

Fourth Session - Thirty-Ninth Legislature
of the
Legislative Assembly of Manitoba
Standing Committee
on
Justice

Chairperson
Mr. Daryl Reid
Constituency of Transcona

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MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Ninth Legislature

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**LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON JUSTICE**

Monday, June 14, 2010

TIME – 6 p.m.

LOCATION – Winnipeg, Manitoba

CHAIRPERSON – Mr. Daryl Reid (Transcona)

VICE-CHAIRPERSON – Mr. Doug Martindale (Burrows)

ATTENDANCE – 11 QUORUM – 6

Members of the Committee present:

Hon. Messrs. Ashton, Blaikie, Swan

Messrs. Borotsik, Eichler, Goertzen, Ms. Korzeniowski, Messrs. Maguire, Martindale, Reid, Whitehead

APPEARING:

Mr. Hugh McFadyen, MLA for Fort Whyte

WITNESSES:

Bill 8–The Highway Traffic Act Amendment Act (Safety Precautions to Be Taken When Approaching Tow Trucks and Other Designated Vehicles)

Mr. Tom Mark, CAA Manitoba

Bill 19–The Protection from Domestic Violence and Best Interests of Children Act (Family Law Statutes Amended)

Ms. Kimlee Wong, Private Citizen

Ms. Kim Parry, Private Citizen

Bill 25–The Manitoba Evidence Amendment Act (Scheduling of Criminal Organizations)

Mr. Michael Silicz, Manitoba Association for Rights and Liberties

Bill 27–The Upper Fort Garry Heritage Provincial Park Act

Mr. Jerry Gray, Friends of Upper Fort Garry

Mr. Jim August, Forks North Portage

WRITTEN SUBMISSIONS:

Bill 8–The Highway Traffic Act Amendment Act (Safety Precautions to Be Taken When Approaching Tow Trucks and Other Designated Vehicles)

Doug Dobrowolski, Association of Manitoba Municipalities

MATTERS UNDER CONSIDERATION:

Bill 8–The Highway Traffic Act Amendment Act (Safety Precautions to Be Taken When Approaching Tow Trucks and Other Designated Vehicles)

Bill 19–The Protection from Domestic Violence and Best Interests of Children Act (Family Law Statutes Amended)

Bill 25–The Manitoba Evidence Amendment Act (Scheduling of Criminal Organizations)

Bill 27–The Upper Fort Garry Heritage Provincial Park Act

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Mr. Chairperson: Order please. Will the Standing Committee on Justice please come to order. The first item of business for this committee is the election of a Vice-Chairperson.

Are there any nominations for this position?

Mr. Frank Whitehead (The Pas): I nominate Mr. Martindale.

Mr. Chairperson: Mr. Martindale has been nominated. Are there any further nominations? Seeing no further nominations, Mr. Martindale has been nominated as the Vice-Chairperson of this committee.

This meeting has been called to consider Bill 8, The Highway Traffic Act–Amendment Act (Safety Precautions to Be Taken When Approaching Tow Trucks and Other Designated Vehicles; Bill 19, The Protection from Domestic Violence and Best Interests of Children Act (Family Law Statutes Amended); Bill 25, The Manitoba Evidence Act (Scheduling of Criminal Organizations); Bill 27, The Upper Fort Garry Heritage Provincial Park Act.

We have a number of presenters that are registered to speak this evening as noted on the presenters' list located outside the committee room doors. Does the committee wish to indicate how late they wish to sit this evening?

Mr. Doug Martindale (Burrows): I think we should sit until we pass all bills clause by clause,

although I suppose we could reconsider that at one minute to midnight if we weren't finished, but the rules probably say that because there are presenters, we have to adjourn at midnight.

Mr. Kelvin Goertzen (Steinbach): Why don't we reconsider at 10 o'clock? I have a very good feeling about the process of this committee, but let's reconsider at 10 o'clock.

Mr. Chairperson: Is it agreed, then, that this committee will sit till 10 p.m. and then reconsider at that point in time if the business is not concluded? *[Agreed]* Thank you.

In what order of business does the committee wish to hear the presentations this evening?

An Honourable Member: As listed.

Mr. Chairperson: As listed before committee members? *[Agreed]*

Starting with Bill 8 and then Bill 19 and then Bill 25 and then Bill 27? Is that agreed? *[Agreed]* Thank you.

Before we proceed, I have a number of points of information to share with committee members and for the folks from the public who are here with us this evening. First of all, if there is anyone else in the audience other than those listed on the presentations who would like to make a presentation this evening, please register with the staff at the entrance to the room and we'll add your name to the list.

Also, for the information of all presenters, while written versions of presentations are not required, if you are going to accompany your presentation with written materials, we ask that you provide 20 copies. If you need help with photocopying, please see our staff person at the entrance to this room and we'll assist you with photocopying.

As well, I would like to inform presenters that in accordance with our rules a limit of time, 10 minutes, has been allotted for presentations with another five minutes allowed for questions from various committee members.

Also in accordance with our rules, if a presenter is not in attendance when their name is called, they will be dropped to the bottom of the list. If the presenter is not in attendance when their called a second time, their name will be struck from the list of presenters.

Prior to proceeding with public presentations, I would like to advise members of the public regarding

the process for speaking in this committee. The proceedings of our meeting are recorded by the good folks sitting behind me here in order to provide a verbatim transcript. Each time someone wishes to speak at the microphone at the podium whether, or whether it be an MLA around the table here, I first have to say the person's name and that's a signal to the *Hansard* folks sitting behind me to turn the microphones on and off.

Thank you for your patience, and we'll now proceed with public presentations.

Bill 8—The Highway Traffic Amendment Act (Safety Precautions to Be Taken When Approaching Tow Trucks and Other Designated Vehicles)

Mr. Chairperson: The first bill we have for consideration is Bill 8, The Highway Traffic Amendment Act (Safety Precautions to Be Taken When Approaching Tow Trucks and Other Designated Vehicles).

First presenter we have is Mr. Tom Mark, CAA Manitoba.

Good evening, Mr. Mark, welcome. Do you have a written presentation, sir?

Mr. Tom Mark (CAA Manitoba): No, I do not.

Mr. Chairperson: Please proceed when you're ready.

Mr. Mark: On behalf of the more than 400 tow truck drivers in Manitoba, I'm here to say thank you—thank you for listening and thank you for acting. You may not have ever considered what a huge impact this small legislative amendment will make. So I'm here to tell you.

My name is Tom Mark. I am the vice-president of automotive services for CAA Manitoba. As first responders, tow truck drivers face dangers on the job every day. On average, CAA Manitoba and its contractors respond to over 120,000 calls annually, while the entire Manitoba towing industry responds to over a quarter million roadside assistance calls annually. Each call for roadside assistance puts the responder in a potentially life-threatening situation, because tow truck operators, like paramedics, police officers and firefighters work in one of the most dangerous places—at the side of the road.

This amendment will give them peace of mind that motorists have been educated about the dangers and what they're required to do to pass safely and

prevent accidents from happening. Without saying much more on that, I'm sure you know how I feel about this particular piece of legislation. That being said, I won't take up too much of your time, but I do want to reiterate some points and leave you with some advice about how to proceed successfully to ensure this amendment isn't just words on a piece of paper.

These hazards faced by the roadside first responders are well known, and many jurisdictions have already taken action through legislation to ensure optimal, on-the-job safety for tow truck operators. While Manitoba has had move-over legislation, which has been in effect for many years, it, unfortunately, has not yet included coverage for tow operators. History has shown that legislators are more inclined to pay attention to an issue following a tragedy. In fact, the greater the tragedy, the greater the likelihood for action, such as legislation being written and passed.

Thankfully we haven't seen any tow truck driver fatalities in Manitoba at the side of the road, but we have had some very close calls. Like Tim Paskaruk, a veteran CAA tow operator, was almost killed when a Toyota 4Runner sped through a crash site, lost control and landed 15 feet in front of him in the ditch. Tim is alive today because of the orange triangles he had put out to mark the crash site. In fact, many tow operators use these triangles to warn them of oncoming vehicles. The triangles make a distinct sound when they are run over by vehicles speeding through a crash scene. Tow truck operators know that when they hear that cracking sound, it's time to get out of the way. CAA and other towing companies spend too much money replacing triangles.

Shaun Zroback, another CAA tow operator, didn't have the security of the orange triangles while he was changing a tire and suffered the consequences. Shaun was grazed by the deck of a speeding flatbed truck. He suffered scratches and bruises that lasted for weeks and kept him off the job. These instances are only two examples of why last summer CAA Manitoba launched its Move Over Manitoba campaign. And I have to say I was impressed by the government's swift response to act.

* (18:10)

In terms of advice, I have two main points to make today.

First, in terms of educating the public, I think the government has a huge opportunity. Here in Manitoba, the summer months are also affectionately referred to as construction season. When the construction season starts, we all hear and see the warnings to slow our speed and drive safely through construction zones where people are working. By the time the summer gets warmer and we start to see those workers, it's engrained in us. The consequences of speeding through construction zones is not only dangerous but can also hit a motorist pretty hard in the pocketbook. It's definitely an effective education campaign, and while I'm not privy to the information about the specific success of this campaign, I can tell you that same kind of intensive education campaign is exactly what we need to educate Manitobans about the dangers faced by tow truck drivers every day of the year, not just during the warm summer months, because the plain fact is our drivers are more busy in the winter months. CAA Manitoba would be pleased to work with the government to help get this message out.

