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First Session — Thirty-Second Legislature

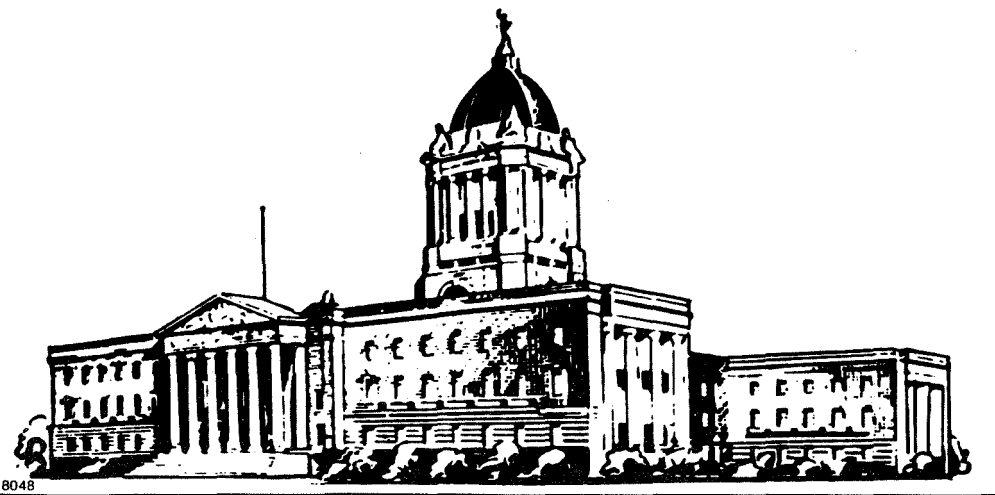
of the

Legislative Assembly of Manitoba

STANDING COMMITTEE
on
LAW AMENDMENTS

31 Elizabeth II

Chairman
Mr. Phil Eyler
Constituency of River East



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MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Second Legislature

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LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON LAW AMENDMENTS
Monday, 28 June, 1982

Time — 10:00 a.m.

CHAIRMAN — Mr. P. Eyler.

MR. CHAIRMAN: Committee come to order. Just to repeat where we were before we broke at the last Law Amendments Committee meeting, we were considering Bill 36, The Highway Traffic Act. We had skipped over Clause 10 and we were considering Clause 21. After that, we were going to proceed to Bill 43 and now we have a list of several more bills to consider.

It is my understanding we have people present today who would like to give presentations on Bill 43 and subsequent bills. I will leave it to the will of the committee whether or not we complete Bill 36 or proceed to public presentations first.

Mr. Penner.

HON. R. PENNER: It was my understanding - that's informal - so that we don't get caught up in an endless merry-go-round, that we would finish Bill 36 and Bill 43 and then hear all of the delegations on all of the remaining bills.

MR. CHAIRMAN: Is there any further discussion? Mr. Graham.

MR. H. GRAHAM: Mr. Chairman, I know how important it is for us not to try and lose our train of thought, but it has been several days since we have met. I think it's important that we give every consideration to the public that is possible for any of us . . .

MR. CHAIRMAN: Order please, order. I'm sorry. The Hansard recorder isn't picking up your comments. Could you come to a mike?

MR. H. GRAHAM: Mr. Chairman, I think it's important that elected representatives always give every consideration possible to the public. I would hope that we would listen to the public presentations first of all.

MR. CHAIRMAN: Any further discussion? Would someone like to propose a solution to the conflicting suggestions of the two committee members?

Mr. Orchard.

MR. D. ORCHARD: Mr. Chairman, I wonder how many of the delegations to present briefs are from out of the City of Winnipeg. If there were some and it perchance carried over that they couldn't make their presentations until this evening, that might impose some difficulty on them. We could at least hear the out of town ones as a compromise, possibly.

MR. CHAIRMAN: Mr. Penner.

HON. R. PENNER: I just made a suggestion; I'm not stuck on it, whatever the committee feels appropriate. I think let the delegations be heard if that's the will of the committee. It just seemed to me that I thought we were rather close to wrapping up Bill 36. Maybe, we can saw it off in that way, just deal with Bill 36. There is a delegation, in any event, to be heard on Bill 43. So why don't we finish Bill 36 and then go to delegations?

MR. CHAIRMAN: Is that agreeable to the committee? Hearing no further dissent, I suppose that's what we will do then.

BILL NO. 36 - THE HIGHWAY TRAFFIC ACT

MR. CHAIRMAN: Should we reconsider Clause 10 or continue from Clause 21?

Clause 10 - Mr. Storie.

MR. J. STORIE: I thought that the only holdup on Clause 10 was some question of whether staff sergeants and so forth at the local level would be given authority to give permission to hold motorcades or caravans. I believe that there is a motion being suggested to alleviate that problem.

So I would move:

THAT the proposed new Subsection 86.1(1), that The Highway Traffic Act as set out in Section 10 of Bill 36, be amended by adding thereto at the end thereof the words "or any person authorized by him for the purpose."

MR. CHAIRMAN: Clause 10, as amended - Mrs. Oleson.

MRS. C. OLESON: At the risk of sounding facetious, I would like to ask the Minister if this would include funerals, this clause.

MR. CHAIRMAN: Mr. Uskiw.

HON. S. USKIW: Mr. Chairman, it is not the intention to and there is no mention of it in the bill, so I wouldn't think it would be interpreted in that way. A funeral isn't a parade rally . . . (inaudible) . . . a motorcade.

MR. CHAIRMAN: Clause 10, as amended - Mr. Orchard.

MR. D. ORCHARD: Mr. Chairman, I think we have some difficulties with the interpretation of this, as motorcades could well include just the example mentioned by Mrs. Oleson. We have some difficulty with this.

I believe the Minister was to provide us with statistics indicating the number of accidents that have resulted from unauthorized parades, motorcades, etc., which he is bringing under this permit section of this Act. Also, I believe the Minister was going to clarify what other sections of the Act prevented unauthorized use of highways by tractorcades, etc., etc.

HON. S. USKIW: Mr. Chairman, we have not been in a position to determine that. We have not had sufficient time to acquire the statistical data, whatever it may be. That indeed would be a fairly massive undertaking.

We have just had the weekend to deal with it.

MR. D. ORCHARD: Mr. Chairman, the Minister obviously had some information on which he brought forward this amendment. It now appears as if he's telling us he doesn't have any information that justifies this amendment. Therefore, I think that we should not pass an amendment. This amendment should be withdrawn and brought forward next year when the Minister can provide this committee and the people of Manitoba with a justification for it.

HON. S. USKIW: Mr. Chairman, we have had numerous complaints from the enforcement people in Manitoba about parades, cavalcades and whatever that were not properly handled on the highway system and where they had to intercede in order to provide for a safer procession, if you like. The amendment here is based on those complaints.

MR. D. ORCHARD: Question, Mr. Chairman.

MR. CHAIRMAN: Question. Clause 10, as amended - agreed - pass?

MR. D. ORCHARD: Nay.

MR. CHAIRMAN: Do you want Yeas and Nays?

MR. D. ORCHARD: Just on division, Mr. Chairman.

HON. S. USKIW: Mr. Chairman, I just wonder whether the Member for Pembina recognizes that amendment is the motion of the Conservative Party.

MR. D. ORCHARD: Is a motion of the Conservative Party?

HON. S. USKIW: Well, Mr. Chairman, it was suggested by the members of the Opposition that we bring forward this amendment. We agreed with that suggestion and we are now bringing it forward. It is your amendment, Sir, and we think it's a good one.

MR. D. ORCHARD: Mr. Chairman, the amendment cleans up a bad amendment. What you attempted to do was bring forward - you agreed to bring forward information justifying accident statistics and the need for this kind of an amendment. Since you have not done that because of lack of time, that is why the amended-amended amendment will not be agreed to. So I would prefer it be recorded on division, Mr. Chairman.

HON. S. USKIW: Mr. Chairman, I would be most pleased to vote for a Conservative amendment in spite of the fact that the Conservatives won't vote for it. Question.

MR. CHAIRMAN: Clause 10, all in favour, please signify by saying yea. Those opposed? I declare the clause passed.

Clause 21 - Mr. Storie.

MR. J. STORIE: I have a proposed amendment to Section 21. Be it moved:

THAT the proposed new Section 192.1 to The Highway Traffic Act, as set out in Section 21 of Bill 36, be amended:

(a) by adding thereto immediately after the word "vehicle" in the 1st line thereof the words "or operator of a bicycle";

(b) by adding thereto immediately after the word "vehicle" in the 2nd line thereof the words "or bicycle."

MR. CHAIRMAN: Mr. Orchard.

MR. D. ORCHARD: Mr. Chairman, was there not an amendment that was brought forward the last sitting of this committee which made certain exceptions to the type of headphone?

MR. CHAIRMAN: Mr. Uskiw.

HON. S. USKIW: Mr. Chairman, I don't think that we proceeded with that amendment. I think we stopped the committee before that amendment was put on the Table, if I'm not mistaken. Perhaps the Chair can clarify for us. There was no motion. Was there a motion?

MR. CHAIRMAN: I don't have the Hansard record. I don't remember any motion on this. We were discussing the clause in general terms and I don't believe there was a motion. Hansard may show that there was though. I don't know.

HON. S. USKIW: It seems to me, Mr. Chairman, that a motion was put forward and then it was decided not to proceed. The committee dissolved at that point. We are not intending to introduce that same motion. We have a different motion before us at the moment.

MR. H. GRAHAM: Would you consider removing the entire clause?

MR. CHAIRMAN: Mr. Graham, could you please come to a microphone? Any further discussion on the proposed motion?

Mr. Orchard.

MR. D. ORCHARD: Once again, to recap this amendment, is it the Minister's intention to remove - now that he's added bicycles in there as well - but basically, the desire of the Minister is to eliminate the use of a device which may inhibit one's hearing while operating a motor vehicle, the theory being that if his hearing is inhibited, he may not operate that vehicle as safely as possible?

MR. CHAIRMAN: Mr. Uskiw.

HON. S. USKIW: Well, Mr. Chairman, it is quite obvious that the intent is that we not permit the use of headphones on both ears while and during the operation of a motor vehicle or bicycle.

MR. D. ORCHARD: Mr. Chairman, that is obviously quite evident from the amendment, but what is the reason for it? Is the reason because of a perceived and anticipated safety problem?

HON. S. USKIW: Mr. Chairman, I think we did indi-

cate that was our concern at the last meeting and it remains to be our concern. While we recognize that it may not be one of those pieces of legislation that would be enforceable very readily, but we do want to give some direction to society as to what should or should not be done with respect to the use of headphones.

The extent of enforcement is another question. Where it probably will impact is where there has been an accident and where the use of a headphone was in fact part of the reason for the accident. So it will have some impact as evidence in court, if you like.

MR. D. ORCHARD: Mr. Chairman, the Minister has a bit of a problem here, because I think it is easy to agree that some of the installed stereo systems in cars have sufficient volume in a four-speaker configuration to prevent the driver, indeed, from hearing any outside sounds that may affect the safe operation of his vehicle. This amendment seems to choose one method of hearing impairment and not others.

It appears to be one which is of questionable enforcement. The devices used may not be readily recognized because they're becoming smaller and more compact all the time. The wisdom of passing an amendment to The Highway Traffic Act, as the Minister has said, which has questionable enforceability is asking, I think, this Legislature to undertake not a proper role.

