



Second Session — Thirty-Second Legislature
of the
Legislative Assembly of Manitoba

STANDING COMMITTEE

on

INDUSTRIAL RELATIONS

31-32 Elizabeth II

Chairman
Mr. G. Lecuyer
Constituency of Radisson



MG-8048

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MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Second Legislature

Members, Constituencies and Political Affiliation

Name	Constituency	Party
ADAM, Hon. A.R. (Pete)	Ste. Rose	NDP
ANSTETT, Andy	Springfield	NDP
ASHTON, Steve	Thompson	NDP
BANMAN, Robert (Bob)	La Verendrye	PC
BLAKE, David R. (Dave)	Minnedosa	PC
BROWN, Arnold	Rhineland	PC
BUCKLASCHUK, Hon. John M.	Gimli	NDP
CARROLL, Q.C., Henry N.	Brandon West	IND
CORRIN, Brian	Ellice	NDP
COWAN, Hon. Jay	Churchill	NDP
DESJARDINS, Hon. Laurent	St. Boniface	NDP
DODICK, Doreen	Riel	NDP
DOERN, Russell	Elmwood	NDP
DOLIN, Hon. Mary Beth	Kildonan	NDP
DOWNEY, James E.	Arthur	PC
DRIEDGER, Albert	Emerson	PC
ENNS, Harry	Lakeside	PC
EVANS, Hon. Leonard S.	Brandon East	NDP
EYLER, Phil	River East	NDP
FILMON, Gary	Tuxedo	PC
FOX, Peter	Concordia	NDP
GOURLAY, D.M. (Doug)	Swan River	PC
GRAHAM, Harry	Virten	PC
HAMMOND, Gerrie	Kirkfield Park	PC
HARAPIAK, Harry M.	The Pas	NDP
HARPER, Elijah	Rupertsland	NDP
HEMPHILL, Hon. Maureen	Logan	NDP
HYDE, Lloyd	Portage la Prairie	PC
JOHNSTON, J. Frank	Sturgeon Creek	PC
KOSTYRA, Hon. Eugene	Seven Oaks	NDP
KOVNATS, Abe	Niakwa	PC
LECUYER, Gérard	Radisson	NDP
LYON, Q.C., Hon. Sterling	Charleswood	PC
MACKLING, Q.C., Hon. Al	St. James	NDP
MALINOWSKI, Donald M.	St. Johns	NDP
MANNES, Clayton	Morris	PC
McKENZIE, J. Wally	Roblin-Russell	PC
MERCIER, Q.C., G.W.J. (Gerry)	St. Norbert	PC
NORDMAN, Rurik (Ric)	Assiniboia	PC
OLESON, Charlotte	Gladstone	PC
ORCHARD, Donald	Pembina	PC
PAWLEY, Q.C., Hon. Howard R.	Selkirk	NDP
PARASIUK, Hon. Wilson	Transcona	NDP
PENNER, Q.C., Hon. Roland	Fort Rouge	NDP
PHILLIPS, Myrna A.	Wolseley	NDP
PLOHMAN, Hon. John	Dauphin	NDP
RANSOM, A. Brian	Turtle Mountain	PC
SANTOS, Conrad	Burrows	NDP
SCHROEDER, Hon. Vic	Rossmere	NDP
SCOTT, Don	Inkster	NDP
SHERMAN, L.R. (Bud)	Fort Garry	PC
SMITH, Hon. Muriel	Osborne	NDP
STEEN, Warren	River Heights	PC
STORIE, Hon. Jerry T.	Flin Flon	NDP
URUSKI, Hon. Bill	Interlake	NDP
USKIW, Hon. Samuel	Lac du Bonnet	NDP
WALDING, Hon. D. James	St. Vital	NDP

LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON INDUSTRIAL RELATIONS

Monday, 15 August, 1983

TIME — 8:00 p.m.

LOCATION — Winnipeg

CHAIRMAN — Mr. G. Lecuyer (Radisson)

ATTENDANCE 11 - QUORUM - 6

Members of the Committee present:

Hon. Ms. Hemphill, Hon. Mrs. Smith,
Messrs. Filmon, Lecuyer, Nordman, Oleson,
Ms. Phillips, Messrs. Santos, Scott, Steen and
Harper

WITNESSES: George Marshall and John Johnson
(MAST)

Dr. Linda Asper, Manitoba Teachers' Society
Tom Ulrich, Manitoba Teachers' Society
Aubrey Asper, Manitoba Teachers' Society
Ralph Kyritz, Manitoba Teachers' Society
Max Schatz, Rolling River School Division
Fred Gross, Lakeshore School Division,
Grant Russell, Manitoba Home and School
Parent-Teacher Federation of Manitoba
Alex Novak, River East School Division,
Linda MacIntosh, Rhineland School Division
and Garden Valley School Division,
George B. Buchholz, Manitoba Association
of School Superintendents
Linda MacIntosh, St. James-Assiniboia
School Division
Dr. Norman Isler, Seven Oaks School Division
Glen Cummings, Beautiful Plains School
Division
Jean Beaumont, Seine River School Division

MATTERS UNDER DISCUSSION:

Bill No. 77, An Act to amend The Public
School Act; Loi modifiant la loi sur les écoles
publiques.

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MR. ASSISTANT CLERK, G. Mackintosh: Committee will come to order. Since the Chairman is no longer a member of the committee, are there nominations for the Chair? Mrs. Smith.

HON. M. SMITH: Gerard Lecuyer.

MR. ASSISTANT CLERK: Gerard Lecuyer is nominated as Chair. Is the Committee in favour of Mr. Lecuyer as Chair? (Agreed)
Mr. Lecuyer.

MR. CHAIRMAN: Is it the wish of the committee that we proceed immediately with the persons who wish to make presentations? (Agreed) That being the case is Mr. George Marshall present? You may proceed, Mr. Marshall.

MR. G. MARSHALL: Thank you, Mr. Chairman. With your leave, Mr. Chairman, there's a number of school boards who are here from throughout the province, in particular with respect to the proposed amendment to tenure and I'd like to recognize them, those that are not making presentations. Would you like to stand trustees, who are from other boards? Thank you, Mr. Chairman.

Again with your leave, Mr. Chairman, I would like to call upon the Vice-President, John Johnson, from the Lakeshore School Division to speak to the record with respect to those amendments in which there is accord or a reasonable accord. I will then return to speak to the question of primary concern to trustees and remain to answer questions of your committee, if that's all right, Sir.

MR. CHAIRMAN: Would you just clarify again the name of the person who is speaking.

MR. G. MARSHALL: John Johnson, Vice-President of the Manitoba Association of School Trustees.

MR. CHAIRMAN: Thank you. Mr. Johnson.

MR. J. JOHNSON: Thank you, Mr. Chairman. Issuing of an interest arbitration award. As a result of our success with a joint ad hoc committees, the Manitoba Teachers' Society and ourselves, it has been indicated that while Section 126(1) and Sections 192(1) and (2) will be put before the Legislature, they will not be proclaimed. One could only assume that the Minister is willing to allow the suggested solutions in the joint report to be given a chance to work. We must, however, make comment to the Minister on these sections both on the principle, or lack of principle, found therein and the substantive issue found in these clauses.

We notice the absence of the right of the Minister to amend or add to the statement of items in dispute before the Board of Arbitration has made its award. The Minister's function in referring matters onto an arbitration board has been recognized in the past, in court cases, and in arbitration awards, as merely procedural part of the process. In other words, she has been likened to a conduit through which information flows.

It is important that items in dispute placed by either the school division or the local association be dealt with by an arbitration board for resolution. We feel this section has been changed to deal with the specific problem in the Tiger Hill School Division, where the teachers have incorrectly stated what items were in

dispute. When the division attempted to correct this, the society then objected, claiming it was an issue settled at the bargaining table. We have taken the position, on behalf of the Tiger Hill School Board, that it is up to an arbitration board to decide what is properly in dispute and not the Minister.

I trust you can appreciate the need for an arbitration board to be the party to decide whether or not an item is properly in dispute and not the Minister of Education.

You will note that Section 126(2) does allow the Minister to amend the award only after the award has been made. A rhetorical question might be: if an issue is known to be in dispute before the arbitration board sits, then why must the parties wait until an arbitration board has published the award before having them deal with the other issues?

We note the section dealing with, where within such longer periods as may be agreed upon by the parties, or as may from time to time, be allowed by the Minister has been left out. We would have no problem with . . . or as may from time to time be allowed by the Minister being left out, however we must remember that the principle behind collective bargaining process is a consensual process and to deny the two parties their wishes when there is agreement makes no sense whatsoever.

A fundamental principle of good employer-employee relations is that when two parties can agree, then the agreement should not be stopped by statute. The teachers' concerns are somewhat mitigated now that most local associations are receiving interest on back pay which, by the way, teachers originally argued would solve their problems regarding delays.

Section 129(1) of the proposed legislation is a change from the 14 days for an arbitration board to deliver an award to 60 days to deliver that award. We have by signed agreement with the Manitoba Teachers' Society on Page 5, Subsection 5 of the agreement therein, states that in the letter of appointment the Minister advised the chairperson that pursuant to Section 129, the time for making the award is 14 days after the delivery of the statement required by Section 126 or of any amendment or addition thereto, delivered before or after making of the award, and that if a longer period may be required, that the Minister will allow a longer period, as may be reasonably required to make an award, but in most cases not to exceed 60 days. Our agreement seems most reasonable.

Section 129(2) mitigates the principle of a tripartite board settling differences by way of a unanimous or majority award to the parties. This has worked well in the past and we believe it was intended to keep the arbitration boards conservative in their awards. Again the principle of consent comes to the fore regarding a reasonable time to make an award. If the parties can agree to further or different periods of time, which by the way, is the agreement we have with the Manitoba Teachers' Society, then it should be allowed. It would appear to be only one further small step before we find ourselves with a single member arbitration board for interest arbitration. We are not in favour of that.

Section 72(2), our main concern with this legislation is that it is not to be considered retroactive. It is only fair that school divisions know the rules for making long-range plans for their school divisions. At the meeting we understood, when we questioned the

removal of the word "rent" from the original wording, were given to understand that "lease" included the right to rent as well.

Section 48.1; this is a new idea. It fills a need. We do not see any point in it that we would recommend for change at this time. As with any new legislation, it will require testing to see if it is effective. We can support the principle and we support the legislation for school participation in the extended immunization program.

Thank you for giving me the opportunity to read this into the record.

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

Mr. Marshall.

MR. G. MARSHALL: Mr. Chairman, I speak to the question of proposed tenure, portability, extension of tenure for teachers. I refer to amendments in Sections 92(5) and 92(6) of The Public Schools Act.

Our complaint is not with the teacher, the teacher in the divisional role. I define the teacher in a divisional role as the function for which he or she has been hired. The teacher in the classroom - the focus of all teaching and learning. Educational leaders in their own right, dedicated, skilled, better educated for their task than ever before. Nor is our complaint with the teacher in the representative role. I define the teacher in the representative role as a teacher who is a member of an association, an association whose purpose is to argue for improved benefits and conditions for teachers.

Nor is our complaint with a representative teacher in a leadership role. A teacher from the classroom dedicated to the improvement of the station of his or her fellows, who works long hours at the local level, with little or no compensation. Certainly school trustees are not unfamiliar with such sacrifice. We can appreciate and applaud such motivation and performance.

Nor is our complaint with the Manitoba Teachers' Society. Advocates for their members. Their dedication too must be admired. Their purpose to enhance the status of teachers in this province. They perform their task in a personable and presentable way. They are very skilled at what they do. They are dedicated solely to the people for whom they are accountable - the teachers of Manitoba.

Not so, the Minister of Education. The Minister of Education has a much broader responsibility to Manitoba society as a whole in education. Not so the Government of Manitoba, its responsibility is even broader. All matters relating to citizen welfare under provincial jurisdiction and particularly not so, those legislators who come from the teaching profession and its many facets and there are many of those in this government. There are many of those in this Cabinet; there are many of those in this administration. I know they would agree with me that to feather the nest of the Teachers' Union in their new broader responsibility to all the citizens of Manitoba would be a misuse of office.

The government has insulted the school trustees of Manitoba. This insult does not arise out of any occasion or occurrence that relates to school trustees as a group. This insult does not arise out of any affront to any

individual school trustee. School trustees, like legislators, are politicians and insults intended or otherwise come with the territory. The offence, the government has insulted the communities that school trustees represent.

The government has said to the communities of the province i.e. the school divisions, through this proposed legislation and its notion of portability that the stranger who rides into town is more important than the community itself. That this stranger who comes to town is more important than the education of the children who live in that community. If the stranger has met the terms of this proposed legislation somewhere else in Manitoba and his rights are more important than the rights of the children of the community, his rights are more important than the educational rights of the children of the community. Because if there is offer and acceptance, if there is contract between the stranger the community to teach, then before the ink is dry on that contract the decision as to adaptability, suitability, capability of this stranger to teach in this community, to teach the children in this community is taken out of the hands of the community. It is taken out of the hands of the duly elected school board and it is entrusted to a third party. This right of the stranger is not permissive, it is not bargainable, it is not part of the new offer and acceptance. It is mandate. There is not one year, not one month, not one day, not one minute, where the community itself can access if the skills of the stranger are adequate to its needs, if they are adequate to the needs of its children.

Does the stranger need to prove that he is fit to teach the children of that community; that he has the skills, the nature, the morals, the suitability to the community and its children? No. The community, on behalf of its children, through its school board, must prove to a third party that this stranger cannot teach. This whole notion is irrational. It offends common sense. The community and its children are less important to this government than the stranger who rides into town.

This proposed legislation fails and offends the ultimate test of any lawmakers. It offends the common sense of the people of Manitoba. The stranger who comes to town is more important to this government than the community itself. This stranger who comes to town is more important to this government than the education of the children who live in that community.

The Minister has quoted in closing second reading, that the government went down the middle on this bill. Well the government certainly didn't go down the middle from our point of view. Twenty months to zero days for experienced teachers, 20 months to 10 months and one day for new teachers. The government didn't even go down the middle from the government's point of view, because if that is the principle of the bill that they went down the middle, then from the trustees 20 months in 1 day, we said two years, but we mean two teaching years which is 20 months, the trustees' position of 20 months and one day and the Teachers' Union position of day one, is not 10 months and one day in portability, it is 10 months and one day.

So if the announced principle of the bill as described by the Minister in the House is to go down the middle between the position of the trustees and the position of the Teachers' Union, then this Legislative Committee, as is its duty, should examine the details of the bill to

assure that the government's announced principle of the bill has been achieved and I'm sure this committee will find that position is not 10 months and one day in portability, that position is 10 months and one day. Our own position is that it's in the interest of both the teachers and the children, that there should be 20 months and one day under 92(5) and that there should be no change under 92(6).

School boards are ultimately responsible for the quality of educational opportunities available within the division. The quality of opportunities depend, to a large extent, on the quality of teachers in the classroom. Boards need to have time to fully evaluate new teachers, to see if their performance as a teacher is acceptable and if they are suitable and compatible with the particular educational environment and specific educational goal. Nine months is not sufficient time in most cases.

The proposed changes to The Public Schools Act contained in Bill 77 would seem to work to the detriment of teachers, as well as school boards. Boards would be frustrated at the inadequate time for evaluation and teachers would be frustrated at having their contracts terminated without adequate assessment. Assessment itself can be done fairly quickly, but teachers should have sufficient time to respond to the help provided by the board's administrative staff, in order to raise his or her performance to an acceptable level.

The proposed legislation strikes at the very essence of our being as school boards and school trustees and what that implies: vocal control and representation of the community in education. The local representative in education who is directly accountable to the public for the performance of the division and its teachers, is the school trustee. Your proposed legislation upsets the important role of trustees in education in the community and turns it over to the Teachers' Union at the expense of the parents, the community, and the children in the classroom.

The school system must ultimately be accountable to the public. The Teachers' Union is accountable only to its members. A perception already exists in the communities of the province that the strength of the Teachers' Union is preventing divisions from dismissing the mediocre teacher from the classroom. What you are proposing eliminates the opportunity for divisions to properly access its newly hired teachers before confirming tenure or permanent status.

Your proposed legislation breaks face with the bargain presently enshrined in legislation between school boards and the Teachers' Union, in that teachers have given up the right to strike in exchange for tenure status. In this arrangement, tenure status is a two-year trial period, in which the school board, through its professional administration, assesses a teacher's competence and appropriateness to the division's direction and setting.

Your proposed legislation offers nothing for the competent teacher. A teacher with experience being hired by a division has instant tenure on Day One of his employment. There's no other occupation in business, industry, in the professions, that I am aware of, that offers such a condition. Your proposed legislation, for all practical purposes, reduces to one year the time in which a teacher, just out of teacher-training, may be assessed. It may have been more

worthwhile for you to have considered the teacher's first full year in the classroom as an internship, rather than an instant move to tenure after one year. The present two-year non-tenure status for this group is a bare essential.

I believe the proposed legislation will be restrictive and unworkable to divisions attempting to properly staff their schools with the best teachers available. Your proposed legislation is a move to increased and legislated acceptance of teacher mediocrity. It is not in anyone's interest for a school division to be unmanageable. I urge you to withdraw this proposed legislation in the interests of the children, the parents, and the communities of this province.

This proposed bill enhances the special status as employees that the teachers of Manitoba already have. This special status was given in 1956 in lieu of the right to strike. It was given by mutual agreement of the government, the trustees, and the teachers. The Minister is proposing to unilaterally change the agreement, a change that will hurt students, a change that will circumvent that agreement.

Teachers already have all the due process rights of all other employees of the province. They have the right to apply to the courts. Now with the Minister's new bill, they will have an improved special right to an arbitration board, after only one year and one day of teaching in Manitoba. This right then continues as long as the teacher works in the province.

I would like to provide a few responses from some member trustees. Our board does not guarantee lifelong employment to incompetent teachers, but arbitration procedures are expensive and arbitration boards have difficulty dealing with the barely competent borderline teacher. We object to having to accept someone else's evaluation as the basis for granting tenure to one of our teachers.

Taxpayers are supposed to be in control of the evaluation and this forces them to accept someone else's evaluation. The board will have to terminate first-year teachers on inadequate information, inadequate opportunity for assistance. Teachers who are competent in an urban division may be totally unsuitable to teach in the North or in a rural area. This will create an even greater turnover problem in the North.

The superintendents, as we understand, have indicated support from their organization for the position of the school trustee. Seven or eight months is not sufficient to give anyone a fair or thorough evaluation. This is obviously a political decision. It cannot be justified educationally, not in the interests of the students, not even in the interests of the teachers, unless perhaps, it is leading to something else, a provincial seniority system of employment for teachers.

We get four years to evaluate the government. Where would they be if we only had seven or eight months? The Minister of Education talked to us at convention, indicated respect for school boards and for local autonomy. This is an infringement on local autonomy. She is saying to us there are more votes on their side than on ours.

Teachers who are terminated in their first year will be in limbo, they will face unemployment on a long-term basis. We will not hire people who will get automatic tenure. We will have to go to those who are beginning. No longer is the contract between an

employing board and a teacher. With teacher lay-off, a Grade 2 teacher may be totally competent, but if the job disappears, how can we employ that teacher, say, at the junior high level?

Evaluation is done by the principals or members of the Manitoba Teachers' Society and the position of the Manitoba Teachers' Society is that all evaluations should be positive. Another comment from a trustee; teachers already have due process through the courts. This legislation is over and above the rights of other employees. So far, arbitration boards have only been able to identify disaster in the classroom.

The role of the school trustee is an advocate of the children in the schools. This move by the Minister is at the expense of the children.

I would like to respond to some board reactions, in particular, the School District of Churchill, who can't be here.

"The Board of Trustees of the School District of Churchill has to register its unequivocal opposition to the proposed Bill 77, an amendment to Section 92(6) of The Public Schools Act. Because of our financial and geographical limitations, we are not in the position to await the pleasure of the Law Amendments Committee," and that's the Industrial Relations Committee, "to present a brief on our opposition to your proposal. We have difficulty in accepting your assertion that the sole purpose of the legislation is to ensure due process for teachers in that we doubt there is any group in the workforce better protected against violations of due process than that of teachers.

"It is not our intention to waste your time on specifics, but we must bring to your attention that in areas such as ours, teachers require a longer period of adjustment to community philosophies and needs. Your proposal will, in our opinion, necessitate hurry and perhaps unjust evaluations and will most certainly precipitate more terminations of first-year teachers who will not be afforded the opportunity to improve performance through continuing counsel and assistance from the more experienced.

"It is agreed that the various systems of evaluation are also in need of improvement, but it is our considered opinion that the proposed legislation will retard rather than promote the necessary changes. It is to be regretted that students may no longer benefit from the energy and freshness which youth brings to the system and we foresee future staff complements as what can only be described as aging and complacent.

"You are aware that trusteeship is frequently demanding and exhausting, in particular, in the past few years, and this proposed legislation can only make the position less attractive to prospective trustees. In the more remote areas, it is already difficult to attract highly-competent administrators with the necessary experience to effect perceptive and positive evaluations of staff performance, nor those with the demonstrated ability to promote and develop professional skills, such as effective techniques, initiative and adaptability and all the other criteria which separate the wheat from the chaff.

"At least four districts, of which we are one," that's Churchill, "have no establishment for a superintendent and must rely exclusively on the opinion of one, in the person of the principal, who is himself a member of the Teachers' Society and who may not be completely

objective at all times. Invariably this person could well be relatively inexperienced in the field of administration and may also need a longer period of development in order to ensure that the evaluation process that is employed is an efficient and creditable one. The district sees no merit in the proposed legislation other than that of political expediency and despite the declared intention to remain firm in its resolve, we beg you, the government, to consider the implication of its passage. The personal ideologies of our trustees cover the political spectrum of the province but the opposition to this legislation is unanimous." That's from Shirley Kernaghan, Board Chairperson in Churchill. Copy to the Honourable Mr. Cowan.

The people in Garden Valley say that the Garden Valley School Division is gravely concerned about the impending changes to Bill 77 and the adverse effect on our students.

The Dauphin-Ochre people say, "In a number of her speeches over the past year, the Minister of Education has indicated that there was to be no further erosion of the powers of local boards by your government. However, our board sees these sections of Bill 77 as possibly the greatest threat yet to the powers of boards and the quality of education in Manitoba." Copy to the Honourable Members, Lyon, Hemphill, Plohman and Filmon.

Another sampling, the people in Beautiful Plains School Division No. 31, "The change to Section 92(5) would be to substantially reduce the opportunity of local authorities to work with beginning teachers in a process of evaluation and improvement before deciding whether to grant tenure. The result will be that a number of these teachers will have their services terminated before having an adequate time to develop their full potential. We believe two years is much more realistic for this process than one year.

"The change to 92(6) forces a division to give due process from Day One, for all teachers that have taught for more than one year in any other division in the province. We believe this also is an unacceptable reduction in local participation and education. The proposed change severely reduces the effectiveness of a board in its role as advocate for the right of parents and students and its attempt to provide the highest quality of education.

"We believe the proposed change is also detrimental to the welfare of teachers, as it may lead to discriminatory hiring practices. Boards will be very hesitant to hire teachers with experience in other divisions and will instead hire the inexperienced teacher in order to gain a one year period of evaluation. This forced lack of movement of teachers cannot be good for teachers and cannot be good for education, generally."

Signed the Chairman of the Board, Mr. Cummings, copies to honourable members Adam, Oleson, Penner and Filmon and the letter was to Mrs. Hemphill.

Another sample from one of the poorest divisions, Duck Mountain School Division No. 34. "Teaching for the first time in a rural community requires a period of pedagogical and social adjustment which cannot, in all fairness, be totally assessed in the first year."

From the people at Portage la Prairie, "In the best interests of all concerned, the board urges you to withdraw this legislation."

An example from the suburban region, River East School Division No. 9. "The board unanimously passed a motion indicating their support for the MAST position regarding these amendments and are opposed to reducing the tenure period to one year, as well as being strongly opposed to the portability of tenure from one division to another. The board approved that a letter be sent to the Minister of Education stressing our opposition to the proposed amendments regarding tenure and its portability and a copy of the letter be sent to each of the MLAs representing our school division." It looks like a baseball lineup and it's all New Democrats: Honourable members, Schroeder, Eyler, Fox, Doern, Bucklaschuk, Lecuyer, and Anstett.

One of the provinces mentioned in the House was New Brunswick and our information, if that's an example, from the Treasury Board of the Province of New Brunswick, is it's non-tenured or portability period is three years and there is no provision for portability of tenure.

