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Fourth Session — Thirty-First Legislature

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Legislative Assembly of Manitoba

STANDING COMMITTEE

ON

LAW AMENDMENTS

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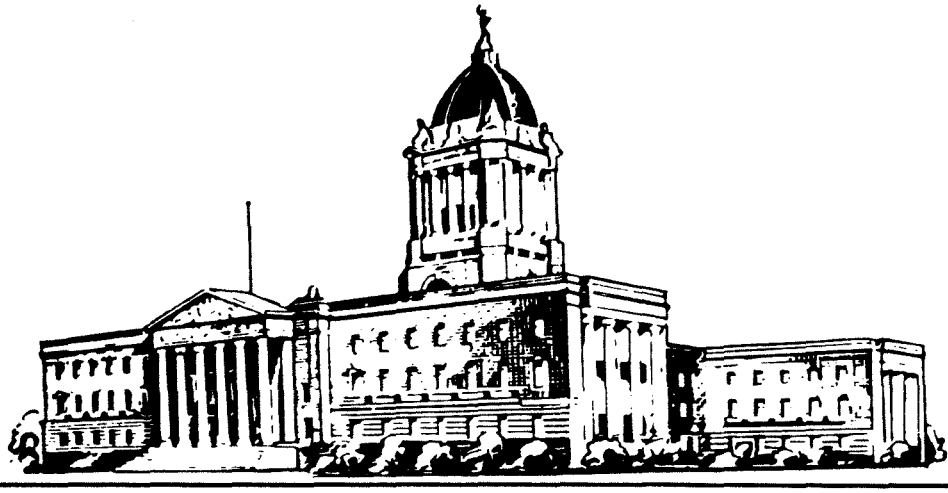

SATURDAY, 12 JULY, 1980, 2:00 p.m. (REVISED)

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MANITOBA LEGISLATIVE ASSEMBLY
Thirty - First Legislature

Members, Constituencies and Political Affiliation

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LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON LAW AMENDMENTS
Saturday, 12 July, 1980

Time — 2:00 p.m.

CHAIRMAN — Mr. Gary Filmon (River Heights)

BILL 59 — AN ACT TO AMEND THE FATALITY INQUIRIES ACT

MR. CHAIRMAN: Mr. Mercier.

HON. GERALD W. J. MERCIER (Osborne): Mr. Chairman, if I may make a general comment with respect to Bill 59. Over the lunch hour I had some discussions with the Member for Wellington with respect to this bill and I'm prepared to recommend using his Bill 69 approach, as he's discussed, making an amendment, if I can just run over it in general, making an amendment to Section 9(3) which would add — and we'll introduce the specific item in due course — add that where a report indicates there's reasonable cause to suspect that a person died by reason of some act of a police officer, performed in the course of his duties as a police officer, there will be an inquest; and we are, with respect to Section 3, I would propose to withdraw that clause and make an amendment to the existing Section 21(1), in the third line where it says now "the judge shall postpone" it would say that he "may postpone" and that, in essence, is very similar to the approach of the Member for Wellington. I'm also prepared to add to the bill the requirement for a report by the Administrator on the deaths of persons in correctional institutions, jails or prisons etc. and perhaps the specific amendments could be read out, starting with the amendment to this Section 2.

MR. CHAIRMAN: Mr. Anderson.

MR. ROBERT ANDERSON (Springfield): Mr. Chairman, I'd like to move that the proposed Subsection 9(3), of the Fatalities Enquiries Act, as set out in Section 2 of Bill 59 be struck out and the following Subsection substituted:
Administrator to direct inquest.

9(3) Where a report submitted under Section 6 indicates that there is reasonable cause to suspect:

(a) that a person who died in a correctional institution, gaol or prison, or while he was an involuntary resident of any institution in the province and he died by violence, undue means or culpable negligence, or in an unexpected, unexplained or sudden manner; or

(b) that a person died by reason of some act of a peace officer, performed in the course of his duties as a peace officer, the Administrator shall direct that an inquest be held respecting the death of the person.

MR. CHAIRMAN: Mr. Corrin.

MR. BRIAN CORRIN (Wellington): I'd like to thank the Attorney-General for compromising with respect to this particular provision. I think it's very important and it shows considerable understanding on his part, as well as considerable largesse of spirit. I am wondering if it is the intention of the government to change the section heading, which now talks only about inquests into deaths in institutions. The only reason I say that is because I am concerned that there will only be deaths in institutions that are police-related that would be the subject of the mandatory inquest.

MR. MERCIER: Mr. Chairman, I think the Member for Springfield, in reading the amendment, referred to the heading as administrator to direct inquest, which is the same as was in your bill.

MR. CHAIRMAN: Shall the amendment carry, then? (Agreed) Clause 2, as amended pass; clause 3 pass; clause 4 — Mr. Anderson.

MR. ANDERSON: A motion that Section 4 of Bill 59 be struck out and the following section be substituted: 4 21(1) of the Act is amended by striking out the word "shall" in the third line thereof and substituting therefor the word "may".

MR. CHAIRMAN: Any discussion? Shall the amendment pass then? Clause 4 as amended pass; clause 5 — Mr. Anderson.

MR. ANDERSON: Mr. Chairman, I would move that Bill 59 be amended by adding thereto, immediately after Section 4 thereof, the following section:
Section 29.1 added.

The Act is further amended by adding thereto, immediately after Section 29 thereof the following section:
Report by Administrator.

29.1 Within three months after the end of each year the Administrator shall submit a written report to the Minister setting out the name of each person who during the year died in a correctional institution, gaol or prison or while he was an involuntary resident of an institution in the province, and setting out (a) the date of death of the person; (b) the name and location of the correctional institution, gaol or prison in which he died, or the institution of which he was an involuntary resident when he died; (c) the cause to which the death was attributed; and (d) any report submitted under Section 20(1) by a provincial judge holding an inquest in respect of the death, and the Minister shall, within 15 days of receiving the report, table the report in the Assembly if the Legislature is then in session, and if the Legislature is not then in session, table the report in the Assembly within 15 days of the beginning of the next session of the Legislature.

MR. CHAIRMAN: The amendment passed; Section 4.1 as amended pass; Clause 5; Clause 6 pass; Preamble pass; Title pass; bill as amended pass. Bill be reported as amended pass.

BILL NO. 79

AN ACT TO AMEND THE EXPROPRIATION ACT

MR. CHAIRMAN: The next bill we consider is Bill 79, An Act to amend The Expropriation Act. Page by page. Pages 1 to 8 were each read and passed; Preamble pass; Title pass. Bill be reported Pass.

BILL NO. 81 AN ACT TO AMEND VARIOUS ACTS RELATING TO COURTS OF THE PROVINCE

MR. CHAIRMAN: The next bill to be considered is Bill No. 81. Page by page?

MR. MERCIER: There are amendments.

MR. CHAIRMAN: There are some amendments that will be considered with Page 5. Pages 1 to 4 were each read and passed; Page 5 — Mr. Anderson.

MR. ANDERSON: Mr. Chairman, I'd like to move that proposed subsection 7(5.3), The Provincial Judges Act, as set out in Section 17 of Bill 81, be amended by adding thereto, immediately after the word "represented" in the second line thereof, the words "by counsel".

MR. CHAIRMAN: Page 5, can we pass Page 5 because the actual amendment occurs on Page 6? Page 5 pass. Shall the amendment pass? Pass. Page 6, as amended — Mr. Anderson.

MR. ANDERSON: Mr. Chairman, I move that Section 19 of Bill 81 be struck out and the following Section substituted therefor: Subsections 9(3), (4) and (5) added:

19 Section 9 of the Act is amended by adding thereto, at the end thereof, the following subsections: Full-time judge's residence.

9(3) The chief judge may designate the area of the province in which a judge appointed on a full-time basis shall establish residence or become ordinarily resident.

Appeal respecting residence — 9(4) Where the chief judge designates an area of the province in which a judge appointed on a full-time basis shall establish residence or become ordinarily resident, the judge may, within 21 days after being informed of the designation, apply in writing to the Judicial Council to review the designation and the Judicial Council shall hold a hearing on the application and may confirm, vary or set aside the designation.

Onus on application — 9(5) On an application under subsection (4), the onus is on the chief judge to establish to the sastisfaction of the Judicial Council the need for the designation to which the application relates.

MR. MERCIER: Mr. Chairman, I had an opportunity to briefly discuss this matter with the Member for Wellington prior to the start of the meeting. The intention of this amendment is to retain the existing Section 9(2) which reads as follows: The chief judge's general supervisory powers in respect of judges, magistrates and justices of the peace in assigning judges, magistrates and justices of the peace for hearings as circumstances requiring and shall perform such administrative duties as the Minister may prescribe. Mr. Chairman, as a result of discussions with the Provincial Judges Association, after the bill was tabled, it is the general view — and there is an agreement on this — that the existing section 9(2) is satisfactory without requiring the necessity to designate the specific powers that are set out in the proposed section 9(2), other than the requirement or specific power that the judge designate the area of the province in which a judge shall establish residence or become ordinarily resident.

The Sections 9(4) and 9(5) in the amendment are the existing Sections 9(3) and 9(4).