Secondly, in addition to educating the public about the new law, there needs to be evidence of strict enforcement of the laws. I know the police service in Winnipeg and the RCMP around the province of Manitoba will do their best to enforce the new laws, but they cannot be everywhere all the time. But the laws can act as a deterrent too. I'm hopeful that a hefty fine with demerits will be enough to tell speeders to slow down when passing tow trucks. CAA Manitoba will be watching closely the effectiveness of this bill, once implemented, and I will be reporting back to you with my thoughts, my advice and the advice of our staff in the months ahead.

So, please, once more, accept my appreciation for your acceptance of this amendment. I look forward to seeing full support from all members of the Manitoba Legislature.

Thank you, and I'd be happy to entertain any questions, if anyone has any.

Mr. Chairperson: Thank you, Mr. Mark, for your presentation this evening.

Mr. Eichler, questions for the presenter.

Mr. Ralph Eichler (Lakeside): Thank you, Mr. Mark, for your presentation. I on this side of the House certainly do support this legislation brought forward by your organization and on behalf of the minister. My question in regards to the education

side of things, what is the budget that you talked about in regards to the education side on CAA, or is there a budget set?

Mr. Mark: At this time we have not set a budget, but we are entertaining looking at some other plans and some other programs that have been developed through some additional CAA clubs in Alberta, primarily, British Columbia. They do have Move Over campaigns and, collectively, as an association, we're looking at working together with whatever jurisdictions we can.

Hon. Steve Ashton (Minister of Infrastructure and Transportation): Well, I'd like say a thank-you for the presentation, and I look around the table and I can't speak for other MLAs, but I can certainly indicate that on more than one occasion, actually, quite a few occasions, I've had to call CAA. Travelling as regularly as I do back home to Thompson, you realize just how much you rely on the roadside assistance. And I just want to echo your comments.

I know I had the occasion to, once again, last year, call CAA, and a tow truck operator was sent out. And what was interesting is, I was not Transportation minister at the time, but the tow truck operator mentioned this issue, and this was on Highway 6—and the member for Lakeside's constituency, actually—and he said to me, he said you'd be amazed how many people just speed right by, even though they see the car. And he said the worst is when it's the winter, and, you know, you can assume that perhaps the roads might be a bit on the icy side; you'd think people would take precautions, no matter what.

So I do want to indicate that I appreciate CAA's role in this and CAA's role, in particular, being a voice for all the emergency roadside providers, because one of the reasons we are moving on this bill is because it's not a theoretical concern, it's a real one. And, you know, I can assure you that we will make sure we follow it up with full attention to alerting the public, and also that we'll make sure that all the law enforcement authorities are aware of this legislation. We will take your advice, and I want to thank you for coming to the committee and providing it.

Mr. Mark: Thank you.

Mr. Chairperson: Mr. Mark, did you have any comments, sir?

Mr. Mark: No, I did not. Thank you.

Mr. Chairperson: Okay. Any further questions for the presenter? Seeing none, thank you very much, Mr. Mark, for coming out this evening and for your presentation, sir.

Bill 19—The Protection from Domestic Violence and Best Interests of Children Act (Family Law Statutes Amended)

Mr. Chairperson: Next bill with presenters registered to speak is Bill 19, The Protection from Domestic Violence and Best Interests of Children Act (Family Law Statutes Amended).

The first name we have on the list registered to speak is Marianne Cerilli, private citizen. Marianne Cerilli. Seeing that Marianne Cerilli is not with us at this time, her name will be moved to the bottom of the list.

Next presenter we have registered to speak is Kimlee Wong, private citizen.

Good evening, welcome.

Ms. Kimlee Wong (Private Citizen): Thank you for having me. Sorry, I need to read off my computer. I don't have copies made, but can provide copies if people request some. Okay.

Warm greetings. Thank you for the opportunity to speak before you today.

I'd like to applaud the government for addressing divorce and child custody in Manitoba. This is—divorce and child custody is not a simple or a sexy issue. It's not something that people willingly throw themselves into to deal with. Family break up is messy and, yet, there remain huge gaps in the way we deal with family break ups that really need to be addressed that aren't.

Considering we live in a society where more than a third of the marriages are expected to end before their 30th anniversary, family break up is a reality for many, and most of those family break-ups include children. Out of—or the year 2006, there were almost a million and a half families separating. Eighty percent of those are headed by women, and these stats do not necessarily include common-law relationships.

I guess—one of the main things I would like to speak to tonight is one issue that I feel is not being addressed in Manitoba and that's mainly the fact that in Manitoba a woman may leave an abusive home, but if she has children with the abuser, she will be legislated back into that abusive relationship.

Bill 19, introduced by Minister Swan, is proposed to strengthen The Family Maintenance Act and federal criteria for the best interests of the child. These amendments would guide our courts to consider factors such as the impact of domestic violence as judges assess the best interests of children in custody access matters. It also goes on to deal with protection orders and court appearances and stalking. While the proposed changes regarding the protection orders and court appearances are very much needed and welcome, the other proposed changes, I feel, do little to address the enormous crisis that is happening in our family court system.

And I realize, given the recent release of the Children's Advocate report, the word "crisis" and "chaos" has been played around in the media, and I'm not using it lightly. I really feel we are in a crisis, and I speak from this having personally experienced seven years in Manitoba's family court system.

Many times abuse escalates after leaving the home, and the courts in Manitoba have become a tool used to continue abusive behaviour. The proposed changes to the Divorce Act as set out in Bill 19 do not go far enough to protect children and women from spousal abuse. Too much is left to the discretion of the judge, and from mine and many others' experiences, judges are humans and they make mistakes. And, unless you have thousands of dollars at your disposal, there is no such thing as an appeal.

In particular, I'd like to draw your attention, sorry, to some specific points of the proposed regulations. It's been proposed to add in subsection 39(2) under the best interests of the child, under 39(2.1)(c), the impact on the—one consider—sorry, I'll read it bit—in determining a child's best interest in the application under subsection (2) or section 46, the court shall consider in all matters relevant to the best interests of the child, including but not limited to, the following: On (c), it talks about the impact on the child of domestic violence.

* (18:20)

Again, I feel that this is something that's not given weight in Manitoba. I've spoke to numerous, numerous police officers, social workers, court mediators, court assessors, lawyer—I've spoken to over 15 lawyers. Never have I heard it back to me any recognition of what witnessing spousal abuse does to children. This is rampant in the literature that Public Health Agency of Canada has written on it, plus many others, and, yet, it's not being recognized

in Manitoba. Every time I talked about the abuse, I was asked, are there bruises? Do the children have bruises? When I replied, no, that's where it went. People stopped listening.

Again, under that section (c)(iii), whether the parent who engaged in the domestic violence is able to care for and meets the needs of the child. I have a concern about that point plus this other point, (g), which states, the proposed plan of care of—for the child, including the capacity of the parent seeking custody or access to provide a safe home, adequate food, clothing, and medical care for the child.

What that boils down to in our court system is whoever has the most money is deemed the better parent. The fact that I'm low income works against me. The fact that my ex—his abusive behaviour has restricted my ability to work full time is not considered relevant when I talk about custody of my children.

There is many things. There's something called the power and control wheel which I've heard that our Justice department is aware of, and yet I've examples under every one of those spokes in that wheel of things that went on to me, and when I talked to the lawyers about this, I was told, until the laws change, there's nothing we can do to help you, and because he is the father, he has the right to take these issues to court and he has a right to do this, and because he has the money and the lawyer, his way is heard in court. I don't have a lawyer and I was told by Legal Aid I don't qualify, and yet, in November last year, the judge told me if I show up again without a lawyer, it's not going to go well for me. Funny thing, since then, I've showed up without a lawyer and I've lost custody of my child, not because anyone has said I'm a bad mother but because the dad disagrees and he's got the lawyer, that's what it was.

And so I'm really concerned that these proposed changes are not going to change the status quo of what's happening right now. I'm really happy to see that we're including the child's cultural, linguistic, religious and spiritual heritage. I think one thing that really needs to happen is that we cannot leave this up to the discretion of the judges. It needs to be implicit that if there is spousal abuse or a history or spousal abuse, it must—it must be heard in a custody case and it must be considered relevant. And an abusive parent is not necessarily a better parent.

You know, in fact, it's just—you know, it seems so common sense, and yet, you get into that system, I

tell you, it's insane. Leaving definitions and the relevance of abuse up to the judge is not effective. In my case, the judge in a 2-'08 trial rolled his eyes at me and refused to hear evidence of abuse because, as he said, we're here to talk about the kids, not you. So where is any recognition that my children who witnessed all that abuse were affected? It's not there. There's transcripts. I'm not making this stuff up and I welcome a review by anybody into what's gone on.