We have information relative to professional engineers which does not approach the legislation set out by this government.

I'd like to come to a few press comments. From an executive member, past member of the Teachers' Society, "However, when there are long delays and no action, the waiting can become tedious. To date our only commitment from the Minister is that she intends to introduce legislation on some of our issues." Well, I guess that's what she's doing. That was from the Winnipeg Free Press. From the Winnipeg Sun, "The Manitoba's Teachers' Society spends an inordinate amount of time dealing with personal priorities of its members and far too little time dealing with the needs of our children."

From the Winnipeg Free Press dealing with the Quebec problem in the abolishing of school boards. "Education Ministers of other Canadian provinces would also like to be spared the annoyance of school trustees, whose public election requires some deference, forever finding fault with provincial education policy, and drawing attention to the needs of their communities."

Recently in the Free Press, "Ms. Hemphill's acceptance of the MTS position in a matter where she had no reason for acting, apart from the MTS requests, shows that the teachers have a direct line to the Minister's office." It is not necessary for the Minister to agree with us. It is necessary for the Minister to agree with the Minister.

From the Winnipeg Free Press, "'Local autonomy is safe,' Ms. Hemphill tells trustees." From the Winnipeg Sun, "The education system will have to learn to bend a little to accommodate the wishes of the community," Ms. Hemphill said. In tough times like we're in now, difficult education decisions should be made with the community. Maybe sharing the decisions will make it easier." I'd like to think that if someone has to bend, it should be in favour of the parents and the child. School trustees have trouble swallowing those statements these days.

This proposed legislation takes the decision right out of the community. The Minister's credibility is in very serious doubt among school trustees at the moment. The stranger who rides into town is more important to this government than the community; the stranger who rides into town is more important than the education of the children who live in that community.

For the government to place The Public Schools Act on the table and say to the teachers, what are you in favour of, what don't you like, and to say to the trustees, what are you in favour of, what do you like? Of course, the teachers are going to say we want this and we want that. It is their prerogative. It's their duty to maximize the benefit of their members and their focus is quite simple. They're accountable only to their members. Of course the trustees are going to say this and that will impact negatively our ability and our responsibility for the management of the school and the interests of the communities of the province. The Minister says there's no consensus, therefore, I must act; I'm reluctant to act, poor me. These groups have failed and, therefore, I must act.

If this is to be the methodology, teachers - I want this for myself; Trustees - this is not in the public interest; the Minister - there is no consensus, therefore, I must act. God knows what The Public Schools Act will look like by the time the government finishes its term.

If the Minister and the government want to give the teachers union sole right to decide who may teach in this province then let them tell the communities of Manitoba that. If the Minister and the government want to create huge regions, remove the community's right to self-determination as the teachers union advocates, then let them tell the communities of Manitoba that.

If the Minister and the government want to remove meaningful decision-making at the local level by eliminating property tax as the teachers union advocates, then let them tell the communities of Manitoba that. Let the Minister and the government be responsible for its actions. Let them not say it's because the local organizations could not agree and, therefore, we must act, that's a cop-out, let the Minister and the government take responsibility for what they do with the communities of the province.

The basis of this legislation seems to be a lack of trust; a lack of trust in the system, a lack of trust in the communities of Manitoba; a lack of trust in those elected to represent the communities of Manitoba; a lack of trust in those professionals retained by the communities of Manitoba through their school boards to manage the school divisions on a day-to-day basis.

The Minister says parents are concerned about some teachers, the Minister does not assume that the non-performing teacher is already over-protected by legislation. The government's presumptions, again, seem to be negative but school authorities work from the basis of dismissal without cause, rather than staffing to needs. The Minister's decision is to take the decision out of the community, to have the decision made by some non-educational third party, to have the decision made on human rights, not on educational competence. There's some question in our minds whether a government, if it is operating from the base of a lack of trust, whether that government itself can be trusted.

Those who advocate that teachers do not have due process are, in a sense, practising intellectual dishonesty. If all the teachers want is due process of law before the courts than there's only a need to remove tenure. The Minister has confirmed the courts are hearing such cases. If the court sets aside a hearing, a teacher application because it is deemed frivolous or is of low priority in the mind of the court, then surely that is for the court to decide. The Minister and the

government through this legislation are not only challenging the democratic process, they seem to be challenging the judicial process as well for the purpose of serving a private interest group.

The Minister indicates that the decision to terminate a teacher is still the school board's to make. Nothing could be further from the truth. Indeed, this proposed legislation promotes accountability without authority, an untenable position to place a school board and those responsible for the governments of a school division. The people ultimately accountable to the community for the delivery of educational service to the children is the school board. Under portability from Day One of employment the final decision on who has earned the right to teach in the division is determined by a third party. The decision has been taken out of the hands of the school board, it has been taken right out of the community.

The Minister may say, as she does, in her letter that the school board decides and the teacher has the right of appeal but the reality is that the school board does not make the final decision. The school board essentially only has the power to recommend. The only way the decision will be made at the school board level is if the teacher does not appeal and that decision is not made by the school board either. The right to be heard and told why is, of course, already a requirement under the act.

The Minister is apparently taking the view that everything in The Public Schools Act is negotiable. When the teacher union advocates greater control for themselves and the school trustee disagree because it's not in the public interest, then the Minister chooses some middle ground. The result can only mean, over time, the slipping away of control in education from a community and its elected representatives and its assuming of control by the Teachers' Union which is a private interest group.

The proposed legislation upsets the balance of interest. The school board remains fully accountable to the community for the total operation of the school division. The Teachers' Union has no direct accountability whatsoever to the community. If the community turns out one-third of the school board, for whatever reason, because it is dissatisfied, would the Teachers' Union allow the community to turn out one-third of the teaching staff and would the community be allowed to make those choices too? Not likely.

You see, the Teachers' Union want the authority but they don't want the accountability and who can blame them, if they can become the alter ego of the government, if they can become the mentor of the government, if the government is prepared to give it to them. There is a need for a balance of interests in the educational community. There is a need for a balance between authority and accountability.

Again, in the interest of education in this province and the interest of the children of this province, on behalf of the school boards of this province and the communities they represent, I ask the government to withdraw the proposed amendments to 92(5) and 92(6) of The Public Schools Act.

There seems to be a penchant for the importation of legislation and education in some other provinces; from Ontario, from Quebec, from Alberta, from British Columbia. There clearly must be discord in education

in these provinces that we would do well to avoid. We don't need a government to sort out what other governments do for application here. Use somewhere else is not justification for implementation here. What we need is creative thinking to address our needs, within our jurisdiction, to meet our aspirations, the aspirations of the people of Manitoba.

This is legislation by exception. It seeks perfection in an imperfect world. It seeks to protect the teacher anywhere, in the event of anything and in the process, it ties up the staffing of 56 school divisions.

The Minister has said in the House that MAST, MTS and MASS could not agree. In fact, MASS and MTS do agree; indeed, virtually all those with anything to do with governments in the school divisions in this province are opposed to this legislation. These people face - and individual rights are important - a conglomeration of 150 or 250 individual rights which take precedent, and so they should, but understand their problem. They have to develop, or attempt to develop, cohesiveness and co-ordination in the delivery of educational services to children.

Even a single arbitration case in a school division can be an exhaustive process for all involved. This proposed legislation will cause our limited administrated resources to be siphoned off and focused negatively to build cases for recommended termination, instead of being focused positively on the education of the children in their care. The government is going in the opposite direction from the Faculty of Education.

I asked retired Dean Dr. McPherson at U. of M. at a MAST executive meeting why certification was increased from one year to two years for students with a BA or a BSc. The primary reason, he said, guess what, lack of experience in the classroom. The faculty has gone from one year to two years to enhance classroom experience and the government has gone in the opposite direction, from two years to one year for new teachers, from two years to zero for others.

The government has failed to demonstrate that the present tenure system is inadequate. The government has failed to demonstrate that the proposed system is an improvement in any way. There's no consensus in the House for this legislation; there's no consensus among interest groups for this legislation; there's no consensus in the communities for this legislation. The only consensus seems to be in the minds of the government and perhaps in the minds of the Teachers' Union. Perhaps, and just perhaps, that is because the Teachers' Union and the government are of one mind. If that is the case, then the communities of this province have a much greater problem than this proposed legislation.

The government is not bolstering a weak union that needs assistance in order to have effect. The government is catering to one of the strongest unions in Manitoba, whose influence is everywhere and who, in the end, as a corporation, have no direct accountability to the public for the school system. The government expresses two concerns, wanting to provide due process for teachers and not wanting to offend the Charter of Rights and Freedoms. There's no point in duplicating in statutory law, that which already exists in constitutional law. The government can achieve both of its goals by removing the tenure clauses from The Public Schools Act and requiring teachers to seek due

process through The Constitution Act, 1982, a process available to all Canadians.

I anticipate in advance that perhaps what the government wants and what the Teachers' Union wants is not due process at all but, rather, instant tenure in the name of due process. The present bargain, the present understanding, the present status is a fairly reasonable balance of interest between the teacher, the school system and the community. The teacher has given up the right to strike, that is the significant contribution to the elimination of discord in the educational community, a potential discord in which the children would surely be the losers.

A community has two years, 20 teaching months, in which to assess a teacher's competence and appropriateness to the community's direction and setting. Should the community, after two years, wish to terminate a teacher through its elected representatives it seems reasonable such a teacher should have third party arbitration without the need to seek due process through the courts.

The opposition to this proposed legislation amongst school trustees is really quite extraordinary. No politician in Canada has ever been elected by the margin by which the school trustees reject this proposed legislation. These school trustees come from every walk of life and they come from every corner of this province. This legislation is opposed by trustees who are farmers, cattlemen, miners, town folk, housewives, railroaders, businessmen, people in the service industry, trustees who are union people themselves, trustees who are former or practising teachers. It covers the whole political spectrum, it covers the whole of the province.

The opposition may not be absolute, it is virtually total. These community leaders, these school trustees, may be small in number compared to other groups but they have a very high multiplication factor because they are all elected. One trustee who heard the Minister's speech on local control and education at our convention described the legislation as a sham, sugar-coated, dressed-up, and paraded as due process and a fair hearing.

This legislation breaks a basic principle. The government has broken the integrity of the communities with portability of tenure. The government has removed the right of the communities to decide, the government has done so without consultation and probably without even their knowledge. This government has, for the first time, rendered the school division boundaries as porous. God knows where it will all end now that this government has set this precedent.

It isn't a little thing as the Minister has described, it's part of everything. We ask you to modify your legislation to respect the rights of the parents to decide in education, to respect the government's own professed belief in local autonomy. If you pass it as it is we will work to change it, we will work to change the mind of government or we will work to convince the mind of future governments. This principle is crucial to the notion of community decision-making in education.

So that there might be no further future surprises to Her Majesty's 32nd Legislature, we will oppose with fervor and without restraint, nor are we prepared to negotiate the following: Firstly, we will oppose any notion that public enterprise, i.e., the public school

system should be accountable to a private interest in whole or in part. That any processes which take place within the public school system must have, as their ultimate sanction, referral to the people of Manitoba through their elected representatives, the school boards of Manitoba and/or the Minister of Education. Secondly, we will oppose any notion that Public School Boards of Manitoba should lose entirely their right to levy on property to meet their local needs. A public body that cannot levy and cannot make laws is reduced to the roles of administration and advice.

Thirdly we will oppose any notion of regionalization, the combining of any number of school divisions without consultation with and consent of the communities under local school boards. The Teachers' Union plan of regionalization of rural school divisions nearly the size of federal constituencies is interesting but it is evidence of their lack of accountability to the communities of Manitoba.

These four principles, local autonomy, accountability to the public, the right to levy and amalgamation only by consent are crucial to the sustenance of the tradition of community control in education. These four principles, if offended, particularly if offended together represent a dramatic shift in decision-making in education away from the communities and their school boards. Changes in these basic principles shift power which is what politics is all about, either to centralization and bureaucracy or to the Teachers' Union, a private interest group.

If we take this process of centralization to the nth degree we end up with no local control in education at all, we end up with the government and the anti-government, we end up with the government and the Teachers' Union. The Provincial Government, any Provincial Government, will rue the day that that happens and it's not that far-fetched. It is complementary to the government's "decentralization." We will soon have a "resident expert" to serve a cluster of divisions; how this centralization - and it is from the school division and community's point of view, centralization - will function and practice relative to local autonomy is yet unclear.

The Minister has said, and we're happy for that, that she's prepared to live with the messiness of local government. It remains to be seen whether the local communities are prepared to live with the messiness of this government.

If I have learned anything at all in 20 years of community work, it is that Manitoba is very much an association of communities. Local jurisdictions within the province do not coincide completely with these communities of interest. I believe, though, that there has been an honest attempt to achieve coincidence and I believe, as well, that the present school division boundaries come the closest of all to achieving this.

Provincial governments which deal with these communities of the province with impunity are prone to extinction. Provincial governments which impose their will arbitrarily on these communities of the province are prone to extinction. Provincial governments which legislate without consultation with, or political mandate from, these communities are prone to extinction. A provincial government which becomes arrogant has a life expectancy of four years.

This legislation serves one interest group at the expense of all others, and it doesn't even serve the

individual teachers. This legislation is particularly despicable because it is invisible to those to whom it brings injury - the children of the province. The Teachers' Union will be up here and tell you it isn't quite what they want, and they will want more. The stranger who rides into town is more important to this government than the people of the community. The stranger who rides into town is more important to this government than the education of the children of this province.

MR. CHAIRMAN: Have you completed your presentation, sir? Are there any questions?

Mr. Santos.

MR. C. SANTOS: Thank you, Mr. Chairman. Mr. Marshall, if in order to avoid the effects of portability of tenure among experienced school teachers who are already possessed with tenure, school trustees under this policy would tend to hire only those whom they can evaluate; namely, inexperienced, newly-graduated beginning schoolteachers, and if the school boards, in order to cling to their cherished authority to exercise its own rather than another's evaluation of teaching competence, would therefore tend to deny rather than grant tenure to these new, beginning schoolteachers, would you agree that such a consequence would increase the time for teaching for these beginning teachers without ever a chance of acquiring tenure and, therefore, would tend to increase rather than lower the level of teaching competence for the total public school system in the province?

MR. G. MARSHALL: I don't think I caught everything you have said. I am not convinced it was complimentary in any event.

MR. C. SANTOS: Well, I have; I cannot . . .

MR. G. MARSHALL: I think I got the gist of your question. I think my impression of school trustees and school boards is one of sacrifice. I don't have any great feeling of authority, and that's why I used the comments from trustees right as they came. You see in their comments the dilemma. We are saying that what is in place is fine, but you have really closed the doors on us; and they are, in their own mind, reacting.

There are only two reactions: one to hire tenure teachers and one to hire new teachers. Obviously, they are already expressing a dilemma, and it's a dilemma that I think that you are going to hear from the people who have governance over the system on a daily basis, from the superintendents.

MR. C. SANTOS: My question is too complex and too involved. Can I cut it up into pieces?

MR. G. MARSHALL: If I could hear it, it's not too complicated.

MR. C. SANTOS: Okay. Because the school trustees would like to exercise their own evaluation rather than that of another, the obvious effect to avoid the portability of tenure, instead of hiring experienced teachers with tenure, they will tend to hire new, beginning teachers? That's one of my basic premise.

MR. G. MARSHALL: The premise that's shared by some, but not by all.

MR. C. SANTOS: Okay, and also, not only that they will hire new, beginning teachers, but because they do not want these teachers to readily acquire tenure and thus join the group of tenured teachers, they will tend to deny rather than grant tenure?

MR. G. MARSHALL: Well, they are going to have to make that decision. Let me say, the trustees are community leaders and they hire educational leaders to share that assessment.

MR. C. SANTOS: If these assumptions are correct, then there will be more beginning teachers who will be teaching for longer periods of time before they succeed in obtaining tenure; and, if that is the case, then before they acquire tenure, they would have experience in many varieties of school communities so as to increase the level of teaching competence when they acquire tenure? That's my question.

MR. G. MARSHALL: Well, I am hearing a dilemma that we're sharing. I am not sure I get the precise question, but obviously the time frames are smaller. The purpose is not to deny tenure; the purpose is to assure competence.

MR. C. SANTOS: This is the point of my question, because it will be more difficult now for any beginning teacher to acquire tenure, despite the fact that they will be the ones that will be hired all of the time; then they obviously will have to go through a number of experiences in various communities before they finally succeed in obtaining tenure. In so doing, the total effect would be to increase the competence of those teachers.

MR. G. MARSHALL: This legislation does nothing for any teacher that acquires a second experience either within the division or outside of it. It does nothing at all for a teacher that needs a second, and they very well deserve a second exposure. It does nothing for that teacher at all either in the division or in the next one.

MR. C. SANTOS: Thank you, Mr. Chairman.

MR. CHAIRMAN: Ms. Phillips.

MS. M. PHILLIPS: Thank you, Mr. Chairperson. Mr. Marshall, I am a bit confused with your presentation. You seem to, on one hand, say that you are concerned about the principle, about the right of due process, although it's in the school act now at two years, or 20 months.

So is the basis for your argument the fact that we are suggesting, you are proposing that it should be at 10 months rather than 20 months, rather than the principle itself of an evaluation time for teachers before they acquire the right to due process?

MR. G. MARSHALL: I have all kinds of problems with that understanding of due process. Due process of law, quite simply, is a course of legal proceedings carried

out regularly in accordance with established rules and principles. They can go to the courts like any other Canadian.

We think it's reasonable that they should not have to do that after there has been a period in which they have had an opportunity to be exposed to the division and to its needs, and to show their own competence. We have no quarrel with it at all; we think it's reasonable that after a period of time that this process should be available, and we are saying there is nothing wrong with the way it works now. There is a wanting for the wanting, and to suggest that there is no due process in the very real sense is an exercise in intellectual dishonesty as far as I am concerned.

MS. M. PHILLIPS: So we are squabbling then about the time frame as to when teachers have to be given cause and have a hearing?

MR. G. MARSHALL: Right on.

MS. M. PHILLIPS: Okay. If the basis of your concern, as you suggest throughout your brief, is for the children and the parents and the quality of the education that's happening in the classroom, and other employers are in a position with a lot of different professions, such as social workers, to be able to evaluate and have a performance appraisal within three months in a lot of cases - the MGEA contract is three months - if your basic concern is for the quality of education and what's happening to those children, which I am sure we both share, would it not seem reasonable to you that if there was a mediocre teacher or a teacher who one could evaluate in ten months, surely, that that teacher should not be allowed to go on and pass on mediocre education to another class of 28 children for another year in terms of waiting for a two-year term before that evaluation takes place?

MR. G. MARSHALL: Well, there are degrees of competence. It may very well be that teacher deserves a second setting, a second circumstance, a second opportunity within the covenant of the original contract, but in all fairness, we are not making widgets.

The two-year period has been a reasonable one, but the thing that is particularly damaging is the notion of portability because that simply takes it right out of the community completely.

MS. M. PHILLIPS: I would like to address that notion. You made several references to the "stranger" riding into town, and conjured up lots of images of western movies with the slant-eyed guy in the dark hat, etc., sort of jumping in a depraved manner onto all these little children, and the community had no resources to protect themselves from this terrible stranger, but so be it.

My question is when this "stranger" comes riding into town, in other words, a person from another community has applied for a job in your division, how now does the school board assess that person's capabilities or qualifications?

MR. G. MARSHALL: Well, I've been around Bob Rose and John Johnson so long I wear cowboy boots; but

there are many analogies that you can strike relative to a new person.

A new person is essentially a set of credentials; that's what a new person is to a new community. So that person is really very much of a stranger to that community, and that community is a stranger to that other person. It's a stranger-community relationship, and the only basis you have is a set of credentials, nothing more.

MS. M. PHILLIPS: You would also, in the case of this stranger having prior teaching experience, have references to check out, I assume, and would be able to check with other communities as to their experience and how they performed; and would you not take all that into account before you chose, the school board, not the government or the Department of Education or the Minister, but before you chose to hire that individual in your community, you would, specifically nowadays when there is a large number of teachers on the market as it were, it would be up to the school division to make that assessment and the school division's arbitrary choice as to which teacher they hired for that particular position?

MR. G. MARSHALL: The school board doesn't work in a vacuum. They have a team. One thing that is missing in the equation is the aspirations of the community itself. The notion of education in a local community is not an imposition downward on the community of somebody's particular educational philosophy. There's a need to respond to the aspirations of that community, and the communities are all different.

Roland Penner sure knows they are all different. They are different, and that's the match that has to take place, quite apart from any competence. But is it reasonable, is it rational to make that decision on credentials? Credentials create eligibility; it does not necessarily bring performance.

MS. M. PHILLIPS: If this proposed legislation is passed, Mr. Marshall, when you are doing those interviews, would you not, through the interview for a new teacher, whether they had past experience or were straight out of university, would you not try, as you have in the past, to do that kind of matching and try your best through the interview process to assess whether that particular "stranger," as you put it, whether that individual had the personality, capabilities, whatever you were looking for that were the necessary match for your individual community as you have all along, would you not continue to do that? Would this legislation interfere with that process?

MR. G. MARSHALL: If this legislation passes in its present form, I guess the first thing we'll do is pick up the pieces. We will have to weigh, within what has been identified as eight or nine months and no time at all, between applicants for particular roles.

Sometimes when a role becomes a requirement to a division, it's an immediate requirement. You have to fill a need. Filling that need in the long-term interest of both the teacher and the division is not always a spur-of-the-moment decision, but you're right. In some cases, it is going to be a roll of the dice. That is precisely what we don't want.

MS. M. PHILLIPS: So if it's a roll of the dice, the only difference that this particular section of the act is suggesting is that where in two years now, you have to give that individual cause for dismissal and the right to a hearing, in this case, you would have to do that sooner. Is that not the only difference? I am trying to find out why you're so upset. I really am. Doesn't it boil down to that?

MR. G. MARSHALL: We think the present system, after two years and one day - and the one day is only to confirm the two years - is a rational one, because after two years a mutual responsibility does develop. There is a mutual responsibility. That mutual responsibility doesn't exist except for the contract between the two parties before that person has been put in a position to perform.

You know, it's a substantial difference, particularly when you tell me that the time available is no time at all. There is no time.

MR. CHAIRMAN: Mr. Filmon.

MR. G. FILMON: Thank you, Mr. Chairman. I have, like a dutiful student, been taking copious notes. Those teachers in the room will please forgive me if I get them in the wrong order. The Member for Wolseley asks if I can read. Yes, fortunately I was taught in the public school system in Manitoba with good teachers. That's a compliment to them and to the system that existed in the past, and hopefully will continue to exist in the present. Therefore, I can read and write. Thank you.

Mr. Marshall, in response to the question of Ms. Phillips just a moment ago, she, I think, tried to draw you in on several occasions to say, isn't all we're squabbling about - I think is what she said the first time - the time period? Then the second time, she said, I am trying to understand why you're so upset. She said, isn't it just the difference between two years and now one year or eight months, as some say, for the evaluation period for a teacher to be given due process of tenure?

Isn't the situation really that once having taught one year anywhere in Manitoba, that teacher will now be entitled to due process without the benefit of any evaluation period by the next division hiring them?

MR. G. MARSHALL: Precisely. It isn't just a question of two points in time though. That two-year point in time is a reasonable assessment in order that we might collectively go the road of a third party arbitration and avoid the nonsense of the courts. The courts are not nonsense, but it's a long time and they regard some things as frivolous. At some point, a mutual coming together takes place. That takes time.

So you're not just talking about two points in time. You are talking about something that has been agreed upon and now is arbitrarily moved. The question is whether in fact there can be a reasonable assessment with respect to the competence of that teacher and the needs of the individual community, the aspirations of the individual community and the suitability to the direction of the particular school division because these people don't work in isolation. They're a team, and you have to look at them.

MR. G. FILMON: Mr. Chairman, as well when Professor Santos was questioning Mr. Marshall, as part of his preamble, he stated that he was assuming that school divisions do not want teachers to readily obtain tenure. Is this so?

MR. G. MARSHALL: That's nonsense, what we want to assure is competence of the teacher and suitability of the teacher to that particular community. We are not arguing against the present process. We are saying that we need that time in the interests of the teacher and in the interests of the community. Particularly, we simply just cannot understand that there should be no time at all.