I have serious concerns as to the Minister's justifications of bringing in this particular amendment dealing with only one source of hearing impairment and not establishing sound levels for in-car stereo systems, etc., etc., all of which can impair one's hearing while driving and, theoretically, make one a less than safe driver.

HON. S. USKIW: Mr. Chairman, the member raises a valid point and we have certainly considered it. It's an area, though, that I think would be better dealt with through the Ministerial Conferences and indeed through regulating the manufacturing of product for use in vehicles as opposed to regulations through this particular legislation or this Act.

If the member wishes, however, to broaden the scope of our proposal, I'm sure he knows that he is free to introduce that kind of amendment.

MR. D. ORCHARD: Mr. Chairman, the Minister made a rather interesting suggestion, and possibly he might do that, in that he refer this to the Canadian Conference of Motor Transport Administrators for some advice on a national basis, which would include the manufacturers, etc. In view of that, might the Minister consider withdrawing this amendment at this time and bring it forward next year after it's had due study?

HON. S. USKIW: Mr. Chairman, the amendment is before us and it's up to the committee to decide the disposition of the amendment. We are proceeding to put it forward.

MR. D. ORCHARD: The question, Mr. Chairman.

MR. CHAIRMAN: On the proposed motion of Mr. Storie to amend Clause 21.

QUESTION put on amendment, MOTION carried.

QUESTION put on Clause 21, as amended, MOTION carried.

MR. CHAIRMAN: On division.

Are there any further amendments proposed for The Highway Traffic Act? Should we proceed clause-by-clause or page-by-page?

HON. S. USKIW: Page-by-page, Mr. Chairman.

MR. CHAIRMAN: Mr. Orchard.

MR. D. ORCHARD: Could the Minister provide a brief explanation for Section 22, the amendment to include "snowmobile?"

HON. S. USKIW: Mr. Chairman, I believe we dealt with that extensively on Second Reading. It has to do with the fact that snowmobiles also are not to be driven across a highway on the part of a person who is suspended from driving.

MR. D. ORCHARD: Mr. Chairman, can the Minister indicate whether that prohibition of use of a snowmobile on a highway includes use on the right-of-way of the highway which might include the extreme outer limit of the ditch?

HON. S. USKIW: Mr. Chairman, for a person that is a suspended driver, that person could not use the highway right-of-way with the use and operation of a snowmobile, according to this section.

MR. D. ORCHARD: Then one further clarification, can a person who is not prohibited from driving use the right-of-way portion, which is the ditch, to operate a snowmobile?

HON. S. USKIW: Yes, that hasn't been changed, Mr. Chairman. It's not proposed to change that either.

MR. CHAIRMAN: Mr. Anstett.

MR. A. ANSTETT: Just for clarification, Mr. Chairman, can an unlicensed person, a person without a motor vehicle driver's licence, use the right-of-way, the ditch, or just that portion of the right-of-way just outside the fence line, an underage person, a 14 or 15-year old, as long as they're not on the highway itself?

MR. CHAIRMAN: Mr. Uskiw.

HON. S. USKIW: Mr. Chairman, we do not legislate or have provision for licensing of snowmobile drivers. So the answer to that is yes.

MR. A. ANSTETT: Then, Mr. Chairman, if I am to understand this provision correctly, just for clarification, an underage person who is not licensed to drive other motor vehicles may drive a snowmobile in the ditch on a highway right-of-way; a licensed driver over the age of 16 can, but a person whose licence is suspended cannot.

HON. S. USKIW: That is correct.

MR. A. ANSTETT: Thank you, Mr. Chairman.

MR. CHAIRMAN: Clause 22—pass. Page-by-page? Mr. Orchard.

MR. D. ORCHARD: Can we expect an explanation from the Attorney-General on Sections 23, 24, 25 which involve The Summary Convictions Act, when we deal with The Summary Convictions Act, or would he prefer to do it now?

HON. S. USKIW: We agreed to hold these sections.

MR. CHAIRMAN: Mr. Penner.

HON. R. PENNER: These particular provisions relate to Bill No. 27, which will be considered in committee later today. The proposed procedures in Bill No. 27 overtake, replace, the procedures that are delineated in Sections 220 and 223.

MR. D. ORCHARD: Would it be the will of the committee, after we hear the explanations from Bill No. 27, to pass in short order thereafter 23, 24 and 25 of this bill and just leave them unpassed for now?

MR. CHAIRMAN: Mr. Uskiw.

HON. S. USKIW: Mr. Chairman, it is my understanding that the sections that are being repealed here are being repealed not because of what is in Bill 27, but because those sections are already covered by existing legislation under The Summary Convictions Act. It has nothing to do with Bill 27.

MR. D. ORCHARD: I believe that the amendments in Bill 27 toughen up certain aspects considerably than what is presently in The Highway Traffic Act and, therefore, represent a fairly significant change in the process of certain moving violations in The Highway Traffic Act as well as parking violations in the province.

MR. CHAIRMAN: What is the will of the committee then? Will we pass 23, 24 and 25 after Bill 27 is presented or will we consider it now?

MR. D. ORCHARD: When Bill 27, I would suggest, Mr. Chairman.

MR. CHAIRMAN: Mr. Anstett.

MR. A. ANSTETT: Mr. Chairman, the Minister has made it clear that there is no connection, in his opinion, between Bill 27 and this bill with respect to these sections. It that's the Minister's opinion, there is no need to further delay this bill. I would suggest we pass the amendments now.

MR. CHAIRMAN: Mr. Orchard.

MR. D. ORCHARD: Mr. Chairman, I have no particular aversion to passing them now or later, but there are amendments in The Summary Convictions Act which significantly alter these deleted sections in The Highway Traffic Act. There is a connection, I submit, in the fact that the penalties are increased; the process of the law is changed in The Summary Convictions Act. However, if the committee wishes to pass 23, 24, 25 at this juncture, that's fine. We'll discuss it in Bill 27.

MR. CHAIRMAN: Mr. Uskiw.

HON. S. USKIW: Mr. Chairman, just to clarify a point. It is Section 25 that is already embodied in the existing Summary Convictions Act. Section 23 and 24 are impinged upon by the new Summary Convictions Act, Bill 27. So I have no problem whether we proceed or we don't proceed at this point on these sections, but if the Member for Pembina says, we can proceed, I have no argument against that, Mr. Chairman.

MR. CHAIRMAN: Is it agreed that we proceed? Mr. Penner.

HON. R. PENNER: I'd suggest that we proceed and we can discuss the substance of the problem when we hit Bill 27.

MR. CHAIRMAN: Very well, we'll proceed then. Clause 23, page-by-page? Mr. Orchard.

MR. D. ORCHARD: Is it not a numbering error in Section 29 where it refers to Subsections 292(1)?

MR. CHAIRMAN: Mr. Tallin.

MR. R. TALLIN: Yes, that's a typing error. In the 1st line of 29, it should be 291(1) and (2). Also, there's another typing error in Section 30. It should read in the 2nd line "immediately after Subclause (nn)(xix)." Those are both merely technical errors. If the committee would consent to me making those corrections without a formal motion, that would speed things up perhaps.

MR. CHAIRMAN: Is that agreed? Page 6—pass. Page 7 - Mr. Orchard.

MR. D. ORCHARD: I didn't realize that we passed Section 29, but 291(1) and 291(2), could the Minister indicate the rationale in the outcome of making these amendments?

MR. CHAIRMAN: Mr. Uskiw.

HON. S. USKIW: The provisions are now in the existing Act, Mr. Chairman. What we are doing here is providing for this section with respect to certain weights only, so that we don't unnecessarily involve people that are not a problem. So it's a reduction of regulation, in essence.

MR. D. ORCHARD: It's my understanding that the process which is presently in the Act and is being amended to exempt certain smaller trucks has not been utilized by the Motor Transport Board staff. It is a legislative requirement that has been not used and indeed, I think, the issuing of CT plates has been

greatly freed up in the last three years, so that CT plates are in fact available through a number of outlets outside of the City of Winnipeg and indeed throughout rural Manitoba and Northern Manitoba.

MR. CHAIRMAN: Order please, order please. There are several side conversations proceeding. Could you please keep the noise level down so we can hear the presentation of Mr. Orchard?

MR. D. ORCHARD: We made an amendment, I believe. I don't know if it was an amendment to the Act or by regulation whereby commercial truck licensing could be accomplished in areas outside of the City of Winnipeg. In other words, the CT truck owner and operator did not have to come to Winnipeg to either obtain or renew his commercial truck licence. That was of considerable convenience for people who lived 100, 200 miles out.

Now, it would appear as if, with this change in the Act, that the intention of the Minister is to have all commercial trucks above the 12,700 kilograms go through a much more formalized process of obtaining a commercial truck licence. Is that a fair interpretation of the use of this amendment, Mr. Chairman?

HON. S. USKIW: Mr. Chairman, I am afraid the acoustics are such that I couldn't get the drift of the member's suggestion or question. I can't hear.

MR. D. ORCHARD: Would the Minister care for me to repeat it?

HON. S. USKIW: Please.

MR. D. ORCHARD: About three years ago, if my memory serves me correct . . .

MR. CHAIRMAN: Mr. Orchard, could you speak a little closer to your microphone?

MR. D. ORCHARD: About three years ago, if my memory serves me correct, we made some changes to the availability of commercial truck licences whereby various centres throughout the province could issue commercial truck licences. That eliminated the need for commercial truck operators to come to Winnipeg to obtain their licence from the Registrar.

It would appear from this amendment that the Minister has every intention on commercial trucks above 12,700 kilograms to have not only those truck operators come to the City of Winnipeg to obtain their licence, be they in Thompson, be they in Flin Flon, be they in The Pas, Swan River, Russell, Melita, etc., etc., they will now have to come to Winnipeg to: No. 1, obtain a licence but only after they have gone through an application review at the Motor Transport Board. Is my interpretation of this amendment correct, Mr. Minister?

HON. S. USKIW: Mr. Chairman, that process is not being changed. The licences are going to continue to be made available through those outlets throughout Manitoba.

MR. D. ORCHARD: For trucks including those with greater registered weights than 12,700 kilograms?

HON. S. USKIW: Sorry, would the member repeat that last point?

MR. D. ORCHARD: The Minister indicated that commercial truck licences will still be available at various points throughout the province. Will licences be available at various points throughout the province for trucks weighing in excess of 12,700 kilograms?

HON. S. USKIW: Yes, Mr. Chairman.

MR. D. ORCHARD: Will the applicants wanting to license a larger vehicle have to first come to Winnipeg and appear before the Motor Transport Board to verify the nature of his business and the desire to have a commercial truck?

HON. S. USKIW: Mr. Chairman, the procedure is that they would have to file an affidavit. They can do that without appearing in Winnipeg. If there is to be a hearing with respect to their application, then of course it may be that they would have to appear in Winnipeg.

MR. D. ORCHARD: Now under what circumstances would the Minister envision the need for a hearing?

HON. S. USKIW: Mr. Chairman, it could be that there is a dispute whether or not they should be entitled to the kind of licence that they have applied for. In that case, the Motor Transport Board would be playing a role.

MR. D. ORCHARD: Now, obviously, the Minister has some reasons why he is bringing forward this amendment and, even though the practice is in the existing legislation, it hasn't been used. Now does the Minister foresee extensive use of this amendment once it's passed?