Our brothers and sisters to the east in Ontario have heard and responded to people's pleas for action against domestic violence, and in December 2004, introduced the Domestic Violence Action Plan. It's a comprehensive plan from a government that states strongly, we are strongly committed to helping women and children affected by domestic violence through the empowerment of women and the promotion of economic independence. Since launching the Domestic Violence Action Plan, Ontario has increased funding for shelters and counselling service for women, provided current training for front-line workers in hospitals, schools, courts, social service agencies to identify and act on the signals of domestic violence, taken steps to ensure that front-line police response is appropriate, and increased the number of specialized domestic violence courts.

Under Ontario's Children's Law Reform Act, courts are obligated to consider domestic violence in matters of parental custody or access. They are also raising awareness in the public and through the public education campaigns. And I strongly urge the Manitoba government to care for women and children as Ontario has and provide better protection, education, and supports for family break up and domestic violence. We need a broader definition of abuse, one that recognizes the power and—the issues around the power and control wheel and how physical violence is just one tool, especially when men are educated and smart. They know the laws too. They know enough not to leave physical marks.

A report for Health Canada prepared by the Canadian Resource Centre for Victims of Crime notes that children who witness violence are often the silent, forgotten, or unintended victims of spousal abuse. Research suggests that the effects on children who witness violence between their parents can be serious and long lasting. These children are at an increased risk of becoming victims themselves or perpetrators of violence. They are at greater risk of numerous behavioural or emotional development

problems and can experience post-traumatic stress disorder, including fear, anxiety, irritability, difficult concentrating. These children may also experience elevated rates of depression, withdrawal, low self-esteem and other emotional problems. There is evidence that if children witnesses physical violence, they will also witness a considerable amount of psychological abuse, including verbal abuse, belittling and threats.

As it stands now in Manitoba, none of this is recognized in our courts. I speak from experience. I speak from the many, many women who have come to me since then. Because I'm not afraid to speak out, I can tell you there are many women going through this who are afraid to come here today because they're currently going under trials, and everybody is scared to speak out in case it will be used against them.

I think we really need to put this into context and look at it from a gender lens. And I know that's often used and there's almost like a backlash, I feel, about this feminist argument, and all I hear is that the women have all the rights and the women have all the say and, yet, funnily enough, that's not been my experience.

And I'd just like to read a excerpt from a book by a man called James Tuft on battering of women, and he puts it in a historical context: The battering of women by men can be understood within a historical context in which men establish social approval for controlling their wives and a legal right to do so. Although most of the formal laws supporting a husband's right to physically discipline and punish his wife have been abolished, at least here, traditions of male entitlement and hierarchy linger. They are ceremonially embedded in the promise to honour and obey and they are concretely rooted in economic and gender structures that diminish and marginalize women.

To continue these traditions of entitlement, many men use the amount of force and coercion necessary to establish and maintain dominance over their partners. Not surprisingly, the battering of women has only recently received public recognition as a social problem. This recognition has been met with considerable resistance and co-option because it means acknowledging that our society's core values and interaction patterns, hierarchy, gender superiority, property possession and domination regularly generate, legitimize and reinforce the battering of women.

As a public policy issue, the recognition of battering is further impeded by an idolized or romanticized view of family life. Prescriptions against state intervention into the alleged sanctity of the home and the belief that if battering exists, it is either episodic or the result of individual pathology. Most centrally, however, denying the reality of battering and not recognizing it as a social problem reflects gender stratification and gender politics. Violence against women is often generally defined as a private matter or personal trouble, as a psychological problem of one person or the transaction of individuals within a dysfunctional family system, as mutual combat or as a transmission of behaviour across generations. Each of these definitions maintains the illusion that our cultural beliefs do not support and our cultural arrangements do not embody power and balance. This detextualization of battering places responsibility solely on the individual family members while minimizing the impact of historical conditions, cultural traditions, and current institutional arrangements that maintain battering just as they maintain dominance generally and the subordination of women to men specifically.

* (18:30)

It's not surprising, then, that battering has become an issue of public policy largely through consciousness raising, organizing, and lobbying efforts of women. Like other groups or persons at the bottom of oppressive and structurally violent social hierarchies, battered women have often generally been perceived as causing their own suffering. In a post-battered state, survivors have been compared by researchers to non-battered women, and the differences between the two groups judged to be the causes or correlates of battering. Like the people of invaded nations, battered women are perceived by the general culture as a cause of their own invasion, torture, and anguish. *[interjection]* Okay, I'm almost done.

Although until recently there had been a lull in blaming battered women for their victimization, the battering is again being psychologized. Individual and family interventions are once more favoured and funded over interventions that seek to change social, structural, and community co-ordinated responses to battering and violence. Even though women are less likely to be overtly blamed, battering continues to be interpreted in ways that tacitly reinforce notions of women's complicity in the violence.

I'd just like to finish to say, what I'd like to see is a broader definition of abuse in Manitoba; stronger legislation requiring judges to act on the changes; a comprehensive plan like Ontario that includes specific legislation regarding custody to non-abusive parents; public education designed to change attitudes and mobilize communities to stop violence before it happens; early intervention and prevention strategies such as training, research, and conferences in key sectors to help victims get the information and support they need; strengthening the justice system response to better protect women and children and hold abusers accountable for their behaviour. Thank you.

Mr. Chairperson: Thank you, Ms. Wong, for your presentation this evening.

Questions for the presenter.

Hon. Andrew Swan (Minister of Justice and Attorney General): Yes, well, Ms. Wong, on behalf of, I think, everybody around this table, I want to thank you to for coming down and presenting to us this evening. It takes a lot of courage to stand up in front of a room of elected officials to tell your story, so I do truly appreciate your advice for us.

The comment that you made is that you felt that judges haven't really focussed on the impact that domestic violence has had not only on you but your children, and that's really why we've moved ahead to add that section 39.2(1) that you talk about, and we thought that it was important to make sure that it focusses judges to consider that impact that you're talking about, that we accept as a very important consideration. So I certainly hear what you have to say about the other pieces outside of this legislation. I can assure you we're continuing to work on the broader piece outside of this one piece of law: on education, on prevention, on all those other items.

But I do want you to know that we agree with you that it makes sense that judges be required to take abuse into account, and if there is domestic violence and somebody in court wants to talk about it, it's not for a judge to say it's not relevant. We think it is and that's what we're trying to do with this piece of law.

I thank you so much for coming down to—

Ms. Wong: Thank you for that. I just feel that it's—the language isn't strong enough right now as it is. Thank you.

Mr. Kelvin Goertzen (Steinbach): Thank you, Kimlee. I also want to thank you for coming tonight. It's tough enough, I think, for many people to come and present at a legislative committee. I can't imagine how difficult it is to come and speak about something so personal to you, so all of us appreciate that.

We will look at the recommendation from the Domestic Violence Action Plan out of Ontario, and perhaps the minister and I can have a discussion about some of the things that were in that report and how legislation in the future can be strengthened. But I want you to know that we very much appreciate you coming in and speaking from the heart about a difficult subject, I know, for you to speak to so many people about in a public forum, so thank you.

Mr. Chairperson: Ms. Wong, did you have further comments?

Ms. Wong: No, thank you.

Mr. Chairperson: Thank you very much for coming out this evening and for your presentation.

Next presenter I have listed is Kim Parry, whose name was added to the list. Kim Parry.

Good evening. Welcome.

Do you have a written presentation?

Ms. Kim Parry (Private Citizen): No, I don't have any copies.

Mr. Chairperson: Please proceed when you are ready then.

Ms. Parry: Manitoba needs to get up to speed on domestic violence and the continued effect that it has on children who have an abusive parent. Ontario has introduced legislation that will actually mean a change for its children and I implore Manitoba to do the same.

This bill needs to consider the well-being of the children, as the name suggests, and these changes do not address that at this time.

An excerpt from the newsletter of the National Council of Juvenile and Family Court Judges research—says that research on children's exposure to domestic violence has tended to focus primarily on two aspects of their experience: the trauma of witnessing the physical assaults against the mother and the tension produced by living with a high level of conflict between their parents.

However, these are just two elements of a much deeper problem pervading these children's lives, which is that they are living with a batterer. The parenting of men who batter exposes children to multiple potential sources of emotional and physical injury, much of which have not been recognized widely.

Our society is currently giving mothers a powerful and crazy-making mixed message. First, it says to mothers, if your children's father is violent or abusive to you or your children, you should leave him in order to keep your children from being exposed to his behaviour. But, then, if the mother does leave, the society many times appears to do an abrupt about-face and say, now that you are split up from your abusive partner, you must expose your children to him, only now you must send them alone with him even without you even being around any more to keep an eye on whether they are okay.

Did you know that the stats prove abusive men will almost always fight for full custody of his children, where non-abusive men rarely will fight for full custody?

I read for someone who could not be here tonight because she is taking care of her daughter. Her abusive partner was arrested close to two and a half years ago and it cost this woman over a hundred and fifty thousand dollars—more than a hundred and fifty thousand in legal fees in these two and a half years. She avoided trial because it was told—she was told it would cost over 50,000. Women are forced to live in a lifetime of debt if they want to protect their children.

In criminal law, you are innocent until proven guilty; in family law, it works the opposite. The justice system assumes the abused is guilty of mischief and exaggerations and parental alienation until proven otherwise. With the family justice system structured the way it is now, even though a woman leaves an abusive relationship, she's then legislated into it for the rest of her time—of the time her children are at issue. The abuser continues to attack, as they did in the relationship, but now the attack comes with a financial burden attached.

