



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

STANDING COMMITTEE

on

INDUSTRIAL RELATIONS

38 Elizabeth II

Chairman
Mr. H. Pankratz
Constituency of La Verendrye



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MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Fourth Legislature

Members, Constituencies and Political Affiliation

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BURRELL, Parker	Swan River	PC
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**LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON INDUSTRIAL RELATIONS**

Thursday, June 22, 1989

TIME — 8 p.m.

LOCATION — Winnipeg, Manitoba

CHAIRMAN — Mr. Helmut Pankratz (La Verendrye)

ATTENDANCE -11- QUORUM — 6

Members of the Committee present:

Hon. Messrs. Cummings, Driedger (Emerson),
Ducharme, McCrae

Messrs. Doer, Edwards, Ms. Hemphill, Messrs.
Pankratz, Patterson, Plohman, Rose

APPEARING: Mr. Sheldon Pinx, Manitoba Bar
Association

Mr. Harvey Pollock, Q.C., Citizens Against
Impaired Driving

Mr. Meyer Cosman, Private Citizen

Mr. John Campbell, Winnipeg Police
Association

MATTERS UNDER DISCUSSION:

Bill No. 3—The Highway Traffic Amendment
Act

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Mr. Chairman (Helmut Pankratz): I would like to call the committee to order on Industrial Relations. This evening we will be considering Bill No. 3, The Highway Traffic Amendment Act. I have a list of persons wishing to appear before this committee, and I will name them. If there is anybody else in the audience who would like to appear, I wish you would come and see the legislative Clerk and identify yourself.

I will read them out. Mr. Sheldon Pinx, Mr. Harvey Pollock, Mr. Meyer Cosman. Is there anyone else that would like to make a presentation before the committee? If not, that will be the order, I believe—

* (2005)

Mr. Paul Edwards (St. James): Mr. Chairman, I just want to make sure that in the event that anyone who does want to speak to the committee shows up late, we will ask that question again at the end of the presentations.

Mr. Chairman: Is that the will of the committee? (Agreed)

It is customary to hear the briefs before considering the Bills. Is that the wish of the committee? (Agreed)

Then my next question to the committee is, do you wish to impose a time limit on the public presentations

and the time length that we are going to be spending on this Bill tonight?

Mr. Gary Doer (Leader of the Second Opposition): Mr. Chairperson, I would suggest that we not have a time limit. I think the individuals who are going to present briefs are very knowledgeable on the subject. I am sure they can make their points as lawyers usually do, and other citizens do, in a very concise way. I would suggest we not have a time limit.

Mr. Chairman: No time limit? Is that the will of the committee? (Agreed)

Then I would like to suggest one thing to all Members in the committee that you wait, and you will be recognized before you speak out because everything is being recorded. So with that little bit of advice, I would like to ask the Minister, are you going to make any presentation first?

Hon. Albert Driedger (Minister of Highways and Transportation): No.

Mr. Chairman: No? Okay, then we will listen to the presentations first. I will call them in order. Mr. Sheldon Pinx. This gentleman is representing the Bar Association.

Mr. Sheldon Pinx (Manitoba Bar Association): Yes, I am here on behalf of the Canadian Bar Association, Manitoba Branch.

The first comment I would like to make on behalf of the Bar Association, and I make this point very clearly to all of you Members, is that we do not approve or condone the offences of impaired driving, driving over .08, or driving disqualified, or any other crimes proscribed by law.

Our position deals and will deal with issues such as the presumption of innocence, rights of individuals in our community, and what we perceive to be the creation of innocent victims by this legislation.

We all know about the presumption of innocence, and I do not mean to lecture any of you with respect to that very fundamental principle. That is that anyone charged with a crime is presumed to be innocent of that crime until proven guilty in a court of law.

There are two areas of concern created by the legislation that we have proposed. One deals with the impounding of vehicles driven by suspended drivers, those who are either suspended provincially or by the Criminal Code of Canada. The second category is the suspension of driving privileges for a period of three months prior to a person being convicted of either the offence of driving over .08 or the offence of refusing the breathalyzer.

I think it is fair to say that both of these areas in effect result in the imposition of a form of punishment prior to, in fact, a conviction being recorded against an individual. As we know, when you operate in a system, as we have here in Canada of the Charter of Rights and Freedoms, fundamental justice, fair hearings, and all of those principles, they really are just simply a reflection of that overall principle, that we do not presume people guilty of crimes, we presume them innocent.

* (2010)

The problem firstly, if I might address you, deals in my view with the impounding of motor vehicles. Now, according to the legislation, as we have it in its present form, and I refer you specifically to Section 242.1, a peace officer who has reason to believe that a person has operated a motor vehicle, as defined in this Act contrary to Section 225 of this Act, which is your driving suspended provision, or Section 259 of the Criminal Code, the similar Criminal Code provision, shall seize—and I emphasize these words, Members, shall seize, impound and take into the custody of the law the motor vehicle with which, or in respect of which the offence was alleged to have been committed.