MR. CHAIRMAN: Amendment pass; Page 6, as amended pass. Have we amended 9(4) on Page 7? It's removed, so Page 7 as amended. There are further amendments? Okay.

Mr. Anderson.

MR. ANDERSON: Mr. Chairman, I move that the proposed Section 11 of The Provincial Judges Act, as set out in Section 20 of Bill 81 be amended;

(a) by striking out the words "Every judge" in the first line thereof and substituting therefor the words and figure "Subject to Subsection (4), every judge appointed on a full-time basis";

(b) by striking out the words "or with the prior approval of the Chief Provincial Judge" in the last two lines thereof;

(c) by numbering the section, as amended, as subsection 11(1); and

(d) by adding thereto, at the end thereof, the following subsections:

No extra remuneration.

11(2) Except as provided in subsection (3), no judge appointed on a full-time basis shall accept any salary, fee or other remuneration for doing any of the things mentioned in Clauses (1)(a) and (b).

Expenses excepted.

11(3) A judge acting as a commissioner, arbitrator, adjudicator, referee, umpire, conciliator or mediator in any matter or proceeding on the direction of the Lieutenant-Governor-in-Council may receive reasonable travelling and other expenses incurred by him away from his ordinary place of residence while acting in that capacity or in the performance of the duties and service of the office in the same amount and under the same conditions as if he were performing a function or duty as a judge if the expenses were paid by the government in respect of a matter within the legilsative authority of the Legislature.

Winding up a practice, etc.

11(4) A judge newly appointed on a full-time basis may, with the approval of the chief judge, wind up his practice of law or carry out related activities within a reasonable time of his appointment.

MR. MERCIER: Mr. Chairman, can I just briefly explain them. Obviously the reference in (a) is this requirement is only meant to apply to full-time judges, not part-time judges. The amendment in (b) will therefore only allow a judge to become an arbitrator, for example, on the direction of Cabinet. The amendment in (d) strengthened what is now in 11(1) by making specific reference with respect to

extra remuneration. 11(3) is required to allow reasonable travelling and other expenses when the Cabinet might appoint a judge as a commissioner, arbitrator, adjudicator, referee, etc.

With respect to winding up practice, there is in the existing legislation a provision allowing a judge to continue a practice of law for the purpose of winding it up on his appointment and this merely carries on that authority.

MR. CHAIRMAN: Is there agreement on the amendment pass; page 7 as amended pass; page 8 — Mr. Anderson.

MR. ANDERSON: Mr. Chairman, I move that Section 25 of Bill 81 be amended:

(a) by striking out the word and figure "and 8" in the 1st line thereof and substituting therefor the word and figures "8 and 20"; and

(b) by adding thereto, at the end thereof, the words and figures "and Section 20 comes into force on March 31, 1981."

MR. MERCIER: Mr. Chairman, just briefly that gives clear notice that this change, with respect to remuneration and full time duties, will come into effect upon a specific date.

MR. CHAIRMAN: Shall the amendment pass? (Agreed). Page 8 as amended pass; Preamble pass; Title page pass. Bill be reported as amended pass.

BILL NO. 82
AN ACT TO AMEND
THE CLEAN ENVIRONMENT ACT

MR. CHAIRMAN: The next bill to be considered is Bill No. 82. Page by page? Page 1 pass; page 2 — Mr. Cowan.

MR. JAY COWAN (Churchill): As a preface to my remarks, I had given some consideration to bringing amendments before the committee and placing them before the committee for a vote in regard to some changes that I believe might better serve the purpose of this Act. Having given consideration to that, I have come to the conclusion that some of them are of a nature that might need some discussion and some consideration by the Minister and the caucus, and rather than put them on the table for a vote which then might act to precipitate against those amendments being given full consideration or those suggestions being given full consideration, I have decided to make a number of suggestions in this regard to the Minister and the committee and would hope that they would take those back to their caucus and to their staff and discuss them and perhaps bring amendments forward themselves at third reading. If not, perhaps we would find ourselves in the position of having to bring amendments forward at that point.

So the first suggestion that I would like to make to the Minister is in regard to 5.1 in the report of environmental accident and suggest that there be placed in that particular section some necessity for those reports to be made public and made accessible to the public. I know the Minister and I have had discussions on this from time to time and we are of a different opinion and I'm not certain that those amendments will be brought forward, but I would certainly suggest discussion among his caucus in that regard and if necessary we may bring amendments to that effect forward at third reading.

As we have had considerable discussion on this in the past, I don't know if it's necessary to go over all the points that we have made, but the Minister is well aware of my opinion on that and I would just once again offer it to him.

MR. CHAIRMAN: Okay. Thank you, Mr. Cowan. Page 2 pass; page 3 pass — Mr. Cowan.

MR. COWAN: On the whole matter of the abatement, the changes in the procedures fo an abatement project. It is my opinion, and the opinions of others that I have talked to, that this particular section will in fact centralize much of the power that was previously in the hands of the Clean Environment Commission in the hands of the Minister. And I believe that the Clean Environment Commission has a very positive role to play in protecting the enviornment and I hesitate to condone or to concur with any move that takes power away from them in that it will over the long run tend to emasculate them and tend to, in the public's perception, weaken them and therefore the public will be less likely to come forward and give representation. That will become a self-fulfilling process as time goes on. As the public comes forward to them less and less they will become weaker and weaker and I could conceivably see this as being the first step, inadvertent or advertent I'm not certain, in calling to an end the work that the Clean Environment Commission does.

So my suggestion to the Minister is that he amend this particular amending Act by withdrawing all the sections that pertain to changes in the abatement project, leaving the situation as it stands now, and doing far more research as to the effect that this dilution of powers of the Clean Environment Commission will have in the long run. That would include those particular amendments that are on this page and the next page, Mr. Chairperson. I've talked to several people who are interested and who are members of groups that seek to protect the environment and, unfortunately, because of the short notice they were unable to be before the committee. This, being summertime, a number of their members were on holidays and they found themselves in a position of not being able to present a brief. But what they did say to me is that they were somewhat concerned that they did not believe that they had been consulted fully on the matters of these changes to the work of the Clean Environment Commission. They were disturbed by them and they would like to see this matter put over until such a time as they can make some presentations to the Minister in this regard and also presentations generally in regard to the whole function of the Clean Environment Commission and Advisory Councils.

So, I would suggest to the Minister that there is no need to implement this particular section immediately; it does not seem to be of an urgent nature and I would suggest to him that if it were implemented that it would act to the detriment of the

open process to which he has spoken in support of many times during our environmental discussions during the estimates and would hope, therefore, that he would take the suggestion of withdrawing this until such a time as he has been able to make further investigations.

MR. CHAIRMAN: Mr. Jorgenson.

MR. JORGENSON: Yes, Mr. Chairman, the remarks that have just been made by Mr. Cowan, this provision was brought into the Act as a result of one extraordinary case that occurred during the time that Mr. Green was the Minister of the Environment. He deemed it advisable to deal with that particular situation and brought in amendments to the Act in an effort to cover that particular problem. In doing so, of course, we found out that there are a variety of different situations; it was intended to cover that one. The Act, as it now reads, is not capable of covering the variety of problems that occur. There are occasions, as my honourable friends are aware, the municipality becomes involved in this and then there are negotiations between the municipality and the government. So it's a difficult situation to be placed in if the Clean Environment Commission can give an order, effectively ordering the expenditure of funds that are not agreed upon between the government and the municipality. That poses somewhat of a problem and it was intended to overcome that particular situation. I think that Mr. Green in his remarks on this bill reiterated that particular one.

So it is not an attempt under any circumstances to diminish the powers of the commission; the powers of the commission remain intact. It's a different method of handling the work of the commission, so that, in the final analysis, the government has to take the responsibility. I don't think my honourable friend could disagree that in the final analysis, since they are the government, that they must take the responsibility.

MR. COWAN: Thank you, Mr. Chairman. I'd certainly be the first to agree with the Minister in regard to his last statement, but I would suggest that while these amendments are put in place in an attempt to deal with a specific problem or a number of problems as the Minister indicates, and not to diminish the role or diminish the power of the Clean Environment Commission, they may in fact do both. They may deal with the problem and they may deal with the problem by diminishing the power in the role of the Clean Environment Commission. I think that may be . . .

MR. JORGENSON: I would hope not. That is certainly not the intention. If that becomes evident or if that seems to be a possibility, then that can be amended again and we can change that but we think that this now deal with the variety of situations that arise under the term, abatement projects.

MR. COWAN: If I could just ask the Minister a question there, again, Mr. Chairperson. That question would be, under the old Act as unamended, without these amendments in place, was it not within the purview of the Cabinet or the Lieutenant-Governor-in-Council or the Minister to accept appeals and to, by that way, vary an order of the Clean Environment Commission?

MR. JORGENSON: I'm not sure whether that power was available to us under the abatement project; it certainly was under environmental orders.

MR. COWAN: Was it ever used then, in regard to an abatement project?

MR. JORGENSON: No, it hasn't been.

MR. COWAN: I would ask the Minister then if there could not be a section added or an amendment to the Act which would enable the Minister to have that power but still allow the commission to make that order, and upon receiving an appeal, the Minister can then be brought into play as a force within the process.