HON. S. USKIW: Mr. Chairman, I am not certain as to how widely it will be used and how widely the appeal process will be used with respect to the Motor Transport Board's activities. That is something that remains to be seen.

MR. D. ORCHARD: Then, in the event that a hearing is called, does this now mean that an applicant for a commercial truck plate will now have to go through very similar costs, legal fees, hearing time, that an applicant for a public service vehicle application must now go through before the Board? Is the Minister adding to the costs of obtaining commercial truck licences?

HON. S. USKIW: No, Mr. Chairman. All that's at issue here is to determine whether or not the applicant is a bona fide applicant in the sense of hauling goods of his own as opposed to hauling goods for hire. That is all that's at issue here.

MR. D. ORCHARD: Mr. Chairman, it is my understanding that if a vehicle owner who has registered and licensed his vehicle as a commercial truck - in

other words, to carry his own goods - and he is indeed acting as a for hire carrier, that the traffic inspectors within the Minister's department have every right and authority to ticket that person and undertake punishment, shall we say, of the individual who's in violation of the abilities granted to him under a commercial truck licence. That exists already. We don't need this kind of an amendment to assure enforcement of commercial truck usage as it was licensed.

HON. S. USKIW: Mr. Chairman, in trying to make sense out of the regulated industry - we're talking now the commercial end - there is no point in including in those regulations half-ton trucks, three-quarter-ton trucks, etc. This amendment simply removes that type of vehicle from this regulation.

MR. D. ORCHARD: I realize that this removes the smaller vehicles, but I suggest that it removes smaller vehicles with the intention of now using the existing legislation and, in fact, having commercial truck applicants appear before the board and go through a semi-formal or possibly even a formal hearing.

The point I am attempting to make with the Minister here is that if it is to prevent pirate trucking, which from time to time has taken business from the PSV carriers, the Minister has that authority already vested in his traffic inspection officers. Indeed, if the Minister's intention is to have hearings to obtain commercial truck licences, then the cost to those commercial truck licence applicants is going to be higher; the cost of doing business is going to be higher. Those costs will all ultimately be passed on to the consumer.

Also, the Minister is well aware that the Motor Transport Board right now is approximately anywhere from three to six months behind in their hearing schedules. He is now going to put before them hearings for commercial trucks - truck applications. That will further delay the operations of the board, unless the Minister has the intention of, say, doubling the staff at the Motor Transport Board.

HON. S. USKIW: Mr. Chairman, the member is talking about something that is now part of the system. We are not changing the mode of operation of those trucks. What we are simply doing by this amendment is exempting the surveillance, if you like, of the trucking industry, those trucks which are under certain weights. The rest remains intact and that's all this amendment does. It doesn't change anything with respect to the large trucks.

MR. CHAIRMAN: Mr. Enns.

MR. H. ENNS: Mr. Chairman, I get more concerned about the amendment as the discussion between the Minister and the Member for Pembina continues. It would seem obvious that the intent of the bureaucrats is to enforce an amendment in a way that has not been enforced in the past. I appreciate that amendment has stood on the books for many years. They appreciate that to include in that enforcement the half-ton, the three-quarter, the one-ton vehicles would prove a nightmare even for the ambitious bureaucrats of the Department of Highways, even for the ambitious retiring Registrar of Motor Vehicles, Mr. Peter Dygala, whom I respect to no end.

Nonetheless, it would appear to me to be an indicator of tightening of regulations at a time that you really have to question that. There is a problem with the regulated trucking industry and those that have access to commercial plates, but I suggest respectfully to the department that this is not the way to go about it. The answers that the Minister is giving us do not satisfy us that it is not the intention of the government and the Department of Transportation to crack down on the current commercial plate carriers by means of a procedure that can get pretty complicated; namely, formal hearings, applications before the Motor Transport Board.

I must caution the Minister that in Manitoba and particularly in agricultural Manitoba, the size of units are of the kind that qualify for the commercial plate and it's a different kind of a problem that they're trying to solve by this means.

MR. CHAIRMAN: Mr. Uskiw.

HON. S. USKIW: Again, I don't know how many times one must repeat it. We are not changing the mode of operation of that class of vehicle that the member is concerned about. We are simply eliminating from control the smaller vehicles, because we don't believe that it's in the public interest to indeed try to enforce the licensing system on three-quarter tons or half-tons and so on. We're leaving the rest as it was, Mr. Chairman. There is no change there.

The Motor Vehicles Branch and the Motor Transport Board now together do enforce the existing regulations with respect to CT plates, PSV plates and so on. That is not being changed, excepting to not leave the legislation in a way which implies that they must also enforce it upon small trucks. It is something that should have never been there in the first place that we're eliminating.

MR. H. ENNS: Mr. Chairman, I'll leave the matter if I can have the Minister go on record indicating that the person that now has the opportunity of licensing his unit commercially in Steinbach, in Dauphin, in Brandon can continue to do so without any difficulty. If he wishes to give me that assurance, I'll leave the matter.

However, if I start getting complaints during the course of the year that is not the case, then the Minister will hear from me next year.

HON. S. USKIW: Mr. Chairman, I think it's fair to say that the whole question of licensing is under review. I think the Member for Lakeside and members opposite ought to appreciate why it's under review. We have a bit of a chaotic situation and we don't know what the review is going to recommend. Notwithstanding that, Mr. Chairman, that has nothing to do with this particular legislation, although it may impact; but it has at the moment nothing to do with what is being proposed here.

MR. H. ENNS: I said I would leave it and I will leave it, but my trouble is with the Minister and this government. You guys like to get it all centralized, you know, all out of one office in Winnipeg. If there is one failing that I freely admit to during my term in office as Minis-

ter of Highways, that I didn't do enough decentralizing and letting people get on with their business without having to line up four, five, six months waiting for the wheels of bureaucracy to turn here in Winnipeg.

HON. S. USKIW: Mr. Chairman, just to ease the mind of the Member for Lakeside, I would draw to his attention that it was the New Democrats that decentralized government in Manitoba some several years ago; a process which is still underway, but that's where the big thrust began.

So we do not intend to revoke the rural agencies that provide these licence services to the public. There's no intention to centralize that operation, Mr. Chairman.

MR. CHAIRMAN: Mr. Orchard.

MR. D. ORCHARD: Mr. Chairman, I don't want the Minister to use his numbers in this committee to pass this amendment and leave the clear impression to all Manitobans that he is bettering the law and no more.

The present law, according to the Minister in his introductory remarks, he said this law has apparently never been rigidly enforced. What the Minister is doing is he is providing certain exemptions from the existing law with, I submit, the full intention of making all those who do not fall within the exempted weight categories come under much tougher scrutiny to obtain a commercial truck licence in the Province of Manitoba. In order for the Minister to say that he is lessening the red tape with this amendment by exempting categories of trucks below a certain size, he is not quite in tune with what I believe is going to happen, because those vehicles less than 12,700 kilograms, ever since commercial truck licences were available, never had to go through an affidavit or a hearing process even though the law may have required it. What the Minister is now doing by exempting them is nothing. He is giving them nothing that they didn't have before.

What he is doing for those people who have commercial trucks above 12,700 kilograms is making it legislatively possible to require those people to provide affidavit and indeed a hearing before the Motor Transport Board before they can obtain their CT plate. That is an amendment which is brought forward, as the Minister identified, because of certain abuses by commercial truck operators. I still maintain, Mr. Chairman, that the Minister has enforcement staff within his department who, when they come upon those kinds of abuses, can ticket and indeed I believe even remove that commercial truck operator's licence.

The Minister is now putting before all commercial truck owners above 12,700 kilograms in weight an additional series of steps in order for him to obtain that commercial truck licence. That's going to add to the costs, add to the red tape, add to the size of the bureaucracy in the long run and it's to do nothing other than to give the Minister a confirmation of a route he has already has; but, more importantly, it doesn't do anything if his enforcement officers continue not to enforce existing laws, so that this amendment is not going to better the situation. All it's going to do is worsen it for the 95 percent of the commercial truck operators out there that are operating quite legitimately. This kind of an amendment penalizes 95 percent to get at the 5 percent that the Minister already has inspection officers on the road to prevent their illegal trucking operations from taking place.

So this amendment is going to add costs, red tape and hassle to the legitimate commercial truck owners in the province to satisfy a whim of I don't know whom in the Minister's department.

HON. S. USKIW: Well, Mr. Chairman, again the powers are there now and have not been enforced, so this bill changes nothing. What this bill does do is in the event that we decide we're going to enforce, we won't be enforcing it on the little trucks. That's essentially what this bill is doing.

So, Mr. Chairman, there is no doubt that there are going to be some changes to the way the licensed operators function in this province and indeed probably in every province in this country. Ontario is just undergoing an inquiry into their commercial trucking operation. We may indeed follow that very step as well, because it is not a properly regulated system if it ever was intended to be. Chaos is really the best way to describe the present system. We don't know what the mould should be for a better system, Mr. Chairman, and it may be the subject of a major inquiry.

This here will simply allow us not, at least, to think that we're going to be enforcing the regulations that do now exist on people that it has never been enforced upon in any event. Therefore, this has no business being in the legislation.

MR. CHAIRMAN: Mr. Anstett.

MR. A. ANSTETT: Mr. Chairman, if I understand the debate correctly, not only are we eliminating the requirement that operators with vehicles under 12,700 kilograms obtain these licences but, in addition, we are making another change. The former application process went to the Registrar and could be backed up by affidavit. Now we are requiring the Motor Transport Board to issue that licence through hearing or whatever.

I am wondering, Mr. Chairman, if the Minister can explain why we cannot just provide the exemption for the smaller trucks and retain the old process with the inspection teeth in it without providing this special bureaucratic hurdle that goes much beyond the existing provisions in the Act, which allow the Registrar and the affidavit process to provide the screening.

HON. S. USKIW: Mr. Chairman, the Transport Board does not issue a licence. It will issue a permit, which will then become part of the evidence.

MR. CHAIRMAN: Is there any further discussion on this clause?

Mr. Anstett.

MR. A. ANSTETT: I'm not clear from the Minister's answer, Mr. Chairman, why the Registrar could not continue to issue those permits, why it has to be the Motor Transport Board, and how enforcement will be toughened up by having the Motor Transport Board do it rather than the Registrar.

HON. S. USKIW: Mr. Chairman, the Registrar is not in a position under the present mode of operation to assess the legitimacy of an application. The Motor Transport Board deals with complaints from the general public with respect to the use of vehicles and as to how they are licensed. Therefore, it makes sense that the Registrar and the Motor Transport Board have a dual role in ascertaining the legitimacy of the application.

MR. CHAIRMAN: Any further discussion on Clause 291(1)—pass. Any further discussion on Page 7?
Mr. Orchard.

MR. D. ORCHARD: Under Section 32, I asked the Minister this question during my speaking to the bill in second reading. From what sources can the Registrar receive information showing that a motor vehicle or trailer is not in a safe condition?

MR. CHAIRMAN: Mr. Uskiw.

HON. S. USKIW: By and large, it's the law enforcement system, Mr. Chairman.

MR. D. ORCHARD: By and large, it's the law enforcement. What are the other sources other than the law enforcement?