Please figure out whether you want to protect the children and stop perpetuating circles of abuse. If you continue—if you choose to protect them, you need to do more to this bill.

Spousal abuse does not end when the relationship between the spouses end. If there are

children involved, these children, too, will be abused, manipulated and estranged from their family unless the court system steps in, is able to recognize the patterns of abusive behaviour and award custody accordingly.

Domestic violence has to be considered when it comes to custody. Relationships with both parents should be encouraged in an atmosphere that focuses primarily on keeping the children safe. Remember, they can be unsafe even if there are no broken bones or bruises.

The women's–Children's Access Agency is a start, but how often is supervised visitation used as–to ensure safety, instead of protecting them from a known danger?

Some statistics from Stats Canada says that violence–proves that violence against women affects children. And every year in Canada, up to 360,000 children are exposed to domestic violence. For children who are exposed to violence, consequences can include emotional trauma, depression, injury and permanent disability, as well as other physical, psychological and behavioural problems that can extend into adolescence and into adulthood.

Mr. Chairperson, 58,486 women and 36,000 children sought refuge in one of 470 shelters across Canada between April 1st, 2003, and March 31st, 2004.

* (18:40)

Spousal abuse also has enormous economic implications for Canadian society. The first research study to estimate the costs of various forms of violence against women, including women abused in intimate relationships, found that this problem costs Canadian society an estimated \$4.2 billion per year in social services, education, criminal justice, labour, employment, health and medical costs. Criminal justice costs alone total an estimated \$870 million per year.

Please amend this act with some concrete methods that will ensure our children are protected and the cycle of violence will start to weaken. Without the court's recognition of abuse and the ability to weight the custody to the non-abusive parent, nothing will change. Thanks.

Mr. Chairperson: Thank you, Ms. Parry, for your presentation. Please don't go away yet, there may be some questions–if you don't mind.

Questions for the presenter?

Mr. Goertzen: Thank you, Kim, for coming in this evening.

A question regarding the Ontario legislation. Do you know how long it's been in place and whether or not there has been any sort of analysis about what impact it's had–whether or not the judiciary, whether judges are using evidence of abusive spouses as a determining factor or as a weighted factor in awarding custody of children? Has it had a tangible effect at this point or is it too early to say?

Ms. Parry: I'm not sure. I'd have to look that up, I guess. [*interjection*] Did you want to speak to that?

Mr. Chairperson: Is there leave of the committee to allow for the assistance for the presenter? [*Agreed*]

Please come forward, Ms. Wong. Do you have an answer to the question, please?

Ms. Wong: Yes, I have an answer to that question.

The act that I spoke about was brought in in 2004, but the specific legislation to the judges was amended in February of 2006. The review that I spoke of about the act was just done in 2007 by the government. I'm not aware of any specific–but that, obviously, is something I'm very interested in, also. Thank you.

Mr. Chairperson: Further questions, Mr. Goertzen, Honourable Minister Swan?

Mr. Swan: Yes, Ms. Parry, thank you very much for coming down to speak to us tonight.

I think I missed one of your points. You were talking about the WCAA, the Winnipeg Children's Access Agency. Did you–was there some advice you had on the work that agency does? I just wasn't following.

Ms. Parry: Can I invite my colleague up, too? Okay.

Mr. Chairperson: Yes, please. We'll allow the leave to continue. Please come forward, Ms. Wong.

Ms. Wong: Sorry. Ms. Parry is in a difficult situation because, as she said, she's reading on behalf of another woman who could not make it. So she can't really answer to this.

I don't believe there was anything specifically. I think it was just saying you can have that supervision for the initial changes, but what happens after–like there's no supervision afterwards.

Mr. Chairperson: Any further questions for the presenters?

Seeing none, thank you, Ms. Parry, for coming out this evening, for your presentation, and for your assistance, Ms. Wong.

That concludes the list of presenters that I have before me on this bill, although we will call the bill a little bit later and see if there's additional presentations.

**Bill 25—The Manitoba Evidence Amendment Act
(Scheduling of Criminal Organizations)**

Mr. Chairperson: So we'll move now to Bill 25, The Manitoba Evidence Act—Amendment Act (Scheduling of Criminal Organizations), and the first person we have listed is Michael Silicz, Manitoba Association for Rights and Liberties.

Good evening, sir. Welcome. I hope I pronounced your name correctly.

Mr. Michael Silicz (Manitoba Association for Rights and Liberties): Close. Silicz.

Mr. Chairperson: Silicz. Did you have a written presentation, sir?

Mr. Silicz: No, I do not.

Mr. Chairperson: Please proceed when you're ready.

Mr. Silicz: Sure. Well, good evening, everyone. My name is Michael Silicz and I am here today on behalf of the Manitoba Association for Rights and Liberties, or MARL, as the co-chair of the Charter of Rights and Legislative Review Committee. As a citizen, I'm an articling student in law with the Winnipeg law firm, Monk Goodwin LLP.

Thank you for allowing our organization the chance to speak to this bill tonight. Let me begin by summarizing MARL's position. We are here to speak about what we see as deficiencies with Bill 25. Specifically, we wish to advise the Justice Committee regarding issues of concern that should be addressed prior to passing this bill into law.

Further, it should be made clear, for the record, that MARL is not defending possible criminal organizations by taking a stance against this bill. Rather, we wish to provide our organization's input as it relates to the rights and civil liberties of those this bill may affect.

While MARL understands the policy considerations behind the government's attempt to

give law enforcement a powerful tool of legislation to combat crime, our organization is wary of the proposed extent, power and reach of this bill. If the government wishes to stigmatize and sanction an entity as a criminal organization, there needs to be a high standard of procedural fairness in place and the basic principle of innocent until proven guilty must be upheld with a clear, ordered and transparent process.

As the bill is currently written, it's entirely possible for an entity to be named a criminal organization without any judicial safeguards. Ultimately, MARL's main suggestion to the committee today is to allow for judicial review of the minister's decision when naming an entity as a criminal organization.

One of the first issues that concerns MARL with this bill is the process of the director creating an application under section 68.4. Specifically, MARL is apprehensive with 68.4(2)(c) which reads: The application must provide detailed information setting out the basis on which the director has determined that the entity is a criminal organization, including one or both of the following, and it goes on to list (i) as information obtained by the director respecting the entity and its members or a decision or finding of a federal, provincial or territorial court that the entity is a criminal organization.

MARL takes issue with this proposed legislation's wording that states: allows one or both of subsection (i) and subsection (ii). MARL is of the view that both subsection (i) and subsection (ii) should be necessary. Specifically, there should be a decision or order of a Canadian court that clarifies that the organization in question is criminal in nature. This would address concerns about the lack of judicial authority in the statutory regime, as an order of a Canadian court would guarantee certain judicial standards were at least adhered to before this—the committee's decision. Further, MARL suggests that the committee consider making a court order obtained after a full evidentiary hearing a prerequisite of listing an entity as a criminal organization. That would at least partially address the issue of judicial review which I will arrive at shortly.

Another section of the bill that's raised MARL's concern is section 68.8 as it pertains to reasonable grounds. Both sections 68.8(1) and (9) make reference to reasonable grounds as does section 68.2(2). MARL believes reasonable grounds needs to

be much better defined than it currently is. Most pertinent to this section is 68.8(1) which reads: Determination by review panel. The review panel must review the material provided by the director and advise the minister if there are reasonable grounds to believe that the entity in question is a criminal organization.

It is not clear from the definitions or this part of the statute what reasonable ground means or the threshold that must be met for an entity to become a criminal organization.

MARL wishes to emphasize that the determination process needs to be more explicit and detailed. Specifically, reasonable grounds should be defined in a way that makes the process and decision of a review panel more open and transparent. MARL suggests that naming the standard explicitly to that as a balance of probabilities at a minimum but suggests that the bar should be a higher standard—that of the criminal, beyond a reasonable doubt.

Further, MARL would also suggest that section 68.13 be changed to require specifically that the minister appoint a senior official in the department who is qualified to practise law in the province of Manitoba. As well, MARL suggests that this be applied to 68.14(1) as well to include individuals qualified to practise law in Manitoba. MARL suggests this since those with a legal background would have a better understanding of the evidentiary process in the real court of law and would hopefully keep both standards in mind while addressing possible scenarios that could arise under this bill.

Most important of all, MARL is gravely concerned about section 68.11 on a lack of appeal or judicial review. That section specifically reads: No appeal or judicial review. The decision to add an entity to the schedule or deny a request under section 68.10 is final and is not subject to judicial review or appeal.

While MARL appreciates the government's desire to keep this process out of the court system, we nonetheless re-emphasize our position that judicial review should be necessary. This is especially pertinent given the words of 68.14(3) which states that a proceeding of the review panel are confidential. Such serious determinations cannot be made without a right of appeal or due process. Once named as a potential criminal organization, those who wish to challenge the claim by the government have 30 days to object so via a written summary. Outside of this challenge, there is no other

appeal mechanism or process within the bill itself to challenge the statutory regime's decision.