MR. JORGENSON: Well, of course, that places the commission in the position where they give an order and we turn it down, we're just simply denying their order or defying their order. I don't think that that's what I would like to see happen. I think that the commission is there in the capacity of advising the government on these matters and the government, in the final analysis, has to make the decisions.

MR. COWAN: And that is why I'm suggesting that the government, in the final analysis, could appeal or could set aside or vary an order and could be given an enabling amendment very easily and still allow the commission to make the order. Now, one may suggest why go through that extra step. What that does is it puts everything out in the open. It allows the commission to make an order and the Minister then can, as I believe even under the old legislation the Minister could have on occasion overrule in order of the commission, could do so but would only do so after that order had been made public and after representations had been made. In other words, while it may appear to be a slower and bulkier way to deal with the problem, it keeps out in the open longer. I would suggest that is a positive way to deal with environmental problems.

The Minister has always said — I shouldn't say has always said but in these last estimates, I know for certain he said — that the public must be advised of environmental concerns, the public must be advised of environmental programs. If they are not aware of them, if they are not educated, if they do not understand them, if they do not have faith in the process, they will not be able to deal with them, they will not be able to accept them and, therefore, those programs will fail before they start because of that problem. I would suggest to him that if the Clean Environment Commission gives him an order and he goes behing closed doors, which he will, and he varies that order or gives them advice and he varies the advice and recommendations, if he stops them, if he deletes or adds upon them, that the public will lose faith in that order. That is a problem that perhaps the Minister has not directed his attention to, but I will assure him, that as this becomes more and more the process, that will be exactly what will happen and the powers of the Clean Environment

Commission will be emasculated by increment, piece by piece by piece and that is not what the Minister wants to see, I am certain, and that's not what I want to see, I can assure you that.

So I would just ask the Minister to perhaps consult with various bodies, public bodies, or non-government or non-judicial bodies, to get a feel for the people who now look to the Clean Environment Commission for some guidance, for some protection of the environment and see if they do not believe that might also be a result of these amendments. It's just a matter of holding the amendments back for a period of time and putting in place the other parts of the Act in regard to environmental accidents and coming forward with these amendments at a different session if the Minister does believe, in fact, that these amendments will not have the impact which I suggest they will. The Minister says, of course, that we can always come back and re-amend the legislation and change the legislation and that's true too, but it becomes a matter of inertia and once you've amended the legislation it's hard to come back the next session and amend it back to the way it was. It's more difficult to do that than to it is hold off one session and come forward with the amendments after a more thorough study, and that's all I'm suggesting in this regard.

MR. CHAIRMAN: Page 3 – pass; page 4 pass; page 5 — Mr. Cowan.

MR. COWAN: On this page there are a couple of items I'd like to suggest to the Minister, a couple of changes. On 9 subsection 16(2), (a) reads "examine any records or documents in the place or premises relating to the acquisition, storage, " and that of course is tacked onto the original Act. What I would suggest to the Minister is that this is somewhat restricted in that it only allows the examination of those records in the place or premises where that contaminant is suspected of being stored or is suspected of being discharged and while we all know that that may be a warehouse where no records are kept, but the records are kept in the main office, this would not enable an examination of those records. So I think that the Minister has to look to this particular Act to enable examination in other places that are associated with the company or the person, it may be an individual, that is in fact storing or discharging a contaminant. I would ask the Minister for comments on that because I think it may be an oversight the restrictiveness of this may be an oversight and was not intended to be so restrictive, in a sense that it limited that examination to the exact premise where a contaminant was thought to be stored or discharged.

MR. JORGENSON: The honourable member makes a point that I will certainly take under advisement.

MR. COWAN: On the . . . just one moment, I want to check my notes here to make certain I'm giving the Minister the proper notation. On the matter of special powers in environment accidents.

MR. JORGENSON: I wonder, Mr. Chairman, if we can go back to 9 in order to deal with that particular situation that my honourable friend just mentioned. If we just removed the words "in the place or premises" if we just removed those and then it would read "examine any records or documents relating to the acquisition, storage, transportation, use, handling, discharge, etc."

MR. COWAN: I think that might provide us with a more powerful piece of legislation in this regard.

MR. JORGENSON: I would be prepared to have that deletion made.

A MEMBER: By the way it should be Clause (c) it's being added to, not clause (a), that is a typographical error.

MR. COWAN: Yes. Then it's been moved that the words "in the place or premises" be deleted.

MR. JORGENSON: Well, that's a minor one, that can be done right now, Mr. Chairman.

MR. CHAIRMAN: Shall the amendment pass then, both the change from (a) to (c) and the removal of those five words? (Agreed) Pass.

MR. COWAN: On 10 where Section 16 of the Act is amended and then it is says 16(4) "For the purposes of carrying out investigations of or performing any tasks in respect of an environmental accident, an environmental officer may," and then it gives a list of powers of the environmental officer. Now I'd like to refer us back to the definition on Page 1 in order to examine this, where it says "An environmental accident means the release of a contaminant into the environment otherwise than in accordance with the regulations or an order of the commission." I would suggest that this only enables an environmental officer to have these powers after a discharge has occurred and I think that what we might look at is amending either the definition or this particular Act to allow the environmental officers this power where the officer has reason to believe that an environmental accident may occur. In other words, to provide an anticipatory power to the environmental officer rather than just, say, the power of reacting to a situation.

I hope that the purpose of this Act, of course, is to protect the environment and I think that if the environmental officer is forced by legislation to wait until such a time as an accident has occurred, we may be, in fact, limiting the power of that officer. (Interjection)— Well, yes the Member for Emerson has suggested that it does give some far-reaching powers and that's why I'm not putting an amendment forward here, but what I would hope that the Minister would do would be to take this suggestion back and look it over and there may be a way in which it can be worded as to not give the type of powers which may be subject to abuse to the environmental officer, but may be able to give the environmental officer a number of powers that they don't have, anticipatory powers that they don't have, as the legislation is written. So I don't want to put an amendment and force the issue right now, but I certainly hope that would be discussed within the caucus or within the Cabinet.

MR. CHAIRMAN: Mr. Orchard.

HON. DON ORCHARD (Pembina): Mr. Chairman, I wonder if Mr. Cowan could give us an example of where he would deem this additional power to be necessary and to be exercised?

MR. COWAN: Well, to give you the first example that comes to mind. Perhaps the environmental officer was walking by a plant where he saw that a pipe that was carrying a contaminant might be poorly constructed, might be ready to break but has not yet broken and resulted in an environmental accident or release of a contaminant. The officer would then have power to go in and to make such corrections as that officer deemed necessary to ensure that that environmental accident did not happen. It might happen the next day, it might happen a year from now, but the environmental officer who is dealing with these sorts of problems develops a keenness of insight and could therefore go in and correct a situation before we actually had a release of the contaminant. In my speech to this you will recall that one of the problems we face in regard to environmental accidents is, once the environmental contaminant is released into the environment, it is impossible to entirely clean it up. It is impossible to entirely forestall any impact or effects, and so we should be trying to prevent it. We should be heavy on prevention. I think that's a suggestion and I welcome the comments. I know we would have to be reword very carefully.

MR. JORGENSON: I wonder if my honourable friend would allow me to draw his attention to section 5.2(1) where I think to a large extent that is provided for in that we suggest here, that "The Minister may, by written order, require any person owning or having custody or control of any hazardous material, in any location within the province, remove the hazardous material from the location," etc. etc. I think that fairly substantially takes care of the particular situation that my honourable friend has mentioned.

MR. COWA: It may take care of that situation, but in the case that I just outlined, where it would be a pipe that might be about to break, I don't know as if it would or not. And we haven't seen the definition of a hazardous material yet. Now if the definition of a hazardous material is much the same as a definition of a contaminant that now exists in the Act, then that probably would . . .

MR. CHAIRMAN: Its in Section 2.

MR. COWAN: Well, in Section 2 all we have is "A hazardous material means any substance designated as a hazardous material in the regulations." So I'm somewhat concerned that that may, in fact, not address the problem and I would hope that the Minister would look into it and on third reading, perhaps, report back to us as to his findings either way and we can then make the decision as to whether or not we want to put in an amendment in that regard.

MR. CHAIRMAN: Mr. Orchard.

MR. ORCHARD: Mr. Chairman, I appreciate the Member for Churchill's concern, but I question whether the example he's given, as to when that officer might use the powers that he is proposing to have delegated to him, is a valid one. What we're talking about in that case is an environmental officer who, from time to time, may walk by a plant and I think what the Member for Churchill is saying in his example is that he's, by walking by the plant and looking at a pipe, going to know more about it than the maintenance engineer that is working with that plant all the time. I don't think that's a very good example to warrant the kind of powers he is wanting us to put into legislation. I would ask if he'd have another example that would warrant such powers because I don't think that is the situation that an inspector walking beside a plant is going to be able to detect more readily than a maintenance engineer who knows the maintenance schedule, the downtime refitting that various plants do need.