HON. S. USKIW: The other source of information is from drivers of vehicles, drivers who consider their vehicles not to be safe. That's a little tenuous on their part. It's not always prudent for a driver to complain about the state of his employer's vehicle, but some of the information does come through that way.

MR. D. ORCHARD: Do I understand the Minister to be saying that a company car, which is given to an employee and let's say it's a car out of the Government Services pool, the civil servant doesn't believe that the car is in sufficient shape, good enough condition for him to be driving it; therefore, he can go to the Registrar of Motor Vehicles, report the owner of the vehicle as providing one that's unsafe and then the owner of the vehicle, namely, Government Services will have to put it through an inspection hoop and make sure that the vehicle is in safe condition?

HON. S. USKIW: Mr. Chairman, that's always a possible scenario.

MR. CHAIRMAN: Mr. Enns.

MR. H. ENNS: Just to get that straight, I left this morning in the good hope that my hired man back home at the ranch was going to do some fencing in my half-ton truck. My hired man happens to be my son, but if he would sooner go fishing or go to the Red River Ex than fence, can he report my truck as being in unsafe condition to the Registrar and get out of a day's work that way?

HON. S. USKIW: Mr. Chairman, he can do whatever he pleases; so can we all. It's self-evident. The legislation doesn't deal with the question, Mr. Chairman.

MR. CHAIRMAN: Mr. Orchard.

MR. D. ORCHARD: So then the Minister is saying that it's not only the police officers who can provide this information to the Registrar. It can be any individual in Manitoba can say that a vehicle is unsafe and put the owner of that vehicle through an inspection process. Is that what the Minister is saying?

HON. S. USKIW: Mr. Chairman, all I am suggesting to the member is that any citizen of Manitoba has the right to complain about any situation and this being one of them. Reports like that do come in to the Registrar and they are noted for whatever they're worth. Perhaps, on occasion, they are followed up upon if the charge is serious enough, but it's open to all the citizens of the province to complain.

MR. D. ORCHARD: Mr. Chairman, with all due respect to the Minister, who is a longstanding member of this Legislature and basically quite a level headed fellow, how in the world could he expect this House to pass this kind of an amendment of The Highway Traffic Act which can have the effect of a grudge amendment? I don't like my neighbour because he beat me at bridge the other night, so I will report to the Registrar that his vehicle is unsafe. Then the Registrar has the onus to go and have that vehicle called in, put through an inspection and any repairs necessary undertaken. That is an incredible amendment, Mr. Chairman.

HON. S. USKIW: Mr. Chairman, I don't believe that we intend to function any differently than we now function. If there is a serious complaint lodged, it would seem to me that if we ignored the complaint, then subsequent to which an accident or whatever would occur, then we would be responsible for having ignored the complaint. It is common sense it has to be applied in any event, Mr. Chairman.

MR. D. ORCHARD: Mr. Chairman, the Minister has even further confused a confusing amendment. He is saying that common sense will prevail in determining which of these alleged unsafe vehicle reports the Registrar will act upon - like, is the Registrar going to act upon all of them? Only some of them? Is there a judgmental factor in there to determine which are of serious content and which are merely mischievous? Is not the Minister placing the Registrar of Motor Vehicles in the position with this amendment that he must act upon every single complaint received about an unsafe vehicle in the Province of Manitoba? Because failing to act upon one of those complaints and, pursuant to that failure, that vehicle is involved in an accident, could not the Province of Manitoba then be held at fault for that accident for not undertaking an inspection on that vehicle as the complaint indicated should have been done?

I believe the Minister, through this amendment, is placing an incredible amount of red tape and potential mischievousness on to the department because the department is going to be forced, with this amendment, to act upon every single complaint of an unsafe vehicle made by anybody in the Province of Manitoba against anybody in the Province of Manitoba. Failing to do that will leave the Registrar and the Government

of Manitoba in a liable position should that vehicle be involved in an accident. This is an incredible amendment.

HON. S. USKIW: Mr. Chairman, the logic of the amendment is simply to make sure there is a response mechanism to a complaint where there appears to be a dangerous situation. It could be the driver of the vehicle who makes the complaint, but who does not want to make that same complaint to his superior or has made it and his superior has ignored his advice, in which case there is some risk to the general public involved and also to the driver involved, so that the Registrar would have to make a judgment as to whether or not the nature of the complaint is such that an inspector ought to be sent out to check out the complaint or that the vehicle ought to be brought in for an inspection by a qualified mechanic anywhere in the province.

That's the strength of that provision, but certainly the member is right, one wouldn't want to abuse that provision. It could be subject to abuse, certainly. That is not the intent. The intent is to hopefully use judgment on how one applies the information that is provided to the Registrar.

MR. D. ORCHARD: Mr. Chairman, I believe if the Minister refers to The Highway Traffic Act, I think it is Section 19 of The Highway Traffic Act which has amendments in place dealing with the safety of used vehicles and it's made certain exceptions from the requirement of inspection. That seems to be a much more straightforward way to proceed with this perceived problem the Minister has of particularly the example of an employee being required to use an employer-owned car which is deemed unsafe by the employee. A simple requirement for inspection, as is contained in Section 19, would suffice. The Minister has that ability in the Act; all he has to do is proclaim it.

This kind of an amendment here, I believe, has the potential of clogging the Registrar's Office with 100,000 complaints a year on unsafe vehicles in the Province of Manitoba. I don't care, despite what the Minister says about discretion and judgment used by the Registrar to determine which complaint he should act on and which he shouldn't, I believe there is an onus building into this amendment that the Registrar must act on each and every one of them. Failing to do so and having that vehicle involved in an accident can put the Registrar, hence, the Province of Manitoba, in an extremely vulnerable position. That is caused by this amendment; I think it is a very poor amendment.

I don't think it accomplishes anything except the ability for mischievous use of the law by people of Manitoba. The Minister has Section 19, if he were to proclaim it, which will give him the same abilities as he is attempting to get here, probably better abilities than he's getting here, and with no obligation on the Registrar to make judgmental decisions as to which vehicle complaint is legitimate and which one isn't. I suggest the Minister seriously reconsider this amendment and withdraw it from the bill and bring it back next year if he deems it necessary.

HON. S. USKIW: Mr. Chairman, we do now have a process for this same concern, to deal with the same kind of concern, that is, the Registrar must show cause. It's a very cumbersome procedure to be able to get at the problem and is not efficient in terms of its application. This provision here would get around that need on the part of the Registrar to show cause and merely cause an inspection to take place, in which case - of course, it would have to be based on the kind of information that is provided and indeed checked out - it would have to be verified.

It's not something that we can act upon because we would be subject to tremendous resistance on the part of the public if we were attempting to provide this kind of surveillance without adequate reason or logic applied. There has to be some basis on which information that is brought in is going to be acted upon. Hopefully, it's not going to be used too often, Mr. Chairman, but if there is a serious problem that has to be dealt with, this is a better way of dealing with it than the present system.

MR. CHAIRMAN: Mr. Storie.

MR. J. STORIE: Mr. Chairman, I can't believe - we continue to hear these arguments over and over again about clauses that are of this nature. I believe the provisions that are outlined in Section 22 are no different from those provisions which occur in the powers that are given to public health officers or employment standards officers or environmental officers. It stands to reason that if someone offers a complaint that there should be provision in the Act for those complaints to be investigated, whether they come from law enforcement officers or individual private citizens. There are provisions under other Acts to deal with people who are providing information for mischievous purposes. There has to be provisions for individuals to express their concerns. Some of those concerns are going to be legitimate and some not. The provisions under this Act are no different than the powers given to all kinds of other enforcement agencies of the various departments.

MR. CHAIRMAN: Mr. Graham.

MR. H. GRAHAM: Mr. Chairman, I think the No. 1 one concern here is to correct the deficiencies in an unsafe vehicle rather than keep the Registrar busy. I would hope that maybe a more commonsense approach might be considered; that is, that where a person has a complaint about what he considers to be an unsafe vehicle, perhaps it might be advisable to tell the owner of the vehicle rather than the Registrar of Motor Vehicles. If that complaint is registered with the owner of the vehicle and there is a failure to act within a specified length of time, then to forward the complaint to the Registrar. The No. 1 concern is to get the correction made rather than to keep the Registrar busy.

HON. S. USKIW: Mr. Chairman, we have had incidents where the drivers of big trucks have complained to their management about the unsafe condition of their trucks and subsequent to which, due to lack of attention and correction, where people have been killed. We have specific instances - due to brake failure after the driver complained about the poor brakes

to his employer. So it's not a matter of imagination that we're dealing with, we're dealing with real people that have been killed because this mechanism was not there, Mr. Chairman. The employer was notified; the employer did nothing about it. An accident occurred where a person was killed as a result of the failure of the braking system. So this attempts to get at that problem, Mr. Chairman, I don't know if there is a better way to get at it.

Certainly, most employers would want to be responsible, but there is always the pressure of time in business. Sometimes people let things go a bit too far and accidents happen as a result, very much the same as in the airline industry. It's the same thing. If there is a complaint, one must address the complaint and deal with it because there is too much at stake.

MR. CHAIRMAN: Mr. Orchard.

MR. D. ORCHARD: Mr. Chairman, the Minister has now mentioned one specific category and possibly this is the reason why he's bringing in the amendment. He mentioned larger trucks. I might remind him that two years ago the province undertook a Critical Item Inspection Program for heavy vehicles and, as a result of the inspections carried out with that Critical Item Inspection service, the Minister brought forward this year in this series of amendments to The Highway Traffic Act the ability to prescribe standards for air brakes. It would appear as if the Minister has the ability through amendments already brought forward and indeed passed by this committee to have brake systems on heavy vehicles inspected as well as repaired. Now he is using a further justification for a bad amendment. Mr. Chairman, I have a great deal of difficulty supporting any of the reasons offered by the Minister for Section 32 of this bill when, in fact, he has existing and unproclaimed Section 19 of The Highway Traffic Act which can deal with used vehicles and older vehicles and bring them under inspection to assure they're in safe mechanical condition.

This amendment is not necessary. It is a dangerous amendment in that it provides for abuse of the law because the Registrar is going to be turned into a clearing house for complaints on used vehicles. Every one of those, as the Minister has already said, is going to have to be investigated to make sure they're legitimate. That's going to take untold time, untold numbers of staff dedicated to this, and it is not going to accomplish anything that proclamation of Section 19 would not give the Minister should he proceed with proclamation of that section.

HON. S. USKIW: Mr. Chairman, the Member for Pembina ought to know that simply the passing of a regulation prescribing standards doesn't mean that the general public will adhere to those standards without some form of inspection capacity or enforcement capacity. Writing laws means nothing unless they're enforceable, Mr. Chairman, so this is what we're doing here. We are making that section, which the member alludes to, enforceable through the sections that we are now debating.

Section 19, which the member alludes to, has nothing to do with this question, Mr. Chairman. It has to do with the sale of used vehicles and where an inspection certificate would be required. It has nothing to do with the maintenance and operation of vehicles, generally speaking, so it doesn't apply. Ninety-five percent of our complaints - this is not new, we have received complaints since Day One since we have registered vehicles - that are received by the Registrar have to do with large trucks and come from drivers of those trucks.

MR. CHAIRMAN: Clause 32 - Mr. Anstett.

MR. A. ANSTETT: Mr. Chairman, I am not clear from the Minister's remarks why it would not be possible to specify "employee."