MR. G. FILMON: Further, Professor Santos, in putting forth his thesis to you indicated that he thought that, because of the fact that more beginning teachers would perhaps not have their contracts renewed after the first year, this would cause them to move from division to division before gaining tenure. Is the problem not that, under the proposed legislation, the day after they were hired by a new division, having had one year's experience anywhere else, they now have tenure?

MR. G. MARSHALL: Precisely — (Interjection) —

MR. G. FILMON: Okay, sorry. Yes, that's a good point. Ms. Phillips indicates that the term is due process and not tenure. I am surprised that the Minister of Education has not already chided both you and me during the course of this meeting — (Interjection) — yes, she says she's going to, but I gave her the opportunity to ask questions first.

So I'll pre-empt her, and ask the question that she is going to ask you. That is, the Minister has taken great pains during the course of debate on second reading in answers to questions in the House to indicate that there is a vast difference between due process and tenure. What is your position on that since you have utilized the two almost interchangeably?

You started, I believe, by referring to the fact that you were going to concentrate on the tenure provisions of the bill. Later on, in the course of your presentation, you said that teachers gave up the right to strike for two-year tenure status. Then you referred to instant tenure as being one of the consequences of this bill. So what is your position on the interchangeability or the similarity between those two terms?

MR. G. MARSHALL: Well I'm prepared to go by Webster. He describes tenure as, "a status granted after a trial period to a teacher protecting him from summary dismissal." Due process, Webster describes, "due process of law is a course of legal proceedings carried out regularly in accordance with established rules and principles." That due process can, of course, be before a court of law. It doesn't have to be to a board of arbitration.

Tenure, though, is essentially arbitration after a waiting period and that waiting period has been deduced to one year, and to zero by this government.

MR. G. FILMON: Mr. Marshall, you said that the Minister, and I think you quoted her accurately, has

said on a number of occasions in defending this change that all it really gives the teachers is the right to be heard and told why they're being removed from a position. You've said that that is already a requirement under The Public Schools Act. Can you explain that?

MR. G. MARSHALL: I don't have a copy with me. It's under 92(6) now, as I understand it. In any event, it's under that section.

MR. G. FILMON: Mr. Marshall, at a meeting in Dauphin on Saturday afternoon, the Minister of Government Services, Mr. Plohman, who is the Member for Dauphin, met with a group of school trustees and parents. During the course of that discussion, I am given to understand, and I'm sorry he's not here to correct me if I'm wrong, but I'm given to understand from persons in attendance at that meeting that he indicated that this change in The Public Schools Act was a fulfillment of an election commitment by the New Democratic Party Government to the Teachers' Society. I know that you probably, as an elected representative and an active interested participant in the Manitoba scene and probably followed the 1981 election campaign closely, were you aware of this promise?

MR. G. MARSHALL: Well, the Premier has said himself that even policy and convention, given circumstances, need not be enacted by the government, and if that's the government's position on its own policy and convention, then I hope that whatever comment may have been made by anybody with respect to an election, and to any group, would be assessed by the government under the circumstances under which the government is working, and that the government would take into account that some of these changes impact other people.

That's my hope, that whatever might have been said, it is in the end the legislators who must decide. It seems to me that's the way it should be. I would hope the government's approach, any government's approach, to legislation would be that it would assess any of its commitments, whatever they were, in view of the interests of the people of Manitoba, and they would make that decision on that basis.

I would be very disappointed if anybody in government, the Premier or otherwise, because of a comment in a hall in the midst of a long election campaign - if that's what you're describing - would commit the people of Manitoba to something, which in the analysis of the people who serve government and the decision of government itself, would not be in the interests of the people of Manitoba.

MR. G. FILMON: Well, I can appreciate that you're being diplomatic in suggesting that even if the promise had been made that you can find justification why it shouldn't be carried out. I can add to that justification, because during the election campaign the Premier promised that he would turn around the harsh economic circumstances that face Manitoba and that no Manitoban would lose their home, or their job, or their business. Those are other promises that some of us would rather that they kept. But I just wondered if you had any indication that that was a promise of the 1981

election campaign, because I have asked others, perhaps who haven't been involved with the educational scene as you have, and I can't find anyone who acknowledged that that was a promise.

MR. G. MARSHALL: I read it in the newspaper, as a claim of the Manitoba Teachers' Society, that such a promise had been made at some point in time. My own position is that government should look at legislation with respect to its impact on the people of Manitoba, and government is not just a fulfilling of promises, although all governments like to have a reasonable ball score, I imagine. Every piece of legislation must take into account its impact.

This particular piece of legislation impacts negatively the communities of this province and the children of this province, in our view, and that's a very widely-held view throughout the whole of the province amongst trustees who don't always agree on everything.

MR. G. FILMON: Yes, Mr. Chairman. As well, I would like to ask Mr. Marshall, he referred to the special status or bargain that is enshrined today in legislation, which saw the - I believe in 1956 - teachers giving up the right to strike in return for tenure status. What was the length of - due process, as Ms. Phillips reminds me - what was the length of service required in order to obtain that due process under that bargain.

MR. G. MARSHALL: The old Public Schools Act was 20 months and one day. When the act was rewritten, that clause became fuzzy, and our thrust has simply been to clarify it and put it back where it was. We have made no further claims. Our position is 20 teaching months and one day, as it was in the old act.

MR. G. FILMON: The position that the Minister has put forward over and over again in defending this seems to rest on, Mr. Marshall, the fact that this only gives the right to be heard before an arbitration board. I think I understood you when you said that the arbitration boards are not normally made up of educators or educational administrators. Who sits on these arbitration boards generally then?

MR. G. MARSHALL: Well, they are appointed by both sides and each side appoints a chairman. Relative, though, to the kind of educational assessment that takes place in the division, it seems to me - and this is my opinion - that arbitration boards tend to award on the rights of the individual, and maybe that's not a problem on their part. Maybe that's not a fault, that's their particular point of view.

But what's missing in this whole thing, and what's changed is who makes the decision. It's not whether you get a hearing and have a right to be heard, it's who decides. And for an experienced teacher who comes to a division from Day One, somebody else decides, the community doesn't decide. The community doesn't have a year, they don't have a month, they don't have an hour, they don't have a minute. Before the ink is dry, the Minister is taking that decision out of the community, and saying on behalf of the teacher, from Day One, based only on credentials you make this decision, and the community is going to have to

live with it. The school division, and its people, will have to defend their position, and take these scarce resources out of the division, part of the team that delivers educational services to children, and they're going to have to prepare a case of recommended dismissal for someone who has never taught in the division before.

MR. G. FILMON: Mr. Chairman, is Mr. Marshall saying then that the onus is on the employer to demonstrate conclusively to the Arbitration Board why they are recommending dismissal then under these circumstances?

MR. G. MARSHALL: The onus is on the employer.

MR. G. FILMON: Then there' no onus on the part of the teacher to prove competence?

MR. G. MARSHALL: The onus is on the employer.

MR. G. FILMON: Mr. Marshall, I'm sorry if I'm repetitious but you didn't say to me what types of individuals normally sit on the arbitration boards. Are they educators, or educational administrators?

MR. G. MARSHALL: They tend to be people in the legal or quasi-legal profession.

MR. G. FILMON: I'm sorry, I'm being helped at this point, Mr. Chairman, by Ms. Phillips who says they could be minors, they could be anything. Is that m-i-n-e-r-s, or m-i-n-o-r-s?

MR. G. MARSHALL: It can be everybody except a stranger.

MR. G. FILMON: Everybody except a stranger. Mr. Chairman, if the two arbitrators don't agree on the Chairperson of the Arbitration Board who then appoints the Chairperson of the Arbitration Board?

MR. G. MARSHALL: That's in the process of change. I can't quite frankly recall whether it's the Minister of Education or the Minister of Labour.

MR. G. FILMON: I'll help you. It's the Minister of Labour.

MR. G. MARSHALL: Thank you.

MR. G. FILMON: A teacher.

MR. G. MARSHALL: Another one?

MR. G. FILMON: If you would - yes - would you like to know some of the appointments she's made recently as Chairpersons of those Arbitration Boards? — (Interjection) — Art Coulter, Nels Thibault. I don't think either of those are educational people. You're making the point - that's a matter of question, a matter of opinion.

The Member for Wolseley, Ms. Phillips, in questioning you asked about the ability that you would have to judge people based on their credentials, and perhaps a report on one year's previous experience with a

division, and asked about the effectiveness of an interview.

I'm sure, Mr. Marshall, in the course of your experience, either your business experience, or your school trustee's experience, you must of interviewed people before. Have you ever met or encountered people who sold themselves very well in interviews and didn't perform worth a darn on the job?

MR. G. MARSHALL: You've got a very good chance getting somebody that's good at interviews.

MR. G. FILMON: I think I'll leave it at that, Mr. Chairman, thank you.

MR. CHAIRMAN: Mr. Harapiak.

MR. H. HARAPIAK: Mr. Marshall, as a former school trustee I can identify with many of the comments you made. As a former school trustee I have witnessed examples of where the evaluation system for teachers was less than perfect. I believe that your organization and the Manitoba Association of School Superintendents and the Principals' Association at MTS have recognized that there's a need for support in the area of evaluation so there has been several seminars put on to give the principals more direction and support in the evaluation of teachers.

Do you believe that the children of the community will benefit because - probably the need for a better evaluation system because of this legislation?

MR. G. MARSHALL: Quite frankly, I don't see anything in this legislation that complements proper evaluation. In our own division it's primarily professional people with trustee representation who make the assessment, who make the interview. But as you know in a democracy the community has the last word. I don't think anyone's opposed to improving evaluation processes but quite frankly we're bewildered how shortening the time for assessment is going to, in any way, positively impact the process of evaluation.

MR. H. HARAPIAK: Under the portability of tenure do you think there will be more honesty in the recommendations of teachers' ability between school divisions in the entire province which may help eliminate some of the incompetent teaching that some people say exist in the school system?

MR. G. MARSHALL: Well, we're trying to prevent incompetency from getting in. You've heard some of the descriptions that I read, and they were verbatim from trustees in the field who have been present at arbitrations. In attempting to identify and remove incompetence one trustee regarded it that it has to be disaster in the classroom. I think the approach to evaluation generally is pretty positive. Everybody wants good teachers. I think the professional people themselves who have governance over the system want good teachers too. But they need, and we need, a period of time to assess a new teacher in a new community setting because they're all different.

MS. M. PHILLIPS: Following up, Mr. Marshall, on the questions from my colleague about evaluation and I

started a little bit into it with my first questions. I really have difficulty understanding the inability of the professionals in the school system, such as the supervisors, the principals, the superintendents, and ultimately, the board, of not being able to assess a person's capabilities or performance in one year, in a 10-month period.

We have, for instance, in the public service, in the Manitoba Civil Service, many different professional categories. We have teachers; we have nurses at the Manitoba School at Portage, who are dealing with children; we have social workers; we have all kinds of professions, engineers, whatever, and they are assessed within 90 days, in a three-month period. After that, they have recourse through their union to the arbitration system. I really have problems when you say on one hand that you are wanting to protect the education of those children in saying you were not able, with all your professionals, to assess a teacher in 10 months and allow that teacher that is, well, "iffy," because you haven't quite decided, to be a teacher to another classroom of children for the next year around.

Now, could you please explain to me, clearly, why you do not have the capabilities to assess them in 10 months and need 20 months?

MR. G. MARSHALL: I'd like to respond in two ways. First of all, if you're offering 10 months for everybody, I'll take it. Secondly, what's missing is the opportunity for a second setting to place a teacher in a second setting, because the teacher may very well respond in a second setting. It may be unfair to terminate a teacher after 10 months. But we now have to make that decision. So, all we've done is moved up the decision on the position, that's all we've done.

MR. CHAIRMAN: Mr. Scott.

MR. D. SCOTT: Mr. Marshall, you made repeated references to strangers. I want to know who invites these strangers to town?

MR. G. MARSHALL: Well, out west, Mr. Scott, anybody who comes to town, who we don't know, is a stranger. It may be a teacher, and that doesn't mean necessarily that they are a bad person. It simply means that they are unknown, and as such, except for their credentials, all their attributes are unknown to the community.

MR. D. SCOTT: You still haven't answered my question. Who invites them to town? Who hires these strangers to come to town?

MR. G. MARSHALL: There is an offer, there is an acceptance, I assume. Let's assume that happens, that may not happen. The stranger may come to town and a stranger may leave town, but I think what you're referring to is that when the stranger comes to town, there is an offer, there is acceptance, and there is a contract.

MR. D. SCOTT: And that is with the school board?

MR. G. MARSHALL: That's right.

MR. D. SCOTT: Another point I'd like to make, given the tone, I guess, of your reference to strangers, which

kind of surprised me because I come from a small town myself, if it wasn't for strangers, you wouldn't have any teachers. I wonder how many of you, when going through school, were only taught by people who grew up in your community? — (Interjection) — No, it very much is a point in the reference towards this.

MR. CHAIRMAN: Mr. Scott, would you ask your question?

MR. D. SCOTT: I did.

MR. G. MARSHALL: Well, the stranger who taught you probably had a two-year tenure period.

MR. D. SCOTT: In those days, sir, they didn't have any tenure period.

You talked about a mutual responsibility between your teacher, I believe the students, and the school board, and were making some form of reference that that mutual responsibility doesn't really start swinging or start moving until the second year of the contract. I know from my teachers, and I spent a couple of months as a fill-in teacher completely by accident — (Interjection) — That it was, completely by accident. I studied Business Admin, nothing to do with pedagogy, but that mutual responsibility started for me on the very first day. It didn't take a year.

My final question, I guess is in relation to the evaluation system that Mr. Harapiak raised, and that is: If there's a weakness in the system right now, it isn't a good evaluation system, and that evaluation system does not simply apply to a brand-new student or a brand-new teacher, it applies to people no matter where they are. Do you not feel that with an approved - and this process actually forces you or encourages you, I should say, to set up and implement stronger evaluation systems, and with that evaluation system, will you not get a better education system where you have a better and continuous evaluation system for your teachers from Day One of teaching until retirement?

MR. G. MARSHALL: In describing mutual responsibility, I was simply describing that in working together, in creating a fit between the community and the person retained to perform in that community, that there is a mutual responsibility with the community that can't exist in signing a contract. That is what I was describing.

Insofar as evaluations are concerned, they are not perfect I'm sure. Any process can be improved. We're saying reducing the time does not improve the process.

MR. CHAIRMAN: Madam Minister.

HON. M. HEMPHILL: It's hard to know where to start. Mr. Marshall, you've made a number of points.

I wonder if I could ask you - I want to talk a little bit about the arbitration process and get perspective on the amount of activity that we're looking at. I think there might be a feeling that there are hordes and, in fact, tons of incompetent teachers out there. I would like to talk about numbers for a few minutes.

We've got about 12,400 teachers in the Province of Manitoba, give or take a few, and I assume that those

teachers are being evaluated every year, because they should be evaluated every year throughout their lifetime and not just in the first year that they are employed, which seems to be the period that you are largely concerned about, but they should be evaluated continually. So assuming they're all up for evaluation, how many cases have gone to arbitration in the last two or three years perhaps - do you have those figures? - and how many are in dispute?

I want to make it clear what my question is there. It's my understanding that there are a much larger number of cases that are in dispute per year, than ever go to arbitration. By being in dispute, I mean teachers and trustees have to get together and talk about the question of whether or not a teacher will be fired. So can you give me some idea of numbers? Let's say, this last year, how many do you think were in dispute where the question was raised between the trustees and the Teacher's Society on whether people would be fired, and how many went to arbitration?

MR. G. MARSHALL: The matter of evaluations stopping in the second year is a conclusion of the Minister and not a position of mine.

Our concern is not only the question of retention of teachers and doing it in a shorter period, but the deployment of resources. How much of your educational resources are used up contesting - I'm not talking about the evaluation process itself, I'm talking about contesting. This is a contest with a stranger. This is a contest which is taking these resources that are normally focused as part of the educational team down into the division - and I'm sure other people will speak on this - in a positive way to deliver educational services to children. I hope there wouldn't be any.

What will probably happen is that there will be a number of decisions which will be made based on the priority of resources. Those may not be in the best interests of the division in terms of the people they retain when they have that choice.

HON. M. HEMPHILL: I am having a little bit of trouble understanding your answer. I heard it, but I didn't get a direct answer to my question about how many arbitration . . .

MR. G. MARSHALL: I don't have the numbers here. I have a folder that's . . .

HON. M. HEMPHILL: Okay, then I would like to throw out . . .

MR. G. MARSHALL: . . . 50 pages long, and I don't have those kinds of numbers.

HON. M. HEMPHILL: Can I ask you if you think the numbers that I'll give are unreasonable to assume that they are in the ballpark?

My understanding is that we've got about 12,000 teachers, that this last year, there were about 25 cases in dispute, and three of those are going to arbitration. In fact, there have been some years when there has only been one case going to arbitration, or maybe one or two arbitration cases. Are those figures some that you think would be in the ballpark?

MR. G. MARSHALL: I am saying, if half the divisions in the province are involved in one form or other in this process - because an arbitration proceeding is a wrenching experience for a school division, one arbitration. It's divisive. It is time consuming; it's resource consuming. It is something you don't want to do. It's an exception. But the fact the decision has to be made sooner doesn't solve anything, it only makes the decision all the more difficult within the division.

HON. M. HEMPHILL: I want to ask you - and I'm getting at the point of what the interpretation is of due process. I want to confirm that due process is simply the right - no, first of all, I'll go back.

Is it true that presently, and even with the bill, Bill 77, that teachers can be fired, with the way it is presently, within 20 months for no cause and, with the new bill, within a school term for no cause? They can be fired if you have declining enrolment; they can be fired if their job becomes redundant, giving no reason. The only time due process comes into place is when you're questioning competency. So what I am asking you is: do school divisions have considerable authority to fire, in this bill, the first year without giving cause at all? Within the first year, they can fire any time for any reason and they don't have to give cause. They can also let teachers go if they do not need them anymore, or if their job has become redundant, or if declining enrolment indicates that they cannot continue to maintain them.

MR. G. MARSHALL: Are you talking about layoff?

HON. M. HEMPHILL: I'm saying, are you able to fire, to let people go under those conditions, presently and under the Bill 77?

MR. G. MARSHALL: I'm bewildered why we would use layoff, reduce numbers and other natural processes within the division with which we co-operate to the extent that's possible. If you have a mismatch, you have a mismatch. If you have no place to put somebody with a particular skill, you have no place to put somebody with a particular skill. But I'm bewildered how this legislation really changes those processes. It simply shortens the time in which the communities, looking for the best teachers they can get, are able to make that decision. You are allowed no settings for an experienced teacher, and one setting for a new teacher. That's really the question.

HON. M. HEMPHILL: Is it true that what it does is shorten the time under which they are entitled to be told what the reason is if they're going to be fired, and they are entitled to a hearing if they want it? That is all that it does.

MR. G. MARSHALL: Tenure, Mr. Webster says, is "a status granted after a trial period to a teacher, protecting him from summary dismissal." If you're talking about the trial period, then you are talking about the period when they can be advised as to why, but the decision lays with the school board. What you have done in your legislation is, you've taken the decision out of the community.

HON. M. HEMPHILL: That's a question I would like to raise, too. Presently, school boards decide when and which teachers to hire. They decide when and whether or not teachers will be fired, and they are totally responsible for the evaluation procedure. They decide how long it will take and what kind of a process they will have. Is there any change with Bill 77 that interferes with any of those rights? In other words, do school boards still hire and decide who to hire? Do school boards still fire and decide who to fire? Are they totally responsible for the evaluation in their school division?

MR. G. MARSHALL: 92(4) of The Public School Act, where a complaint is made to a school board respecting the competency or character of a teacher, the school board shall not terminate its agreement with the teacher unless it has communicated the complaint to the teacher or his representative, and given him an opportunity to appear personally, or by representation, before the school board to answer the complaint.

What you're talking about, and I think we are agreeing here, with respect to what tenure is, what you are doing is reducing and eliminating the trial period of tenure.

HON. M. HEMPHILL: Is there anything in Bill 77 that limits the period in which school boards can evaluate. In other words, if you feel that you need a two-year evaluation procedure to properly evaluate a teacher, is there anything that says you can't take that amount of time? The only thing it says is if you do it earlier, you have to give cause and the teacher has the right to a hearing.

MR. G. MARSHALL: What has changed is just who makes the decision. That's what's changed.

HON. M. HEMPHILL: Are you telling me that you believe that school trustees no longer make the decision on who to fire?

MR. G. MARSHALL: I say the reality is that the school board essentially recommends whenever it goes to a third party. They decide, but the reality is that that is a recommendation to a third party.

HON. M. HEMPHILL: Okay. If they have the authority to decide to fire, and they do, and they are the only ones in a school division, I think you will agree, that can hire and make a decision on hiring and firing, if they make that decision and they go to an arbitration hearing, then isn't the only question whether the evaluation was good and the process was fair, but the decision is the school board's, and they have to support it with information?

MR. G. MARSHALL: The decision would be made by people that Mr. Filmon identified, probably non-educators. We are not quarreling with the arbitration process and tenure when that trial period is in place, and we are saying that the reasonable trial period is two years. You are saying for a teacher with experience, the trial period - and I'm not sure it still qualifies for the definition - the trial period is zero, it's nothing.

HON. M. HEMPHILL: I think you were getting into the portability question there, weren't you, and we weren't

talking about portability in that question. It's ten months, one full school term.

MR. G. MARSHALL: We have to talk about portability, because that's what you've done.

HON. M. HEMPHILL: All right, let's talk about the question of portability for a minute. The question of the stranger - it sounds like there is nothing to go on, and I'm wondering if there isn't some recognition or acceptance of the evaluation procedures from division to division. In other words, each division has evaluation procedures. We would hope that they're solid and good evaluation procedures, and I would imagine that the very best place of information for another school division to get information on a teacher is from a school division. In other words, they would be looking at it from the same perspective as does the hiring board.

So, are you saying that there is no confidence in the evaluation procedures from one division to another?

MR. G. MARSHALL: The communities themselves are saying that there is quite a difference between the various communities, and we are trying to develop a match between the aspirations of the community and the competence of the teacher. I think that it is a factor, but it may not be the only factor. Apparently this is your position, because this is what you've done, you've taken the position that that should be *carte blanche*. You haven't even taken the position that it should be permissive; you haven't even taken the position that it should be bargainable as part of the new offer and acceptance, because there may be within the give and take and the needs, and the qualifications, as you suggest, for some people that might apply, but you haven't even done that.

You said that that evaluation out there is perfect. Not only is it perfect in that community, but it's perfect in every other community. That's not rational.

HON. M. HEMPHILL: Mr. Marshall, if, as you say, that you need more time to evaluate - and I don't disagree with that, because this doesn't say anything about evaluation. It doesn't tell you how long to take, it doesn't tell you to put any limits, or tell you how to do it; it simply says if you fire after one year, then the teacher has a right to know why, and they have a right to a hearing. If you need more time and you have not been able to properly evaluate within one school term, on what basis are you firing?

MR. G. MARSHALL: Well, first of all, I don't need more time, I need the same time.

Secondly, your conclusion that evaluation stops is your conclusion, it's not our position.

The question is, and we think it's reasonable, that the period of tenure, the period defined by Webster, is the trial period before summary dismissal. We're saying it should be two years; you're saying for an experienced teacher it should be nothing. You don't even qualify for the definition.

HON. M. HEMPHILL: You keep referring to summary dismissal, I am wondering if you are also . . .

MR. G. MARSHALL: That's Webster's words.

HON. M. HEMPHILL: Yes, I know it's Webster's words. Do you realize that summary refers to action which omits certain formalities generally required by law?

MR. G. MARSHALL: Summary to me is some accounting on behalf of those who are serving notice as opposed to simply serving notice and reasons.

HON. M. HEMPHILL: Mr. Marshall, how much - we are all concerned about the quality of teachers, I don't think there is any disagreement by anybody that probably quality of education and quality of teaching, that one of the keys is good teachers. I think you mentioned that in your statement, and we agree with that.

How much responsibility, and in fact, do not school boards have total responsibility for the question of whether or not they have proper evaluation procedures so they are identifying the good teachers, because they should be identifying the good teachers, and only school boards can do that, identifying those that need help and identifying those that are incompetent, that that is dependent upon an adequate evaluation procedure, and is the total responsibility of school boards? Do you have any disagreement with that?