MR. COWAN: Perhaps an environmental officer would see the transport of hazardous goods in such a way as that he or she might consider it to be a dangerous method of transport and that an environmental accident would ensue if that dangerous method was proceeded with. There are all sorts of examples that one can give. I share the member's faith in maintenance engineers, as well as in in-plant maintenance procedures, but I also know, as the Minister of Highways knows, that sometimes those pipes do break. (Interjection)— Well, he's saying that they can't be detected. Sometimes they're missed, sometimes the maintenance procedure is not everything it should be and that's a problem. If you will enable one more person to be a part of that process, I think that you are, in fact, in the long run bringing more people into the process and thereby reducing the possibility of such an accident occurring. I know they'll have some heated discussions or I hope that some heated discussions will take place in regard to that particular section.

MR. CHAIRMAN: Anything further on Page 5? If not, Page 5, as amended pass; Page 6 – pass; Preamble pass; Title — sorry.

MR. COWAN: I'm sorry. Just, with leave, I missed one suggestion that I wanted to make to the Minister on Page 2 and I wonder if he would accept it now. Yes, on Page 2 we have the Minister able to, by written order, require any person owning or having custody or control of any hazardous material in any location to take a number of actions — to remove it, to dispose of it, to take special precautions — and only when that person fails to comply with that order can the Minister then cause that material to be seized and disposed of or otherwise dealt with as he, in his absolute discretion, may determine. I would suggest that there are some materials that are so hazardous that they must be disposed of immediately and that the order may, in fact, be a delay that is unnecessary and a delay that would be not in the best interests of the public. Let me just explain, perhaps, in an instance where we had PCBs stored in a warehouse where there were food products that weren't canned products and the PCB cans were leaking, the Minister could give an order

to the person to comply with and we know that the person is not going to comply with that order because there just are not the transportation or the storage facilities available for that person to comply with the order. Perhaps it would be best if the Minister could just go in right away and seize that material because the Minister is going to have to seize it in the end anyway. I'm just suggesting that this may be a step that's put in place that is not necessary, and under extraordinary circumstances the Minister should have the power to seize the materials directly without an order.

MR. CHAIRMAN: Thank you very much. Preamble pass; Title pass. Bill be reported as amended. pass.

Now, I'll just seek the committee's direction. We have two bills left and it's obvious that one of them is going to invoke more discussion than the other. Could we bring 104 forward first? Thank you.

BILL NO. 104
AN ACT TO AMEND
THE HIGHWAY TRAFFIC ACT (2)

MR. CHAIRMAN: Bill 104, page by page. Page 1 pass; Page 2 pass; Preamble pass; Title page pass. Bill be reported. Pass.

BILL NO. 85
AN ACT TO AMEND
THE MENTAL HEALTH ACT

MR. CHAIRMAN: Bill No. 85. Shall we go page by page through Bill No. 85? Bill 85 is An Act to amend The Mental Health Act. There are some amendments I understand. I'll begin with Mr. Parasiuk.

MR. WILSON PARASIUK (Transcona): Mr. Chairperson, I don't have an amendment to propose right off the bat. I wanted to get on the record whether, in fact, the Minister has amendments to provide to the committee now, in that when he was summing up debate on second reading he indicated that some of the concerns expressed, especially about the very strong powers given the peace officer, should in fact be amended or qualified in some respect and he undertook to investigate this matter. I'm being handed something right now, is that it? Because i'd like to, rather than do it on a page-by-page basis, I do have an amendment that may in fact be a bit more broad than that and might be best dealt with first because it doesn't fit neatly into any particular page.

MR. CHAIRMAN: Okay. Proceed.

MR. PARASIUK: Could the Minister then explain this particular amendment? Oh, it's on Section 22. Okay, I'll raise my amendment then and that will be the best way of dealing with this. I think I'd have to preface my amendment with some comments. Frankly, Mr. Chairperson, I feel very frustrated about this bill. There is some consensus on it regarding desired and necessary changes, especially with respect to the establishment of a review board and the provision for reviews. However, the bill is very very badly flawed. The other day, in Law Amendments Committee, we had three learned, informed, rational presentations which very accurately and graphically pointed out the very bad features and omissions of this legislation. Indeed, that evening I was quite impressed by the fact that we indeed have the Law Amendments Committee mechanism to allow the public to provide a comment on legislation. I think we, as legislators, were very well served by this mechanism on Thursday evening when we had the presentation of the Manitoba Association for Rights and Liberties, the presentation of the Canadian Mental Health Association and the presentation of Professor Kelly of the University of Winnipeg. All were very very well informed, very rational. This is a very complicated technical area and, frankly, they impressed me to the point of really accepting their well-documented, well-reasoned arguments. Indeed, I got the impression that night that they so overwhelmed the Minister that he was cowed into silence; he did not question them at all. He made comments about their presentations to the media afterwards, but he did not avail himself of the opportunity of questioning those very informed people who were making representation to us. In that sense, I take silence to be consent and, given their types of arguments, I was amazed, in my questioning of the people making representation, that there had been no consultation by the government with the Manitoba Association of Rights and Liberties, the Canadian Health Association, Manitoba Section.

I don't know if there was any consultation with the Law Reform Commission; I have not been able to discern that. But I was quite shocked that with respect to a long overdue legislation, with respect to legislation which is very sensitive, dealing with a very technical area, there would be no consultation in the drafting process and yet, despite that lack of consultation, despite the fact that these organizations have put forward very well-reasoned arguments, we are now caught in a pressure cooker situation of having to try and redraft a bill in one afternoon that took, one would presume, at least a year to draft and took the Law Reform Commission at least a year to examine a year ago and come up with recommendations. And these people had spent a lot of time studying this and yet we are now being asked, as Legislators, to look at a badly flawed piece of legislation and try and redraft it within an afternoon, or at least within one or two days, given the pressure cooker Speed-up situation that we're in and that is just a ridiculous, asinine situation to be placed in as Legislators. And in that respect I think that we have no one to fault but ourselves. In this sense, and since the pace of legislation is controlled by the government, I think the government is at fault here. They could have introduced this legislation, we could have gone into Law Amendments Committee and we could be in a different type of process because I do think that this piece of legislation requires what George Washington called a sober second look and we don't have a Senate in Manitoba.

But really here is an instance where we should take that extra bit of time to ensure that the bill is properly drafted and does not provide for sort of a police-state type of provision which I don't think we want, and also leaves patients somewhat defenceless

within mental institutions. I think those are objectives which I'm sure we all, as legislators, have and I think we may be able to agree on those objectives and possibly even agree on means of achieving those objectives if we had a two, three or four-week period to reach some type of compromise on this legislation in terms of redrafting it. It is very difficult applying oneself totally to this when we're having three sessions being called in Speed-up every day, or two sessions at least. Ideally, I would like to see us referring this legislation to an intersessional committee to be brought back at a fall session but that's another very long story that I'm quite certain should be considered at some other time by us as legislators, and that we find ourselves late in the spring or in the summer caught in a Speed-up legislation, dealing with legislation, which really, in many instances, at this particular stage, would best be set over to an intersessional committee so that it could be reported back, without being killed, at a fall session. I think we'd have far more intelligent legislation, because I think every administration has been guilty of bringing in Acts into the Legislature late in the session and we, as legislators, have been guilty of quickly trying to ram something through at the last minute that none of us are very satisfied with. I certainly am not satisfied with this particular piece of legislation. And I think there are some major difficult areas that were pointed out, both in second reading and by those people making representation to the Law Amendments Committee.

The first area was apprehension and admission for compulsory examination and these concerned the very strong powers given to policemen that could be subject to abuse, in fact, we have to rely tremendously on the judgment of policemen at that time. I don't know if it is possible to redraft that. This gets into a fairly technical area, again I'd like the time to ensure that is done.

A second major area, to me at least, is the whole area of having a patient's advocate in hospitals. I think that that is a superb idea. We should have patients' advocates in every hospital, especially in mental institutions or psychiatric hospitals, where the ability of patients to fend for themselves is probably less than the ability of patients to fend for themselves in many other hospitals at least. And yet that excellent proposal, which was proposed by the Law Reform Commission in its report, has been completely and studiously avoided by this government. Although it is an interesting idea its a new idea, its a very valid one. I don't think it would be that expensive and I don't think it would unlock a can of worms because if, in fact, a patient's advocate did unlock a can of worms then maybe in fact what we have are "cuckoos nests" for mental institutions and if we're afraid of patients' advocates in fact unlocking that type of horror story that we saw in the movie "One Flew Over the Cuckoo's Nest" then, frankly, we have even greater need for a patient's advocate than one would see on the surface. Again, there's been no explanation from the government as to why they haven't come forward with a patient's advocate. We can be path-breaking right now with this particular piece of legislation. Again, that is an area that I'm quite certain the general public, I'm quite certain the great majority of members of the Manitoba Legislature, are in agreement with. It then becomes a mechanical technical matter of how does one draft those types of amendments to this legislation to ensure that that is provided for and I don't feel I can do it this particular afternoon, and that is the dilemma that we find ourselves in.