MR. CHAIRMAN: Mr. Uskiw.

HON. S. USKIW: Mr. Chairman, it could be the owner or it could be - not an owner - I mean an owner's nonpaid person, a relative. It could be anyone. It could be the police. Why would one want to specify that?

MR. A. ANSTETT: Mr. Chairman, I understood that we already had provisions under the "show cause" rights that the Registrar has to require inspection, that we're not removing that. We're adding something additional and that on complaints from the police certainly the Registrar would have adequate cause to act. So that the 95 percent of the complaints that the Minister is trying to resolve are complaints that come from employees, as I understand it.

HON. S. USKIW: No, Mr. Chairman, 95 percent of the nonpolice calls are employee calls. The police calls are the majority, okay? Now the "show cause" provisions that we now have apply with respect to the cancellation of one's plates. It is not a mechanism to bring the vehicle up to standard; it's a mechanism to cancel one's licence.

MR. CHAIRMAN: Clause 32. Yeas and Nays. All those on favour of passing Clause 32, please signify by saying Aye. All those opposed? In my opinion, the Ayes have it.

MR. D. ORCHARD: Can we have a formal count, Mr. Chairman, on this one?

MR. CHAIRMAN: A formal count on the request of Mr. Orchard.

A COUNTED VOTE was taken, the results being as follows:

Yeas, 10; Nays, 7.

MR. CHAIRMAN: I declare the motion passed.

Page 7, any other - Mr. Orchard.

MR. D. ORCHARD: On page 7, Mr. Chairman.

MR. CHAIRMAN: Mr. Storie.

MR. J. STORIE: Mr. Chairman, I would like to propose . . .

MR. CHAIRMAN: Page 7—pass; Page 8, Subsection

299(12)—pass.
Clause 33 - Mr. Storie.

MR. J. STORIE: Mr. Chairman, I would like to propose
THAT Section 33 of Bill 36 be amended by striking out the words and figures "and 24" in the 1st and 2nd lines thereof and substituting therefor in each case the figures and word "24 and 29."

MR. CHAIRMAN: Any discussion on the proposed amendment?
Mr. Orchard.

MR. D. ORCHARD: I heard correctly, it was Section 29?

MR. J. STORIE: Yes, that's correct.

MR. D. ORCHARD: Would not Section 25 come under that as well, since 23 and 24 are, or is that not required?

MR. CHAIRMAN: Mr. Uskiw.

HON. S. USKIW: Mr. Chairman, Section 25 is simply being repealed because it is covered now under the existing Summary Convictions Act.

MR. D. ORCHARD: Then why would Section 24, which does the same thing, be included in Section 33?

HON. S. USKIW: Mr. Chairman, 23 and 24 are subject matters of the present Bill 27. Therefore, they are being held for the consideration of Bill 27, summary convictions; 25 doesn't apply.

MR. CHAIRMAN: The proposed amendment of Mr. Storie, any discussion—pass; Clause 33, as amended-pass; Preamble—pass; Title—pass. Bill be reported.
That completes Bill 36.

BILL NO. 43 - THE PUBLIC SCHOOLS ACT

MR. CHAIRMAN: Now, as was previously recommended, we'll be hearing presentations from the public on Bill 43.
Is Mr. Norm Harvey present? Would you please come to the podium? Mr. Harvey, the general procedures are that you would give your presentation and then if members of the committee have any questions to clarify your views, we will ask you questions. You may proceed.

MR. N. HARVEY: Thank you very much, Mr. Chairman, ladies and gentlemen.

MR. CHAIRMAN: Order please, order please. Please allow a little quiet for the public to make their presentations.

MR. N. HARVEY: Mr. Chairman, I do have a few copies of my presentation here if it is your wish to distribute them to the members of the committee.

MR. CHAIRMAN: The Clerk will take your copies and make some copies.

MR. N. HARVEY: I would like to take a moment, Mr. Chairman, to briefly review the history of teachers' sick leave legislation, which brings us to the consideration of Bill 43.

Prior to December, 1980, sick leave legislation had not been changed for a number of years. The main area of disagreement between school boards and teacher groups at that time was whether or not the 20 days sick leave, which teachers could accumulate in one year, was available to the teacher in the first month of teaching or whether it had to be earned at a rate of 2 days per month of teaching. This area of disagreement was never resolved in the courts. Rather than assume the expense of going to court, school boards usually made the 20 days available at any time during the year. Some school boards agreed, through negotiations with the teachers, to increase the total number of sick days a teacher was entitled to accumulate beyond the 60 days specified in The Public Schools Act, but no school board or teacher group ever attempted to negotiate an increase in the 20 days maximum accumulation per year, as specified in the Act.

The new Public Schools Act, which came into force in December, 1980, specified that sick leave is earned at a rate of 1 day for every 9 days of teaching to a maximum of 20 days per year. The total accumulation to which a teacher is entitled in the new Act is 75 days.

Shortly after the new Public Schools Act came into force, representatives from MAST and MTS (Manitoba Teachers Society) met to determine if there were any differences in interpretation of the new legislation on sick leave. Two or three areas were identified and it was agreed by the two groups to take the issue to the courts for a ruling. The court ruled that sick leave was not a negotiable item, that any sick leave granted beyond the entitlement in the Act was at the discretion of the school board. The MTS appealed this ruling and the Appeal Court upheld the ruling of the lower court.

MAST was informed by the Minister of Education that Cabinet had decided to amend The Public Schools Act to make it possible to continue to do what had historically been done; that is, allow school boards and teacher groups to negotiate sick leave as had been the practice for the past 25 years. I might say, Mr. Chairman, that MAST appreciates the opportunities given to us to discuss this issue with the Minister of Education since we were informed of the intentions to amend the Act.

Historically, the only aspect of sick leave which has been negotiated to date has been to increase the total number of days which can be accumulated to something in excess of the 75 days specified in the Act. The wording in some collective agreements is open to be interpreted that the 20 days which can be accumulated per year can be made available to the teacher at any time during the year, even during the first month of teaching.

Inasmuch as the Minister of Education stated that the changes to the Act would simply make it possible to do what has always been done, MAST assumed that the only two areas which would be negotiable would be the total number of days which could be accumulated and the method of accumulating the 20 days per year. At no time was there ever any mention of making the total number of days per year a negotiable item.

Nor has there ever been an attempt by teacher groups or school board to negotiate this. It is not something which has historically been done.

Our major concern with Bill 43, Mr. Chairman, is with 93(2). We would ask that this subsection end after the word "year" in line "2." One can always say that school boards don't have to agree in negotiations to more than 20 days of accumulation per year, but as you know, once it is on the bargaining table and if negotiations break down, it is settled by a Board of Arbitration. Two members of the Arbitration Board are appointed by the parties and because these two appointees are usually biased towards the parties appointing them, it is the chairman who makes the final decision.

We also have a concern, Mr. Chairman, with Section 94. We believe that it should be the right of an employer to ask for a doctor's certificate when an employee is absent from work for a specified period of time. In our opinion, this would remove suspicion of abuse of sick leave and eliminate possible litigation. Again, it is inconceivable that a school board would negotiate away this right, but it could very well be lost through an award of a Board of Arbitration.

Mr. Chairman, one of the provisions in the award of the previously mentioned court case, which was upheld in the Court of Appeal, is that under present legislation sick leave is not portable from one employer to another. Since there has been no proposed change in the wording of that legislation, we assume that it is not the intention of the government to make sick leave portable. We agree with this position because it would make a difference to school boards' hiring practices if teachers were allowed to bring an accumulation of unused sick leave with them when applying for a new job.

Thank you, Mr. Chairman. I have with me this morning our Vice-President of the Manitoba Association of School Trustees, Mr. George Marshall. I am sure that between Mr. Marshall and myself we'd be pleased to try to answer any questions you might have.

MR. CHAIRMAN: Thank you, Mr. Harvey. Are there any questions from the committee? Seeing none, thank you.

Ms Dorothy Young. Do you have copies of your brief, Ms Young?

MS D. YOUNG: No, I just have a few brief statements to make, Mr. Chairman.

MR. CHAIRMAN: Very well, proceed.

MS D. YOUNG: The Manitoba Teachers Society is pleased to be able to speak to the Committee on Law Amendments today very briefly.

We support wholeheartedly Bill 43. Bill 43 makes no changes in the provisions of The Public School Act governing sick leave and how you obtain sick leave, but it does resolve the problem of sick leave clauses that have been negotiated since 1948 in collective agreements in the province for teachers. It makes clear that the collective agreement provisions now apply to teachers and school boards. We are quite anxious to have this situation resolved because at the moment we have a number of teachers whose sick leave question is in limbo because of whether or not this Act will go through, whether the old one applies and just where we're at with that whole situation. We hope however that Bill 43 is passed in its entirety without amendment, as our legal counsel advises us that the present wording of Bill 43 will resolve the problems that we have with sick leave at the moment.

We would like to extend our thanks to the government for introducing Bill 43 and also to the Opposition who indicated to us on November 13th that they would introduce similar legislation. So we hope that Bill 43 would go through without amendment. Thank you.

MR. CHAIRMAN: Are there any questions for Ms Young?

Mr. Filmon.

MR. G. FILMON: Thank you, Mr. Chairman. I wonder if Ms Young could comment on the presentation just made by MAST this morning. Does that mean that the Teachers Society is in disagreement with the principal points brought forward by MAST?

MS D. YOUNG: We are in disagreement with amendments to Section 93(2) and 94, yes.

MR. G. FILMON: Thank you, Mr. Chairman.

MR. CHAIRMAN: Are there any further questions? Seeing none, I would like to thank you, Ms Young.

MS D. YOUNG: Thank you.

MR. CHAIRMAN: Are there any further people who would like to make presentations on Bill 43? Seeing none . . .

BILL NO. 31 - THE CHILD CUSTODY ENFORCEMENT ACT

MR. CHAIRMAN: Bill 31, The Child Custody Enforcement Act.

Is Mr. Bill Riley present? Could you wait until the Clerk distributes copies of your brief? Proceed, Mr. Riley.

MR. B. RILEY: Mr. Chairman, members of the committee, this brief is being presented on behalf of the Manitoba Association of Rights and Liberties and I am here as the spokesman for that organization.

The position of MARL is one of support, support for a bill which is necessary to bring certain standards to bear in cases of abduction; where children are removed from an original matrimonial home situation and are brought to Manitoba; where the ultimate weapon used by the person charged with abduction is to, in a very real sense, go underground with the children of the marriage, cut off access and contact with the custodial parent to the detriment of the child (children) of the marriage. The purport of this bill is to bring standards to bear by which these cases will be judged by the courts, so that there will be an attempt to minimize the trauma to the children.

Now the principles which are established in the bill are supported wholeheartedly by MARL. The question of certain aspects of the bill though, in the opinion

of MARL, should be scrutinized by this committee before passage of the bill. I would like to deal with some of those now in the order in which they appear in the brief.

The first one is on Page 2 at the top. That relates to Section 13(3) and deals with the common law rule of confidentiality. The purport of the section appears to be to require certain statutory bodies such as the Manitoba Hospital Services Commission, perhaps The Highway Traffic Act people, to divulge addresses, the whereabouts of the mother or the father, whoever is the person who has gone underground, that person's address and/or the address of the child. But if the scope of 13(3) is to include lawyers, then under 13(1), the lawyer is only obliged to divulge the information that is contained in his records. Lawyers, being what they are and what we are, will find ways to get around that provision. I would suggest that the section should be amended so as, if the scope is such to include lawyers, to require them to give any information they have dealing with the question of address. That's the first point.