* (18:50)

Further, in most judicial review proceedings, courts traditionally show a considerable degree of deference to the findings of fact that a tribunal or administrative body makes. Since 68.6(3) restricts the information the minister must disclose to an objector by exempting that information if it's from a confidential informant or an information stemming from a possible ongoing investigation, the bill further violates basic natural precepts of notice which further highlights the need for judicial review. As well, the bill allows hearsay evidence to which those wishing to defend their organization may not have access to. While MARL appreciates that entities as such are not legal persons and have no standing before the law, we nonetheless feel that there should exist better safeguards that would allow an accused organization to confront its accusers.

To summarize, as the amendments are written, an entity could be found to be a criminal organization without a court order or decision on the topic, decided so at the undefined standard of reasonable grounds and without any judicial review of the decision whatsoever. Once named, the entity would remain a criminal organization for a minimum of five years. With this in mind, MARL is of the opinion that there should be a powerful evidentiary safeguard and accountability mechanisms in place for this statutory regime. Judicial review would provide that structural safeguard.

MARL is also concerned about section 68.16 as it relates to collection of personal information. This is especially daunting in the context of the lack of aforementioned judicial review. Under the proposed amendments, the director is allowed to collect a very broad range of personal information on individuals as defined under The Freedom of Information and Protection of Privacy Act. MARL is of the opinion that this board-broad power to obtain information about individuals in this context is highly susceptible to government abuse.

Specifically, in their investigation, a review committee or the director has the authorized power to obtain personal information about people, and law enforcement agencies are specifically forced to provide such details under 68.16(3). Further, 68.16(4) allows the minister to enter into agreements with other enforcement agencies in the country. This opens the door for the minister to approach

organizations like CSIS, for example. MARL is of the opinion that allowing a government-appointed access—sorry, allowing a government-appointed body access to provide information to make a decision about criminal organizations is both an affront to individuals' liberties and is a potential avenue for abuse. Again, without judicial review, the potential for misuse here is great. Privacy is a basic and fundamental right, and this bill purports to impose wide-sweeping violations of that right.

Last but not least, MARL feels that there are constitutional issues that must be addressed before the bill is passed. Specifically, MARL would like to draw the Justice Committee's attention to possible Charter issues as they relate to section 2(d) on the freedom of association as well as section 7 as it pertains to fundamental justice.

MARL is of the view that broad legislation that may interfere with individuals' Charter's rights, and unless it can be clearly established that an entity is indeed criminal, the associational right of it or its members should not be interfered with. This is a very complicated area of law, and if it would please the Justice Committee, MARL can arrange to provide you with further written submissions on the issue of constitutionality.

We hope today that the Justice Committee takes into account MARL's suggestions when further reviewing the bill. In addition to the few specific changes MARL has recommended, we are again of the strong opinion that judicial review in this context is necessary.

Thank you for your time, and, pending any questions, that concludes my presentation on behalf of MARL. Thank you.

Mr. Chairperson: Thank you very much for your presentation, Mr. Silicz.

Questions for the presenter.

Mr. Kelvin Goertzen (Steinbach): Thank you, Michael, for your presentation. It was well thought out, and obviously you spent a lot of time reviewing the legislation. Your primary concern, then, is the fact that it's going to be a director essentially that makes the determination of a criminal organization. You recognize that those who are in the court system, prosecutors, in terms of having to re-prove that an organization is a criminal organization, that's become a bit of a burden. And so there's value in terms of being able to list organizations as criminal organizations, but you object with the process by

which those organizations get onto that list. Is that correct?

Mr. Silicz: That's correct. I mean, when we were looking at the bill, there's obviously situations where you're dealing with known gangs or perhaps even terrorist groups where you're obviously going to be able to make the call and you don't want to spend, you know, all this time trying to prove that in court. However, MARL's concern is if that definition is applied to something broader, perhaps to a novel organization or an organization that's not as well known criminally as, for example, the Hells Angels or a gang similar to that, then it opens the door for potential abuse under this system with the lack of judicial review.

Mr. Goertzen: And how would you foresee that judicial process taking place? Would you see advocates on either side making representation to somebody who's in that position, whether it was a master or a judge, or would you see that being again more of a private process? How would you see that taking place?

Mr. Silicz: To elaborate on that, MARL has not thought out that far ahead as to the actual process that would be involved to the degree that you've stated. However, we just want to make the committee aware that we are concerned that without any process that there is potential for abuse.

Hon. Andrew Swan (Minister of Justice and Attorney General): Mr. Silicz, I want to thank you for coming down and giving us MARL's perspective on this bill. You said you're an articling student. Have you just started your articles or are you coming to the end of that road?

Mr. Silicz: Three more days.

Mr. Swan: All right, well, I'll look forward to seeing you at the call-to-the-bar ceremony in a few days and congratulate you on your year but also on a good presentation tonight. Thank you.

Mr. Chairperson: Mr. Silicz, any further comments, sir?

Mr. Silicz: Thank you, Honourable Minister Swan. No, that concludes my presentation. Thank you, committee.

Mr. Chairperson: Any further questions for the presenter?

Seeing none, thank you very much, Mr. Silicz, for coming out this evening and for your presentation, sir.

**Bill 27—The Upper Fort Garry Heritage
Provincial Park Act**

Mr. Chairperson: Next—seeing no further presenters registered to speak to this Bill 25, we'll now move on to Bill 27, The Upper Fort Garry Heritage Provincial Park Act, and the first presenter I have listed is Jerry Gray from the organization Friends of Upper Fort Garry.

Good evening, sir, welcome. Do you have a written presentation?

Mr. Jerry Gray (Friends of Upper Fort Garry): Yes, I do.

Mr. Chairperson: Give us a moment to distribute and then I'll give you the signal to proceed.

You may now proceed, Mr. Gray, when you're ready.

Mr. Gray: Thank you, Mr. Chairman, and good evening, everybody. I have two things for you. Of course, one is the plot plan or the site of the park. I'll talk about that very briefly in the context of the bill, and, secondly, I have just a brief presentation to make on the reasons why the Friends do support this, the proposed bill, and would like to see it passed.

If I go to the diagram just very quickly—we're not here to talk about the park—but the bill does make particular reference to the boundaries of the park and it's a legal description and so just to give you a flavour for what the property is, and I have to point this backwards here, but it basically—the property's bordered by Main Street on the east side, Assiniboine on the south side and Fort Street on the west side and then goes up to the back where the gate property is.

I would say that all the stuff in white—but it's not quite true because if you go across Assiniboine Avenue to the south, that is Bonnycastle Park and the key is this says the long-term development plan. We would, of course, like to do something with Bonnycastle Park long term but that is not part of the bill, the property, nor is this development part of our proposal, but we do like to show people that it is possible to make it even a more spectacular park if we had the property all the way down to the river, but for purposes of the bill, it is only the property as I have just described.

On the bill itself, I've outlined here, I think, seven reasons why the Friends do support this bill and I'll just—you can read these for yourself, obviously, but a little bit of context around them. This property was not in public hands for almost a

hundred years. The gate property, of course, was. I don't know the exact date but I think it's early 1903 or '04, Hudson's Bay Company decided that to the City and that was just the part that has the gate on it. The rest of it, over the years, was public, private and back and forth and so forth, and even with the Friends owning the property while it is, in our view, sort of secure, nothing makes it more secure for the people of Manitoba than to make it a provincial park and so, once this is done, this will forever be in the hands of all Manitobans and we think that is a great thing for everyone.

*(19:00)

Secondly, there is no doubt about it, being a provincial park is matter of public prestige. It has a sign of approval on it by the Province, and, in terms of marketing the site and so forth, this is good for the whole development. I have said there, and I can be challenged, this is the first provincial park established in the city of Winnipeg. Yes and no. Apparently, the—well, apparently, the Province does own Memorial Park, but it is not a provincial park, at least not on the park's Web site, okay. So whichever you want to go for it, fair enough, but certainly this would be, from our standpoint, the first provincial park in the city of Winnipeg, or the second; either way we're happy with it.

Thirdly, and part of it, you may recall through our fundraising campaign, the government came to the table with two things. One was a pledge of \$1.5 million in capital funds, and the other was a permanent commitment to cover the operating costs—pardon me, the maintenance costs of the parks forever. That was nominally tagged at \$3 million, and, of course, it was—came with the park status. So, by making it a provincial park, it does allow the Province to fulfil its commitment to cover the maintenance costs of this park forever.

Secondly—or fourthly, this is a marketing initiative on our part. I mean, we want people to come to this park and, having a provincial park, it will be included, obviously, in all the marketing and public relations material that the Province puts out through Tourism Manitoba and in other means as well.

In the bill, you'll also notice this creates an advisory committee. We think this is an excellent idea. It—in addition to the fact that it has to be done if the Province is going to own the park, so to speak, it presents an opportunity for additional consultations between the minister and the public on the park

development, what goes on in the park and et cetera. So we are in favour of having this advisory committee, and also the membership makeup as proposed in the bill.

As provincial park status, it gives us access to funds we'd probably not normally have, and I don't mean just within the province, but with heritage granting agencies across the country, both federal and provincial. And so, again, the park status is important for that reason.

And, finally, being a provincial park and with the Province owning the property, this will ensure that the site will be developed appropriately and a view and with the participation of all Manitobans. So, on balance, we think that this is and—of course, a very good bill, and we are very much in favour of provincial park status.