MR. G. MARSHALL: There is no disagreement. I think I said many many times in my presentation there is no disagreement about who has total accountability. Our problem and our complaint is the erosion of authority. We think they go together. We think if we're going to have the total accountability of the community, that we should also have the authority, and that's not open-ended authority because we develop responsibilities to the new teacher as well. We're simply saying that having no opportunity whatsoever for the community itself to make the decision is irrational.

HON. M. HEMPHILL: But are school boards totally responsible for evaluation and for the question of whether or not the teachers in their school division are competent or incompetent by having adequate evaluation procedures?

MR. G. MARSHALL: I think I've agreed with you. Our problem is addressing that responsibility with your legislation. That's our problem.

HON. M. HEMPHILL: There is in this legislation no limit on the amount of time you can evaluate, is that so?

MR. G. MARSHALL: Madam Minister, I will say for the third time, your conclusion that evaluation stops at Year Two is your conclusion and not our position. Evaluation is an ongoing process.

HON. M. HEMPHILL: Right. My question was: Is there anything in Bill 77 that limits the amount of time a school board can take to evaluate a teacher? It does spell out the requirement that if you're going to fire after they've taught for one year, you have to tell them why and they're entitled to a hearing, but it says nothing about the amount of time that you can or should take to do an adequate evaluation, is that right?

MR. G. MARSHALL: We take the position that you have to tell them now. What's changed is, who makes

the decision. That's what has changed. We have no quarrel with third-party arbitration. It makes sense. But the people who have full accountability to the community, it seems to me and it seems to us, are entitled to have some measure of time in which to try to match the skills of the teacher with the needs and the aspirations of the community. That's what is being offended with this legislation. It has nothing to do with the length of evaluation. It simply changes the point at which who makes the decision. That's what has changed.

HON. M. HEMPHILL: If your evaluation procedures are really good, Mr. Marshall, and they are fair and reasonable and people know what they are and they're being carried on throughout all your schools and you are doing the documentation that is required, what's the big worry about having a hearing? I mean, are you not confident that your evaluations will stand the light of day of a fair and objective hearing?

MR. G. MARSHALL: Fair and reasonable may very well include the opportunity for that teacher to have a second setting in which to perform, to have a different circumstance into which to perform. That's what's missing in this legislation.

HON. M. HEMPHILL: Okay, can you explain to me - I'm having trouble with this one point - why you seem to believe that teachers having a right to be told why they were fired and having a right to a hearing at which point I would assume that you've got a good evaluation procedure that can stand the light of day of a hearing, why that gives you a teacher who has lifetime employment? Why do you not seem to believe that you can get rid of an incompetent teacher?

MR. G. MARSHALL: We take the position that the teacher has a right to know now. We take that position now. There's a need for the opportunity, for the community, for its educators who have been retained for that purpose to assess the ability of a teacher to function, to blend and to be suitable in that particular setting. These people do not work in isolation, they work together. We've said a number of times that shortening it may force the decision that the community doesn't want to make because it simply moves up, as you suggest, it's a different point in the evaluation process, it's an earlier point of the ongoing evaluation process, but it's the last point in which the community can decide.

HON. M. HEMPHILL: I'm wondering if you have any statistics that indicate that there is a lot of incompetence or a lot of school boards who cannot get rid of an incompetent teacher, and why?

MR. G. MARSHALL: One of my colleagues described it as: The requirement is a disaster. That's probably an exaggeration, but third-party arbitration is a conflict. It's a conflict that divides a division wherever the question goes. It's irrational to us that there should be no time at all. It's limiting to us that it should be 10 months. We believe in community decision-making in education. This legislation with respect to teachers from

another division essentially takes the decision out of the community.

HON. M. HEMPHILL: I found a study that MAST did - I think it was in about 1980, I might be wrong about the year - but a study that you did on tenure very interesting because it confirms a lot of the things that we have been saying and I wonder if you disagree with some of the information and the points in the study where it says, "The committee noted the importance of having effective evaluation procedures and proper documentation of those procedures when implementing the act with regard to contract termination," so that they're basically on this issue saying that same thing as we were? They were saying in the study that effective evaluation and proper documentation is critically important.

MR. G. MARSHALL: I think we're all saying the same thing vis-a-vis evaluation. The only thing that's changed is the point in time. That's what has changed.

HON. M. HEMPHILL: I was surprised at some of the statistics. It shows that in the last three years, the three years previously, 67 percent of school divisions surveyed said that they had successfully dismissed a tenured teacher. So that where their evaluation procedures are effective, they seem to be successful. I think your point and I guess the question is, your point that arbitration boards tend to award on the rights of the individual that this information would belie that because 67 percent of your boards have successfully dismissed tenure teachers. They may not have had to go to arbitration to do it. Most of them didn't have to go to arbitration to do it.

MR. G. FILMON: Does the Minister mean due process?

MR. G. MARSHALL: Was that a question?

HON. M. HEMPHILL: Yes.

MR. G. MARSHALL: What was the question?

HON. M. HEMPHILL: I'm saying that if 67 percent of your teachers - you seem to be suggesting that arbitration awards went on the side of the teacher, because they went for the individual. I am saying that in your own survey, 67 percent of your school boards have said that they have successfully fired a tenured teacher. So your point that you can't get rid of tenured teachers is hard to understand.

MR. G. MARSHALL: I don't think I used the term, can't get rid of. I think I used the term, very difficult. But if two-thirds of the divisions have dismissed one teacher, I'm not sure that's a relevant statistic under what we're discussing, because arbitration is something, if at all possible, that should be avoided. The longer process may, in fact, have that very effect of having the teacher have a second setting.

I'm not a big fan of arbitrations. As I said earlier, they are wrenching experiences for a school division. They should be avoided. But now the time is shorter, the decision is earlier. It's simply not complementary

to the system, not complementary to what you're trying to promote.

HON. M. HEMPHILL: Your point about arbitration hearings and wanting to avoid them, I quite agree. I think that the closer that the decisions are made and the less often we have to go to arbitration or to court, which are both costly, the better off we're going to be. That to me suggests that we need a number of things. We need really good evaluation procedures, so that you don't have to go to arbitration.

I wonder if you don't think that, with the numbers I gave earlier that said there were about 25 cases in dispute and only two or three of them, three of them this year, going to arbitration, doesn't suggest that maybe where there is good solid documentation and a good evaluation process, they don't go on to arbitration. They are settled prior to arbitration.

MR. G. MARSHALL: An arbitration in a school division can be a process which has the highest profile in that school division. The fact that there are only 25 divisions - if you've got 25 divisions going through this damn thing, that's not something that is healthy.

We are saying that shortening the period doesn't achieve what you want to achieve, because the decision that's made in the second year now becomes a wrenching experience for the school division. If they do give that teacher a second opportunity and they do give the teacher a second chance, they are then faced with a wrenching experience. It's not a statistic. It is something that is very high profile, which tends to gather the energy of the division and to divide the division and to be non-productive to the division. A single statistic in one school division, one is too many. We're not convinced that shortening the time promotes what you are trying to promote.

MR. G. FILMON: Mr. Marshall, do you suppose that when the Minister asked you the question about 67 percent of the school divisions successfully having dismissed a tenured teacher, do you suppose that she really meant that 67 percent of the school divisions successfully had dismissed a teacher with the right to due process?

MR. G. MARSHALL: The Minister described it as tenure.

MR. G. FILMON: Yes.

HON. M. HEMPHILL: I was quoting a document.

MR. G. FILMON: I thought it was the Minister's survey

MR. CHAIRMAN: Order please, order please.

MR. G. MARSHALL: This is a teacher then that has proceeded to arbitration.

MR. G. FILMON: Mr. Chairman, I wonder if I could ask Mr. Marshall, the Minister referred to a good evaluation procedure that could stand the light of day of a hearing. Ms. Phillips also referred to the evaluation process,

and I think there is an implication that it's a very clear black and white process; that it's very easy to make that decision. When these judgments are being made by anybody, is there not a line that eventually is struck, above which performance is adequate or acceptable, below which performance is not adequate or unacceptable?

Is it not true as well that line may vary from division to division, given the availability of teachers? Let's say, for instance, that line of acceptability may be a little higher in an urban division where there are far more applicants for the positions available than in a remote division in which they find it difficult to get enough applicants for the division. How would a board of arbitration take an evaluation from a division that turned out to be average, and then compare it to an evaluation from another division that turned out to be just below average and not adequate? How would they take into account all those factors, this board of arbitration?

MR. G. MARSHALL: The people in the North have particularly expressed concern about this legislation. This process of arbitration, I think, serves divisions if there has been time for an evaluation. The evaluation process continues.

It's something that should be avoided. There should be an attempt to avoid. There should be an attempt to work with the teacher. There should be an attempt to develop in the teacher the skills that are needed to perform in that setting.

One of the things that comes out of this legislation is sort of a lack of trust that somehow the community is against the teacher, which is nonsense. Even if he's not against the teacher, the community does not seek arbitration as a goal. Arbitrations are negative. They're a process that are necessary, they're a process that we've agreed to, but there's a need from both sides - from the teachers point of view in the division, and from the division's point of view - there is a need for what Webster describes as a trial period prior to there being any kind of summary dismissal.

I think that's something that we've worked towards as divisions, and will continue to work towards. But this process, however well intended, will be counter-productive if its purpose is to improve the quality of teaching in the classroom.

MR. G. FILMON: Mr. Chairman, is it conceivable that in an arbitration hearing, a previous evaluation from another school division would be called into evidence, or is the evidence provided to the hearing just that of the evaluation and documentation of the experience of the teacher in the division in which they are presently employed?

MR. G. MARSHALL: Well, it's not a factor in the Minister's thinking in the sense that there's no permissiveness. There's no opportunity for that to be part of the bargain of the new offer and acceptance in the school division. It's simply a provincial mandate that that teacher has this right.

MR. G. FILMON: Maybe I should embellish that a little, or amplify in what I'm after. If a teacher taught for one year in a school division, and at the end of that year,

because of whatever reason, the teacher was found wanting, or there just wasn't a job available the next year, or the principal was also a teacher and therefore the evaluation procedure was not a thoroughly done as it was, and they weren't planning to keep the teacher on in any case, so they gave that teacher sort of an average rating, and didn't renew the contract. Now that's their first year.

The second year they went to another division and in the course of their second year of teaching they were found by that second division to be found wanting.

Is it possible that if that then went to arbitration - and it would under this act presumably, because the teacher now has the right to due process - that the evidence could be presented from the previous division, which had not intended to rehire the teacher in any case, or keep the teacher on staff, so therefore wanting to be reasonable, and wanting to part on good terms, had given an average assessment, that that now could become the standard against which that teacher was being evaluated in the arbitration process?

MR. G. MARSHALL: Well, I assume that the first evaluation would be the property of the original principals. They may, or may not, make that available to the second school board. The arbitration people may be able to subpoena that evaluation, I don't know.

MR. G. FILMON: Wouldn't the teacher carry that with him or her, and then present it to the arbitration proceeding?

MR. G. MARSHALL: That is the property of the teacher and she may very well present it as evidence.

MR. G. FILMON: You use the term "stranger" coming into town a number of times, and I think that it has struck perhaps an offensive cord with some around the table. I think perhaps you were using that just to dramatize your position. Are you not saying, in effect, that under the proposed system the decision on granting, or entitlement to due process, or in effect tenure, is made, with this act, on a person who is unknown to the division; whereas at least under the present system, that decision, as to whether or not the person is entitled to due process, is made with someone who has been there for two years, and is not a stranger to the division?

MR. G. MARSHALL: Well the stranger is unknown. The stranger has credentials. We have no opportunity, in reality, to make the decision without going to the wrenching experience of arbitration.

MR. G. FILMON: Mr. Chairman, I forgot to ask earlier. Mr. Marshall, you referred to some earlier speeches of the Minister of Education saying that she confirmed her support for local authority in school boards, and that she said, I think the quote was "If we are to bend, we must bend in favour of the parent or the child." Was that speech given when she was Minister of Education, or President of MAST?

MR. G. MARSHALL: Minister of Education.

MR. G. FILMON: No further questions, Mr. Chairman.

MR. CHAIRMAN: Ms. Phillips.

MS. M. PHILLIPS: Thank you, Mr. Chairperson. Mr. Marshall, when I first asked questions I was trying to determine from your presentation whether it was the reduction of the time frame that you were mostly concerned about, or whether it was the principle of due process. Frankly, through this long and arduous question and answer period, you have convinced me that you are not in favour of the arbitration process, you would like to avoid it wherever possible or that you don't feel that is a necessary protection for a teacher's right to that job or career. Am I wrong?

MR. G. MARSHALL: I think arbitration is an important compromise. Arbitration, without having to go to court, is a sensible process after a period of tenure. I don't have any problem with due process at all. I think due process is there. The problem I have is reduction in the trial period of the period of tenure. It's been halved and it's been eliminated.

MS. M. PHILLIPS: You have said, Mr. Marshall, many times that third party arbitration is a conflict, it takes the decision out of the hands of the community and gives it to people who are from the community in several instances and not necessarily educators, and even though the school board appoints and participates in the choosing of the Chairperson that it ends up with the community against the teacher, were phrases that you used.

I guess I really am having the most trouble with understanding why you can accept that due process procedure. In other words, telling a person why they have been denied that job, or why they are being fired, and having the onus of proving that to the person. In other words, you know, the individual teacher is innocent until proven guilty, I hope, by all standards of law, why that is such a concern that that is being reduced from two years to one year. As the Minister, I think, so aptly pointed out, if in your heart of hearts, or out of the goodness of your heart or the school board's heart, you decide that teacher should be given a second chance, you might under present circumstances do that even after the second year; in that, within any school division if they don't match that one particular community, you move them to another community, or within an urban school division, you move them to another school or another grade. You can choose to do that after the two-year period now, you could choose to do that after the one-year period now, and still end up in both circumstances with extending the probation period. If that is not satisfactory to the school board's part, then go to arbitration, either after a two-year period or a one-year period.

I really am having trouble understanding why you are so vociferously opposing the reduction in the time frame, if, in fact, it's not the principle of having to go through a due process situation and prove that you have an incompetent teacher on your hands.

MR. G. MARSHALL: Do you think it's reasonable to prove to a board of arbitration that somebody cannot teach, who has never taught for you before? Do you think that's a reasonable position for the community to be in?

MS. M. PHILLIPS: Well, the Chairperson didn't correct you, you are not allowed to ask us questions.

MR. G. MARSHALL: Well, it was a rhetorical question arising out of . . .

MS. M. PHILLIPS: That was a rhetorical statement, I take it.

MR. CHAIRMAN: I assume Ms. Phillips will refrain from answering the question, and will keep herself to questions.

MS. M. PHILLIPS: I didn't answer.

MR. CHAIRMAN: Ms. Phillips, do you have any further questions?

MS. M. PHILLIPS: In that case, Mr. Marshall, you would still, I presume, as a responsible employer, after the board has chosen to hire that person, who might have ten years teaching experience elsewhere, I presume as a responsible employer that you would evaluate that individual through their first term, and then if you had cause you would take the necessary steps, that you would not do that after a month unless there was, as you indicated earlier, a disaster; that you would let your supervisory staff evaluate that individual like you would evaluate a new teacher straight out of university, would you not?

MR. G. MARSHALL: We don't even have essentially that opportunity, because the person coming with experience, as you suggest with ten years, from our point of view that's not even permissive in terms of us entering into offer and acceptance. That's not even bargainable, that's not part of the bargain, that's mandated, that's laid on us, this experience.

It might well be, given your rationale and given some other Minister of Education, that they may hold a view that that should be part of the bargain, but it isn't, it's mandated, you've got to live with it.

MR. CHAIRMAN: Are there any further questions?

MS. M. PHILLIPS: Just one final comment. There has been a lot of discussion tonight, Mr. Marshall, including in your presentation, assumptions that that this legislation would bear harder on northern communities. Frankly, having had children in several northern public school systems, or in several different schools divisions, and having lived in the North for several years, and recognizing the competence of both the trustees, the administrators, and the school divisions, I find that a little hard to accept. I think that's rather derogatory on the school system in the North, and I find, unless you have some further justification, especially with some of the northern teaching programs where universities are trying to train teachers to go back to their own community, who will not be "strangers", I find that very difficult to accept that this legislation would bear harder on northern school divisions. I don't think that the rationale you presented justifies that.

MR. CHAIRMAN: Have you got a question, Ms. Phillips?

MS. M. PHILLIPS: My question is, do you have any relevant justification?

MR. G. MARSHALL: I would like to respond to that. I can appreciate the member's position. The North was my region for eight years, I'm not unfamiliar with the North. But I was quoting from a letter that comes from as far north as you can go in Manitoba . . .

MS. M. PHILLIPS: I've been to Churchill.

MR. G. MARSHALL: . . . from the District of Churchill. That's their view. The chairman of the board, Shirley Kernaghan, says it's the unanimous view of that board, so I was reading verbatim from the position of the Churchill District School Board.

HON. M. HEMPHILL: Just a couple of questions, Mr. Chairman.

I wanted to talk about the arbitration process for just a minute, because you were talking about people being named, sort of, by third parties. Is it not the case, and we mentioned this before, that the trustees select one person, the teachers select another person, and between the two groups they select a chairman?

MR. G. MARSHALL: I think we have agreed to the proposed change in the . . .

HON. M. HEMPHILL: So that's the way . . .

MR. G. MARSHALL: My vice-president agreed with me.

HON. M. HEMPHILL: So that is the way it is presently being handled, which means that you people are deciding - I am referring to your point about what kind of people are sitting on arbitration boards, and I suggest to you that you are deciding yourselves who will sit on arbitration boards, and what kind of people. Unless you have information that contradicts, I have just checked with a staff member who is here, who has been around for some time, and who says that in the last ten years he cannot remember a time when they couldn't agree on the chairman. Now, I think you're talking about conciliation, I think you're talking about chairmen being appointed for the conciliation process, and not arbitration hearings.

MR. G. MARSHALL: I don't think I even got into a narrative or discussion on the difficulty of picking people. I think you may want to check Hansard, but I don't think I got into that.

HON. M. HEMPHILL: My memory was that you were saying that these were not educators that were making the decision, and you were questioning the kind of people that were sitting on arbitration boards. I am saying that you select, that you make that decision.

MR. G. MARSHALL: Right. I think what I am implying and what I am saying is that that is less of an educational environment than the place where the evaluation takes place within the school division itself; that is less of an educational environment. I think that's a reasonable position to take whoever they might be.

HON. M. HEMPHILL: Might we say, that if you are able to select the people who sit on the board, and the chairman, that it might be more of an educational milieu than the courts where you have no options at all?

MR. G. MARSHALL: We are supporting the arbitration process. We are supporting it as a rational alternative to due process before the courts. We think that's reasonable; but together with that, together with the notion of tenure, is a need for a trial period. My vice-president has come up here and agreed with the changes in the arbitration clauses. We are not arguing with that. We are saying that there is a need for the educators in the division to have the opportunity to assess that individual as to his or her competence, as to his or her suitability, and to do it in the community milieu.

That is entirely a different environment from the adjudicative environment of three people, irrespective of who you choose, but we are not against that process. We are supportive of it as a reasonable compromise, but you have moved it up on us. You have moved it up and you are going to make the decision difficult. You are not going to achieve what you want to achieve.

HON. M. HEMPHILL: Mr. Chairman, it's important that I try to clarify a point that was made by the Member for Tuxedo; and my question is going to be: Is your understanding the same as the point that he made, because it was not an accurate reflection of the due process section?

Mr. Filmon set a scenario, gave an example where a teacher is in one school division and teaches for a year, and then goes into another school division and teaches for another year there, and that that teacher then has due process. Am I right in saying that you talked about a teacher who goes from one school division to another, fills a year in at one place and then fills a year in at another place?

I guess the question that I have is: Is it your understanding that it requires more than one full school year, and that means the teacher has to have successfully completed a full school year, which means right to the end of June, and started to teach again in the same division on the first day of the second school term, because that is the fact?

In other words, a teacher does not get tenured, and this was the point that, and I am asking what your interpretation and understanding is, because it's a very important point; and this was the one issue that I understood there was - one of the issues - there was some concern at the trustees' meeting where there was a misinterpretation of the clause that I would have liked to have clarified, because I don't want school divisions and trustees to interpret it that if the person goes at May 31st and doesn't complete that term and doesn't come back to the school division, that they have due process, because it requires more than one full school year, which means one year and one day in the same school division. Now, what is your understanding?

MR. G. MARSHALL: Well, the language rates that you have given us - one year and a day under the legislation - we, in fact, wanted two years and a day. So that clarification that we asked for when it became fuzzy,

when the act was rewritten, has now been clarified; but you eliminated a year.

HON. M. HEMPHILL: But nevertheless, I am just making sure that everybody understands that the teacher has to be teaching, has to go into their second year of teaching in the same school division before they receive the due process entitlement.

MR. G. MARSHALL: That's my understanding of the language.

HON. M. HEMPHILL: Okay.

MR. CHAIRMAN: Any further questions? If not, I thank you very much, and I do believe your legs probably need a rest.

MR. G. MARSHALL: Thank you.

MR. CHAIRMAN: Dr. Asper. A written brief is being distributed.

You may proceed.

DR. L. ASPER: Thank you, Mr. Chairperson. It's my pleasure to represent the Manitoba Teachers' Society this evening, or this night, or whichever time frame you are on here.

Speaking on behalf, then, of the Manitoba Teachers' Society, which represents 12,558 teachers at the end of the school year 1982-83; and some of our members are present with me tonight, if I could just take a brief minute to mention some of them: Vaughn Wadelius, our second vice-president who is a school principal in The Pas; Cordell Barker, our treasurer who is a teacher in Gladstone; members of our provincial executive who represent various parts of the province; and our staff, including Wally Pindera, who is our general secretary, and Aubrey Asper, our assistant general secretary. We are very pleased then to have this opportunity to be with you tonight and give our presentation.

I am going to read most of the brief in order that it be on the record. I will refer only to some sections, despite the hour. The brief that we have prepared has been organized into the five headings that are listed, and I am going to refer to each of those as I work my way through the paper.

The first item then that we are reacting to: The governance of regional vocational schools in the proposed bill. The society supports, in principle, the thrust of the proposed legislation. We would, however, like to draw your attention to some possible problems in its implementation; for example, the recruitment of teachers that will be taking or is taking place without a collective agreement in place.

Another problem, the portability, our concern with the portability of rights and benefits of teachers that are recruited; for example, the accumulation of their sick leave.

Those are two examples then, and there are other areas referred to in the brief. I would like to point out, however, that the society has a policy favouring regional delivery systems, which is given on the second page, and we view the proposed legislation as a modest step toward what we see as an objective in educational

administration for better educational service. The proposed legislation then in the area of the governance of the regional vocational schools would appear to be in harmony with our society's position and is therefore supported.

The second area in the proposed bill: The right to due process for teachers whose contracts are terminated. First of all, I would like to say that due process has been a concern of the Manitoba Teachers' Society since our beginnings in 1919. More specifically, we have had serious concern with "just cause" as it is applied to termination since the 1960s. Policy concerning "due process" for all teachers has its beginnings in 1972 and goes way beyond termination to encompass assignment transfers and other such matters. The provisions of Bill 77, while they do not meet our policy, are a first step in this direction, that is in the direction of fundamental justice.

In reference then to again, our brief, I think it should be very clear, the definition, our Society believes that every teacher whose contract is terminated should have the right to due process. In this context, due process is understood to mean the right to a fair hearing. That is, where a teacher's contract is terminated, a teacher would:

1. have the right to ask for and to receive the reasons for the termination; and

2. where not satisfied that the reasons constitute just cause, the teacher would have the right to have the matter adjudicated by an impartial third party.

The Manitoba Teachers' Society believes that this should be the right of all teachers and indeed of all workers and further believes that it is consistent with the provisions of Article 7 of the new Charter of Rights in the Canadian Constitution. The Society is disappointed that the proposed legislation does not meet the above objectives. Nevertheless, it represents an improvement over what currently exists.

Before commenting then specifically on the amendments in Bill 77, a review, I think, is warranted of the rationale supporting the objective of universal due process.

In the brief that we are presenting in Section (b), we have given some background information on the current legislation. Considering the hour, I will leave that with you for reference. I'd like to point out though under the current legislation, that again it has been the long-standing objective of the Society to extend the right of due process to all teachers with no exclusions.