The second point is the enforcement provision which is Section 14 at Page 8 of the bill which deals with contempt. The submission of MARL is that the section would be enhanced by deleting the opening phrase of the section so that all courts would be in the same position with respect to imposing a fine and/or imprisonment under the bill. The Queen's Bench judges have rather extraordinary powers when it comes to imposing penalties for contempt. They are unlimited; they can do whatever they like. In theory, they can impose life imprisonment and/or an unlimited amount of a fine. I don't think that the Legislature is aware of that. Contempt law is a very murky area and I would suggest that the Legislature should make its intention clear in that section so that the sanctions over and above the other penalty provisions of the bill, and there are substantial numbers of them, in terms of the fine and/or imprisonment there should be clear that we don't have different levels of contempt, depending upon which court you're unfortunate enough or fortunate enough depending upon what happens that you may be appearing before. So the suggestion is that there should be uniformity brought to bear with respect to Section 14(1).

The other point is that the word "wilful" appears in the section and the burden of the person charging a parent with contempt, I think is unnecessarily increased by the inclusion of the word "wilful." Whether it's wilful or not, a person can be guilty of contempt. The question of the degree of the contempt can be dealt with when that person is being assessed for punishment under the section. I think that the word "wilful" here is a throwback to days of yore when there used to be inevitably the use of the word "wilful" in a charge of contempt, but it's no longer the case today. So the word "wilful" should be deleted to decrease the burden of the prosecutor, the burden that the person is going to have to meet when laying the charge and ultimately going for a conviction, whether that person be an individual or a prosecutor from the Attorney-General's department. Of course, there are other provisions of the law as well that deal with the question of contempt. That is in the Criminal Code.

Point No. 3 on the top of Page 3 deals with Section 19. Now what Manitoba is doing here is incorporating by reference the Haig Convention. I understand that Ontario already has incorporated by reference the same Convention. We'll see that the Convention is a significant document which appears as a schedule to the Act and contains something like 45 articles. I am informed by legislative draftsmen that this Convention was some 12 years in the making.

I think that there are potential areas of conflict between the bill; that is the Act, which incorporates the Convention, and the Convention itself. For example, the Act applies to children under 18 years of age. The Convention applies only to children up to the age of 16. So there's one conflict there.

There is another potential conflict between the real and substantial connection test under the earlier provisions of the bill with Article 13. The courts are going to send the children back from whence they have come if there is a real and substantial connection with the jurisdiction from where they have come. That is what has been done by judges over a period of time - by some judges, not all judges - and this Act incorporates and makes uniform the standards that some judges have applied, but others have not. So that when you've got a difference in wording between the real and substantial connection test in the earlier sections and specifically under Section 5, Extraordinary Power of the Court, where the test suffers serious harm; when you flip over to Article 13 on Page 13 of the bill, you will see under Article 13(b) they use different words: "grave risk that his or her return would expose the child to physical or psychological harm." I think that there is a potential here for conflict. If one assumes that the Act includes the Convention, then there are going to be potential conflicts between the Act and the Convention, of which the Convention is a part; or if the Convention exists by itself, then you're going to have potential conflict.

I would submit that the Legislature should decide whether it is the Convention that should prevail if there's a conflict or whether the Act should prevail. The position of MARL is that it is the Convention that should prevail.

The fourth point is the question of the right of children to be represented by counsel in cases involving their future as to whether they are to be allowed to remain with the parent who has taken them from the jurisdiction where there is the existing Custody Order or whether they are to be sent back. The Legislature has seen fit to provide that a judge may in protection cases, wardship cases between Children's Aid Societies and the parents, direct that counsel be appointed to represent the interests of children. Given that the interests of the children may not be adequately represented by either their warring parents or by the court, it is the position of MARL that there should be a similar provision enabling the court, before whom such a contest as envisaged by this bill will be empowered, to say that the children are entitled to be represented by counsel, that their interests should be dealt with and should be put forward by their own advocate.

Then the last point to be made is the Location and Apprehension Order, which is an interesting section in itself, which is part of the enforcement process. The judge has the power to make an order directing peace officers to go and locate and apprehend the child that

is the subject matter of the investigation. This type of order is analogous to the ancient right of habeas corpus. Habeas corpus is a provision that everybody has heard the term, but there are procedural mechanical points that have to be followed if a person is going to be given a writ of habeas corpus; one of which is that there is always a return of the person who is the subject matter of the writ of habeas corpus.

There should be a specific provision here in this bill to make certain the child that is going to be apprehended - once that child is apprehended - it is the obligation of the agency, or whoever it is that's going to have the custody of that child, to bring that child to the court so the judge can make a disposition as to what should happen to the child. Because if you don't do that, then the danger is that the person from whose custody the child has been taken, even though that person will be accused of being guilty of abduction, the child will go back to the foreign jurisdiction before that parent has the right to argue that the child will suffer harm, that there is no real and substantial connection, that there was a change by consent as to the custody; that is, from the custodial parent to the non-custodial parent.

So that even though there are general provisions to make orders for whatever is necessary to implement the bill, MARL's submission is the Act should be strengthened by requiring that unless unusual circumstances apply, the child has to be brought before the court so that we don't have a situation where the child is whisked out of the province back to its place of origin before that other parent has an opportunity to make its submissions with respect to what should happen.

Those are my points, Mr. Chairman, unless there are any questions.

MR. CHAIRMAN: Are there any questions for Mr. Riley?

Mr. Penner.

HON. R. PENNER: Just a couple of comment and perhaps from the comments, a question. First of all, I would like to thank Mr. Riley and MARL for presenting this brief. I would particularly like to thank them with respect to this brief of having given me an opportunity to look at it in advance of the meeting of the committee, unlike another brief which I received this morning from MARL five minutes after the committee started. It makes it very difficult then to take into consideration the submission, particularly where matters are quite complex.

With respect to the particular points, I would like to simply advise that on the issue raised with respect to 13(3), I think it's a good point and I propose to bring in an amendment that I think will satisfy the concern raised about the provision of the information generally with respect to the whereabouts of the child. So there will be an amendment brought forward when we get to clause-by-clause that will deal with the concern raised with respect to 13(3).

Similarly, with respect to the point raised about contempt, again the points made I think were valid and there will be amendments brought forward when we get to clause-by-clause to deal with the points raised in the brief which were very helpful.

With respect to the point made about conflict between the Act and the Convention, it is my impression - I'll put this as a question - is it not the case, in both of the examples used by you, Mr. Riley, that in fact the bill that we're proposing gives greater protection and that the Convention is a minimum? What we're doing is going beyond the Convention in both of those instances.

The Convention is limited to 16 in terms of age. We are saying 18 in terms of age. The Convention says, grave harm, which makes it a little bit more difficult to enforce. We're saying, serious harm, which is a little less difficult to enforce.

MR. B. RILEY: My reaction was the other way around, that what happens to somebody between 16 and 18, because then there will be a different standard brought to bear. For example, under Article 12, there's a prima facie presumption that if it's less than a year, if the abducting parent has gone underground and has been successful in keeping the child unexposed to the custodial parent and has established the children in schools and there's a regularized life pattern and all the rest of it, there is a presumption under that Article that the child should go back unless there's the saving provision. Similarly, even if it's over a year, there is the presumption, albeit not as strong, that the child should go back.

What the purpose of the bill is, is to send the child back to the first jurisdiction, so if there are issues to be fought there, that's where the contest is going to be held and not in Manitoba. So it seemed to me that there was a conflict provision there and that the standard was a different standard under the Convention than under the Act itself.

I don't understand Section 19, whether or not the Convention is deemed to be part of the Act itself or whether it's a separate Act of the Legislature. It just struck me that this Section 19 should be clarified so that it's clear, because any enactment, does that include or exclude the Convention itself? I don't know the answer to that question, but it would seem to me that, if it's incorporated by reference, then it is part of the Act. So you've got potential for conflict between the Act itself, that is, the Convention part of the Act and the nonConvention part of the Act.

HON. R. PENNER: I don't think that there is that potential for conflict. It is always possible of course that there is some conflict that may be perceived between one section of an Act and another, but then that falls to be decided by the ordinary rules of statutory interpretation. However, we'll monitor the situation. It was the intention of this bill not to restrict, but to enlarge the protective mechanisms of the Convention and I think substantially that will happen.

Just to conclude with respect to two other points made by Mr. Riley with respect to counsel for children, just a general observation. I think it must be understood that the bill, The Child Custody Enforcement Act, specifically operates where the question of custody has been determined. All of the questions of the child's rights and the parents' rights have been adjudicated at first instance. Now a court of competent jurisdiction has said that "Parent A" shall have custody, and that is an issue which may always be

brought back to a trial judge or may be appealed. But this legislation says that order, having been given, we want to make sure that this childnapping that takes place will not take place. This is a mechanism to enforce those orders.

So that the question of counsel for the children at this stage, or habeas corpus at this stage, seems to me is not as relevant as it is when the question of custody itself is being adjudicated at first instance. I would be particularly concerned, at a time when we are looking at the whole question of representation for children both with respect to The Child Welfare Act and elsewhere, of adding something at this stage in this Act where it doesn't appear to be primarily necessary and about adding a provision about habeas corpus, where in fact there is a provision that the child which is the subject of a lawful order of custody has been taken unlawfully has been found, why should the child have to be brought to the court? The child should be taken back to the parent who has the existing order. So that's the reason for not at this time in any event acceding to the suggestions with respect to counsel and habeas corpus.

We are going to introduce some amendments on the other issues.

MR. B. RILEY: Mr. Penner, the problem with your last remarks, if I could just respond to that, is that both the Act and the Convention clearly contemplates that there is an argument that can be advanced as to no real and substantial connection with the jurisdiction having granted the Custody Order. So that if what you're saying is that it is contemplated by the Act that the child, once apprehended, will then be sent back before that other parent has the right to advance the argument, then you're not going to give that parent the right to advance the argument in a practical way because the child is already going to have been sent back.

It could be, for example, that the custodial parent may have acquiesced or have consented in some fashion to the change of custody, yet having changed his or her mind, having obtained such an order and having the child go back, then the person from whose custody the child has been taken won't have the right to advance the argument. I don't think that was contemplated either by the Convention or by the Act itself.

HON. R. PENNER: Well, just finally on that, Mr. Riley, no, pursuant to Section 9 of the Act, it still must be by court order. The court cannot issue an order unless the terms of the statute have been complied with. When the court is seized of the matter, there must be argument upon the real and substantial connection and all of the other things. So I think that the basic protection that is required, not only for the child but for those who may want to contest the jurisdiction of the court to issue an order, the mechanism is provided.

MR. B. RILEY: Thank you.

MR. CHAIRMAN: Are there any further questions? Mr. Harper.

MR. E. HARPER: Mr. Riley, I just wanted to maybe hear your comments on the Native children that are being sent to the States, being adopted. By reading in your presentation here, you have built in a safeguard for the parents to argue before they are taken out of the province. I just wanted to hear your comments on it.

MR. CHAIRMAN: Mr. Riley.