We know full well that legal counsel has a whole set of other pressures put on it right now in Speed-up situation, so I guess when I talk about these specific points I do point out the general dilemma that is faced by us, as legislators, in revising, reviewing and coming up with the final draft, the operational draft, of a piece of legislation which will conceiveably be in effect for quite a long time and isn't that easy to change, it's not as if you're establishing an administrative regulation or guideline that can be changed if circumstances prove otherwise within two or three months or five or six months. Once you in fact pass legislation it is cumbersome and it is difficult to change and that's why I think we should be as careful as possible in, in fact, drafting this legislation. So, I think that there is consensus with respect to the concept of a patient's advocate.

The third major area is that of a review board itself. The idea of a review board, the idea of reviews is commendable. No one is arguing that, we agree with that. Then there are some questions of mechanics at this particular stage. Will there, in fact, be a hearing within a certain period of time if application is made, because the way in which the legislation is drafted right now it's open-ended. The board has to decide upon a hearing within a certain period of time but it doesn't say when that hearing could take place, they could set a hearing a year from receipt of application. Those types of safeguards aren't there.

The last major area that I can see with this particular piece of legislation concerns the whole area of treatment. I think if you look at the submission from the Manitoba Association of Rights and Liberties it is very clear there, that right now and under this particular piece of legislation as proposed before us, voluntary patients, people who admit themselves voluntarily to a mental institution, can be subject to treatment that they don't want. They can't refuse that type of treatment.

In the case of compulsory patients, you can have horrible types of treatment administered to a patient without any independent form of review. When Dr. Kerr of the Canadian Mental Health Association was before this committee, I asked her about the consensus with respect to these experimental or what they call surgical psychiatric procedures, which other people call lobotomies. There is not consensus on them, and yet one particular doctor could in fact perform a lobotomy on a troublesome patient, on someone who is rebellious because they are independent; and for those people who did see the movie, One Flew over the Cuckoo's Nest, I'm quite certain that is not a complete fabrication, nor is it a complete exaggeration.

Just recently I read a biography of Frances Farmer and for those people who may, in fact, be a — (Interjection)— yes, it is — because it does deal with lobotomies, and lobobotomies are in fact in the bill. She was a movie star in the 1930s who in fact was committed because the people within the state of

Seattle didn't like her political views, which were a bit left-wing at that particular time. At this particular point in time they might be considered right-wing, but at that time they were considered to be left-wing. She was put into a mental insitution and ultimately she had a lobotomy performed upon her. They had a great deal of difficulty determining at first whether in fact she had a lobotomy, but she did have a partial lobotomy. That was controversial at that time. I think lobotomies are controversial at this time.

If one, in fact, uses surgery to effectively dehumanize someone by cutting away their thinking ability, that is a more ghastly or as ghastly as anything that took place in the concentration camps of the Nazis during the Second World War. When we found out about all of that, we were shocked and the German society at that time said, well, we didn't know about all those things happening. All of us, when we look back upon that period were all shocked, were all aghast at people in concentration camps, were all aghast at what place and if anyone ever goes through places like Auschwitz or Dachau, you're just shocked by the dehumanization of man in institutions like that.

MR. CHAIRMAN: Mr. Parasiuk, I'm sorry. I hesitate to interrupt you, but I'm, just for clarification, wondering if you indicated that a noncompulsory patient could be given treatment against his will.

MR. PARASIUK: Yes.

MR. CHAIRMAN: I believe Section 8(4) under Clause 17, Section 8(4) indicates that a noncompulsory patient — no treatment shall be given to the patient if the patient objects to the treatment.

MR. PARASIUK: That's with respect to the previous point I had made, that every voluntary patient would have the absolute right to refuse any treatment. That's what it says here and in terms of the presentation that we received from the Manitoba Association for Rights and Liberties by people who had been very involved in it, they say that other sections of the Act conceivably contradict that. The surprising thing is that no one raised any questions. The Minister didn't raise any questions to the people presenting this report to us as a technical document, raising those particular points at that time. I'm surprised that they are raised today when they weren't raised Thursday night, but if that's the situation, fine. I can appreciate someone waking up today when they weren't awake two nights ago.

However, with respect to compulsory patients, which is the point that I am on right now, I think that an independent review should take place if there are going to be things like electric shock therapy or lobotomies. The point that I'm making is that we probably have our own form of concentration camps and they are nicely out of mind's eye because we really don't go into those institutions very much. Very few of us know people, we touch them on the periphery and they go into those places and we hope that somehow they'll come out okay. Yet I think what we're really looking for is not necessarily treatment. I think that's the problem with this. Sometimes we don't get treatment taking place in those institutions, rather we get control.

If someone is psychotic, I wonder whether in fact the major emphasis is to cure that person or to control that person, so that person does not harm society and given that particular vent on the part of certain individuals, I think you have very serious possibilities. I would hate to have investigations done which would show that five or ten or fifteen years from now, that what took place today was horrendous. Because when you read about what took place in mental institutions 25 or 20 years, we're shocked, and I just don't think we know a full enough story about what takes place in mental institutions.

So for all those particular reasons, Mr. Chairperson, I feel that it's quite imperative that we have to move that the existing Mental Health Act — and I do this in the form of a formal motion — I move, seconded by Brian Corrin, that the existing Mental Health Act be amended by including in its Section 25 of proposed Bill 85, together with such technical amendments as may be necessary to implement it, and the remainder of proposed Bill 85 be referred back to the Department of Health for redrafting and subsequent reintroduction at the next session of the Manitoba Legislature.

HON. L.R. SHERMAN (Fort Garry): Mr. Chairman, I'd like to speak to the amendment proposed by the Honourable Member for Transcona and also generally to the bill from the perspective of an overview on the bill in response to the overview that the Member for Transcona has offered. First of all, I want to disabuse him of any impression he may be under that the Minister was cowed into silence by the presentations that were made on Thursday evening before the committee. The Member for Transcona has offered the opinion that he takes silence to indicate consent. That being the case, Mr. Chairman, I submit that that principle could be applied to the public response to the bill generally.

The Member for Transcona may or may not be aware that the recommendations that now find themselves incorporated in Bill 85 were four years in the making, that there were meetings, hearings, discussions of an official and a semi and an unofficial nature held over a period of four years, in which all relevant sectors of the community in the mental health field, the judicial field, the judicial field, the medical field and other fields, both from an association and an individual point of view connected with mental health, had the opportunity and availed themselves of the opportunity to make presentations and engage in discussions and consult with officials of my department, as well as the Law Reform Commission.

On Thursday night when the bill came before Law Amendments for public representations, there were three presentations made in total, all of them from particular professional vested interest perspectives, legitimate vested interest perspectives, but nonetheless vested interest perspectives as narrow as are those to which any of us adhere when our own particular professional interests are concerned. When one considers that that Law Reform Commission itself heard or received something like 35 submissions on this subject and when there were

considerable other meetings held under the aegis of the Chief Provincial Psychiatrist and officials of my department, I suggest that the principle applied here by the honourable Member for Transcona can be turned around and applied to demonstrate that there is broad public support in the mental health and psychiatric and medical communities for this legislation and that the fact that only three delegates or delegations saw fit to avail themselves of one last opportunity to pursue their particular ambitions in this area is evidence that the proposed legislation has pretty widespread support. Most of us who have had the privilege of participating on Law Amendments over the years, as is the case with everyone around this table, are well aware of the controversial legislation that has attracted opposing or hostile representations, running into the dozens and running into the days. If this legislation were that unacceptable, I'm sure that we would have heard from more than three delegates the other night.

Mr. Chairman, one reason why I did not confront persons making the representations on Thursday night was that to some degree I was considerably surprised by the positions that they took and the position that it reflected to me, which is essentially a position of very broad misunderstanding, both of the existing legislation and of the proposed new legislation and the recommendations of the Law Reform Commission. Perhaps I was in error in not challenging them at that time but that was a judgment call, and the Member for Transcona can draw whatever conclusions he wishes from that, but my attitude on Thursday evening was that there would be nothing in particular to be gained by pursuing and exploring the subject with persons who appeared to have such a broad misunderstanding, well-intentioned as their presentations were, of the legislation that I would rather deal with it with the committee in clause by clause as we are now doing.

I was asked by some of the media for my reaction after the meeting and I gave it briefly and I think essentially it summed up this attitude that I'm describing, which was an attitude of some consternation, because for any of those delegations, including Professor Dale Gibson, to suggest that we did not take great pains to absorb and act upon the recommendations of the Law Reform Commission is simply not true. If one looks at the legislation and looks at the Law Reform Commission's recommendations, one will observe very quickly that a great many of the Law Reform Commission's recommendations are incorporated into the legislation and, in fact, already exist in the existing legislation. In fact, some of the sections to which the Manitoba Association for Rights and Liberties and Professor Gibson objected most strenuously the other evening in the new legislation are lifted word for word — word for word, Mr. Chairman — from the Law Reform Commission recommendations. So there is obviously a broad gap in understanding and I want to make that point firmly, for the record and for honourable members opposite.

The Member for Transcona suggests we are now in a position where we have to redraft a bill. Well with respect, Mr. Chairman, I would submit to all members of the committee and the House that we're in no such position whatsoever. There is a progressive reform of Manitoba's mental health legislation in front of the committee. It represents the first major step in reforming and modernizing and contemporizing our mental health legislation in this province in many many years. It's something that the mental health community, the legal profession, the courts and the community generally have waited for for some considerable time and although not all the ambitions of the MARL and the Canadian Mental Health Association and my honourable friends opposite are met in the legislation, I suggest to you that it goes a considerable distance in bringing Manitoba into the 20th century in this area, in making it contemporary, in making it equal to and better than many other jurisdictions with respect to their mental health legislation.