Further in this area, comparability with other provinces - under current legislation, the right of Manitoba teachers to due process appears to be the most restricted when compared with provisions for teachers in other provinces. Prince Edward Island is the one province where teachers serve a longer period prior to obtaining this right. Nova Scotia and Saskatchewan have provisions similar to that of Manitoba. The right to due process on termination of contract is much less restricted in the remaining provinces and, of these, two-thirds of them provide this right to all teachers regardless of length of employment.

The fact that due process is extended from the first day of employment in four other provinces does not mean that there cannot be a probationary period for teachers in these provinces. There is a distinction to be made between the right to be dismissed for cause

and the right of an employer to establish periods of probationary service.

For example, since reference was made to it earlier in your discussion, New Brunswick, which has due process, has a three-year probationary period, although teachers do have the right to due process, even when they are on probation.

In summary then, in terms of other provinces, provisions vary from province to province, but approximately 50 percent of Canadian teachers, at this point, function under laws which grant the right to due process on contract termination from the first day of employment. The Manitoba Teachers' Society's aim is to obtain parity with those other provinces which provide the universal right.

In terms of the rationale for the universal right to due process - as I have indicated the Society advocates that all teachers have the right to due process from the day they sign a contract. The Society believes its position is simply the advocacy of natural justice for all teachers. In addition, the current teacher supply situation results in such serious consequences for any teacher dismissed, that there should be no room for caprice or unfairness in procedures related to dismissal.

It had been the hope of the Society, at the time of the introduction of the new Public Schools Act, that the former Section 281(3) would be amended to reflect its position. This did not happen. As noted earlier, changes were made which effectively moved further away from our position as an organization. At that time, when more sensitivity exists in matters of rights, we have the paradox of Manitoba in 1980 having moved in the opposite way with this selected group.

The following rationale supporting due process from Day One was submitted to the then Minister in June, 1978, and I quote:

"The Society believes that employers should be required to show just cause for dismissal if requested to do so by the teacher dismissed. Teachers who do not have the right to due process may be discouraged from expressing their views openly and from attempting new teaching methods. The absence of the right to challenge a dismissal encourages poor evaluative and administrative practices in many school divisions. Granting the right to due process to all teachers would benefit education generally in that hiring, firing and supervision techniques would have to be improved."

Continuing to quote from the rationale in 1978: "The right to a fair hearing neither guarantees job security nor protects incompetent teachers. It simply provides for appeal to an impartial arbitration board which would have the responsibility to decide whether or not the reason given for dismissal is proper and sufficient. Many teachers, whose contracts have been terminated, have not been in the employ of their boards for more than two years and therefore cannot challenge the reasons for their dismissal.

"It is rather ironic that teachers who acquire the right to due process in one division should lose that right by moving from one division to another. Under present legislation, of course, this right is not transferable.

It has already been referred to this evening. "Teachers undergo at least four years of professional preparation before they enter their own classroom. What is needed is not the probationary period used by industry for unskilled employers, but better hiring and evaluation

procedures. Due to the increase in the number of teachers available to fill positions, school boards can be very selective in the teachers they hire.

"The Society then in 1978," ending the quote, "urges the Government of Manitoba at that time to extend due process rights to all teachers."

Continuing then in terms of the rationale from an economic point of view alone, it is wasteful both for the public and the individual teacher if a career is effectively aborted by an unfair dismissal. The individual teacher has invested at least four years of time and considerable money in preparation for a teaching career. The public has subsidized this preparation from public funds. It is in the best interest of both the public and the individual concerned to protect this investment. The Manitoba Teachers' Society then has taken a position which would provide this protection.

As I noted earlier, the Society believes its position on this question to be consistent with Article 7 of the Charter of Rights of the Canadian Constitution which provides for "right to . . . security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice."

The Province of Manitoba has not opted out of Article 7 of the Charter. Further, the Manitoba Teachers' Society believes that the Province of Manitoba should not opt out of Article 7 of the Charter and should not have legislation in conflict with it. The Society believes that the present provisions of The Public Schools Act deny the right of due process to certain teachers when their contracts of employment have been terminated, and that this denies natural justice to those teachers.

Further in this area, the right to due process then as proposed in Bill 77, Sections 5 and 6 of Bill 77 would provide the following:

- 1) That the right of due process is extended to a teacher who has been employed by the school board "under an approved agreement for more than one full school year;" and
- 2) The right to due process is "portable" from employment with one school board to another, provided the teacher has taught more than one full school year within three years prior to entering into an agreement with the second school board.

As I indicated earlier, the Manitoba Teachers' Society is disappointed in the proposed legislation in that it does not adopt the universal right to due process. At the same time, we recognize the proposed legislation as a significant improvement. The amendment appears to be somewhat of a compromise. Therefore, the Society would support the apparent intent of these sections, but would advocate certain changes to improve both wording and substance. If you'll bear with me, I would like to develop those for you.

Section 5 refers to "one full school year, as defined by the Minister by regulation." If it is intended that the present reference within regulations to the school year is to serve as a definition, the Society foresees confusion and some problems. The current Regulation 4/81 as amended by Manitoba Regulation 29/83 does not define the school year, but rather indicates that it shall be divided into fall term and spring term. The Society believes that the definition of one full school year should be clarified in the legislation or, at the very least, should be clear in the regulations. It is recommended that the legislation be amended to add the following:

"Full school year" means a period of time, not necessarily continuous, equivalent to the two terms into which a school year is divided by regulation by the Minister.

On another point of equal concern is Section 6, where to qualify for portability a teacher must have been employed previously by one other school board "for more than one full school year within three years prior" to entering into the new agreement. One interpretation of the wording would be that a teacher who has a career interruption of two years or more will lose due process rights. This would affect seriously persons who take as few as two years to attend to family responsibilities, who take Master's or Doctoral Programs, or who might continue in education with brief assignments in superintendencies or at the Faculties of Education.

Therefore, the Society recommends that, in order to reduce some of the problems presented above, Section 6 be amended by deleting the number "3" and replacing it with "5" or some greater number.

I would ask you as a continuation to our presentation on due process to take a look at an addendum, the goldenrod pages at the back of the brief. These are further comments that I would like to make on Sections 5 and 6 of Bill 77. These are made necessary because, subsequent to the preparation and printing of our submission to this legislative committee, a statement of concerns of the Manitoba Association of School Trustees regarding Sections 5 and 6 has been made public. A letter dated June 24 of this year from the President of the Trustees' Association to the Minister of Education has been circulated and in the letter the Trustees' position has been set out. It is the purpose of these additional comments then to respond to points made in that letter.

In Part (a) of the trustees' concerns, the claim is made that the "proposed legislation upsets the important role of trustees in education in the community and turns it over to the teachers' unions." The Society fails to see how the referral to an impartial third party to adjudicate a dismissal turns power over to the Society. The proposed legislation gives no power to the Society to adjudicate the reasons for dismissal, nor will the Society have control over the appointment of more than one of the three persons on the arbitration board.

Just to clarify one of the debating points that was made tonight, it is not the Minister of Labour who would be responsible if the parties do not agree on the chairperson; rather application is made to the Court of Queen's Bench.

Indeed there is no change in the mechanism. It merely becomes available a bit sooner. If the trustees' claim were correct, it would imply that the Manitoba Teachers' Society currently controls dismissal by a particular board of teachers with more than two years of employment. Again as was referred to earlier this evening, it is known that this is not the case as a study by the trustees' organization itself referred to in 1981, that in the three years prior to the report, 67 percent of responding school boards had dismissed - and "tenured" here is used as quoted from the report - "had dismissed tenured teachers." The proposed legislation will not reduce any school board's right to dismiss a teacher for cause. I would emphasize, it only

reduces the number of teachers boards will be able to dismiss without just cause.

Part (b) of the Trustees' letter makes the statement that the "proposed legislation breaks faith with the bargain presently enshrined in legislation between school boards and the teachers' union, in that teachers have given up the right to strike in exchange for tenure status." The claim made by this statement is not supported by the facts. In 1955, a brief was presented to the government jointly by the Teachers' and Trustees' organizations. In that submission, four separate proposals were made and each was provided with a supporting rationale. There was no interrelationship among the four subjects which were as listed:

- A. Selection and Certification of Teachers
- B. Collective Bargaining Legislation
- C. Tenure
- D. Deduction of Fees at Source

Except for (D) of those four listed, the presentation illustrated under each topic how both trustees and teachers would benefit from the proposed changes. With respect to the trustees' claim that in 1955 a deal was struck whereby teachers gained the present due process rights in exchange for giving up the right to strike, the following direct quotation from the 1955 submission refutes that claim: "Clause (B 2) guarantees to the trustees that the schools will never be closed through strike action on the part of the teachers. In return for the sacrifice of this right," and the underlining is ours by the way, "the teachers are assured of the right to have their case heard by the trustees and also are assured of compulsory arbitration binding teachers, trustees and the Municipal and Public Utility Board."

In part (c) of the Trustees' recent letter, the claim is made that "the proposed legislation offers instant lifetime employment to a teacher moving from one division to another regardless of his/her competency or suitability." The Manitoba Teachers' Society supports fair and well-developed evaluation processes. We have as much interest as trustees do in ensuring that our schools are staffed with competent teachers. The right to due process or a fair hearing cannot provide a guarantee of lifetime employment for a proven incompetent teacher.

Further in part (d) of the Trustees' letter, the suggestion is made that teachers are to be assessed only during the period that they are on some form of probationary service. The position of the Manitoba Teachers' Society is that evaluation procedures should be in place for all teachers and assessments should be made of their performance from time to time throughout their careers.

Part (e) of the Trustees' list of concerns repeats the suggestion that the proposed legislation would turn over the management of the school division to the "teachers' union." - and I quote the phrase - I have already provided an answer to this earlier in this submission.

Finally then, the tone of the Trustees' objections to Sections 5 and 6 of Bill 77 seems to suggest that the education system will be negatively affected. The Manitoba Teachers' Society rejects that contention since we cannot believe that the extension of the right to a fair hearing to teachers, in any way prejudices the system. In fact, I would maintain that the effect would

not be neutral. It would enhance the system because it would encourage creativity which involves taking a risk. It is entirely appropriate that a system which seeks to create in the young people in this province the appropriate attitudes in functioning in a democratic society, that people who work in that system are given simple rights to natural justice.

I would like to take you back then to the main part of the brief. The third area that we would like to respond to is that of collective bargaining, Sections 7, 8 and 13.

The amendments that are proposed - in the middle of that paragraph - address one particular problem and the Society supports the proposed legislation. However, the Society urges deletion of that provision in Section 13 that would delay the effective date of Sections 7 and 8. Although the Manitoba Teachers' Society and the Manitoba Association of School Trustees jointly have proposed ways to make the present procedures more effective, we view these only as stopgap measures to operate within the restrictions of present legislation. These measures do not substitute for the legislation which is proposed in Sections 7 and 8.

The Manitoba Teachers' Society has advocated other changes to the collective bargaining legislation which are not in Bill 77, including an amendment to provide that:

- i) where two nominees to a board of arbitration cannot agree on a chair, the Minister of Labour appoint the chair; and here we have it:
- ii) an amendment which would make clear that any term or condition of employment is negotiable unless specifically excluded by legislation.

Of greatest concern to the Manitoba Teachers' Society is the absence in the proposed legislation of any amendment which would make clear that all terms and conditions of employment are negotiable unless expressly prohibited by legislation. This objective could be achieved by changes to the definition of dispute in The Public Schools Act as suggested in Appendix I. These are the two blue sheets and I will leave that with you for reference, rather than read through it.

The Society believes that free collective bargaining demands that either party be allowed to negotiate any matter related to the employer-employee relationship. If it is in the public interest to restrict the negotiability of any item, then that restriction should be indicated clearly in the legislation. It should be noted that simply because a matter is placed on the table for negotiations by one party, it does not follow that the other party must agree to the proposal. Also, the fact that an item is in negotiation does not require an arbitration board to grant the request of the party making the proposal. These matters stand or fall on their merit but there should be no question of the right to raise the matter for negotiation.

We would urge then, on this matter, that Bill 77 be amended in order to provide for teachers the same rights to negotiate terms and conditions of employment as those which are enjoyed by persons negotiating under The Labour Relations Act.

The fourth area which we would like to respond to is The Authority for Disposal of Land as proposed in Sections 4 and 9. Our MTS policy is quoted in the brief whereby we state how we believe excess or vacant

school space should be used. We give some guidelines. It would appear that the proposed changes in Sections 4 and 9 are in harmony with our policy and therefore we support the amendments.

The fifth section on Immunization of Children as a Requirement for First Admission to Schools in Sections 10, 11 and 12 - we believe that these changes make the provisions of The Public Schools Act consistent with the legislation and regulations in the field of health. Therefore, we support those changes as proposed.

Those then, very briefly as I can, are reactions to our position on the proposed Bill 77 subject to the reservations that I have expressed as I've presented the brief. I would state that the society supports Bill 77. We would however urge the committee to act on our recommendations for changes.

I'd like to thank the committee for your patience and time in receiving my presentation.

MR. CHAIRMAN: Are there questions from the members of the committee?

Ms. Phillips.

MS. M. PHILLIPS: Thank you, Mr. Chairperson. Miss Asper, considering the Teachers' Union is leading this government around by the nose you still have quite a few things you're dissatisfied about, it seems.

In terms of the major issue, the one to due process, and your dissatisfaction with the fact that we haven't made that immediate, are there any other arguments other than in your brief as to why we should have not moved to Day 1 than what you presented?

I guess I'm just thinking, considering that our friends, the school trustees, have declared war on us anyway, I'm wondering whether we should not have moved to Day 1.

DR. L. ASPER: If I may respond, I think that's something for you to consider in committee. Our request is, and it has been our policy, as I mentioned we've been looking at this since the early days, 1919. Our policy is that every teacher whose contract is terminated, has the right to due process, and that means from Day 1.

MR. CHAIRMAN: Are there further questions?

Madam Minister.

HON. M. HEMPHILL: I'm wondering, Dr. Asper, if you have any . . . Well, first of all I'm going to ask you a straight question. Do you always stand up for teachers? In other words, will you fight the cause of a teacher regardless of whether they're competent or not or what they're doing in the classroom? Are there any cases or examples or numbers you can give us that demonstrate that you do not do that?

DR. L. ASPER: In general, it's our policy to defend our members. There is a process I think you'll understand. There is a process whereby teachers, in exercising their right to consult with our organization, do have the opportunity to receive advice, to receive counselling. So it may be, in some instances, that a case is not pursued based upon that counselling that takes place.

In terms of numbers, I'm going to exercise my right to consult with some of our staff, and I'd ask one of

them to respond to anything in terms of numbers since they deal with that more directly than I do as a junior high school principal. Would one of you like to comment on numbers please?

MR. CHAIRMAN: First identify yourself, please.

MR. T. ULRICH: I'm Tom Ulrich, Personnel Services Staff Officer with the Manitoba Teachers' Society.

Over the last number of years it has been our policy, as Dr. Asper noted, that we will provide whatever support is required to assist a teacher. However, we have maintained that a good deal of that support is helping them to make the correct decision about whether or not they should proceed.

As we have pointed out to them, it is one thing to have a school board say that you are incompetent. It is quite another thing to have an arbitration board confirm that. So certainly where there are cases where there are some serious doubts about whether or not the person might be successful, certainly those doubts are communicated to the individual, and in many cases, the decision is made not to proceed.

Just this past year we have had a few of those cases, as indicated by the Minister. There are a number of cases that involve what one might call in dispute each year. I think the ballpark figure she gave of 25 to 30 is probably relatively accurate. We do not keep exact statistics. As she did correctly note, only three of those this year are proceeding to arbitration.

So that may give you some idea of the number of teachers that we deal with and assist in dealing with the problem they're facing but do not necessarily encourage any further action, whether it be referral to arbitration, or referral to the legal process.

HON. M. HEMPHILL: Is there a process? The feeling that I get is that sometimes you work together. I mean it isn't all, you know, I think that everybody would agree that if you can avoid arbitration you avoid arbitration; if you can avoid court, you avoid court, and the closer down, and the more able you are to settle it between the parties, the better off we all are. Do you work? Isn't there a co-operative approach sometimes?

I didn't think to ask this of Mr. Marshall, but I think that sometimes it's the two organizations together that will sit down and co-operatively look at it and make a joint decision on how to handle something.

MR. T. ULRICH: The Minister is quite correct that there have been a number of cases in which in discussions with the administrative staff of a school division perhaps involving the school board, perhaps involving representation from the Manitoba Association of School Trustees, we have sat down and negotiated the termination of a teacher's contract where it was believed to be in the best interest of both the school division involved, and the teacher involved. So that does happen on a relatively regular basis although there, I do not have any specific numbers I could give you.

MR. CHAIRMAN: Mr. Filmon.

MR. G. FILMON: Thank you, Mr. Chairman. I wonder if I could ask Dr. Asper - on Page 6 of her brief she

says, "The absence of the right to challenge a dismissal encourages poor evaluative and administrative practices in many school divisions." Can she give any school divisions as examples in which there are poor evaluative and administrative practices?

DR. L. ASPER: I don't think it's my role to point fingers at school divisions in terms of their performance. It would be my contention, however, that there is room for improvement and, despite the fact that there may be faulty evaluation procedures, in other words, that there are concerns, it seems to me that those are the problems that should be addressed and, in doing that, you not take away the right to a fair hearing on the part of a teacher.

MR. G. FILMON: Mr. Chairman, is Dr. Asper saying then that she doesn't have any examples, or that's just a general sort of criticism of school divisions?

DR. L. ASPER: I'm not saying I don't have examples. I said, I don't think it's my role to point the finger at any particular school division. I think I'd rather deal with it in a general sense, in that if there are faulty evaluation procedures those should be improved, but that does not mean that you deny the right to a fair hearing.

MR. G. FILMON: I haven't suggested anybody be denied a right to a fair hearing, Mr. Chairman.

DR. L. ASPER: I'm having trouble hearing. Maybe you could cuddle a little bit more.

MR. G. FILMON: Did you say cuddle?

DR. L. ASPER: It seems to me that's what you used on me last week.

MR. G. FILMON: Mr. Chairman, let the record show that Dr. Asper and I are acquaintances over the telephone and we have met, but I can't recall ever cuddling with her. That's one way to throw me off the track, Dr. Asper.

DR. L. ASPER: You're blushing.

MR. G. FILMON: It's just the tan I received on the weekend.

I think I said I had never indicated any quarrel with teachers having a fair hearing.

Further on Page 6, Mr. Chairman, there is the statement: "Many teachers whose contracts have been terminated have not been in the employ of their boards for more than two years and, therefore, cannot challenge the reasons for their dismissal." The Minister has been concerned with the figures and the numbers and she has challenged the president of the school trustees to indicate ball park figures, so I wonder if Dr. Asper could give me some ball park figures to attach to that statement. How many in the course of recent years would have been terminated without being able to challenge the reasons for their dismissal?

DR. L. ASPER: I think Mr. Ulrich referred to that in terms of his response earlier. He talked about the

average number of 25 that are in dispute, which means they go beyond the telephone call stage. Again it was referred to earlier, and that would be the only statistic that I would have is in the past year we've had three that have gone to arbitration. Now, does anyone else from our organization have other statistics on that?

MR. G. FILMON: Before you pursue that, may I just clarify that my understanding is that that number of 25 and 3 were those who did have the right to challenge and did have the right to due process. I'm looking for the number who didn't have and were dismissed.

DR. L. ASPER: My understanding was that that number is up to two years, is that correct? My understanding is that that number of 25 was teachers who have up to two years experience, is that correct?

MR. T. ULRICH: I think when the question as asked it related to a number of cases that did not proceed to any formal legal action, whether it be arbitration or the courts. They may or may not have involved teachers who had tenure, or the right to challenge through the arbitration procedure. We do not have any exact statistics on teachers whose contracts were terminated, simply because that is not reported to us. The only ones that we know of are those who call us for some assistance. A lot go their own way believing there's nothing they can do about it.

In reply to the then Minister of Education, in 1976, a number of non-tenured cases that we had dealt with in the number of years previously, and over the approximately five years previously, it would come to something in the neighbourhood of 150 to 200.

MR. G. FILMON: So that would be 30 to 40 per year? Mr. Chairman, I'd like to ask Dr. Asper, further on Page 6, in referring to the professional preparation of a teacher, the statement is made, "Teachers undergo at least four years of professional preparation before they enter their own classroom. What is needed is not the probationary period used by industry for unskilled employees, but better hiring and evaluative procedures."

And further, and I'll just paraphrase the references made, the Society believes that the present provisions of The Public Schools Act deny the right of due process to certain teachers when their contracts of employment have been terminated, and that this denies natural justice to those teachers. The referral to natural justice is, I believe, one to the constitutional rights of individuals.

Comparing this to other professions, let's say the professional engineers, for instance, what right to natural justice do they have upon dismissal; or chartered accountants, say, what rights to natural justice do they have upon dismissal?

DR. L. ASPER: I thought the member was going to answer the question. I'm not an expert in that area, I'm going to ask one of our staff members to reply to your question, Mr. Filmon.

MR. A. ASPER: I'm Aubrey Asper, Assistant General Secretary. Those might very well be negotiated in

collective agreements or, as pointed out by Mr. Marshall earlier, I suppose they would have redress in the courts. We, of course, are familiar with recent cases, whereby there have been a number of settlements in court for middle management people of the kind you're referring to, I believe.

MR. G. FILMON: I will assist you by saying that I know of very few, say, chartered accountants or professional engineers who have collective agreements.

MR. A. ASPER: Just for clarification, are you referring to those that are self-employed or employed by companies?

MR. G. FILMON: Employed by other organizations, whether they be consulting engineering firms and industry or what have you, or just ordinary businesses or practices - whatever.

MR. A. ASPER: If they are employed, rather than self-employed, I think I would agree that very few have such rights. That doesn't mean we don't believe they should have them or shouldn't have them.

MR. G. FILMON: I think what you are saying is that, Mr. Chairman, they do have them under the system of being able to go to court in accordance with their rights under our Constitution. A teacher, even at the present time, has that right. Are we not saying that?

MR. A. ASPER: It would appear to be the case, yes. But that doesn't mean that your laws and your agencies that practise in this province shouldn't have processes that are in harmony with the Charter of Rights. Your dismissal procedures should be in harmony, so that you don't have every individual with a grievance having to go to court to rectify or remedy the grievance. Remedy should be within the processes set up within legislation which is consistent from the beginning with the Charter of Rights.

MR. CHAIRMAN: Mr. Santos.

MR. C. SANTOS: The whole premise of the claim to due process is Section 7 of the Charter of Rights and Freedoms. It mentions that everyone has the right to life, liberty and the security of the person, and the rights not to be deprived thereof except in accordance with the principle of fundamental justice. In the quotation on Page 7, apparently the basis is the concept of security of the person rather than the right to life or the right to liberty. My question to Dr. Asper is whether or not that concept of security of the person, in her opinion, includes the right to security of a teaching job under a contract with a school division?

MR. CHAIRMAN: Dr. Asper.

DR. L. ASPER: My interpretation would be that it includes the right to a fair hearing.

MR. CHAIRMAN: Is that complete, Mr. Santos?

MR. C. SANTOS: Mr. Chairman, a fair hearing is a procedural right that guarantees that the person will

be heard and that all the claims will be proved by certain evidence, and that certain procedural requirements will be complied with. That's what we call the principle of natural justice.

Is it not the case that in private industry, even at the highest level of management, some managers are subject to termination at the will of management?

DR. L. ASPER: Again, I'm not an expert on private industry. I have always been a salaried school teacher. So it may very well be, but I'm not an expert so I can't respond to that with any real authority.

MR. C. SANTOS: Let us assume that it is. Mr. Chairman, if it is the case that even high managers in industry can be terminated at any time provided that the management is willing to pay whatever is agreed upon as damage for the termination of the contract without the need for any hearing of any kind, may it not be the case that it might be written under the contract with the school division that the teacher's contract can be terminated provided that she is paid a certain compensation?

DR. L. ASPER: I think we're getting into another line of argument here. What we are reacting to this evening is the right to due process if the contract is terminated.

MR. C. SANTOS: Mr. Chairman, this is precisely the point, whether the right to the procedural requirement of due process can be substituted by the right to a certain amount of money on the violation of the contract by management doing the hiring.

MR. CHAIRMAN: Is there a question in there, Mr. Santos?

MR. C. SANTOS: Would they agree? Well, I have no more questions, Mr. Chairman.

MR. CHAIRMAN: Ms. Phillips.