MR. B. RILEY: I followed the issue to the extent that it's been dealt with in the newspapers. If you are implying that these children are being sent out of Manitoba before the parents have an opportunity of making representations, then of course I would be against that. But I don't know that I'm in a sufficient position to respond meaningfully to your question, because it strikes me that you're asking me about a motherhood kind of an issue that I am going to obviously say that I'm against what you are talking about, but I really don't understand the context in which it takes place and I don't know that I'm in a position to . . .

MR. E. HARPER: I can say that many parents don't realize that their children have been sent to the States. As a matter of fact, children have come back from the United States to Manitoba without the parents' knowing it.

MR. B. RILEY: If you are talking about - I think Mr. Penner indicated that the whole question of representation for children is being looked at. I think that's a mechanism that can be looked, for example, to protect the interests of the child. Now, we're talking about the child as distinct from the parents. I suppose what you're talking about is a protection case where the custody has effectively been transferred to the Children's Aid Society but again, Mr. Chairman, I don't know that I'm in a position to respond in a meaningful way.

MR. E. HARPER: I just wanted to hear your opinion, whether you were well informed in that matter.

MR. B. RILEY: I'm not.

MR. CHAIRMAN: Are there any further questions? Mr. Corrin.

MR. B. CORRIN: I just wanted to ask a question with respect to the concern you raised lastly regarding habeas corpus and, I guess, directly with respect to the application of 9(2) of the proposed bill. There is an instance where an ex parte application can be made for apprehension of a child. The subsection says specifically that the court must be satisfied that it is necessary that action be taken without delay to apprehend and take the child.

I was wondering, in those cases, do you feel that it might be necessary or it might be of some assistance to the parents who have possession of the child, not custody but possession, to have the child brought before the court in order that those parents then, after the ex parte hearing has been completed, can make representations with respect to jurisdictional aspects of the case.

MR. B. RILEY: That's exactly my point.

MR. B. CORRIN: I thought that was and I just wanted to clarify that.

MR. B. RILEY: You made it better than I did. That point is that habeas corpus, this kind of procedure, has been going on for about 200 years now or longer, depending upon which habeas corpus Act you're talking about. It's worked that well and I would suggest that this Act, by way of a similar circumstance, should contain a similar provision, so that it doesn't become a situation where the noncustodial parent doesn't have the right to argue. Because what is the point of arguing after the barn door has already been opened and the subject matter of the whole debate has gone back to the original jurisdiction?

MR. B. CORRIN: So you would be happy, Mr. Riley, if we just extended 9(2) to assure that a parent would have an opportunity to make an argument.

MR. B. RILEY: That's right and it would not just only be the parent, but it would be the peace officer who apprehends the child, then is going to have to do something with the child in the meantime, until the return date. All these orders are going to be ex parte orders. I don't think that the custodial parent is going to serve notice. They're going to get themselves an ex parte order, then apprehend the child and then deal from a position of strength. They're not going to be serving notice. All of these orders are going to be made ex parte without notice to the other side and you can be sure of that.

MR. CHAIRMAN: Are there any further questions? Seeing none, I'd like to thank you, Mr. Riley, for your presentation today.

BILL NO. 53 - AN ACT TO AMEND THE BUILDERS' LIENS ACT

MR. CHAIRMAN: Bill No. 53, An Act to amend The Builders' Liens Act, is Mr. Gervin Greasley present? Could you wait until the Clerk has distributed copies of your brief? Proceed.

MR. G. GREASLEY: Mr. Chairman, members of the committee, our association appreciates the opportunity to appear today to outline to you our reactions to Bill 53, an amendment to The Builders' Liens Act.

As some of you are already aware, the Winnipeg Construction Association has been actively pursuing amendments in the lien field for the past 16 years. During that time, we have not only consulted with our 325 contractor member firms, but also met with other groups representing major sectors of the construction industry in Manitoba and did so regularly. In this way, we were able to develop a broadly based background for our recommendations.

These industry meetings were possible because former governments indicated in advance their intentions and directions with respect to the amendments. Unfortunately, in the case of Bill 53, we were not able to obtain prior information. The actual printed bill only became available to us four days ago so, as a result, we have not had an opportunity to have industry meetings.

By way of overview, it would appear that the proposed amendments attempt to clarify sections of the current Act which have created confusion in the industry. In most instances, it seems that the wording proposed will, in fact, accomplish the clarity.

We welcome the efforts to provide a greater distinction between the role and responsibilities of the prime contractor and the roles of the subcontractor.

We also appreciate those amendments which appear designed to make enforcement of the Act more consistent. For example, Section 24(5) provides that the judge not only can order the owner to place holdback funds into a required account, but also that the owner must pay interest on funds not previously deposited. This brings the current section into line with the method of handling other nondeposited funds and interest.

We note that Section 24(6) now exempts municipalities, Crown agencies and Crown departments from mandatory holdback accounts and interest payments where the project value is below that outlined in the regulations. This places those groups now on par with other buyers of construction. It should also satisfy the points raised last fall before this committee by the City of Winnipeg.

The points raised by the Manitoba Association of Architects relative to payment certifiers appears to have been addressed by Bill 53, particularly where it clarifies that the certifier does not originate the Certificate of Substantial Performance. We agree that contractors and subcontractors should originate those certificates.

There are two main areas of concern to our members. Under the current Act, the Notice of Substantial Performance must be issued within 7 days of the recognition that substantial performance has been attained. From the date of the Notice, the lien rights to file a lien then exists for 40 days. After that, holdbacks may be paid out, which would be on the 48th day if the full 7 days were taken to issue the Notice.

Under the amendments, the payment certifier now has 17 days to issue the Certificate. The lien time runs from the date of that Certificate. This could mean that no holdback could be paid until the 58th day if the payment certifier took the full time period allowed.

Those extra 10 days of potential delay are a concern to our industry. Delays to us mean reduced cash flows and higher financing costs. In the current economic times, these are truly a burden on our company operations.

We are not aware that any contractor representatives have requested the change to 17 days. We note that May 12th, the submission of the Manitoba Association of Architects still referred to a 7-day period. Incidentally, our comments in discussions with the City of Winnipeg indicate that they are also working on a 7-day period.

If there is a strong and just reason why 17 days is absolutely mandatory, we would be pleased to learn of it from this committee. Otherwise, we urge that the amendments be altered to provide a period of 7 days to issue the Certificate, as currently found in the Act.

The other area of concern involves the traditional

practices in the industry of vacating liens and paying out the holdback funds. Under the old Mechanics Lien Act and under current legislation, the practice has been to disburse holdbacks after the lien registration time expires. Where no liens were registered, the system is simple. Where a lien was registered, the money is disbursed to the party in return for their discharge of the lien; but where a lien amount is in dispute or an action has begun, the holdback portion for that particular subcontract is paid into court in lieu of the discharge. The contractor then proceeds to disburse the balance of the holdback funds to the other subcontractors and, of course, to suppliers according to the shares that they are owed.

We interpret that Section 27(2) of Bill 53 will now significantly change the traditional practice. The new section eliminates reference to placing funds in court in lieu of discharge, in contrast to existing Section 27(2). Moreover, Section 27(2.1) specifically provides that funds may not be disbursed where the action has been commenced prior to the holdback funds being issued.

We recognize that in Section 55(2) it is provided that a judge may order funds paid into court and is allowed to discharge a lien, but the automatic feature appears to have been eliminated. Now, a subcontractor or contractor will wait until a judge decides whether or not to order the funds paid into court and, later, whether or not to discharge the lien. Meanwhile, it appears that the holdback funds are frozen for all other subcontractors to whom the funds are justly due. If our interpretation is not accurate, we would be pleased to learn from this committee just how the traditional practice may be continued under the proposed amendments.

Incidentally, Section 55(2) uses the word "contract," which by definition of the current Act refers specifically to the document between the owner/agent and the contractor. It does not refer to subcontracts. Yet, the majority of liens are filed by subcontractors. Should the wording then, we suggest, not read "as it applies to a particular contract or subcontract?" Then only the money appropriate to that particular subcontract under the action would be retained in court.

Surely, it is not the intention to have a judge order all of the holdback funds for the total project paid into court to resolve the claim of one subcontractor while that person might be only one of 15 or 20 subcontractors active on the project. Yet, that is the way the current amendments appear to read.

Those are the two main areas of concern. There are two other minor points in passing. In Section 47, line 2, we question whether this should not read "subcontract" rather than "subcontractor."

In Section 48, throughout the amendments the changes have been put into effect to use the word "encumbrances" in place of mortgages and other types of encumbrances. We suggest that possibly in Section 48, in the fourth line, the word "encumbrancer" should be used rather than the word "mortgagee."

As mentioned previously, the Winnipeg Construction Association appreciates the attempt to correct some of the basic confusion with clauses in the existing Act. We would have appreciated prior consultation before Bill 53 was printed and possibly our visit today would not have been necessary. We realize, of course, that we're always free to go to the Attorney-General's Department and make voluntary suggestions, but it is difficult to make those suggestions based on clause wording when one is not aware of the wording the department intends to use.

Last year, we presented several seminars to the industry throughout Manitoba in order to acquaint contractors with the new legislation. A number of information bulletins were also issued to the entire industry. The same procedure will be followed once these amendments are proclaimed and once the printed copies of the amended Act become available.

Thank you.

MR. CHAIRMAN: Are there any questions for Mr. Greasley?

Mr. Penner.

HON. R. PENNER: I would ask Mr. Tallin, Chief Legislative Counsel, to just comment on at least the first point that was raised with respect to 17 days. It relates to the form used nationally for engineering and architectural contracts, I believe.

MR. CHAIRMAN: Mr. Tallin.

MR. R. TALLIN: Yes, this point was brought to our attention by one of the architects and he pointed out that Clause 14(3) of the Standard Architect Provision provided for 10 days after receipt of the application for the architect to make the inspection and then a further 7 days after the inspection to indicate his reasons for disapproval of the application or to give the certificate. So, it's to make it consistent with what was done within the profession.

MR. CHAIRMAN: Mr. Greasley.

MR. G. GREASLEY: It's interesting that wasn't the position of their own formal official submission, though. That's why we weren't sure where the influence was coming from.

MR. R. TALLIN: It was raised to us by an architect as a concern which the architects had. It wasn't, I agree, within their formal submission, because at the time they were not concerned with that. It arose with the question of the redrafting of 27 and 46.

MR. G. GREASLEY: The Attorney-General is quite free to choose the direction he wishes to take, but if we were given our druthers, we would still prefer the 7 days. Failing that, I suppose we're going to have to meet with the architects and persuade them that 17 days is not totally necessary in the performance of whatever amendments are brought down.

MR. CHAIRMAN: Mr. Penner.

HON. R. PENNER: Finally, Mr. Newman, who as you know has been working closely with us firstly on the drafting of the original Act and subsequently on the amendments, will be here this evening to answer any questions. You are certainly, obviously, free to attend and he may have comments on that point later this evening.

MR. CHAIRMAN: Are there any further questions for Mr. Greasley?
Mr. Greasley.

MR. G. GREASLEY: There was a second question, Mr. Chairman, with respect to some clarification as to whether the entire holdback funds would be frozen when ordered into court. Can I presume that the Attorney-General's Department will take that under consideration?

HON. R. PENNER: I'll reserve comment on that until this evening.

MR. G. GREASLEY: Thank you.