And I have to say, with respect, obviously I am a servant of the House and of the committee, Mr. Chairman, but with respect, I have no intention whatsoever of putting honourable members on either side of the committee to the task of redrafting a bill. It's a perfectly good bill. It doesn't provide the moon for those who want the moon, but I suggest it takes us half-way or two-thirds of the way there and, as is the case with all legislation in difficult areas, one has to strike a mean between what is ideal and what is attainable. In this case, I think we have achieved the attainable.

I'm not suggesting that the presentations of the other evening did not contain some valuable suggestions. They did in fact identify some problems and it would be my intention to address those problems with two or three specific amendments that I don't have drafted in formal form in front of me at the present time but that I would intend to bring in at the report stage on third reading. They deal with the detention of an Indian or an Eskimo, a native person, by a peace officer who has been taken into custody pursuant to an emergency action by a peace officer; they deal with fixing a specific limit within which time a review of a person in a mental institution, a psychiatric facility, should have his or her case heard; and then there is one housekeeping amendment which I think honourable members opposite have already addressed. It had to do with the numbering of a particular section.

But, Sir, I take exception to the suggestion both here and the other evening that this is a badly flawed piece of legislation. You yourself identified one glaring error in a presentation that was made the other evening and repeated by the Member for Transcona today, that had to do with treatment for non-compulsory patients, the legislation clearly specifies that no non-compulsory patient, no voluntary patient has to submit to any treatment that he or she doesn't approve of. There are, in the presentations that were made the other evening, a series of misunderstandings of that kind. I don't believe that it's my right or privilege at this time to deal with them clause by clause, but there are a series of complete misunderstandings of what the legislation says and what the existing legislation says.

Mr. Chairman, just in conclusion, the Member for Transcona takes great exception to the fact that we have not incorporated the proposal for a patient's advocate into the legislation and he went so far as to say that, and I think I'm quoting him correctly, that the patient's advocate proposal has been studiously avoided by the government — studiously avoided.

Well, I want to tell him, Mr. Chairman, that it was not studiously avoided, it was not avoided at all. It was dealt with in discussion by the government, taken under advisement and considered with psychiatric advisors, including the Chief Provincial Psychiatrist, and it was rejected as being unnecessary and unworkable and at least unacceptable, at this point in time, when measured alongside the proposed review board and review mechanism that we have put in place.

Now I'm not suggesting that the proposal for a patient's advocate has no merit, of course it has merit. But again, I go back to the analogy of shooting for the moon and we are not going to find ourselves, around this table, in a position where we are able to build a review mechanism and a review board into our existing structure and institutions in this field and also put patient's advocates into all our mental health facilities. Further to that, Mr. Chairman, I think that when one considers the number of patients in our mental hospitals, and it's not excessive, but just looking at Brandon and Selkirk we're talking approximately a total of 800, it is something, I suggest, of an impractical suggestion in the first place to suggest that a patient's advocate could deal more effectively with approximately 400 patients in each of those institutions on the basis of approximately 200 to 250 working days a year, than is the case that's being provided under the review board, which can split into two panels and will be statutorily responsible for reviewing every patient's case at least within a year, at a maximum of once year.

On the final point, Mr. Chairman, the Member for Transcona seems to feel that there has been insufficient time for the Opposition to look at this bill, to deal with it, to consider it. I would remind him that it was introduced for second reading on June 24 and certainly it's not that long a bill in terms of pages. Certainly between June 24 and July 10, I would think, I know that a member of his calibre of intelligence, certainly had time to sit down and read those 15 pages and compare them with the existing Act and draw some conclusions. When he suggests to me that he takes silence to indicate consent, I suggest to him, sir, that I take his silence similarly.

MR. PARASIUK: Yes, I have to point out some of the incredible contradictions on the part of the Minister just now. The Minister takes great pains to indicate that this has been a product of a four-year process. That process of consultation that he's trying to take great pride in was the process instituted by the Law Reform Commission and yet we have former members of the Law Reform Commission, we have people who are expert in the area, coming along and telling us that this government departed markedly from the Law Reform Commission report in coming out with this piece of legislation. So the Minister can't have it both ways. He can't say that we had all this consultation with the Law Reform Commission, because if that's the case then the Law Reform Commission's report is the report of consensus in this province and the government's report, which departs from it, is the one that doesn't have consensus. And he's saying that we haven't had a large number of people coming here making representation, although I would think that the Canadian Mental Health Association is a very representative body. And I would think that the Manitoba Association of Rights and Liberties, which is very concerned about patients' rights, again, is a very representative body.

The Minister seems to be saying that he is not willing to really listen to those people who have, in fact, been part of the participatory process, who have, in fact, been part of the process that fashioned the consensus which resulted in the Law Reform Commission report. What the Minister has done, I think he inadvertently perhaps blurted it out just now, he said that he's taken the advice of the bureaucrats. He's talked about the people in the institutions, running the institutions and they don't want the problem, they don't want the hassle of a patient's advocate, for example, because if you look at what a patient's advocate would do, a patient's advocate would keep patient's fully informed as to their rights, to listen to all complaints by the patients and to advance patients' rights wherever possible. That would go on in institutions all the time; has very little to do with the review board. It might have to do with the fact that possibly, because of government cutbacks, the quality of service in the mental health institutions isn't good enough; it may be that a patient's advocate, if you want to take this to its extreme case, may in fact have prevented two of the deaths that we have had recently in mental health institutions in Selkirk and Brandon. And the Minister can't then say well, you know, the bureaucratic system couldn't accommodate both a review process, dealing with whether in fact the person should remain in that institution or not, and a patient's advocate, which would try to ensure that the patients got a fair break within the mental institutions, in terms of care, in terms of treatment, in terms of grievances, in terms of persecution, people who aren't in a good position to defend themselves.

Anything that you read about mental institutions, people are subject to sexual abuse, they're subject to harrassment, that goes on all the time. They don't have any rights. We talked about prison reform but we're not prepared to talk about reform within mental institutions and the Minister has not given us any convincing argument whatsoever with respect to this government rejecting the whole concept of patients' rights. He has caved in to bureaucrats, he's put the bureaucrats ahead and I understand how bureaucrats can operate to do that type of lobbying. But I think the Minister could have been a lot stronger on this particular issue and not caved in to the bureaucrats and provided an interesting breakthrough unless, of course, he in fact in concert with the bureaucrats is afraid of letting a patient's advocate loose within the mental institutions. Which again brings me back to that point I was raising before, what's the function of mental institutions? To provide care for patients, to treat them, to rehabilitate them or to control patients? You know, when you look at the record of the mental health institutions you find that once people have been in a mental health institution for a year or so, they're in there for what, an average of sixteen years in Brandon, seven years in Selkirk?

MR. SHERMAN: Those who are there more than a

year.

MR. PARASIUK: More than a year, I qualified that. Well I don't know if that's good enough. And the point is, are we using these places in a sense as stockades where we put away uncomfortable and individualistic, ruggedly individual people, moderately individual people, clever people? Clever people I hear the Member for Wolseley saying. Certain non-conformists. We put them into that institution to cure them or to rehabilitate them or just to put them out of the way. (Interjection)— Well the point is, since my amendment really argues that the bill doesn't in fact deal with those particular issues, we in fact should bring in the review board mechanism, which all of us agree with, which I commended the Minister on, which I say, yes, we should do that. But since none of these other things have been done we should put it back for redrafting.

And the two suggestions by the Minister, regarding the terrible situation that the Indian and Eskimo people may have if they're held there and people aren't going to take them because they are squabbling over cost-sharing, if he's going to deal with that, fine. Fixing a time limit, that's great as well but he hasn't said anything about the powers of a policeman, which is something that he acknowledged in second reading. Hasn't said anything about whether in fact there's going to be some type of independent mechanism, and again, everyone agreed that this is a very tricky, difficult, complicated area.

With respect to lobotomies, no one here, no one here obviously would ever want, or even want to imagine having, a lobotomy performed on them. People might imagine a situation where they would be, say, forced to accept an amputation of an arm or a leg because of gangrene. You can understand that, you can imagine that, but if any of us had to imagine themselves in a situation where they would have a lobotomy performed upon them they would probably argue that they should die. And yet we aren't providing a good enough mechanism within this bill to prevent that. And it's funny you know, when we get up in other debates and we talk about capital punishment and people get impassioned on capital punishment, one way or the other, we will debate it and people will raise it as an issue over, and over and over again and I'm finding that undoubtedly it's 3:30 on a hot afternoon on a Saturday and people might want to get home, myself included, but the notion of performing a lobotomy on someone to me is the same thing as executing them. And we are quite willing to let that type of issue slide through and I don't there are sufficient provisions within this legislation to deal with that. And if, in fact, we could develop them I'd be delighted but obviously we can't develop that in a short period of time. I don't think we can do that in the next day or two. And it's for those reasons that I strongly feel that this amendment by myself should be, in fact, endorsed by the committee.