MS. M. PHILLIPS: Thank you, Mr. Chairperson. Dr. Asper, I have a question on another topic from your brief. On Page 11, you are urging that we include an amendment to bring this act in line with The Labour Relations Act, which I think is a fairly major suggestion.

As a former member of the Manitoba Government Employees Association and remembering their many many recommendations to also be included under The Labour Relations Act and after many discussions on that topic, recognizing to bring the MGEA out of the protected domain of The Civil Service Act would mean that they would lose their exclusive bargaining jurisdiction and would, in effect, be open to raids from another union or whatever. Remembering that they changed that proposal substantially so that part would be under The Civil Service Act and part under The Labour Relations Act, are you suggesting here a similar situation, that you be under The Labour Relations Act or that the word "enjoyed" be incorporated under The Public Schools Act as the direction you're suggesting?

DR. L. ASPER: What we are suggesting is that we have the same rights to negotiate terms and conditions

of employment as do exist under The Labour Relations Act.

MS. M. PHILLIPS: The clarification that I'm seeking then is that you are not asking to be put under The Labour Relations Act. You want some of those provisions to be incorporated in The Public Schools Act, in this act. Is that correct?

DR. L. ASPER: We want to expand the scope of the collective bargaining.

MS. M. PHILLIPS: Thank you very much.

MR. CHAIRMAN: Mr. Enns.

MR. H. ENNS: No question, Mr. Chairman, more on a matter of personal privilege, I regret that the government member, namely the Member for Wolseley, has chosen to put on the public record that the school trustees have declared war. By implication, she has decided whose side who is on. I reject that kind of implication, first of all, that anybody is on anybody's side. More importantly, Mr. Chairman, I don't believe any political party will benefit from that kind of a war. The educational process may suffer from it and, more importantly, our children. I just want to put that on the record.

MR. CHAIRMAN: Thank you. Mr. Harper.

MR. E. HARPER: Dr. Asper, as you know, there are many bands that are taking over their educational system. They have set up educational authorities on the and many bands have hired without setting up their own education authorities to hire teachers on their reserves. These teachers who are hired on the reserves, are considered civil servants because they are hired through the Civil Service process through the Department of Indian Affairs. My question is, have you had any requests from teachers who work on these reserves?

MR. CHAIRMAN: Dr. Asper.

DR. L. ASPER: Just to clarify any requests in relation to

MR. E. HARPER: From the teachers who work on the reserves?

DR. L. ASPER: Yes, but any requests in relation to what?

MR. E. HARPER: In terms of assisting them; they may be dismissed, or fired or, you know, lack of competence or

DR. L. ASPER: Again, it's not an area that I work in directly as president, but I believe that we have had a number of contacts made with staff in our office in this area. If you would like something more specific, I could call upon a person who works in that department and deals specifically with those types of calls.

MR. E. HARPER: Yes.

DR. L. ASPER: Could I ask that person to come then and maybe delve into some specifics if you'd like? Mr. Kyritz would deal with this on a daily basis in terms of those specific concerns.

MR. R. KYRITZ: My name is Ralph Kyritz. I'm on staff of MTS. We've had calls from associate members on bands, yes, and some are with respect to dismissals. Since they are not under any provincial government regulations or rules, we have to follow the federal labour code, which does have due process regulations in it. That's the procedure we're using.

MR. E. HARPER: I had some calls concerning some of the dismissals by teachers and some of the bands were concerned whether or not what category these teachers could be dealt with in terms of federal or provincial, and I wasn't able to determine that I needed that clarification.

MR. R. KYRITZ: I believe there is sufficient court action to this date to indicate it will be the federal route. There is something like the St. Regis case we could check through, but we are quite sure it is a federal route right now, rather than a provincial route.

MR. CHAIRMAN: Any further questions? Mrs. Hammond.

MRS. G. HAMMOND: A question to Dr. Asper. On the first of the yellow pages dealing with 5 and 6 of Bill 77, it said that there is a study by the trustees organization revealing that three years prior to the report 67 percent of responding school boards had dismissed tenured teachers. Was that for incompetence; or do you have any statistics; or would it be on declining enrolment as well?

MR. CHAIRMAN: Dr. Asper.

DR. L. ASPER: My understanding of it is that it was not on declining enrolments. It was not to do with layoff.

MRS. G. HAMMOND: It was strictly for incompetence?

DR. L. ASPER: Yes.

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

MR. G. FILMON: Mr. Chairman, one final question for Dr. Asper. Given the response that you made earlier to the Minister, Dr. Asper, when you said that in general it was the policy of the Teachers' Society to defend the position of its members in a dispute with a school board; and given that essentially your mandate is to protect the interests and further the interests of the members of the Manitoba Teachers' Society, can you honestly say that you're taking an objective view of the proposed legislation?

DR. L. ASPER: It would be my contention that any individual has the right to a fair hearing when they are

dismissed, and I don't think it matters what group you belong to, what role you fulfill, you have the right to a fair hearing when you're dismissed.

MR. G. FILMON: Does this not give a right to teachers that is not enjoyed by most others in society?

DR. L. ASPER: Well, I would hope that everyone would have that right. We happen to represent our members in terms of what we're seeking and I'm sure if there are some other groups who are seeking that, you will hear from them at another time, on possibly other legislation.

MR. G. FILMON: But at the present time this is not a right that's enjoyed by most others in society?

DR. L. ASPER: Is that a question?

MR. CHAIRMAN: No, I don't believe so.

MR. G. FILMON: Yes, it's a question.

MR. CHAIRMAN: Mr. Filmon, would you like to make a question?

MR. G. FILMON: Yes, just put a question mark at the end of that.

MR. CHAIRMAN: Read that as a question mark at the end, Dr. Asper.

DR. L. ASPER: Yes, I think Mr. Marshall had a few of those too, so that's fine.

MR. CHAIRMAN: Are there further questions? If not, I thank you very much for your presentation.

DR. L. ASPER: Thank you.

MR. CHAIRMAN: Mr. Schatz.

MR. M. SCHATZ: My presentation is not very long. Mr. Chairman, and members of the Legislature.

MR. CHAIRMAN: Could I just hold you off one second while your presentation is being distributed? Please proceed, Mr. Schatz.

MR. M. SCHATZ: Thank you, Mr. Chairman. On behalf of the Rolling River School Division Board, I would like to thank you, Mr. Chairman, and the members of the Legislature for the opportunity to make a presentation to you expressing the concerns of the Rolling River School Division Board. Represented here tonight with me is Trustee, Dr. Peter Neufeld, and I'd like to acknowledge him. My name is Max Schatz. I'm Superintendent of the School Division.

I would simply like to read through the short brief that we do have. It expresses some of the concerns of the members of our school board. If there are questions then arising from this, I'll try to answer them.

The Board of the Rolling River School Division held a special meeting on Wednesday, August 10, 1983 to

consider the implications of Bill 77 for this Board and for education in this division.

The Board concur with the opinions of the trustee and superintendent representatives who attended a special meeting in Winnipeg on August 4, 1983. Bill 77 does, in a very subtle way, further erode the authority of school boards. Reducing the probationary period for teachers to one year and making tenure portable from division to division could, indeed, result in the lowering of the quality of education due to an inability of school divisions to release marginally competent teachers.

The teacher evaluation model and procedure that is used by this division was developed in collaboration with the Teachers' Association. The teachers were quite insistent that the prime purpose for an evaluation model should be the "improvement of instruction." They suggested that new teachers who were experiencing some difficulty should be given time to improve, and that it was incumbent upon the school division to assist these teachers to develop into "good" teachers.

If a school division accepts this concept, then one year is certainly not a sufficient amount of time to assess the performance of first-year teachers and to provide assistance to those who need to improve. Furthermore, it does not allow a teacher sufficient time to make the necessary adjustments required by a school division.

Under a one-year probationary period, a school division would be required to very quickly form an opinion about its first-year teachers, either to retain or to release them. The results of a hasty decision could be twofold:

(1) A first year teacher who experiences the slightest difficulty could be released; yet, that teacher might have developed into an excellent teacher under a longer probationary period and with proper guidance.

(2) Retaining a first-year teacher who is having some problems, with the hope that they will improve over a period of time, might result in the school division having to retain the services of a marginally competent teacher for a long period of time.

The suggestion that tenure should be transferrable from one school division to another implies that teachers can perform equally well, regardless of the assignment or situation. This certainly is not true. A teacher may have performed well in one situation for one school division, but under different circumstances, perhaps because of a new assignment, a different age group of students and unanticipated problems, the same teacher in a different school division may not be able to perform satisfactorily. A school division would have a great deal of difficulty releasing such a teacher, since it would be difficult to prove that the teacher was incompetent when the previous school division rated the teacher favourably. Again, this would force a school division to retain the services of a teacher whose performance was less than satisfactory.

The Board of the Rolling River School Division see the passage of Bill 77 as an unnecessary "security blanket" for the teachers, which could result in many teachers becoming complacent and indifferent to their responsibilities because they will perceive themselves as being secure and "untouchable."

It is the hope of this school board that Bill 77 will not become legislation.

Thank you.

MR. CHAIRMAN: Are there any questions? Seeing none, thank you very much, Mr. Schatz.
Janice Tegelberg.

MR. F. GROSS: I think, even at this late hour, I will still not pass for Janice Tegelberg, but my name is Fred Gross. I am the Superintendent of the Lakeshore School Division. I have with me, Mr. John Johnson, who is the Chairman of the Lakeshore School Division Board, and also Mr. Ed Senko (phonetic), who is the Vice-Chairman.

MR. CHAIRMAN: Thank you. Please proceed, Mr. Gross.

MR. F. GROSS: Mr. Chairman, Madam Minister, members of the board. It is with great concern that, on behalf of the Lakeshore School Division, I present this brief to you.

Now, although we were under the impression that teachers do get tenure, even though they have been in a division for one year and proceed to the next division which, in fact, is part of this bill, I am very pleased to know from the Minister that that is no longer the case and, hopefully, if she also will say after my presentation that the other two points that are being made are equally reconsidered, I surely can say that many boards and superintendents would appreciate that.

Mr. Chairman, we thank you for the opportunity to present this brief regarding Bill 77, on behalf of the Lakeshore School Division Board. So much has been said and written concerning this bill that for us to detail all of our objections would only be repetitious. For that reason, we will try to be concise and only outline what we feel are the most outstanding dangers in this legislation.

(1) What effect will Bill 77 have on students? The primary aim of any educational legislation should be to protect the interests of students before interests of any other individuals are being protected. Should we not, if we really think that students are the ones whose interests should be most protected, make sure that school boards have the best possible opportunity to hire, and assess; I would like to add, those teachers who are willing and able to provide students with the best learning possibilities. Should we not avoid, in any way possible, assuring someone a job at the expense of developing students? Bill 77, if implemented, will probably result in school boards not being able to hire the best possible teachers. The effect of Bill 77 on students will be potentially detrimental in that Bill 77 will probably make school boards avoid hiring experienced teachers, as school boards cannot take a chance on some experienced teachers, especially if a teacher was dismissed and did not voluntarily resign from his or her previous position.

Despite the fact that the intent of Bill 77 is to give teachers better job security, in actuality, the situation could work out to be entirely different.

(2) Let us examine shortening the tenure period to one year. What will this proposed legislation do for beginning teachers? In past years, beginning teachers were given second and even third chances to prove themselves. Beginning teachers will not be given an opportunity for a second year if their performance is

clearly not up to par. If that beginning teacher were to apply to another school division, that school division could not afford to hire the teacher because of the teacher's marginal performance in the previous school division, and because of the portability of tenure. This could very easily mean that beginning teachers who have good, but unfulfilled potential, will not have an opportunity to prove themselves in their profession.

(3) Let us look at portability of tenure. What will this proposed legislation do for experienced, competent teachers? Portability of tenure for teachers will mean that school boards will take a cautious approach in hiring any experienced teachers. The tendency will probably be not to hire potentially good teachers if there is any doubt at all because of the portability of their tenure.

Although on the surface there seems to be the possibility of believing that this change in law will not make it impossible for school boards to rid themselves of incompetent teachers, reality and cases fought by school boards in court have shown that it is close to a nightmare to get rid of a tenured teacher.

I would like to say here - that I'm not hesitant at all to point this out to the committee as a superintendent because there is definitely great expense and great time of administrators involved, in bringing before the courts evidence that is considered to be resulting in labelling a teacher incompetent. There is very often very little possibility for administrators to satisfy a court that a teacher is incompetent in the execution of his or her duties, yet it is well known to administrators, such as superintendents, that there is a great difference between proving incompetency in a court and seeing it in a classroom situation.

Teaching is a delicate and largely intangible process. It is very important to the learning process of students that their teacher be a warm and personable individual - willing and able to relate to children. Now you prove in court that this is not the case. The teacher must have a sincere desire to see that the students learn to their maximum ability and be willing to put forth every effort to this end. Yet how do you define the personal and professional qualities of a good teacher in a court room in a termination dispute?

I would like to say if I would hand out papers, and ask all of us to tell who is a competent teacher, we'd get many different definitions indeed. I think this is where later on the process becomes so extremely difficult when you have to prove incompetency in a court. Another reason, of course, why this is so terribly difficult is also that expectations vary from person to person to such a very large extent. I think if it is agreed upon between teachers and a school board their administration what a school division in fact expects, then the teacher has a responsibility to, or should have a responsibility, to fulfill the expectations of that particular school board and not fulfill the expectations of another school board which may, in fact, be entirely different.

The absence of these qualities - a warm personality, desire, unselfishness and dedication - are hard to substantiate in a labour dispute but anyone in the classroom, be it a student or a supervisor, knows when they are absent. When they are absent, it is the pupil who suffers. But the pupil is unable to prevent teacher incompetence. It is those who are concerned with

administering education, such as trustees and superintendents, and those who are responsible for education legislation who must protect the students. We are pointing out, the process of eliminating unsatisfactory teachers by troublesome and costly litigation is unsatisfactory and does not protect students. We ask you to heed our concerns.

In the past, as long as there was a shortage of teachers, almost all teachers had jobs, and it didn't really matter too much in what classroom or division mediocre teachers were teaching - they all had jobs anyway. But now with a much better supply of teachers the situation has changed. The incompetent teacher who is protected in his or her situation by law that makes it difficult if not impossible to get at him, will harm another group. The young teacher who is gifted and willing to work will be the one who will suffer. He or she will be unemployed while those who are unwilling, incapable or both, will be secure in their positions, knowing often that administrators and boards will be unwilling or unable to risk costly battles against a strong union in order to bring about proper changes - and again I say this from experience as a superintendent in my 14th year within the same school division - these people have every need to be cautious. It is taxpayers' money they are administering. As any school board knows, a contested dismissal can cost a board many thousands of dollars - I would like to add \$25,000, \$50,000 - and involve hundreds of hours of administrators' time, time that is taken dearly from dealing with the welfare of students. This new law will probably protect the interest of marginal teachers to such an extent that the stimulation and proper progress of many students will be impeded or destroyed.

We must also indicate to you that it is our belief that education in rural Manitoba has thrived over the past decade only because a delicate balance existed between the trustees' and teachers' organizations. The proposed legislation, while giving better job security to some teachers, may well be the first step in creating an imbalance. Bill 77 may well end up putting the MTS and MAST into a bitter adversary situation in the area of teacher evaluation, where increased co-operation and understanding is required. If school boards have too many limitations in the hiring and dismissal of teachers, as these changes appear to be directed, then staffing of schools all over Manitoba will suffer.

Trustees are not a self-interest group. They are parents and community people with the awesome trust of managing the education of our young people. It is the students that the Lakeshore School Division Board is most concerned about in this issue. Legislation that, in all probability, will reward and protect the incompetent, or at least the marginals, can only mean that we must accept a lesser standard of teaching from our teaching staff. It is time that we protect the competent and discourage protecting those who are a liability to the educational system as well as the teaching profession.

At this late date we will strongly urge you to reconsider changes in Bill 77.

MR. CHAIRMAN: Are there questions from the members?

Mr. Santos.

MR. C. SANTOS: Mr. Gross, as an experienced teacher and superintendent, would you say that there is one best way of teaching, or that a teaching situation only varies from situation to situation?

MR. F. GROSS: I would say that there is a standard that one could set for good teaching, and this standard could be recognized. However, I also have to mention that there are expectations that may be slightly different from school division to school division which also play a very important role in considering whether or not a teacher is successful. In talking about local autonomy, I think we must at the same time then, make allowance for these slightly different expectations that school boards may have. For that reason, a teacher who has been successful in one division may not necessarily be successful in that he or she can satisfy the board, because of slightly different expectations.

MR. C. SANTOS: Mr. Chairman, a supplementary. Mr. Gross, since the students are always in constant interaction with the teachers, would you say that a student evaluation of their own teacher's competence or performance would be a better index or measure of the teacher's competence than evaluation by superiors such as principals or superintendents?

MR. F. GROSS: I would say that students may at times - I would like to say "at times" - be very very accurate in their assessment of teachers. However, the students' assessment has very little bearing in terms of presenting proof in a court. It is, therefore, that superintendents' and principals' evaluations are the only ones that perhaps have a chance to stand the test of the laws.

MR. C. SANTOS: Mr. Chairman, a third question, Mr. Gross has stated that it is very difficult on the part of a school division or school board to prove the incompetency of a teacher before a court or arbitration tribunal. Would you say that the level of difficulty of proving incompetence is as much the same level of difficulty, if the onus or burden of proving competence is on the part of the public school teacher during the period of probationary appointment?

MR. F. GROSS: I would say that a teacher may have some difficulty from time to time working out the differences that may result from an evaluation between the principal and the teacher, or the superintendent and the teacher. However, these difficulties can be resolved and, according to my experience, have always been of an amicable and very friendly nature especially since most superintendents - and I can say, I, myself - believe in the evaluation process as being a process which helps teachers to become better professionals. I think even the MTS would have to agree with that, because otherwise, if they feel that teachers are already perfect after one year, they most likely would not really have justification for asking eight, nine or 10 increments.

MR. C. SANTOS: Thank you, Mr. Chairman.

MR. CHAIRMAN: Are there further questions? Seeing none, I wish to thank you, Mr. Gross.

MR. F. GROSS: Thank you very much.

MR. CHAIRMAN: Doris Fedun or Grant Russell.

MR. G. RUSSELL: I don't look very much like a Doris, Mr. Chairman. Mr. Chairman, gentlemen, my name is Grant Russell. I'm a Vice-President of the Home and School and Parent Teacher Federation of Manitoba. Present here this evening are our President, Mrs. Doris Fedun, our past President, Mrs. Sonya Anderson, and three members of our board of directors.

Mr. Chairman, committee members, we appreciate this opportunity to speak to the legislative committee regarding Bill 77. While you are no doubt aware of the opinions of teachers, trustees and administrators, we are here to represent the parents of the children whose quality of education may be affected. Our greatest natural resource lies not in the industrial field, but in our children.

The Home and School Federation is an organization composed of parents who are part of a national organization in existence since 1895. We are committed to ensuring that quality of education is provided for our children. Parents are the greatest stakeholders in the educational process.

Our presence here indicates not only our solid support for the Minister of Education's expressed desire for public participation in educational decision-making, but also our absolute refusal to be relegated to the status of innocent bystanders and merely providers of children for the educational system.

Bill 77 was made available, as we understand it, to the public in the latter part of July, 1983. As of this date, all schools were closed for summer recess and our member associations had recessed. As a result, we have had no possible opportunity to consult with our general membership. We cannot believe that such a vital change to The Public Schools Act could be introduced for passage in the Legislature in the middle of summer vacation. This is in complete contradiction of the Minister's indication of her department's commitment to parental involvement in education. It is, therefore, our opinion that this legislation should be tabled to allow for public input.

As well, we feel that our membership should have an opportunity to express their views and concerns. Our Federation was represented on the Planning Committee for the Public Involvement in Education Conference. As well, our treasurer represented the Home and School on an official committee formed to review the accessibility of school budget information. This committee was composed of members representing MAST, MTS, MASS and MASBO. The final report of that committee of April 11, 1983, proposed draft legislation which would modify The Public Schools Act to make budget information as accessible to the public as audited financial statements. This, we notice, has not been included in Bill 77. Why not?

We would like to deal with two proposed changes to The Public Schools Act which concern our organization the most. These amendments are subsections 92(5) and 92(6) - 92(5) relating to the granting of what might be termed tenure to new teachers. We, as an organization, believe that full school year which is to be defined by the Minister, whatever length of time that may be, is really too short a time to properly evaluate a starting teacher. When one

considers that re-employment is offered at the beginning of May, it will be realized that what we are talking about is a probationary period of some eight months. We feel, therefore, that the period for new teachers should be left at 20 months as is now the case. As parents, we feel we have the right to demand that starting teachers prove themselves in their profession over a reasonable period of time.

While the emphasis has been on the protection of the teachers' job security, what of the students, the children? As parents, that is our concern. We do not feel that requiring new teachers to do a form of internship is either unreasonable or unfair. A 20-month period removes some of the stress on a starting teacher, and gives him/her an opportunity to correct initial errors and adjust from the theoretical to the practical aspects of teaching.

Under 92(6), for the experienced teacher moving from one school division to another, we feel that the two-year period should remain, since we do not consider it unreasonable that an employer have an initial assessment period and be able to let an unsatisfactory employee go without being involved in expensive arbitration procedures. As parents concerned with the educational welfare of our children, we have a right to demand that quality of education be the ultimate criterion in the hiring and retention of teachers. We are deeply concerned the employer industrial relations aspect of this bill not take precedence over quality of education.

The Minister of Education has repeatedly stressed her commitment to parental involvement. It is now time for her to show that she really means it, and table this bill to allow the parents whose cause she espouses to have an opportunity to study and comment in detail.

Thank you, Mr. Chairman.

MR. CHAIRMAN: Thank you. Are there question from the members of the committee?

Mr. Filmon.

MR. G. FILMON: Mr. Chairman, I'd just like to ask Mr. Russell, he's indicating I think that the Manitoba Home and School Parent Teachers' Federation has had no prior indication of this proposed change from the Minister; that they learned of it, I guess, when it was tabled in the Legislature near the latter part of July. I'm surprised at that because I believe that both MAST and the Manitoba Teachers' Society and perhaps even MASS were at least given some indication or request for comment on this proposed change back prior to the summer. But you're saying, Mr. Russell that you had no prior indication of this?

MR. G. RUSSELL: That is correct.

MR. CHAIRMAN: Are there further questions? Seeing none, thank you very much, Mr. Russell.

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

MR. CHAIRMAN: Mr. Alex Novak.

MR. A. NOVAK: Thank you, Mr. Chairman. I'm here representing the River East School Division No. 9, and I'm Chairman of the Board of Trustees.

Our board has some grave concerns regarding the proposed amendments to The Public Schools Act as set out in Bill 77, and we would particularly like to refer to subsections 92(5) and 92(6), and the proposed amendments to these particular subsections as they deal with tenure and portability. Tenure refers to the right of a teacher to submit reasons for termination to arbitration.

Our board held a special meeting on August 10, 1983 to consider these amendments. At this meeting our board went on record as being opposed to these amendments and has so indicated to the Minister of Education. A copy of this letter, by the way, is attached to the brief.

Perhaps we could very briefly outline the reasons for these objections. First, dealing with subsection 92(5) where it is proposed that the words, "for an aggregate of at least 20 teaching months of paid service," be struck out and replaced by the words, "for more than one full year as defined by the Minister by regulations."

Our board has two concerns:

- (a) as to the intent and real meaning of "as defined by the Minister in regulations;" and
- (b) that the period of one year is not adequate to allow for proper evaluation of a teacher coming on staff with a school division.

In fact, the one year is really about eight months of actual teaching time. As under the terms of Form II contract, notice of dismissal or termination must be given before the end of May if we wish to terminate at the end of June. So we have to really make up our minds early in May if a teacher is to be terminated.

This short period of time, about 8.5 months, does not allow adequate time for counselling, or a period of adjustment, or improvement as may be needed as a result of the evaluation process. This would then mean that if there is any doubt, the division could not take a chance and would let the teacher go without really giving him or her a fair chance to prove themselves. Our board strongly advocates that the period of two years be provided by legislation before a teacher is granted tenure and that this should be clearly defined so as to avoid any confusion in interpretation.

This two-year period was originally established by an agreement reached between the teachers, trustees and government and should not be changed without mutual agreement of all concerned. Each and every school division must and should have adequate time to properly evaluate a teacher and to be able to allow a period of time for a teacher to make necessary adjustments, to try and meet the expectations and quality standards required by each division.