MR. CHAIRMAN: If there are no further questions, then thank you, Mr. Greasley, for your presentation.
Mr. J.T. McJannet. Is Mr. McJannet present?

BILL 23 - THE LEGAL AID SERVICES SOCIETY OF MANITOBA ACT

MR. CHAIRMAN: Bill No. 23, An Act to amend The Legal Aid Services Society of Manitoba Act - Mr. Sidney Green.

MR. S. GREEN: Mr. Chairman, members of the committee, first of all, I would like to hypothesize to you that there is a group of people in the Province of Manitoba who consider that the Federal Government has no right to levy taxes on a Provincial Government and that the Provincial Government has no right to levy taxes on a federal payroll. That group of citizens considers that they have a very strong social and economic issue. They feel that the Federal Government is wrongly allowing to Quebec the imposition of a payroll tax which takes away from the monies of all of the other citizens of Canada and not in accordance with the Constitution of this country. That group feels, Mr. Chairman, that they should take legal action enjoining the Federal Government from continuing to pay a payroll tax on its payroll to the Province of Quebec at the expense of all of the other citizens of Canada and feels it is an issue that is of great social and economic concern. They don't think that they have enough money or they don't think their issue is compelling enough or is a strong enough cause so they could get people to put some backing to what they are doing. So they seek money from the state to pursue that issue.

I presume, Mr. Chairman, because this group believes in civil rights and the rights of anybody no matter what the cause, as long as they feel that it's right and as long as they feel they have a reasonable issue and in this respect they would have the support of the Legislative Counsel of the Province of Manitoba, that they could go to a public body and get money to hire a lawyer to pursue that position.

That being the case, Mr. Chairman and members of the committee, I think that this bill should be entitled, "An Act to Provide for State Money to Pursue Particular Political Objectives," because that's what the Act will do. Then, Mr. Chairman, I presume that when they go and seek this injunction it is possible that a group of people, also public-spirited citizens of the Province of Manitoba, will say they like what the Federal Government is doing; that they should be able to appear as friends of the court, as we call it, amicus curiae, in order to be represented on the other side of this question; that they feel that their cause is either not strong enough to obtain public support or they are too lazy to do so, that they will come to the Legal Aid Society and demand that they have a lawyer to take the other side of this position. After these two groups are provided with counsel at legal expense, I presume that there could be another group that could say, we think it's wrong for citizens to be appearing for court on issues of this kind, that these things are best resolved by the elected representatives of the public in the political arena and we want to apply for an injunction restraining the court from deciding that in one way or another. Because they feel that their cause is not such as would command much respect or at least any money to back it, they will also go to the state and say we would like some money to hire a lawyer to be able to pursue this position in court.

Now, Mr. Chairman and members of the committee, I have allowed my imagination to only deal with three sides of this issue. I would respectfully suggest to you that there are 15, 20, an infinite number of sides of this issue, but they all come down to the same result, that there is going to be some bureaucrat sitting in the Legal Aid office who is going to be recommending to a committee who then can either accept or deny his suggestions. But in any event I say they will be given strong weight, as to which political issues the state is going to assign counsel, to deal with this question.

Mr. Chairman and members of the committee, I really don't know why this legislation is being brought forward because my understanding is that this kind of, in my respectful submission, denial and interference with the political and social rights of people in this community has been going on for a year without the legislation.

As a matter of fact, last year, a group of people said that they wanted to stop an access route to North Winnipeg. They felt that they should be given money to pursue their position through Legal Aid. Their position wasn't one that necessarily would involve court action, although I will concede to you that one can make a court action almost out of anything, but they wanted money to pursue this position and they got it without the legislation. I respect the right of people to say that they don't want a particular political position; that happened to be a political position. But what happened, Mr. Chairman, was that another group, which had in my observation the biggest meeting that I ever saw in North Winnipeg, attended by some 600 or 700 people, decided that they wanted to pursue the Sherbrook and McGregor Overpass. They found a legal position, one by the way which strangely as it may seem, was upheld by the court. Now it didn't result in anything happening, but the court held they were legally right. They applied for Legal Aid.

Now would the members of this committee, who believe in freedom of expression, who believe in equality of treatment and believe that what they are doing is not pursuing a particular political position but making all people equal and have the access to Legal Aid, wouldn't they think that group got money? If you give it to one side, would you not think that you would give it to the other side? Well, that group was refused

money.

I tell the members of this committee it is inevitable that if this legislation is passed that what you are going to have is a subjective legal support to one group or another in connection with court actions on policy questions which these people should finance themselves. If someone says that they're too poor to finance it, may I say, Mr. Chairman, that if a cause is right enough, if you believe in it strongly enough and you work hard enough, that you will be able to get money. But if you don't have any faith in your cause, if you are not prepared to work for it, then you go to the state and say provide me with a lawyer. The best guarantee that it's not a good cause is that you are seeking state money to pursue it, because if it is a good cause then you could rally people behind it and you could obtain the necessary funds, if necessary. I suggest to you that if it's a good enough cause it's not even necessary.

Causes of this kind have been fought by lawyers for as long as Manitoba history has been in existence. When it's a problem, the money is found. The Attorney-General will recall, because we were both members of the Winnipeg Film Society. The Winnipeg Film Society was charged with holding movies on a Sunday. They said we are not breaking any Lord's Day Act, we are a group of people who are together for the purpose of seeing movies. We chip in, we provide a movie, our members come in, and if they wish to bring a guest they can come in. But the charge was continued, they were convicted, then they were convicted a second time, then they were convicted in a Court of Appeal, then it went to the Supreme Court of Canada and they acquitted us all. What money was raised by the state in support of that position? Lawyers gave their time, other people became involved and the thing was done.

I would assume, Mr. Chairman, today they got Legal Aid, I, for one, and some people know me well enough to know that I am not just making this statement; but if I gave it to the Film Society, I would give it to the Lord's Day Alliance. You cannot, in my respectful submission, choose your sides in an issue of this kind; but this particular Act - which I say, I really don't know why it's being done; it is confirming a practice that I objected to previously and is already going on - is as dangerous an issue, Mr. Chairman, gentlemen and ladies, as that which loomed in the Legislature quite innocently last year when another Attorney-General thought he could remedy the problems of election campaigns by making it an offence to make a false statement during a campaign and there would be lots of people going to jail on that statement now.

In any event, Mr. Chairman, this has the potential of being just as bad. This has the same potential as was objected to by a majority of the members of the Legislature when it was suggested that the public was going to finance private schools. At that time, it was argued that if you're pleading for the parental right to say how a child is going to be educated, then let's do it. Let's say you will permit communist schools, schools that you may term fascist, schools that preach anything and if you are not going to do that, then let's not suggest that we are looking for parental rights. Let's call a spade a spade and say what you're looking for is the state to come to the aid of certain religions, of certain beliefs, a concept which is entirely contrary to the entire theme of a Charter of Rights.

Mr. Chairman and committee members, I want to indicate that the eligibilty in 10.1(2) is that which the society in its absolute discretion determines. I don't think that can be improved upon; because I think the only way you can improve upon it is chuck the bill, do not give it and let these people who believe that they have causes which are important raise money for their cause. There are various ways of raising money. I mean, they might even get a bingo game, but let them raise money for their cause. If the cause is just, the money will be raised. If the cause is not just, then the money will not be raised and they shouldn't be able to get money from the state.

So they, in their absolute discretion, will decide and they will decide that even if there are some members in the group that have a fortune, because they say the incomes of the members generally are at such a level that payment by the group would work a serious hardship upon the group, would seriously hamper its activities and the group does not have sufficient funds to pay the legal costs in respect of which the application is submitted.

If they don't have the funds, let them raise the funds. Let them do what every single group that has fought for causes in the past, when they are just, have done, go out and fight for them, go out and get subscriptions to raise the money, go out and get lawyers who are sympathetic with what is done and will deal with the matter accordingly; that has been done.

Here, Mr. Chairman, are some of the causes which Legal Aid would be faced with supporting. By the way, let me not in naming these things suggest that I don't agree that they would be entitled to support. My problem is that if I was on the Legal Aid Committee, I'd have to give them support much as I disagreed with them, because that's the only fair way of dealing with the question; but I do not, knowing some of what has happened with Legal Aid, think that's what will be done. Furthermore, I don't think that's what is intended by this bill. I think this bill is intended to facilitate court actions for groups that are in sympathy with particular positions.

Here are the ones that you will have to deal with or should have to deal with . . . I'm sorry, Mr. Chairman. I missed the intervention.

MR. CHAIRMAN: Proceed, Mr. Green.

MR. S. GREEN: I'm sorry. I missed what was said. —(Interjection)— balderdash.

Mr. Chairman, with respect to that kind of remark, the only way of dealing with it is to say that the people who are saying the contrary are spouting balderdash, because balderdash is a good argument. Well, if it's a good argument, I want to use it. "Balderdash." This is worse than balderdash. Balderdash can be harmless. This legislation can cause irreparable harm to the democratic process and anybody who says anything to the contrary is spouting balderdash.

Mr. Chairman and gentlemen, it is a joke. It is a joke that a citizen coming before this body making a submission - which is based not on a moment's thought, but which has been given thought over the years and which generally has received respect - that citizen

should be shouted at from the Chair "balderdash"; because it is not balderdash. You can disagree with it and I do not think that I have said anything personal against any member of this group.

MR. CHAIRMAN: Order please. The Chair did not say "balderdash."

MR. S. GREEN: Mr. Chairman, I didn't say the Chair said "balderdash." I said a member of the committee said "balderdash." It was said by the Attorney-General. That's the level that he gets to when he has no answer to what is being said - balderdash. When you wish to answer him from now on, you know that you've got a good answer if you say "balderdash" because he considers it a good answer.

Mr. Chairman, knowing in advance now that the reply is "balderdash," why should I want to attend this evening since that's the way I am being dealt with here? I am not spouting balderdash. I am saying that here are the kinds of things, even before I said it, that you will have to contend with.

The Anti-Fluoridation Group believe that they have a just cause and an environmental issue. They believe that you are poisoning every citizen of the Province of Manitoba when you put fluorine in the water. They could ask for - and I say that they would be entitled to unless there is subjectivity on this committee - funds to get an injunction against the water control authorities for putting rat poison in the water and they believe that. They believe that sincerely. They believe that as sincerely as my learned friends believe that this bill is right.

The League for Life wants to get money to pursue an injunction against the Federal Government for contravening the Charter of Rights by having a therapeutic abortion provided for in the Criminal Code and paid for out of provincial and federal funds. Of course, the Women's Action Committee on the Status of Women wants you to give them a lawyer to do the contrary.

The Plymouth Brethren wish to get a lawyer to get an injunction against the Provincial Government for having a statement in a Labour Relations Act which requires them to pay union dues when it's contrary to their conscience to do so and they believe that. Are they entitled to Legal Aid on the basis of this bill?

MR. CHAIRMAN: Order please. The hour is now 12:30, the customary time for breaking. What is the will of the committee? Shall we continue to the end or should we reconvene tonight?

Mr. Filmon.

MR. G. FILMON: Could we find out how long the member's submission is likely to be and perhaps finish it at this point?

MR. CHAIRMAN: How long will your submission be, Mr. Green?

MR. S. GREEN: I would be a very short time, but the members may wish to ask me questions; In which case, I am unable to predict how long it would be.

MR. CHAIRMAN: Committee rise.