MR. SHERMAN: Mr. Chairman, I don't want to delay the vote on the amendment but just before you call the vote I would like to respond briefly. The Member for Transcona seems to be under the impression that no one looks after patients' rights in our mental hospitals and I suggest to you, sir, that that is not correct, that the medical directors, the medical chiefs of staff, and the individual psychiatrists at our mental health centres in Manitoba do, compassionately and conscientiously, everything that they can to look after and protect the rights of their wards and their charges. I'm not suggesting that the concept of a patient's advocate is not a worthwhile suggestion and it may well be that we should, and can, move to that in time. I'm simply rejecting the suggestion that the Cabinet or the government studiously avoided consideration of it, because I want to assure the Member for Transcona that considerable consideration of it was given.

The Member for Transcona suggests, in this case, that the Minister has caved in to the bureaucrats and that we didn't consult sufficiently with the Law Reform Commission on drafting the legislation. Well, Mr. Chairman, I haven't checked the record but I don't know in how many instances, no matter what the government of the day that legislation is necessary drafted, in eyeball to eyeball consultation with the Law Reform Commission, I can tell him that the Law Reform Commission's report and a paper by the Manitoba Psychiatric Association constituted the basis on which the legislation was drafted and the drafting committee comprised the Chief Provincial Psychiatrist, Dr. Roy Tavener, the Chief of Psychiatry at St. Boniface Hospital, Dr. El-Guebaly, the Chief of Psychiatry at the Grace Hospital, Dr. Warder Hunzinger and the medical chiefs of our mental health centres. I suggest that is hardly a case of caving in to the bureaucrats. These are experienced people in the psychiatric field, in the mental health field, who, acting on four years of meetings, as I say, and a Law Reform Commission report and a report from the Manitoba Psychiatric Association put together in lengthy consultation that has been going on since last summer, that we've been working for some time as the member knows on this legislation, put together the rough draft of the proposals that the committee now sees before it.

That, of course, was then refined by legislative counsel for purposes of legal and technical wording. But that is the process out of which this legislation evolved and it does not represent a cave-in to the bureaucrats. What it does represent is a respect for professional psychiatrists who have toiled in this field throughout their professional careers and who speak from the experience of reality in the mental health field of what is necessary, what is needed, what is reasonable and what is practical.

The section having to do with the emergency powers of a peace officer and the powers of a policeman is of concern to the Member for Transcona and it was raised in the House at second reading by the Honourable Member for Inkster. I did indeed assure him that I would sit down with my colleagues and my advisors and have a second look at the wording in that section. I want to assure you, Mr. Chairman, that I have done that. I think the concerns of the Member for Inkster are valid insofar as all of us have to be concerned about our rights and our freedoms in a corrupt society. If society is corrupt and if our peace officers, our courts and our medical officers are corrupt, then there is nothing we can do to protect ourselves against eventual deprivation of our freedoms, if not our lives.

But presumably we operate in a free society. We have peace officers, courts, medical officers of integrity and the fear that was raised by the Honourable Member for Inkster, although a legitimate one, is really an abstract one. The fact of the matter is, Sir, that under The Pubic Health Act we can apprehend people today with infectious diseases. I don't hear any great outcry from the opposition or anyone else about that situation.

MR. PARASIUK: It's easier to determine an infectious disease than it is to determine whether in fact someone is psychologically deranged. That is somewhat subjective, more subjective than determining when someone's . . .

MR. SHERMAN: But the fact is that the person with the infectious disease is perhaps of no less a threat to society than a person suffering from mental illness. In this case, the actual diagnosis of the disease and the sanctioning of treatment still remains vested with a medical practitioner and still requires sanction under the processes that exist, both in terms of a medical certificate and a court order. What is provided here is the opportunity for a peace officer to intervene where he has reason to believe and where he fears for the safety, either of the individual or somebody else, and where he in his judgment does not see it as practical or responsible to go through the processes of getting a court order to apprehend a person and take him or her for medical examination, for examination by a physician.

I think I can assure you, Mr. Chairman, that there are a great many people who have spoken to me who feel that this section is highly necessary. They've had the experience of not being able to get any help when someone, a relative or a friend, is ill, suffering from a psychosis that constitutes a threat to them or others. The fact of the matter is at the moment, with respect, the police will not intervene in these situations. It is extremely difficult to get police officers to apprehend someone unless they've seen some evidence that's associated with a criminal act. What this does is give them the right and the opportunity to intervene where they see life and safety visibly and demonstrably threatened and at that point they only have the right to take that person to an appropriate for examination by a physician, and that means a psychiatric facility.

So that we did re-examine it on the strength of the questions raised by the Member for Inkster and reassured ourselves, Mr. Chairman, that it is a necessary and a worthwhile section in the bill. Further to that, I might just say, it was one of the sections that was strenuously criticized by the Canadian Mental Health Association on Thursday evening. It is translated word for word into the legislation from Page 61, recommendation 5, of the Law Reform Commission. So I think, Sir, that there is sufficient substance and evidence to support continued inclusion of that section in the bill.

MR. PARASIUK: I just wanted to come back on the question of the patients' advocate and the issue of what type of treatment actually takes place within our mental institutions. I know that the Minister can use the government majority on the committee to, in fact, put through this legislation and he appears determined to do so. That is the power that a government has, but at the same time I think it's important to note that we are passing very glibly over the whole issue of whether in fact they've got sufficient safeguards within our mental institutions to deal with something as drastic and final to me as a lobotomy.

I think it's been about 15 years, possibly more, since we've had an execution in Manitoba. I wonder how many lobotomies we've had in Manitoba during that time. We've undoubtedly had some. The point is, have we reached a stage where a lobotomy is required at all? I know there are some people within the medical profession who feel that, but there are many people who argue the opposite. The point is that there is a lot of divided opinion as to that type of final treatment and that's why that type of provision for some type of independent means of reviewing that type of final decision is critical. When the Minister points out that he's had consultation with a number of respected people who are running institutions, fine, I can appreciate that and I'm glad he had that type of consultation, but there is the other side of the coin and that is the patient. Obviously, we don't have that good a mechanism for consulting and communicating with patients in mental institutions, but surely they are the other side of the equation as well. The representations that we had tended to dwell considerably on patient's rights and I can understand that particular perspective coming forward. I'm glad that they did, because obviously those people aren't in a position to make representation to us.

People who may have been in mental institutions, given our societal set of values, aren't the type who want to come prancing forward before a legislative committee, telling people about their experiences in a mental institution. So we may, in fact, have not received representation that we could have received because of what we're talking about and the fact that people may, in fact, have been too embarrassed because they had been mentally ill to come forward. That's a reflection not on them as much as possibly on us as a society, but I say there is another side to this coin and that's the side of the patient. It's the side of patient's rights and I don't believe they've been dealt with sufficiently.

Finally, you know, I find this quite surprising. The Minister is looking for contradictions in terms of his arguments and he says, well, one of the arguments put forward or one of the objections put forward by the Canadian Mental Health Association with respect to the powers given to policemen was Recommendation No. 61 of the Law Reform Commission, as if that in fact deals with the argument. The point is, obviously, that if the Minister is taking that type of approach to the Law Reform Commission, then I guess we can ask why all the other proposals in the Law Reform Commission haven't been accepted by the government if he in fact is saying that they are the final authority with respect to matters of judgment in this matter.

MR. CHAIRMAN: Mr. Corrin.

MR. CORRIN: I just have a short question for the Minister. He didn't really explain why the government decided in its wisdom not to follow the

recommendation of the Law Reform Commission with respect to the matter that Mr. Parasiuk keeps bringing to our attention, that is, the one respecting cases of compulsory patients being required to be the subject of experimental surgical types of therapeutic procedures. I'm just wondering, I think it might assist the work of the committee if the Minister could advise us why the government decided to divorce itself from this particular recommendation.

MR. SHERMAN: Basically, Mr. Chairman, it's because the science itself, as was pointed out by Dr. Kerr and others the other evening, is one that's open to a variety of opinions, particular in the area of treatment. There are a great many developments in terms of medication that are approved from time to time for use in this field and they could, I suppose, in some instances be described as experimental. There are experimental drugs which receive the sanction of the Drug Standards and Therapeutics Committee and then, in the judgment and wisdom of psychiatrists on site, are tried where other therapies and other medications have failed to help patients. The feeling of the government is that there would be more disadvantages than advantages to legislating against use of experimental forms of treatment in as complex and scientific a field as this.

With respect to surgery, I can assure my honourable friends that experimental surgery is not permitted and is not performed. The Member for Transcona seems unduly concerned about lobotomies. I don't have the figures on lobotomies, but I can assure him that the total number of lobotomies performed in Manitoba in the last several years would not add up to the fingers of one hand and I may even be exaggerating there, Mr. Chairman. I'm prepared to check on that point, but as far as I know, there are no lobotomies performed. It's not the kind of treatment that is endorsed or is engaged in.

Somebody just handed me a note to say that in the last 15 years, there have been three lobotomies performed in Manitoba and those were to relieve tumour pain beind endured by the patients. They are not being performed to produce an environment of physical control, such as was portrayed in the movie and the book to which the honourable member has referred. There have been three apparently performed to relieve pain. Once again, Mr. Chairman, I have to go back to the faith that one places in one's professional medical personnel.