With regard to subsection 92(6), regarding the portability of tenure after one year of service with any school board in the province, our board cannot accept this proposed change.

Although much is made of the point that no one should suffer with a poor teacher, we all know it is almost impossible to terminate a borderline teacher once they have their tenure. We do not think that it is responsible to ask a division to accept the evaluation of another division. The needs of all divisions are not necessarily the same and the method and quality of evaluations also vary from division to division.

We feel each division, in hiring a new teacher to its staff, should be allowed at least two years to evaluate

that teacher's ability and qualifications and to decide if that teacher meets its needs.

Our board feels that the proposed portability may really prove a hardship to new teachers coming from faculty to their first job, who may have some difficulty in coping with teaching and who may be terminated before they have really had a chance to prove themselves.

Also teachers, who may be terminated by other divisions because of declining enrolment or for any other reason, may have difficulty securing new positions if the hiring authority does not have the opportunity to evaluate a teacher before he or she has tenure and boards will be hesitant to hire the teachers.

Our board feels that we who are responsible for providing a quality education to the children in our division should also be given the opportunity to select the best teachers available and to be given the opportunity to evaluate such teachers and be satisfied that they can provide a more than adequate service for educational community. There must also be time to allow a teacher with potential to be able to develop and become a better-than-average teacher. The pursuit of excellence should not be compromised by mediocrity.

In summation, our board would respectfully submit that the tenure requirement should be for more than two consecutive school years of teaching service with a division; and as such, tenure should not be portable from one division to another. In light of the strong opposition to these proposed amendments, 92(5) and 92(6), it would seem reasonable to delay the enactment of these amendments so that opposition being expressed, can be considered and taken into account.

Thank you.

MR. CHAIRMAN: Are there questions from members of the committee? Seeing none, I thank you very much for your presentation, Mr. Novak.

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

MR. CHAIRMAN: Mr. Art Dyck.

MS. L. MacINTOSH: Mr. Chairman, if I might be permitted, Mr. Dyck has had to leave and as well the representative from the Garden Valley School Division has had to leave and they have asked me as a table officer of MAST if I could present these to you on their behalf. Would that be permitted?

MR. CHAIRMAN: Is that agreeable to members of the committee? (Agreed)

MS. L. MacINTOSH: Thank you, Sir. My name is Linda Macintosh. I'm a Director at large with the Manitoba Association of School Trustees. The briefs from the Rhineland School Division and the Garden Valley School Division both support the position taken by the Manitoba Association of School Trustees. Both of these gentlemen have given me permission to sum up, in the interest of saving time, their points. Since their points do repeat, in essence, what has been said in Mr. Marshall's brief, I won't go into a great deal of detail on them.

The main point I would like to make, on behalf of these two school divisions, is that the points that they

make do support completely the position as presented by Mr. Marshall. I would ask you to consider that in listening to these briefs, as you notice that they do tend to repeat the same points over and over; I ask you to consider that these points then are consistently felt by school divisions across the province. They are not the thoughts of one particular executive or one particular school board; they are consistently felt by all boards, and that is why you are hearing such a great deal of repetition. These boards come from every part of the province in every kind of circumstance and, yet, their reactions to this bill are unanimous.

These gentlemen have asked that their briefs, while they may be repetitious, be seriously considered; that they not be taken lightly as the whim of an association that, as Ms. Phillips has said, have declared war on the government, a statement to which I take, personally, great offence because the implication in that statement that the trustees have declared war on the government and, therefore, the government should lower the boom and make their legislation even more restrictive, to me, is a tremendous violation of the democratic process.

What you are essentially saying, in that joke which was in very poor taste, is that if we rise and object to a legislation with which we do not agree our penalty for employing our freedom to speak and exercise our democratic will is to be punished. I think, as a trustee, I resent that as an individual; I resent that as Vice-chairman of my own board; I resent that as a Director of MAST. I would hope that this committee, when they do come to study these concerns, would take a more responsible, enlightened, democratic attitude to the concerns that we express and to the concerns that are outlined by the Rhineland and Garden Valley School Divisions.

The Rhineland School Division, Mr. Chairman, has a letter that they would like to submit. The Garden Valley School Division has briefs for the members here. Are there any questions?

MR. CHAIRMAN: Are there any questions from members of the committee?

Ms. Phillips.

MS. M. PHILLIPS: Yes, Mr. Chairperson. I do want to respond to the comments of Ms. MacIntosh. My interpretation of the last few paragraphs of Mr. Marshall's brief, where he was going to call out the troops and do whatever he could possibly do, not only to stop this legislation, which is certainly within his democratic rights to do, but also continue in terms of his democratic rights to assure the defeat of this government, and he seemed to make that case fairly strongly. If my interpretation was incorrect, then I certainly apologize, both to Mr. Marshall and to the Association.

It seemed to me that the Minister had very wisely suggested a compromise of a one-year probationary period, rather than a two-year as is present; whereas the Teachers' Society was asking for due process from Day One. I did not intend my comments to be a joke; I was saying that if there was that much objection to the position of due process being extended, that if we were going to be into that kind of a battle with MAST - which I sincerely hope we will not be, because we

have taken the compromise position - then perhaps we should have listened on the principle that Mr. Marshall says he does not object to, which is the right to due process at some point in time, and moved that down to Day One if MAST, in effect, your Association does not disagree with that principle, but is only concerned about the time line.

So I did not mean to be personally insulting to either the organization or to Mr. Marshall. Perhaps I did not express my opinion as clearly as I should have. I do apologize if you took it that way.

I am concerned about MAST, whether they are in favour of the principle of due process, and just concerned about the time line. It seemed to me what he was saying at the end of his presentation was that if we move this down one year that all stops are out.

MS. L. MacINTOSH: Is that a question?

MS. M. PHILLIPS: No it wasn't a question, it was a response, and I did want to put that on the record that I did not mean to be insulting, but I did certainly accept his challenge very seriously.

MS. L. MacINTOSH: Mr. Chairman, I believe Ms. Phillips indicated earlier that we were not to ask questions of this committee, but I do appreciate her response nonetheless.

I would like to respond to her response, if I may, and that is that it is very subjective as to whether or not you can call this legislation a compromise. It is a compromise, perhaps, in the opinions of some; it is not a compromise to the trustees who said, in our presentation on June the 7th, that we felt that the existing tenure provisions should remain as they are, 20 years plus one day. — (Interjection) — That would be lovely. That's really wishful thinking. Pardon me, 20 months plus one day. I would love to see that split down the middle. Twenty months plus one day split down the middle is 10 months for everyone, under all circumstances, and you're not doing that in your portability. So you can believe it's a compromise, Madam, should you desire.

MR. CHAIRMAN: Are there further questions? Seeing none, I thank you on behalf of those two school divisions.

Mr. Buchholz.

MR. G. BUCHHOLZ: Mr. Chairman, Madam Minister . . .

MR. CHAIRMAN: Mr. Buchholz, can we have a moment for the distribution of your brief?

MR. G. BUCHHOLZ: Certainly.

MR. CHAIRMAN: Mr. Buchholz, will you proceed.

MR. G. BUCHHOLZ: Mr. Chairman, Madam Minister, and members of the committee. I am representing the Manitoba Association of School Superintendents, as President, and with me at this late hour is Walter Melnyk, 2nd Vice-President of the Association. Before we had other executive members, and also the executive but

some of them had to travel long distances and they have left, and I apologize for that.

The Manitoba Association of School Superintendents is presenting a very short brief, not that we have not much to say about this, and that this is very close to our heart, but we think because of the nature of the hour and the understanding that you are in Speed-up, we wanted to bring these points succinctly, to address them so that you could read them, study them and possibly heed our advice.

The changes that are proposed in Bill 77 do not only affect teacher security but also the quality of education in Manitoba. It is our Association's hope that the Standing Committee on Industrial Relations will take the quality of education into consideration when it reviews Bill 77, not just security of tenure.

The Manitoba Association of School Superintendents has many concerns about the proposed changes to Section 92, subsections 5 and 6 of The Public Schools Act. This presentation then briefly outlines the difficulties that these changes will pose to the quality of education in the Province of Manitoba.

Bill 77 shortens the non-tenure period for new teachers and it introduces the portability of tenure for experienced teachers across the province.

A. New Teachers to the Profession

A new teacher during the probationary period is offered the opportunity to learn, to improve prior to gaining permanent staff status and therewith the right of tenure as outlined under Section 92 of The Public Schools Act. Teachers need time to develop as professionals before a decision is made in regard to their employment status. Shortening the probationary period requires a much earlier decision of assessment and a final evaluation as to the retention of that teacher.

The teaching act is one that is both complex and extensive. A teacher has to complete at least one whole school year before he/she has dealt with all the facets and various tasks and responsibilities of that position; one whole school year. Sound evaluation practices - and I underline sound evaluation practices as we talked about it here today - require that the evaluation take into consideration the performance of the teacher not only in the few areas but reviewing the total performance throughout the school year, and that's why the evaluation cannot be done properly in three weeks, six weeks, or nine weeks, or three months. Making less time available, as this legislation suggests - 8 months in practical terms in a school division - it comes down to 8 months during the probationary period to assess a teacher, is both unfair to the teacher involved and to the student in the classroom.

Changing the probationary period for a new teacher so that it approaches that of the industrial model will have the effect that:

- a) It will leave inadequate time to adjust to the local situation;
- b) It will leave inadequate time for teachers to prepare, revise and review the program delivery systems;
- c) It will leave inadequate time for teachers to become familiar with the local services and materials to develop their program to its fullest potential; e.g. resource services, media services, student placement, educational

support services, clinical services, what have you;

- d) It will leave inadequate time for administrators to do a thorough job of teacher evaluation, formative and summative.

And I particularly underline the aspect with a new teacher "formative evaluation." We're fooling ourselves if we think that 6 weeks, or 12 weeks of practice teaching is adequate preparation for taking over a classroom. The first year is very much a trial year, trial and error, and many a teacher has floundered and stumbled in the first year, and has turned out to be an excellent superior teacher with proper counselling and growth. That opportunity, ladies and gentlemen, will be missed.

- e) It will leave inadequate time to decide on potential vs. actual teacher performance based on observation, performance and change capability.

Bearing these points in mind how will the proposed changes benefit the quality of education, I ask you? Teaching is not an act that is easily mastered, nor easily evaluated, and it requires opportunity of growth and positive support.

B. New Teacher to a School Division with Previous Experience.

The Manitoba Association of School Superintendents has major concerns in regards to Section 6. The time element of more than one year is now reduced to zero for teachers who have served another school board in the province for more than one year. The school board has at its disposal only two sources of information regarding teacher performance prior to contracting service. The interview yields some information; however, there is no actual observation of the teaching act. References solicited from previous employers are the other source of information. There is no on-the-job opportunity for observation or assessment before the teacher has gained tenure. It is of great concern that there would be no knowledge of adaptability to the local situation.

It's quite a difference about teaching in St. James-Assiniboia versus teaching in Churchill; or teaching in a one-room school, six grades, or teaching a Grade 5 class that's homogeneously grouped; or teaching in a core area. One person may well succeed in a middle-class income area in Grade 5, but maybe have a task that he or she cannot handle in the core area and vice versa.

So how, I ask you, do references and credentials certify to the employer that you will have a successful candidate as of Day 1? I suggest to you that the probationary period in employee relations in whatever field has been always regarded as part of the selection process. Now we will have this part of the selection process eliminated. How will that improve quality of education, I ask you?

If a school board had to defend, in an adversarial context, a termination of a teacher who is new to the school division, though he may have previous experience, the problems that are inherent with the process of arbitration were very well illustrated today, I believe, that there are so few arbitrations. What conclusions can one draw from that, I ask you - that there are no problems and, therefore, there's no need for arbitration? Is that the first conclusion that occurs?

How about the other side of the coin, that the process is so arduous that very few will want to get involved in it? Because the teaching act, when it comes down, is not easily evaluated and categorized, therefore, it unequivocally cannot be proven that there is marginal performance, superior performance, average performance or incompetence.

It can be shown that, on a relative scale, some performance is wanting, but to prove it absolutely, categorically, without a reasonable doubt, which our learned friends who usually sit on the arbitration boards require, that it was not the kids' problem, that it was a teacher problem - and often it's stated, well, we just got a lousy class. We have a lot of misbehaviour in this class and a bunch of derelicts and so on, and they are causing this problem. How can you create another situation unless you take it historically over a longer time period with another class again? So this situation goes, because the evidence that is produced by children is not taken by these arbitration boards as evidence because it has to be an adult that can testify to any extent on this question.

So when it comes to arbitration boards, the legal jurisprudence indicates that in most cases, unless you're absolutely incompetent, you are going to win. Therefore, there is a large reluctance on the part of school boards, superintendents, principals, what have you, to press a case to the point of arbitration. What impact does that have on quality of education, that reluctance?

This bill certainly is not going to improve or work against that reluctance. I suggest, if we were going to address that question of that reluctance, what we should have maybe looked at is strengthening of evaluation processes through regulations, or additional support.

Why would a division contract the services of a teacher whom they will not have opportunity to assess before all rights to due process are entrenched? Will the proposed change force school boards to delete the hiring of experienced teachers into their system? This would be a real retrograde step in a superintendent's point of view.

If we are going to be bound that we cannot hire experienced teachers, my own school division would drastically lose in that process because we were very fortunate in the past, being an urban school division, to be able to attract very experienced and qualified teachers. If there is going to be a fear developing that if tenure as of Day 1, I can see that door being closed as my prerogative to hire. That, I think, is a retrograde step.

How can these changes benefit the hiring practices of school divisions and, finally, the quality of education offered by the system?

Along with these concerns appears the difficulty regarding part-time teachers, which has not been addressed. There is no specific reference to the application of the proposed changes to part-time teachers. Is their experience accumulated through several years to reach an aggregate of more than one year? Will part-time teachers gain tenure? The whole area of part-time teachers has not been addressed, and perhaps it's going to be addressed in the regulations.

C. Conclusion

Teachers in their probationary period do possess rights similar to the average citizen. They can challenge

dismissal through the courts. They can ask for the reason for dismissal. Within seven days, we have to supply it. They then can have a hearing in front of a school board with legal attorney or whoever else they wish to bring along. Then if there is sufficient case that warrants to take it to court, they can take it to court because the Constitution, as was referred to by the Teachers' Society, and The Human Rights Act grants an individual considerable latitude and rights. But what is involved in the court case?

In the court case, if you're taking a frivolous case forward, charges may be charged against you. The cost of the case may be charged against you. In the arbitration hearing, it's usually split 50-50, which changes the ballpark on the operations quite a bit.

These substantive rights are theirs through common law, The Human Rights Act and the Constitution. Section 92 of The Public Schools Act provides adequate protection, and the superintendents concur with the tenure rights for teachers, and they have been beneficial for education in Manitoba since they were introduced in 1958 - or '56, pardon me. The teachers of Manitoba enjoy due process legislation which is very similar to the protections offered in other provinces - not in all provinces, some provinces have a little better, some have a little worse - but in general terms, it's very similar. We reviewed the Manitoba scene and, as even came out today, when you talk about 30 cases of 700 new teachers coming into the province or into the profession, and we have 30 cases or 5 percent fall-out rate or disputes, has the case been made that the scene requires adjustment today at this time? We believe, as superintendents, that the case has not been made, that there is an adjustment required or warranted.

Therefore, the Association urges this committee and the Minister to table this legislation and review it at some later time.

I thank you.

MR. CHAIRMAN: Ms. Phillips.

MS. M. PHILLIPS: Thank you very much. Sir, you have made some very important points and brought some new points into the discussion about evaluation and the difficulty of that evaluation. I really appreciate the points that you have made, in terms of raising those difficulties to our attention.

I think we agree that sound evaluation practices are required, and it is a matter of whether it's a one year or a two-year period. I think the point about reviewing the total performance throughout a school year is really the answer to why we did not move for due process from Day One, in that, if you're an electrician and it's much easier to evaluate whether you wired that house properly on your first assignment. So, I think that's very legitimate, except when you get to the portability part.

MR. CHAIRMAN: Ms. Phillips, do you have a question?

MS. M. PHILLIPS: Yes, my question dealing with the portability, because I think you've answered the one year and I think we have answered that, that you do have the one year plus one day. In the portability part, it seems to me you are still contending that tenure means, with an evaluation in that circumstance you,

as a superintendent, are not able to recommend dismissal. You are also confusing, are you not, the tenure versus the fair hearing due process?

MR. G. BUCHHOLZ: No, I'm not. I understand fully what tenure means and I fully understand what due process means. Unfortunately, the due process aspect is American lingo and it's come into our scene because of the American Constitution. Our Constitution is relatively new and, therefore, due process has been talked an awful lot in the United States, but essentially it comes down to the same thing as far as what section of the act we're talking about.

In 92, due process under the law, a teacher has that through the courts; but in terms of having the right for arbitration by a third party automatically, and the association presently can counsel a teacher not to go; but I like to see a teacher, if they wanted to push the Association, the Association would have to take the case, if they liked it or not, because in most likelihood they would have to take the case, and that's the legal opinion we have. Essentially they could push the case and they would have to take the case, as a matter of right of that individual, because he is a payer of dues. If he feels that he feels he's been wronged, then he can have it arbitrated, and arbitration cases are very expensive.

In my experience as a superintendent, as a principal and as a teacher, school boards and administrators are reluctant to get involved in the messy deal of an arbitration, so they usually compromise much earlier. Now in a larger school division the compromises are much easier to handle, but still there is compromise made.

Now, I tried in this brief, Mr. Chairman, to point out that the selection process requires references, requires the applicant to come for an interview or present himself with credentials and so on, but generally it's regarded that there's a probationary period in the selection process. As long as the school board is an independent employer and they are involved in the selection - I don't think anyone has taken that right away from them - then they should have the right, for the probationary period, to select an employee if they're going to be held accountable for that performance of that employee.

I understand that you're saying, well, you can still take them to an arbitration case and you can dismiss them if they're incompetent. But I recommend to you, study the arbitration cases in Manitoba. Mike Czuboka wrote a book - he was a Superintendent in Beausejour - on tenure in Manitoba. I'd recommend that as reading, because it addresses this very question, and the number of cases that we've had have not addressed marginal performance when teaching act, and because there's an inherent reluctance of school boards to spend, as was suggested, \$25,000, \$30,000 in the process, the evaluation process, my colleagues have been working hard to improve. We're far arrived from where we wanted to be, I assure you, but we are I think, in the state of the art, we are pretty well comparable to most of the other provinces in North America. We use their resources and other people's resources to upgrade our skills, but our legal advisors tell us that if you want to terminate - you see before we take any case for termination, we discuss it, before we even take it to

the board as superintendents. We discuss it with legal counsel and legal counsel says well unless you have a-a-b-b-c-d-f documentation from Day 1 to Day 200, and have very much evidence, forget it, because you're going to come out with egg on your face, Mr. Superintendent. So then what we now do, when we decide to go to an arbitration case, where the performance of a teacher is incompetent, we document every step and then we get charged with harassment, and so it goes.

MS. M. PHILLIPS: I agree that the term "due process" is rather new. It was rather new to me, being involved in the Trade Union Movement, we used to say just cause.

MR. G. BUCHHOLZ: Just cause, and that's really what a tenure - dismissal for just cause, you've got to prove cause.

MS. M. PHILLIPS: Right. In terms of the probationary period, again, on your discussion on portability - you'll have to pardon me, I'm getting tired - my experience, in terms of a lot of other collective agreements, which is what we're dealing with in one form or another, is that in most cases where someone moves to another job, be it a promotion or whatever, that in that position one does not lose one's right to a just cause hearing; that oftentimes they might be back on a probationary period, but management has to prove just cause for why they then remove them from that position.

MR. G. BUCHHOLZ: That's correct with our teachers, Mr. Chairman, that as far as a teacher in a large school division like Winnipeg No. 1, St. James, River East, and so on, if a teacher goes from that to a co-ordinator's position or to a principal's position, they retain their tenure rights as employees of that school division; but you know what this introduces is provincial, so then essentially what you're looking at is a provincial employer of teachers, and I guess if we were all working for the department, I could reasonably say it's the same employer. You would also have the same evaluation system throughout; you would have a hierarchy that would evaluate similarly, or insist, and we also get good access to your evaluation.

But right now, I mean I'm not talking against my colleagues or anybody else, but there is a reluctance in our society to give accurate references. Why is it? Because of The Evidence Act; because if you make any derogatory statements, you may have a suit on your hands. So then you have to read between the lines, and that depends how good an between-the-lines reader you are.

MR. CHAIRMAN: Ms. Phillips, do you have a question?

MS. M. PHILLIPS: Yes, Mr. Chairperson, a final supplementary?

MR. CHAIRMAN: A question?

MS. M. PHILLIPS: Yes.

MR. CHAIRMAN: Thank you.

MS. M. PHILLIPS: That was a question mark at the end of that statement, just like my honourable colleague across the table.

MR. CHAIRMAN: Yes, well, it was a long question.

A MEMBER: Are you getting testy, Myrna?

MS. M. PHILLIPS: Yes, I'm getting testy.

I understand the difference between a common employer then, as you are pointing out that being the significant difference. However, what we have here is the workers in this situation belonging to a common union dealing, in essence, with school trustees and school boards who also belong to a common association with a legislation that covers everyone, regardless of what school division they work in.

It seems to me, that would be the relevant particulars that come into play here in terms of someone's career in the teaching profession throughout the Province of Manitoba, certified to teach throughout the Province of Manitoba, that there should be after some length of time, some right to their experience being taken into account and just cause being a right due to them. Are you not in agreement with that?

MR. G. BUCHHOLZ: I would prefer, and our association recommended to the Minister, a compromise. The compromise that we recommended was actually one year for those teachers that have experience and two years for a non-tenure period for those that have no experience. That was really the compromise we suggested from the present legislation and we thought that was sort of middle ground - that was our concept of middle ground - but when it comes to that question, to be consistent, if you're a university professor and you're at the University of Manitoba, you don't have tenure rights in the University of Brandon; or if a university professor at the University of Winnipeg, you're going to have tenure rights in the University of Manitoba - similar funds, similar structures and so on - so I mean that legislation doesn't address that question.

Let me take the question a little further. If you're working for the Steelworkers of America or any other large union, there is Stelco, and the protection that you have under their contract with Stelco will not go across with International Nickel or another outfit - I don't know another company that the union represents, but it's another large company - it only involves that contract with that company and that employer and as long as you regard school boards as autonomous employers. If you do not, if they become non-autonomous employers, that's a different question. But as long as they retain autonomy and are independent employers, I believe they should have a right in the selection process because they're accountable for that selection, and the probationary period is always regarded as part of the selection process. Now granted, in the teaching profession and in the major professions, the period of probation is longer because of the nature of the act.

You referred, for example, to social workers in the Civil Service but a social worker's case load, in most cases, is very similar. So if you assess three months of case load, you get a pretty good, accurate picture

of the work of that social worker. But the teaching act, as I suggest to you, goes for a 10-month period with most teachers, unless they're on the semester system, but for most teachers it starts in September and finishes in June. Until you face the last day of school and till you've given the final report card, etc., you really haven't completed the whole act.

MS. M. PHILLIPS: Sir, your analogy left out one important function. This legislation, I would suggest, would be similar to The Labour Relations Act or The Employment Standards Act, that would cover employees from all different employers. Whether a particular group had signed a particular contract that gave them more, or different, or varied over and above that kind of benefits, in terms of their pension plan, sick leave, whatever, it seems to me that that's where we're at with this legislation in terms of dealing with the rules that school boards and the employees work under in this province. We're just suggesting that just cause be one of the facets, in that an individual employer negotiates with their employees.

MR. CHAIRMAN: I don't believe there was a question there either.

MS. M. PHILLIPS: Question mark.

MR. G. BUCHHOLZ: I don't know how I should answer that. I have difficulty in terms of addressing the just cause component, in terms of the employer's relation with his performance and the responsibility that the individual undertook.

I believe that The Public Schools Act is addressed in two ways. Why do you think, why aren't teachers under The Labour Relations Act? Why are they not? Is that a fluke of history, an accident, or why is it? Why is it right across North America that way? Why is it across Europe that way? What do you think that is, a fluke or what? I'll ask that question back and maybe it's a rhetorical question. Why is there a separate act which deals really with labour relations matters, but set quite apart?

A MEMBER: We're a unique government in North America.