So, with that, I will be happy to answer any questions you might have about this or the plan, either one.

Mr. Chairperson: Thank you very much, Mr. Gray, for your presentation.

Questions for the presenter?

Mr. Larry Maguire (Arthur-Virden): Thank you very much, Mr. Gray, for your presentation. I, too, am encouraged by the development of the work that I see on my doorstep. I live in that area.

I think that, probably, first of all, I want to commend you on your efforts in fundraising, your tenacity. I think a better word probably would be devotion, though, to making sure that this type of a park is developed in our province and in the city here. And the work of the advisory committee is to be recommendations to the minister. You're satisfied with the number of players or the number of people that will be there: five to 10. I know there's been a great deal of consultations.

Mr. Gray: Named by the board of Upper Fort Garry. Yes, we are.

Mr. Maguire: My question on that is: Is there anything else, any other improvements or deletions, that you'd like to see in this bill?

Mr. Gray: No. Nope.

Mr. Hugh McFadyen (Leader of the Official Opposition): And thanks, Jerry, for the presentation, for all the work that's gone into bringing us to this

stage in the process. It's been a good road, a long road, a few bumps along the way, but we're here, and so I want to congratulate you and everybody else involved in getting it to this point.

Can you just provide a bit of a time line in terms of the various steps, and when they can be expected to be complete in accordance with the current thinking?

Mr. Gray: Right now, I'll do a quick overview. Right now, we are finishing up the archeological work, the initial work on the site. The people there will be through this coming Friday. Their work will be done on the site. We will start actual site preparation for the park after that is done. We are looking to start construction in the park in the spring of '11. We are very much hampered by the fact the curling club is still there, and hard to curl without a curling club, and they have a right to stay there until next year, the end of the curling season.

So our plan right now is we will demolish the curling club roughly May of next year, and then we can start actually doing the park. So the park will start construction in, say, May of '11, and continue through until it is mostly done. The building, the interpretive centre, which sits on the southeast corner—and you can see that marked there on the site—that will start construction in probably early 2012–2012.

We have some more fundraising to do, and we are not going to start the building until we have the funds in place to do it. So the park comes first; the building comes second. Short of a windfall, I wish it would all start tomorrow, but we have to raise money.

Hon. Bill Blaikie (Minister of Conservation): I just want to, on behalf of the government and myself as minister, extend our appreciation to Mr. Gray and to the Friends of Upper Fort Garry for all the work that they've done and it's a happy occasion to be at this stage in the development. I was thinking perhaps that the opposition leader didn't like the idea of knocking down a curling rink, but we all have to make sacrifices along the way to make sure that this great idea comes to fruition. And so I have no questions, but I just wanted to add my own congratulations to the work that you've done.

Mr. Gray: Thank you very much.

Mr. Chairperson: Any further comments, any questions for the presenter?

Seeing none, thank you very much, Mr. Gray, for coming out this evening and for your presentation, sir.

The next presenter we have to Bill 27 is Jim August, Forks North Portage.

Good evening, sir. Welcome. Do you have a written presentation?

Mr. Jim August (Forks North Portage): I do.

Mr. Chairperson: Just give us a moment sir, we'll distribute, and then I'll give you the signal to proceed.

You may proceed then, Mr. August.

Mr. August: The Forks North Portage, who I represent, is very supportive of Bill 27. In fact, the corporation has been very supportive of this initiative right from the get-go, and in many ways we're the—The Forks has become the operational arm of Upper Fort Garry. So when it comes to the—they really do, our volunteer organization with no paid staffs, so we've become basically that—carry out those activities, including the accounting, financial management, the tender document process, all the security-related communications efforts, et cetera, and believe that the Upper—this designation will really allow us to work on an ongoing basis closely with the Friends of Upper Fort Garry.

Kind of the history here is over 22 years ago governments came together and formed The Forks Renewal Corporation, and that really has become one of the great success stories, I think, of Winnipeg and of government co-operation and collaboration. So the Upper Fort Garry project, I believe, really builds on that and, in fact, expands that Forks precinct to really include more of Winnipeg's historic site at the junction of the Red and Assiniboine rivers.

So we applaud the work of the Friends of Upper Fort Garry and the commitment of governments to make this—to pass this bill. And we also believe that the linkage between Upper Fort Garry and all the other things happening at that junction, with the Canadian Museum for Human Rights and other activities at the site, really makes the whole area a much more attractive site for tourists and for residents of Winnipeg and Manitoba.

So we applaud you for producing the legislation and applaud also Upper Fort Garry for the great work they've done in getting it to this point. Thank you.

Mr. Chairperson: Thank you very much, Mr. August, for your presentation.

Questions for the presenter?

Mr. Maguire: Well, I have more of a complimentary comment as well. I just wanted to thank you for your presentation and your support of this project as well and for all of the rest of the work you've done on many other heritage areas, and so I appreciate that and just look forward to encouragement as far as the project going ahead.

Mr. Chairperson: Any further—Honourable Minister Blaikie.

Mr. Blaikie: Again, just thanks to Mr. August for the presentation and for, you know, laying out before the committee that—the vision of that sort of—the contiguous developments between Upper Fort Garry and The Forks and the Museum of Human Rights, and I think we're, you know, we're on the cusp of a very nice development, so to speak, in that part of Winnipeg, and thanks—thank you to you for the work that you've done in—with the Friends of Upper Fort Garry and being a resource to the whole project. Appreciate that very much.

* (19:10)

Mr. Chairperson: Thank you very much.

Mr. McFadyen: Thanks, Jim, for that presentation, and I just want to echo some of the comments already made about how proud we all are as Manitobans, of The Forks and on what's happening there and how pleased everybody is that this development is moving forward.

And the minister had just mentioned there—I use the word "contiguous" in terms of the connection between Upper Fort Garry and The Forks. A couple of the kind of existing barriers between Upper Fort Garry and The Forks are the railway tracks which have some underpasses, also, a few lanes of traffic with Main Street. I'm wondering if you have any thoughts in terms of how we make it—how we ease the passage of pedestrians between The Forks and Upper Fort Garry in order to make it easier for people who may be enjoying The Forks or Upper Fort Garry to be able to enjoy both on any given day.

Mr. August: Yeah, pedestrian flow becomes very important, and there's a few concepts being worked on. One is really to ensure that the passage coming through VIA Rail station and the lights at that passage where it is a more accessible. There's a big

idea that's been talked about that's not in the plan and that's an overhead walkway, but I think I promised Jerry we wouldn't talk about, so we won't. But it's a phase 2 or 3 or 4.

And then really through Bonnycastle Park and along the river way, we do have some flooding issues this year, and every once in awhile we have that, but I think the linkage of Bonnycastle Park down along the river and to The Forks is really the—probably the best linkage in—for much of the year, and we're in discussions, and very positive discussions, with the City of Winnipeg on Bonnycastle Park and the possibility of them becoming part of this whole plan or turning it over to The Forks and we'd do the development that links it together.

So it's an important part and as is parking and all the rest of those things, but it's—they're in discussions that are ongoing and some solutions.

Mr. Chairperson: Any further comments, questions for the presenter?

Seeing none, thank you very much, Mr. August for your presentation this evening.

Mr. August: Thank you.

Mr. Chairperson: We have—we had on one of our prior bills, Bill 19, we had a name that was dropped to the bottom of the list, was not present for first call, and I will refer back to Bill 19, The Protection from Domestic Violence and Best Interests of Children Act (Family Law Statutes Amended), and we'll call for the second time, Marianne Cerilli. Marianne Cerilli. Seeing that Marianne Cerilli is not with us this evening and that was second call, her name will be struck from the list.

Bill 8, 19, 25 and 27, are there any members of the public with us here this evening who wish to make a presentation to any to these bills? Seeing none, that will conclude public presentations.

In what order does the committee wish to proceed with the clause-by-clause consideration of these bills? Mr. Swan?

Hon. Andrew Swan (Minister of Justice and Attorney General): Numerically.

Mr. Chairperson: Numerically, in the order that's listed. Thank you.

**Bill 8—The Highway Traffic Amendment Act
(Safety Precautions to Be Taken When
Approaching Tow Trucks and Other Designated
Vehicles)**

(continued)

Mr. Chairperson: So we'll now proceed to Bill 8, The Highway Traffic Amendment Act (Safety Precautions to be taken When Approaching Tow Trucks and Other Designated Vehicles).

Does the minister responsible for Bill—before we proceed to opening statements, during the consideration of a bill, the table of contents, the preamble, the enacting clause and the title are postponed until all other clauses have been considered in their proper order. Also, if there are—is agreement from the committee for the longer bills, I 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*] Thank you.

We'll now proceed to clause-by-clause consideration of Bill 8.

Does the minister responsible for Bill 8, The Highway Traffic Amendment Act, have an opening statement?

Hon. Steve Ashton (Minister of Infrastructure and Transportation): Just very brief, I want to indicate as we saw during the presentation that this does protect emergency roadside assistance vehicle operators. It also does deal with other public servants, in this case, our inspectors, provides the same kind of protection. So I want to thank the CAA in particular for identifying this issue as a priority and would certainly recommend this bill to the members of the Legislature. I think it's an important addition to the kind of protection we currently see for ambulances, police vehicles, fire vehicles and other emergency vehicles.