I think the Member for Transcona fears that there are a number of mad scientists roaming around in our mental health centres, engaging in all kinds of experimental whims. That is simply not the case. That is simply not the case, Mr. Chairman, and electric shock therapy is not performed unless all other all methods of treatment have failed. Electric shock therapy has been demonstrated to be helpful in the majority of cases in which its used. The Member for Transcona unfortunately knows of a case in which it didn't work. I can suggest to him that there are lots of ailments that he has from time to time for which he takes medicine or treatment, that probably don't work too. But in the main — (Interjection)— electric shock therapy is used because it is useful in treating certain psychoses that resist any other kind of treatment and where it is used, it is nine times out of ten successful. It is only used carefully and certainly would not be used on a minor, without the consent of the minor's parents. I think we've established that this person was not a minor, although your original question in the House to me indicated that he was, but I believe he was in his 20s.

MR. CORRIN: Dealing again with what appears to be the most controversial aspect in the question of compulsory therapy of a rather controversial or experimental nature, I don't understand why it wouldn't be possible in the interests of consumer and patient protection to provide that there be some sort of treatment panel that be authorized to set by, regulation, designated categories of acceptable therapeutic operations and procedures. I don't know why we couldn't have a competent, qualified body, constituted of professionals, perhaps even appointed by the Manitoba Medical Association. I would like personally, my own expressed preference, if there was such a treatment panel constituted, would be also to have lay representatives who could give an informed consumer's point of view in this regard as well. But I don't understand why we couldn't do that and better the legislation, meet the concern not only expressed by Manitoba Association for Rights and Liberties but also the Law Reform Commission, and improve the tenor of the legislation.

I don't think that the Member for Transcona's submissions in this regard have been unreasonable, notwithstanding that it does not appear that factually there have been many of these sorts of surgical, using the one example, surgical procedures taking place. But it seems fairly evident that there are, on occasion, irresponsible physicians just as there are irresponsible people in all walks of life and even though they may be but a very small minority, they can do a great deal of harm. Right now I'm thinking of the case that's been in the press over the past year, involving David Orlikow's wife and the LSD treatments she was subjected to, I believe in the late 1950s or early 1960s. And that was by a psychiatrist, a licenced psychiatrist in Canada. That clearly was an experimental sort of procedure. (Interjection)— Well, I don't usually pay much attention to what the Member for Pembina says, but he says that we should have the consent of the patient.

I must say that when we're talking about compulsory patients who have been designated as mentally incompetent, I don't know how he can suggest that we should have the consent of the patient. (Interjection)— Well, to be fair to him, he says to put it on the record. We're talking about Mrs. Orlikow and was it with the consent of the patient. I would remind him that at that time, it was highly unlikely that any consumer advocate or group in this country, even including qualified physicians, would have known what the properties of LSD would be. At that time it was a very experimental psychedelic drug, used only by a few select research scientists, and there was very little basis on which to prescribe it for therapeutic purposes. So I think with the consent or without the consent, it would be absurd to suggest that any person, no matter, even in this case, how professionally competent, could on his or her own initiative make such a determination, Mr. Chairman.

But it seems to me that a treatment panel approach would provide that sort of judgmental evaluation that's necessary. We don't have to depart from the final ultimate responsibility of the medical profession. We can encompass and embrace that within the context of this sort of approach. And as I said, I just don't see why we should leave this very vital recommendation of the Law Reform Commission sit and I think that the member's amendment is largely motivated and predicated on the basis of that vital recommendation. And if we could cut through, that I think that we would probably be able to come to some conciliated accord on this matter.

MR. CHAIRMAN: Shall I call a question on the amendment? All in favour of the amendment? Opposed to the amendment? I declare the amendment lost.

Shall we proceed page by page? (Agreed)

Page 1 pass; page 2 pass; page 3 pass; page 4 pass; page 5 — there's an amendment, I believe.

MR. DRIEDGER: I move that section 22 of Bill 85 be amended by striking out the word and figures "Subsection 15(4)" in the first line thereof and substituting therefore the word and figure "Section 15".

MR. CHAIRMAN: Shall the amendment pass pass. Could I also have the agreement of committee in the last line of clause 15(4) to change the word "physician" to "duly qualified medical practitioner," which is a more acceptable phrase, I believe. (Agreed) Then the amendment pass.

MR. SHERMAN: Mr. Chairman, on page 5 as well. On Subsection 15(5) at the bottom of page 5, I don't have a formal amendment prepared, but I want to suggest to honourable members that a loophole that was identified by Professor Gibson the other evening is certainly valid and that that section should be changed to read in the third line "until he has been medically examined and brought to a psychiatric facility, where admission to the facility is considered etc." rather than "admitted to a psychiatric facility" because it is perfectly true, and in fact that danger exists in the existing legislation, but we had best correct it. In fact, there is obviously ongoing dispute where natives are concerned as to who has the responsibility in the health field and the difficulty pointed out by Professor Gibson is certainly valid. This would mean that the person could not be kept in the custody of the peace officer once he had been brought to the psychiatric facility. If the psychiatric facility refuses to admit him because they can't determine whose going to pay for it, then the patient would be released from the custody of the peace officer. That's not entirely desirable socially, but it's probably less regrettable than allowing the peace officer to hold him in custody while two governments fought out the question of payment.

MR. CHAIRMAN: Mr. Driedger moves the amendment of the substitution of the word "brought" for the word "admitted" in the third line of clause 15(5). All those in favour. (Agreed).

Page 5 as amended pass; page 6 — we have another amendment.

MR. DRIEDGER: Mr. Chairman, I move that the heading of section 25 of Bill 85 and the first two lines thereof be struck out and the following heading and lines be substituted therefor:

"Section 26 repealed and substituted.

"Section 25. Section 26 of the Act is repealed and the following sections are substituted therefor."

MR. CHAIRMAN: Amendment pass; there's another amendment on that page?

MR. DRIEDGER: Mr. Chairman, I move another amendment, that proposed new subsection 26(1) to The Mental Health Act as set out in section 25 of Bill 85 be amended by striking out the word "may" in in the first line thereof and substituting therefor the word "shall".

MR. CHAIRMAN: Thank you, Mr. Driedger. Shall the amendment pass pass; Could I also ask the committee to permit a correction of a spelling error in the last line of page 6, "shall act in his stead" instead of "shall cat in his stead". Shall that amendment pass? pass; page 6 as amended pass; page 7.

MR. SHERMAN: On page 7, Mr. Chairman, I'd like to propose an amendment in subsection 26(8)(e), where it reads "that the board shall not later than 15 days after the receipt of the application fix a date for the hearing thereof and shall give written notice etc." The Member for Transcona and others have correctly pointed out that that leaves the actual scheduling period for the hearing undefined, although that was not the intention. The intention was to write the legislation in such a way as to indicate that it would be held within reasonable time and with all possible haste, but I appreciate that it doesn't say that precisely.

So what I would propose is that on the tenth line of 26(8), instead of reading "15 days after the receipt of the application, fix a date for the hearing thereof" that it should read "30 days after the receipt of the application, or such longer period as the Minister allows, hold a hearing thereof and shall give written notice to the parties concerned." In other words, it would mean that after the application was received the board would have to hold a hearing not later than 30 days from that point or such longer period as the Minister allows. There might be, Mr. Chairman, situations where the board members were not reachable and couldn't hold a hearing in that short period. But we would try for the 30 days.

MR. DRIEDGER: I'll move that, Mr. Chairman. (Agreed)

MR. CHAIRMAN: Shall the amendment pass? pass; page 7 as amended pass; page 8, are there are amendments? Page 8 pass; page 9 pass.

MR. DRIEDGER: Mr. Chairman, I have an amendment. I move that proposed new Sections 27, 28 and 28.1 to The Mental Health Act be

renumbered as Sections 26.1, 26.2 and 26.3 respectively.

MR. CHAIRMAN: Shall the amendment pass? pass; page 9 as amended pass; page 10 pass; page 11 — there's an amendment.

MR. DRIEDGER: Mr. Chairman, I move that renumbered clause 26.3(b) of The Mental Health Act as set out in section 25 of Bill 85 be amended by striking out the word and figure "subsection (1)" in the second line thereof and substituting therefor the word and figure "section 97".

MR. CHAIRMAN: Will the amendment pass? Pass. Page 12 pass; Page 13 pass; Page 14 pass. Page 15 is there an amendment?

MR. DRIEDGER: Mr. Chairman, I move that subsection 41(2) of Bill 85 be amended

(a) by striking out the figures "27" in the first line thereof, and substituting therefor the figures "26.1"; and

(b) by striking out the word "comes" in the second line thereof and substituting therefor the word "come".

MR. CHAIRMAN: Shall the amendment pass? Pass. Page 15 as amended pass; Preamble pass; Title pass. Bill be reported as amended pass.

MR. JORGENSON: On division.

MR. CHAIRMAN: On division.

MR. JORGENSON: Have it recorded on division.

MR. CHAIRMAN: Does that mean we take a vote? —(Interjection)— Fine, okay.

Committee rise.