MR. G. BUCHHOLZ: No, the same attitude to this kind of legislation is pretty well North American and European, Australian, in a sense that the education component is set out apart; and in The Education Act or Public Schools Act or whatever you want to call it, it deals with labour relations matters which are deemed appropriate for that segment, set apart from labour. That's not an historical accident. That was done by intent and I believe there isn't very much reason. It's another treatise to go into that aspect of why that is necessary and why it's important.

Today I was trying to make an argument on behalf of the association that it protects quality of education - and don't mix apples and oranges. I know that The Labour Relations Act addresses probationary periods in much shorter time periods; and I know from your feelings you want to be fair and make it equal, but it doesn't make it equal. The most unfair thing is to treat

unequals equally and that's what would happen with this because it would really have a negative impact on the quality of education.

MR. CHAIRMAN: Are there further questions?
Mrs. Hammond.

MRS. G. HAMMOND: Just a supplementary question. Mr. Buchholz, you mentioned, talking about the portability, that the door would be closed to hire experienced teachers. What exactly then, as a superintendent, would you . . .

MR. G. BUCHHOLZ: There are two options under this legislation; we would hire teachers who are starting; otherwise, we would hire those that have been out of the classroom three years or more or, if Dr. Asper's suggestion was taken, five years or more; or we would hire people outside of the province, they would become our prime candidate. I would take a flight to Toronto, and hire there.

MR. CHAIRMAN: Further questions? Seeing none, I would like to . . .

MR. G. BUCHHOLZ: But you can see the dilemma of the employer.

MR. CHAIRMAN: Thank you, Mr. Buchholz.

MR. G. BUCHHOLZ: Thank you.

A MEMBER: As it would say in the Red Rose tea ads, what a pity!

MR. CHAIRMAN: Ms. Linda MacIntosh.

MS. L. MacINTOSH: Mr. Chairman, Linda MacIntosh, Vice Chairman of the St. James-Assiniboia School Board. Briefs are coming to you.

The St. James-Assiniboia School Board appreciates . . .

MR. CHAIRMAN: Could we have a moment for your brief to be distributed. Okay, the committee members say you can proceed.

MS. L. MacINTOSH: Thank you, Mr. Chairman. The St. James-Assiniboia School Division appreciates the opportunity to make representation to this committee regarding Bill 77 as it relates to teacher tenure.

We have several concerns regarding the proposed changes to Section 92, subsections (5) and (6), in particular. Teacher evaluation has, as its major objective, the improvement of instruction and, finally, the best quality education for the children of Manitoba. The time element that allows for coaching, as contrasted to umpiring, is of great importance. If the factor of time is being eroded, it will have its impact on personal decisions. Traditionally, school boards had two years to coach newly appointed teachers, assist them to adjust to local situations and local demands, and finally the school board took the role of umpire before tenure was given or employment terminated.

With the proposed change to read "more than one full year", umpire decisions will need to be made before the first of June of the first year of a teacher's employment. This leaves nine months for administrative personnel to assess, to coach, to assess improvement and to umpire an employee's performance. This raises several concerns:

1. Teachers are the key to giving good quality education to children. They need time to develop as professionals before final decisions are made about tenure or termination. Making less time available for school divisions to assess and develop teachers seems unfair to both teachers and the students whom they teach.
2. Our administrators believe in training and coaching inexperienced teachers to help them develop their abilities. Yet the time change gives teachers no second chance, they have no second year in which to blossom. A teacher who in their first year may show promise and potential but, perhaps because of shyness or inexperience don't display that full potential, will have no second year in which to blossom. This means that our administrators are not able to evaluate whether improvement has taken place in the teacher's second year of teaching. This just doesn't seem to be a just approach to teacher evaluation.
3. With the proposed time changes, decisions will have to be made much sooner; that is, decisions have to be made before the finish of the first year of teaching. We don't, in reality, get to wait the ten months and one day; we have to make that decision before we have to give termination, which is before the end of the school term. Decisions made in such a hurry will not be of the same quality as they were when administrators were given two years to do a proper assessment.
4. Our division feels that a new teacher should be given time to get to know our school division, its policies, its resources and its public which may well be different from the policies and resources and the public of a school division in Flin Flon, or Churchill, or Tuktoyaktuk, or and Indian Reserve, or a rural community, or any of the other widely diversified communities of Manitoba. The needs are not the same; the skills and the techniques that are utilized are not the same. One year is not enough time for a teacher to adjust to a new seating and develop programs for the children. This proposed change places the new teacher in a very difficult position. Assessments will have to be made, and final decisions will be made before the teacher is given a fair opportunity to adjust to the local situation.
5. Our division is not able to understand, and I know that Ms. Phillips is not able to understand a lot of things, and we are not able to understand how teachers will benefit by not having a second year to prove their ability; how will this help them to have their

time to prove themselves restricted, to face termination possibly before they really need to because the boards are afraid to take a chance on granting them tenure? Will this new legislation somehow result magically in teachers developing more quickly than they did before by putting extra pressure on them? Will that make them suddenly blossom? Will that give them more confidence to put them under more pressure? I think not. I don't think any reasonable person would feel that putting a new teacher under undue pressure will give them the confidence to develop more quickly. Our division feels that these changes are producing an injustice to a teacher new to our division and we care about the new teachers.

6. Could you please, in your study, tell us what was wrong with the two-year time frame that existed? In our division when we bring in major changes usually we bring them in in response to a problem. Has there been a problem with the two-year time frame? Why do we have this change? Our division sees no benefit to the quality of education in this change and no benefit for the fair treatment of teachers.
7. Subsection 6 now gives tenure to a teacher who comes to us from another division. Our division can interview and we can check references, we can do all of those things and we can go on a gut feeling that this teacher is going to be okay, and so we hire. But, after the teacher has been given the contract, tenure is in place. There is no chance for observation, no opportunity for assessment, nothing that we can do if our gut feeling was wrong, nothing that we can do that the references from the little Indian community up North, which were excellent, prove to not meet the needs of our urban setting where the needs are different, where the skills required are different.

Conversely a teacher doing an excellent job in an urban setting may find in one of these isolated rural settings that their urban standards and their urban skills don't apply, don't work. That board then is in a very awkward position because they don't have a great supply of teachers from which to draw, and that is what the Northern Board said, and it was the Northern Boards that said it, when they said that they were concerned this would lead to a higher turnover than they already have in the North. How will this encourage our division to hire experienced teachers from outside our division? You just heard the President of the Manitoba Association of School Superintendents who happens to be our particular school superintendent in St. James. How is this going to help us employ teachers from other divisions? It is not. It's going to do the opposite. This is going to limit employment opportunities for experienced teachers, and that's not fair to teachers. It's not fair to limit their opportunities.

My advice to any teacher who wants to move to a new division would be to run out and try to move right away tonight before you pass this ill-conceived legislation, because it's going to be much more difficult

for them after it passes, and I don't want to see that happen to them and neither does my board.

Is this a step to province-wide seniority? That's a serious question I would like you to consider; it's a serious question I would like the opposition to consider. There were comments tonight made about evaluation that give me concern that perhaps it might be in the minds of some that we should move to provincial-wide evaluation procedures; that we should have guidelines to tell us how we should evaluate on a provincial basis, and that if we don't obey the guidelines, they will become regulations.

8. The part-time teachers and their opportunity to get tenure has not been mentioned in the changes. Do these changes have any bearing on part-time teachers? Do part-time teachers build up to one year's experience and then get tenure? This whole area needs to be examined.
9. By forcing decisions into a shorter time period, the quality of decisions will not be as high as they would have been in a longer time period. These decisions deal with the teachers' future and the quality of education for children. Our division asks that this time frame for making such important decisions not be shortened in any way for the reasons I have mentioned, for all the reasons that have been mentioned by other boards, superintendents and parents here tonight.

In conclusion, the St. James-Assiniboia School Division expresses a grave concern for the future efficient operation of school boards as they relate to teacher evaluation, dismissal, hiring or retention. The change in time element may cause systems to change past practices to formats that may not be in the best interests of teachers and the children in their charge.

This bill doesn't do anything at all to help good teachers. Good teachers don't need this bill. Good teachers do not have a habit of having to appear before arbitration boards. This bill does not help boards get rid of total disasters in the classroom; even arbitration boards are able to recognize out-and-out disasters. The only teachers this bill protects are the semi-competent, mediocre, borderline teachers; the kind of teacher that no good teacher, no good, thoughtful, caring teacher wishes to have reflecting on him or her by association.

No good, thoughtful, caring teacher appreciates having to correct or improve upon somebody else's mediocre teaching, and as has been so capably pointed out by Mr. Buchholz, those kinds of borderline teachers are extremely difficult to remove from the system once they achieve tenure. They really are.

Was the previous situation in such a state of disrepair that these changes are essential? How will these changes strengthen the format for teacher evaluation? How will they strengthen the format for quality of education? We, in our division, have great difficulty finding appropriate answers to these questions. This school division asks that the committee examine their answers to these questions carefully before endorsing these major changes relating to teacher tenure.

I know that the political process is such that you may now feel at this point that you have taken a stand

from which you cannot back down without losing face. You've had it all over the papers, how this bill, all it does is give teachers a reason for why they are fired; all it does is give them a chance to be heard if they are fired. You know that they already have those rights.

I would like each of you to read very very carefully Section 94(2), I believe it is; no - 92(4). I keep getting things reversed. I would like you to memorize 92(4) before you begin your deliberations. I would like you to memorize 95(2), the first part, where The Public Schools Act says that we have to give a reason; we have to let the teachers come before the board with counsel, should they desire, even if they have only been in our employ two weeks.

The statements that I have been reading in the paper don't match with reality. I am concerned that perhaps the Minister of Education really believes that. I know that a lot of people said, well, the trustees are misleading. I hesitate to say that the Minister has been misleading; but I am more concerned about the fact that she really believes that all this does is put in legislation that will allow teachers to be given a reason for why they are fired when that is already in the act. It's already there, and I would hope that our legislators would read what's in the act before they go making funny statements in public, because it could be interpreted as being misleading. Mind you, I would not like to take that interpretation.

I am asking you not to be afraid to lose face. It is not a bad thing to lose face. Sometimes you gain more stature by being brave enough to say, maybe we made a little bit of a goof on this one. There are a tremendous number of people who don't feel this is right for teachers. It's not going to help them in reality; in theory, but not in reality. It's not going to help the kids; it's not going to help us administer the divisions.

The Minister of Education said that 67 percent of the school boards have been able to successfully fire tenured teachers, and it was presented as if - isn't that great? - 67 percent of the teachers that boards think are incompetent have been able to be fired even though they are tenured. Joe Clark didn't think 67 percent was such a great percentage; neither do I. I look at the corollary of that. I see two-thirds of the teachers that boards think are incompetent were able to be fired. That means that one-third of the teachers that we think are incompetent, we were not able to dismiss. One-third of those teachers that we think are mediocre, semi-competent, borderline teachers are back in the classrooms right now teaching the children of Manitoba because an arbitration board made us reinstate them. I don't think two-thirds is such a great majority. I think it's terrible. If I were in private business, that wouldn't happen in terms of people having time.

Ask any engineer how long it takes him to get professional status. It takes two years for an engineer to apply for professional status. They don't get it after three months, they don't get it after ten months and one day, they get it after two years - then they can apply and maybe they'll get it. If they don't get it, they continue working as a graduate engineer without professional status. So I am asking you, please, to be brave enough to not be afraid to lose face and back down from this. I would hate to think that you are going to push headlong into this because you have taken a public stand and you don't want to be seen to be backing down.

We ask for a responsible attitude; we ask that this legislation not go through.

MR. CHAIRMAN: Are there questions from members?
Mr. Harper.

MR. E. HARPER: Yes, just a point of order. I didn't want to interrupt her when she was making her statement, but I believe members are here to present information and also present briefs. They are not here to single out any individual of this committee. I believe they cannot question their abilities or whether they have lack of understanding. I think the public can present their briefs and the committee members can question and seek information from the presenters.

MR. CHAIRMAN: Are there questions from members of the committee? Seeing none, thank you for your presentation.

Dr. Isler.

DR. N. ISLER: Good morning ladies and gentlemen. All I'd like is a note to my wife that I was really here tonight.

SOME HONOURABLE MEMBERS: Oh, oh!

MR. CHAIRMAN: Order please.

DR. N. ISLER: I apologize for not having enough copies of my brief to distribute, but it's relatively short and I really only want to make one point.

I am Superintendent of Seven Oaks School Division and I am here representing the Seven Oaks School Division. With George Buchholz's indulgence, I'm also here representing the Manitoba Association of School Superintendents because I may allude to that organization in my brief.

I would like to direct my remarks to that section of Bill 77 which provides for changes in 92(5) and 92(6) of the present Public Schools Act. May I have your indulgence for a moment to review with you the provisions of 92(5) that stipulate the procedures for the termination of the employment of a teacher.

If any teacher - any teacher - should receive a termination notice, he or she has seven days from receipt of that notice to make a request for reasons for that termination. The board then has another seven days to provide - which it must do - those reasons. If the teacher in question has less than 20 months of paid service with that board, that then is the end of the matter. He or she was given reasons - that's the end of it.

However, if he or she has been employed for an aggregate of 20 months, then the teacher may take the case one additional step - or at least one additional step - to a board of arbitration composed of three persons, usually lawyers, who will then decide on the following and I quote: "Whether or not the reason given by the school board for terminating the agreement constitutes cause for terminating the agreement." I'll repeat that, it says "cause," it doesn't say "just cause". Now there's a distinction and right now it says cause. "Whether or not the reason given by the school board for terminating the agreement constitutes cause for

terminating the agreement." There is no mention in The Public Schools Act of competence or incompetence, or any other reason for dismissal, only whether the reason given constitutes cause. Now I do not quarrel with, nor does the Manitoba Association of School Superintendents quarrel with, giving a teacher reasons for termination or even having those reasons arbitrated by an independent tribunal. The question though is one of standards. Let me explain.

When we engage a teacher for employment, we attempt to hire the very best person available for that particular position. We are not looking for just a competent person, or a mediocre person, or a borderline person, or even a satisfactory person. We are seeking the very best available. Unfortunately, we are not always successful. Sometimes, and it can happen, that the person we thought would do an outstanding job turns out not to perform to our expectations. An attempt is made to give that person some help, but he or she just cannot make it.

Under present legislation we have about two years to evaluate that teacher, diagnose his or her deficiencies, provide the professional help, and then make a decision as to whether or not we ought to retain that teacher, given the circumstances. If we go beyond the 20-month period, we can still terminate, but that termination will most likely be arbitrated by an outside board.

Now back to standards. The standards of that board of arbitration and my standards are normally very different. I want the very best - an excellent teacher, a very good teacher, or just a good teacher - but not someone less than mediocre, not someone borderline. The question is not whether we can fire incompetent teachers, of course we can, if we can show incompetency to an arbitration board, they will most likely concur with our decision, but it is not a question of incompetency. There are very few absolute incompetents - that's not the problem - the problem is the borderline teacher, the near incompetent, the not-so-hot teacher, the one who hates his job, the one who doesn't like kids or the one who just doesn't fit in. He or she may not be incompetent, but just one whom we do not wish our children to be taught by.

Arbitration boards do not terminate for those reasons. Some time ago, I spoke to an individual who has served as a chairman of many arbitration boards. I asked him, can we terminate a teacher for just not being very good? His response was, nobody said every teacher has to be great. Well, with attitudes like that, how can we possibly have the very best teaching staff?

Most of the teachers in Manitoba currently have the right to an arbitration hearing. They have been with their boards for 20 months or more. They can only be fired if they are out and out incompetent or have committed some immoral act. That's the way it is. We accept that. But let us now not grant the privilege of mediocrity to all of the other persons who are now or will enter the teaching profession in the future. Do you want your child taught by a borderline teacher? If this piece of legislation is passed, you will have granted the privilege of mediocrity to every person who now becomes a teacher.

Thank you.

MR. CHAIRMAN: Are there questions? Seeing none, I thank you very much, Dr. Isler.

Mr. Glen Cummings.

MR. G. CUMMINGS: Mr. Chairman, Ms. Hemphill, members of the committee. My name is Glen Cummings. I'm speaking this evening to you on behalf of the Board of Trustees of Beautiful Plains. I have with me three of our administrators who asked not to be introduced but I'll do it anyway. I threatened that I would introduce them as my three bagmen if they didn't stick around. Our Superintendent, Mr. Cecil Cox; Superintendent Special Ed, Dennis Wrightson; and our Secretary-Treasurer, Mr. Bud Hanson.

Obviously, after you've been at it until almost 2 o'clock, the only thing that could be worse than being 12th on the list is being 13th. Some of the things that we hope to present to you this evening have already been outlined in a letter that we had written previously to Mrs. Hemphill and parts of which were included in the presentation from MAST earlier this evening. So our brief is, I hope, by definition, brief. I'm more comfortable answering questions and if there are any, I would endeavour to hand them over to someone who knows more than I do, if I can't answer them.

Beautiful Plains School Division this evening wishes to express our concern with two of the proposed amendments to Bill 77, namely Sections 92(5) and 92(6).

Under 92(5) - The proposed amendment to this section reduces to 10 months the period of employment before reasons must be given for dismissal. This reduction means that that evaluation with a new teacher must be completed within nine months as May 31 is the acceptable date for notification.

Any dismissal after the first year would lead to due process which involves reasons for dismissal and challenge of those reasons. Mrs. Hemphill, in a letter to George Marshall, President of MAST, and I quote, has indicated that: "Simply the right of the person when fired to be told why, and to have the right to challenge those reasons." We accept this as due process, but the procedure for the challenge leaves much to be desired. Arbitration hearings regarding teacher dismissals have become very technical events in which many cases being decided on technicalities of law, rather than the stated reasons for dismissal.

Incompetency in the classroom remains as the only accepted basis for dismissal and, in a profession such as teaching, this is extremely difficult to prove. Local autonomy is also involved in this amendment, as any reduction of local board decisions immediately erodes local autonomy. Parents, school boards, administrators and, in many instances, teachers themselves will find that this change has reduced the options that are available to them.

Many boards and administrators have offered teachers a second chance in the second year before tenure, but this may no longer be practical. Our board has developed a system where we try to evaluate our teachers for improvement. It's a system that our staff has helped us to develop; it's an ongoing program that we are still trying to develop, unfortunately we feel that changes of this nature at this time may short circuit that advantage that we are trying to give potentially good teachers.

Under Section 92(6), this amendment provides for instant due process for any teacher coming to the

division if they have taught for more than one year in any other division in the province. This amendment causes us great concern as it will have a direct impact on hiring procedures and could easily place some teachers at an unfair disadvantage. Preference could be given to inexperienced teachers, rather than to those with two or three years of experience, in order to retain that year of probation. Preference could be given to experienced teachers from outside of Manitoba, rather than experienced teachers from within the province, in order to gain a probationary period, again, I believe an undesirable side effect of this proposed amendment.

Preference could also be given to experienced teachers from the southern part of the province, rather than experienced teachers from Northern Manitoba because they had taught under conditions and circumstances similar in nature. This amendment could literally force teachers presently in the North to a lifetime of work in those schools. It could also apply to teachers in Western Manitoba or in Beautiful Plains, for that matter, because it is our experience that the flow of teachers, as was alluded to earlier by another presenter, is generally from rural to urban after they have gained some experience and can provide sufficient credentials to be employed with a more urban division.

In general, this amendment could drastically reduce the movement of teachers from division to division or from job to job and hence could lead to a deterioration of the programs involved. The challenges of a new position, and the possible revitalization from change could disappear because of reluctance on the part of both boards and teachers to take chances on changing positions. As a trustee and as a parent, I think that is a very vital part of the education system, and the part that I, as a trustee, have been most concerned about.

We contend that these two amendments are detrimental to education; detrimental to the school boards that must work within the framework of the act; detrimental to the administrators whose procedures for hiring will be changed considerably; detrimental to many teachers, especially those who could be discriminated against; and detrimental to students of the various divisions.

Therefore, we wish to suggest that, in the interest of all Manitobans, these two amendments 92(5) and 92(6) be dropped from the proposed bill. If it is not possible to have them dropped, I would think, at the very least, if we could have them tabled at this time for further discussion and consideration. As a parent, and one who is part of a board who is trying to encourage more parental involvement in our division, trying to encourage the development of active parent/school organizations, I believe that this is a very bad time of year to introduce this kind of legislation and hope to get the kind of reaction that tells you what is truly going on out there amongst the parents. When I was first asked to stand as a trustee one thing that I felt we had to do was be the advocate of the students out there, and this evening there hasn't been too often that we have really put the student first and said what is going to be best for the student out there, and I have to make the point that I do not believe that this change in legislation will be beneficial to the students in the long run.

MR. CHAIRMAN: Are there any questions? Seeing none, thank you very much for the presentation.

Jean Beaumont.

MR. J. BEAUMONT: Good morning. My wife is just as understanding as Norm Isler's, so I won't need an excuse.

I must congratulate you because I've been in administration for six years and this is the first time that I've been able to complete a marathon. Six hours of committee hearings certainly is quite an accomplishment.

Many of my colleagues suggested that I make the division's presentation in French, but because I'm not sure where the government's bill on bilingualism is at this time, and because of the lateness of the hour, I've chosen to read it as prepared.

I'm addressing this committee tonight as the Superintendent of the Seine River School Division, pursuant to a motion adopted by our board at a June meeting, copies of which have already been sent to the MLAs in our region and to the Honourable Maureen Hemphill and, really, it summarizes pretty well what you have heard earlier this evening.

If I may, very quickly. The Trustees of Seine River School Division No. 14 must oppose certain of the changes to The Public Schools Act being proposed in Bill 57. The Trustees of the Seine River School Division No. 14 support the position and the efforts of the Manitoba Association of School Trustees in opposing the proposed changes.

The Trustees of the Seine River School Division No. 14 oppose any legislation that would shorten the probationary period for teachers and make tenure portable. The Trustees of Seine River School Division No. 14 feel that the proposed changes will make teacher recruitment that much more difficult. The administration will be forced to recruit potential teachers from only those divisions, or those institutions, where there exists a personal contact that can provide reliable references. It would become difficult for teachers to change from one division to another.

The proposed changes will add a great deal of pressure to the division's teacher evaluation policy and procedures. The rookie teacher will have only seven or eight months to gain permanent employment. A division will sooner release a beginning teacher than risk a new assignment or a second chance. Teachers dismissed at the end of the first year of teaching may have some difficulty gaining lifelong employment in their chosen profession.

The Trustees of Seine River School Division feel that the change that will be provided by the portability of tenure from one division to another will add stress to the division's recruitment and evaluation procedures. The trustees believe that the proposed changes will make it more difficult to recruit experienced teachers since divisions now will be reluctant to hire a person with tenure. A division may be confident in its own evaluation process, but may have little understanding of the process procedures or references or standards that exist in other divisions.

The portability of tenure would make it difficult, if not impossible, for a division to evaluate a teacher according to its own specific needs and standards, since the division would have to rely solely on information from another division. School divisions

could end up facing each other in court over the quality or the consistency of references.

The proposed changes will place more pressure on the teacher evaluation process. The Seine River School Division No. 14, much like most other school divisions in this province, has had an excellent system of teacher evaluation for many years; yet the general public and many administrators feel that this system protects the nearly incompetent teacher and the incompetent teacher while doing very little to reward the effective teacher. The proposed changes will only strengthen this view.

There have been many instances over the last few years where decisions by arbitration boards have only served to strengthen this particular viewpoint. The proposed changes would restrict a division's ability to recruit and evaluate teachers. Many decisions now made by local boards would be made by other boards or by arbitration. The local board would have much more difficulty in responding to local needs.

The trustees of the Seine River School Division No. 14 find it difficult to comprehend why the Government of Manitoba has chosen to make changes to The Public Schools Act which seem to infringe on school boards'

management rights. We can only hope that the Minister of Education and the Government of Manitoba will soon be in a position to explain their rationale behind these changes proposed in Bill 77 to the general public and this province.

The trustees of the Seine River School Division believe that the Minister of Education and the Government of Manitoba should withdraw these proposed amendments to The Public Schools Act and return to more consultation with the appropriate educational organizations of this province. The trustees believe that a solution, acceptable to parents, teachers, administrators and trustees, must be found.

Thank you.

MR. CHAIRMAN: Are there questions? Seeing none, I thank you and I thank all the other members who made presentations. Before we get caught by surprise by the rising sun, I would appreciate a motion for the committee to rise.

A MEMBER: Committee rise.

MR. CHAIRMAN: Committee rise.