Mr. Chairperson: We thank the honourable minister for the opening statement.

Does the critic for the official opposition have an opening statement?

Mr. Ralph Eichler (Lakeside): Sure. I would like to put on the record that we are very supportive of this legislation brought forward—known by CAA and other members that wanted to see this amendment brought forward. So we are in full support to move forward on clause by clause.

Mr. Chairperson: We thank the critic for the official opposition for their opening statement.

We'll now proceed to clause by clause.

Clauses 1 and 2—pass; clause 3—pass; clauses 4 and 5—pass; enacting clause—pass; title—pass. Bill be reported.

We'll now—

Some Honourable Members: Oh, oh.

Mr. Chairperson: Order, please. Order.

**Bill 19—The Protection from Domestic Violence
and Best Interests of Children Act
(Family Law Statutes Amended)**
(continued)

Mr. Chairperson: We'll now proceed to clause by clause—*[interjection]* We'll now proceed with clause-by-clause consideration for Bill 19, The Protection from Domestic Violence and Best Interests of Children Act (Family Law Statutes Amended).

Does the honourable minister have an opening statement?

Hon. Andrew Swan (Minister of Justice and Attorney General): Yes, Mr. Chairperson, just very briefly, Bill 19 will do three major things. First, it'll amend The Family Maintenance Act to introduce best interests of the child criteria, and as we've already discussed tonight it will specifically add in the presence of domestic violence in a relationship and particularly the impact on children when a judge makes a decision on custody and access issues.

It will also fine tune some provisions of The Domestic Violence and Stalking Act to draw a balance between obviously wanting to protect victims of domestic violence but to also allow court procedures to go ahead to try and resolve matters short of contested hearings.

And, thirdly, it will also make some amendments to the child in custody enforcement act and The Family Maintenance Act to ensure that a judge only reveals information about a—someone who may be the victim of domestic violence to make sure that they will be served and aware of court proceedings but not in a way that will jeopardize their safety.

Mr. Chairperson: I thank the honourable minister for the opening statement.

Does the critic for the official opposition have an opening statement?

Mr. Kelvin Goertzen (Steinbach): I do, Mr. Chairperson. I want to thank the minister for his statement. I also want to thank the presenters who are here again this evening, Kimlee Wong and Kim Parry for bringing forward some—I think some good suggestions, not all specific to this bill but more generally in regards to family law and some of the personal challenges that come as a result of marriage breakdown and breakdowns in family. I think that those are always things that all of us can learn from and they pointed us into some ways to explore and different things we can look at, and I suspect that all members of this committee will be doing that in looking for ways to improve the system overall.

On this legislation, as a whole, we agree with the movement and the general direction of the legislation. Probably this kind of—and, you know, there are things that we could pick around and suggest different things for improvements. I suspect that with this kind of legislation, more than most, there are often unintended consequences as it works its way through the system and we'll see what those will be. Some of them are positive and some are not quite so positive and then you go back and rework it and tweak it again.

So we'll see if this results in the improvements that we all hope that it will and that it'll provide some of the safe measures that we all hope it will in the future as well.

So, with those comments, I think we're ready to proceed to clause-by-clause consideration.

Mr. Chairperson: We thank the critic for the official opposition for the opening statement.

We'll now proceed to clause by clause of Bill 19.

Clause 1—pass; clause 2—pass.

Shall clauses 3 and 4 pass?

* (19:20)

Mr. Swan: I do have two amendments to provide in this section. Clause 4(1)—

Mr. Chairperson: And maybe we'll proceed with clause 3 first.

Mr. Swan: That would be fine.

Mr. Chairperson: That's fine?

We'll call clause 3 by itself, as there is amendment to clause 4.

Clause 3—pass.

Calling clause 4.

Mr. Swan: I move,

*THAT Clause 4(1) of the Bill be amended by replacing the proposed subclause 7(1)(c.1)(ii) of **The Domestic Violence and Stalking Act** with the following:*

(ii) in relation to custody, access or a related family matter,

(A) mediation by a court referral, or

(B) an assessment, investigation or evaluation that has been ordered by a court;

Mr. Chairperson: It's been moved by Minister Swan,

THAT Clause 4—

Some Honourable Members: Dispense.

Mr. Chairperson: Dispense.

The amendment is in order.

Honourable Minister, with comments?

Mr. Swan: I know the member for Steinbach (Mr. Goertzen) was just talking about the tweaking that can sometimes happen to improve a bill. We thought we'd do a little bit of tweaking before the bill hopefully passes.

We've—it's been suggested to us that this amendment would better maintain consistency of language with other family law statutes, including section 47(1) of The Court of Queen's Bench Act and section 20.2(1) of The Provincial Court Act, which both provide that an issue may be referred to a designated mediator.

A court referral to mediation is technically an order of the court, but we appreciate that mediation requires a certain level of co-operation by the parties and their agreement to engage in the process, and, as such, it's more appropriate to use the language of mediation by court referral rather than mediation that has been ordered by any court.

Mr. Chairperson: Thank the honourable minister.

Further questions, comments on the amendment?

Committee ready for the question?

Some Honourable Members: Question.

Mr. Chairperson: Amendment—pass.

Shall clause 4 as amended pass?

Some Honourable Members: Pass.

Mr. Swan: Yes, I have another amendment, Mr. Chairperson.

Mr. Chairperson, I would move

*THAT Clause 4(2) of the Bill be amended by replacing the proposed clauses 7(1.1)(b) and (c) of **The Domestic Violence and Stalking Act** with the following:*

(b) refrain from communicating with the subject, except in the presence and with the approval of

(i) the judge, master or other officer of the court in a court proceeding, or

(ii) the mediator, assessor, investigator or evaluator;

Mr. Chairperson: It's been moved by Minister Swan,

THAT Clause 4(2) of the—dispense?

Some Honourable Members: Dispense.

Mr. Chairperson: Dispense.

The amendment is in order—[interjection] Just trying to move business along.

Mr. Swan: Following introduction of the bill, my officials had further consultation with representatives of Family Conciliation. Obviously, they work closely with Family Conciliation, and it's been suggested that while it may be appropriate at early stages of the mediation process to prevent direct communication between the subject of a protection order and the respondent, Family Conciliation also says that it may be that some direct communication may be appropriate between the parties in a controlled setting at the later stages.

This proposed amendment would only permit direct communication at those times and when the parties are in the presence of a judge or master, or of a court-ordered mediator, assessor, investigator or evaluator, and only with that person's approval allowing the court or the professional discretion to control the process.

Certainly, we're trying to strike a balance between protecting individuals who may be victims of domestic violence, but also trying to allow parties to move ahead and reach agreement, whether through mediation or by a court appearance. And we're simply trying to strike the right balance, and I

appreciate the further advice that Family Conciliation has given to us.

Mr. Chairperson: Thank the honourable minister.

Any further comments or questions on the amendment?

Committee ready for the question?

Some Honourable Members: Question.

Mr. Chairperson: Do you wish to have the amendment reread?

Some Honourable Members: No.

Mr. Chairperson: No. It's the will of the committee to pass the amendment?

Some Honourable Members: Pass.

Mr. Chairperson: Agreed. [*Agreed*] The amendment is accordingly passed.

Shall clause 4 as amended—

Mr. Larry Maguire (Arthur-Virden): Mr. Chairman, I'm assuming, then, that while it doesn't say anything to that effect in the amendment, because you're replacing clause (b) and (c), that clause (d) that's on the page will now become clause (c)?

Mr. Swan: Our dedicated Legislative Counsel confirm that everything will be corrected.

An Honourable Member: Okay.

Mr. Chairperson: Thank you.

Committee's ready for the question on the clause?

Shall clause 4 as amendment—amended pass?

Some Honourable Members: Pass.

Mr. Chairperson: Clause is accordingly passed. Clause 4, as amended, is accordingly passed.

Clause 5—pass; clause 6—pass.

Shall clause 7 pass?

Mr. Swan: Yes, I move, Mr. Chairperson,

*THAT Clause 7(1) of the Bill be amended in the proposed subclause 39(2.1)(c)(iii) of **The Family Maintenance Act** by striking out "engaged in" and substituting "perpetrated".*

Mr. Chairperson: It's been moved by Minister Swan

THAT Clause 7(1) of the Bill be amended in the proposed subclause—

An Honourable Member: Dispense.

Mr. Chairperson: Dispense.

The amendment is in order.

Mr. Swan: Yes, of course, the intention of this bill is to amend The Family Maintenance Act to introduce specific best interest criteria to be applied by judges in determining child custody or access application. This subclause requires the court to consider whether the person who has committed domestic violence is able to care for and meet the needs of the child. And the intent of this provision is to focus on the abuser and to require an assessment of his or her parenting abilities.

And some stakeholders have advised my officials that the bill's provision may be subject to a different interpretation, that it was suggested that perhaps the word "perpetrated" for "engaged in" would be a more appropriate way to word this, to make it clear that the victim of domestic violence has in no way engaged in domestic violence.

So we think the provision is going to be [*inaudible*] ambiguous and less likely to be misinterpreted.

Mr. Chairperson: Thank the honourable minister.

Any further comments or questions on the amendment?

Is the—does the committee wish to have the amendment reread?

An Honourable Member: No.

Mr. Chairperson: Dispense.

Amendment—pass.

Clause 7 as amended—pass; clause 8—pass; clause 9—pass; enacting clause—pass; title—pass.

Shall the bill be reported? As amended, pardon me. [*Agreed*] The bill will be reported, as amended.

**Bill 25—The Manitoba Evidence Amendment Act
(Scheduling of Criminal Organizations)
(continued)**

Mr. Chairperson: We'll now proceed with clause-by-clause consideration for Bill 25, The Manitoba Evidence Amendment Act (Scheduling of Criminal Organizations).

Does the honourable minister for Bill 25 have an opening statement?

Hon. Andrew Swan (Minister of Justice and Attorney General): Yes, Manitoba, like all Canadian provinces, realize that it must do what it can within its own constitutional jurisdiction to ensure a comprehensive response to gang crime.

This bill would introduce Canada's first statutory provisions to create a legislated schedule of criminal organizations for the purpose of provincial proceedings. So it is an attempt within our authority, as a Province, to continue to take steps to make it easier to take on criminal organizations, using the various provincial laws that we have passed over the past decade.

The purpose of Bill 25 is going to be to create a schedule. If a group can be shown to be a criminal organization using the same definition in the Criminal Code of Canada, an application can be commenced by a director within the department. If the director is satisfied that the organization fits the test, there will then be a three-person review panel.

None of those persons can be law enforcement officials, nor can they be provincial government employees. If they believe that the organization fits the definition of a criminal organization under the Criminal Code of Canada, it then moves forward to the minister to seek approval of Cabinet.

* (19:30)

We think it's a fair, an independent and a rigorous process. We believe that successful applications will make it much easier for law enforcement and for provincial officials to use the other provincial legislation to our advantage to continue going after organized crime, especially in an economic way. We see the possibility of more proceedings under The Criminal Property Forfeiture Act. We see more successful proceedings under The Safer Communities and Neighbourhoods Act, The Fortified Buildings Act, and other legislation where we've attempted to have a civil remedy to help us take down criminal organizations.

So I certainly look forward to moving ahead with this groundbreaking piece of legislation.

Mr. Chairperson: I thank the honourable minister.

Does the critic for the official opposition have a statement?

Mr. Kelvin Goertzen (Steinbach): We support the legislation, certainly the intent of the legislation. I will forgo the opportunity to have—go into a longer discourse in terms of what I think the government is or isn't doing in terms of organizational—or criminal organizations. But I do think that there are some very good rationale and reasons for legislation like this and we hope that it will work in an operational way for those provincial officials, for Crown attorneys, for civil remedies against organized crime.

I will ask the minister, not at this point, but at some point in the passage of the bill, about the comments from MARL—and staff may have a ready answer for him in terms of having a judicial review process and why they chose the current process as opposed to a different one.

Mr. Chairperson: I thank the critic for the official opposition for the opening statement.

We will now proceed with clause-by-clause consideration of Bill 25.

Clause 1 and 2—pass; clause 3—pass; enacting clause—pass.

Shall the title pass?

An Honourable Member: No.

Mr. Chairperson: Mr. Goertzen.

Mr. Goertzen: I wonder if the minister could then respond to the suggestions by MARL about how it is—and I think everybody agrees, that the listing of criminal organizations is positive. I think that their concern was about the process and if he's had an opportunity to consider those suggestions since the presentation about an hour ago,

Mr. Swan: I thank the member from Steinbach for the question.

Certainly, because this is the first provincial attempt to bring in legislation of this type, we've done a lot of thinking here in the Province, but we've also had a look at the federal anti-terrorism legislation, as well as efforts by other jurisdictions around the world, to come up with something which will be effective but will still have a fair and thorough process.

And the fact that the director has to institute the proceedings is one important step. We think the review panel, being an independent panel of three individuals, none of whom can be law enforcement officials nor provincial employees, is a good way to make the director effectively prove his or her case—

not necessarily as you would in a court of law, but to make sure there's sufficient grounds to show that the organization is a criminal organization within the definition in the federal Criminal Code of Canada.

I should say that if the director does not believe there are grounds, that's the end of it. The minister, nor government, they cannot step ahead to pursue it on their own. If the review panel does not believe that the criminal organization has been proven to be a criminal organization within the wording of the Criminal Code, again, that's the end of it and there's no way for the minister or the government of the day to bring it back on.

It's only if those two steps are met that the minister can move ahead to ask Cabinet to formally add that organization to the schedule. So it doesn't involve a court process.

It can, of course, use court decisions. And, if there are other court cases which show that a certain organization is found to be a criminal organization, that is certainly evidence that can be taken into account. With certain organizations, we believe that that would be the first place the director looks for evidence. If those cases don't exist though, of course, it would then be up to the director to show that there is other evidence which will be obtained from law enforcement officials from various provincial officials, to make sure that there's sufficient evidence to support that conclusion.

So it's a little bit—I suppose it's fair to say that it's a novel approach here in Canada but not too novel. I know that the federal government is looking at doing a very similar thing to deal with criminal organizations for the purposes of actions under the Criminal Code and other criminal legislation. We're hopeful they'll move ahead on that as well.

So it's a pretty robust process with numerous steps that must be met before there can be any determination. What's also important is that determination is only for the use of provincial laws and not for convictions under the Criminal Code or other federal laws.

Mr. Goertzen: I thank the minister for that. I mean, I do believe that the—I know what the intention of the government is. I support the intention of the government and will trust in good faith on this issue, personally, that it'll proceed in a way that's—has procedural fairness for different parties. I don't think it's the intention of the government to—if there's a gang, the BDI gang, that you're going to criminalize

the Bridge Drive-In. I know that there's going to be a robust process to ensure that there is the proper identification of gangs and I support that and the intention of the bill. So we're prepared to see it go back to the House for a third reading.

Mr. Chairperson: Title—pass. Bill be reported.

That concludes Bill 25.

**Bill 27—The Upper Fort Garry Heritage
Provincial Park Act**
(continued)

Mr. Chairperson: We'll now proceed with clause-by-clause consideration of Bill 27, The Upper Fort Garry Heritage Provincial Park Act.

Does the honourable minister for this bill have an opening statement?

Hon. Bill Blaikie (Minister of Conservation): Mr. Chairperson, I think the witnesses said it all. This is a bill that is warmly received and welcomed by the community, and it represents a truly historic development in the area not so far away from here, contiguous with The Forks and Bonnycastle Park and the Human Rights Museum. And the sooner we can get this project under way and completed the better.

Mr. Chairperson: I thank the honourable minister for the opening statement.

Does the critic for the official opposition have an opening statement?

Mr. Larry Maguire (Arthur-Virden): I just wanted to congratulate, again, Mr. Gray and Mr. August for their presentations this evening in support of this bill. I think it's important that the word "heritage" is—we pointed out the significance of it because not only is the fort that was built in 1836 going to be a great cultural opportunity to attract more citizens and visitors to Manitoba, but it's—it goes beyond the fort. That was basically even before the fort was there, the joining of Manitoba and the significance of the fort, of course, was being used in the development of consequences and circumstances around it ended up being—bringing Manitoba into the Confederation as the fifth province in Confederation.

And so with those words, Mr. Chairman, I am encouraged to be able to continue to pass this bill.

Mr. Chairperson: I thank the critic for the official opposition for the opening statement.

We'll now proceed with clause-by-clause consideration of the bill.

Clause 1–pass; clauses 2 through 6–pass; clauses 7 through 10–pass; table of contents–pass; preamble–pass; enacting clause–pass; title–pass; Bill be reported.

That concludes the business for this committee.

Thank you to members of staff that are with us this evening for your assistance.

The hour being 7:38 p.m., what's the will of the committee?

Some Honourable Members: Rise.

Mr. Chairperson: Committee rise.

Thank you to the members of the committee for your work tonight.

COMMITTEE ROSE AT: 7:38 p.m.

**WRITTEN SUBMISSIONS PRESENTED
FOLLOWING ADJOURNMENT**

Re: Bill 8

The AMM would like to take this opportunity to offer support for Bill 8–The Highway Traffic Amendment Act. Municipalities feel strongly that

greater safety precautions must be put in place to protect emergency service providers.

While Bill 8 expands the list of vehicles that drivers have to take precaution when approaching, legislative changes alone are not enough. Right now far too many drivers fail to slow down when passing emergency service providers at accident scenes. Bill 8 is certainly a positive step, however its impact may be minimal without increased public awareness of the legal requirement for drivers to take precautions when passing emergency vehicles. Therefore the AMM would like to see an education campaign accompany the changes to Bill 8 so that all drivers in Manitoba are made aware of the need to slow down and protect emergency service providers.

The AMM is fully supportive of Bill 8 and is hopeful that the changes proposed along with increased education will have positive results for Manitoba.

Sincerely

Doug Dobrowolski
President
Association of Manitoba Municipalities

The Legislative Assembly of Manitoba Debates and Proceedings
are also available on the Internet at the following address:

<http://www.gov.mb.ca/legislature/hansard/index.html>