It is our view, and certainly at least our attempt to interpret the rationale of this legislation which appears to be that we want to discourage suspended drivers from driving, period, before they even think about doing it. To do so, we want to encourage the members of the public to be responsible in not either lending vehicles to suspended drivers, to put them in a position where they can commit the offence. The problem with this legislation is, and I will attempt to demonstrate to you how it creates in my view, in this area, clearly innocent victims.

If I might take just but one example and permit me to use perhaps two people at this table in my example, the Honourable Minister of Justice (Mr. McCrae)—assuming this is law today—has his motor vehicle stolen tonight from his residence. It was stolen by the Honourable Leader of the New Democratic Party, Mr. Doer, who happened to be a suspended driver. He takes your vehicle, drives it, and it comes to the attention of the police. Mr. Doer is arrested and charged. He was driving your vehicle which was stolen. That vehicle, according to this legislation, must be impounded. There is no discretion in the officer. It is not a may, he shall, because if he does not he is in violation of the law.

So here you are, the Attorney General's vehicle is now in the custody of the Winnipeg City Police Department. Let us assume for the moment the Attorney General does not have the staff of lawyers to run to for guidance and help, but just as an ordinary citizen, Jim McCrae, he phones the police station and says, I do not understand this. I hear you have my vehicle that was stolen from my garage tonight. How do I get it back? According to the way the law reads, as in its present form, you will be told you have to file the appropriate form, apply to a magistrate or a justice, and bring an application to get your vehicle back providing you have paid the appropriate fee.

Now, you will say, where do I go, who do I see, who do I talk to? Assuming you are the ordinary citizen and

perhaps working, and you do not have the time to spend to figure all this out, you will call a lawyer and perhaps have to retain counsel. So now you have a lawyer appearing on your behalf, bringing an application, satisfying a justice that you are in fact that innocent person, as defined in this provision, that the person did not have the vehicle with your consent. Assuming you establish that and the order is made returning your vehicle to you, it is not over yet because you, the innocent victim in this case, will now have to pay the storage fees for that vehicle that was impounded, according to the law. Not only will you have had to pay your lawyer's fees, and the storage fees, but the law does give you the right to go after the fee from Mr. Doer because you can chase him down to collect the money that you had to pay out of your pocket for the storage of that vehicle.

* (2015)

I have given you an example, which I have attempted to use to demonstrate, in my view and in the view of our association, a very glaring injustice that will be created by this legislation. What I have attempted to do by the example is to demonstrate the areas of cost and inconvenience to that innocent victim in the community, not the driver who was suspended, but the person who did absolutely nothing wrong.

I want to give you a couple more examples. Some of you here who are lawyers are aware that for a person to be guilty of driving while suspended, either under the Criminal Code or the provincial legislation, he must have knowledge that he is suspended. There are situations which do not infrequently arise where people do not receive letters from the Motor Vehicles Branch informing them of their suspension. The onus now, according to provincial legislation, is on the accused to establish that he did not receive the letter but, if he does, he is innocent and has committed no crime.

That innocent person, and I say "innocent in law," and I am not going to talk about legal technicalities and Philadelphia lawyer-type defences, but factual innocence, which I think is very important, factually innocent of a crime, will have his vehicle seized for a period of 30 days and he, because he was a suspended driver, cannot get that vehicle back for 30 days. That is the way the legislation reads.

We have, as an association, concerns about that because again you have an innocent person. We are not talking about the person whose vehicle was stolen being punished, but a person who in fact was innocent of any crime being punished, having his car taken away for 30 days.

Let us assume for the moment that person's livelihood depended upon that vehicle. There are many people in our community whose vehicles are used daily to make a living. That person's car is taken away for 30 days, he may lose that opportunity.

Let me digress for a moment. There was another obvious inequality created by this particular provision, and that is almost a law for the rich and a law for the poor. That is, if someone of means has their vehicle impounded they can afford to rent a U-drive and drive

for the next 30 days, or paycabs every day to commute and do their things that they normally would have to do. What about those who do not have the money to rent a car for 30 days or hire a taxi for 30 days? I just make that as an observation about the inequalities that can be created by the legislation.

Let me give you another example, a husband and wife who live together. The husband happened to have the car registered in his name. He is therefore the lawful owner. She is the one who normally would drive the vehicle. She knows he is suspended but he is not supposed to drive it. It just happened to be in his name because when he purchased the vehicle he did have a licence. He was since suspended. She needs the car—and I am giving you, by the way, real life examples, these are not just hypotheticals picked out of the air, but of situations, as a lawyer, you will see from time to time—because perhaps her mother is sick and she has to drive her to the doctor, she has kids in day care. They have a house to run and personal things to attend to that will involve, from time to time, the operation of a motor vehicle.

Who are we punishing by impounding the vehicle? Are we punishing the disqualified driver or are we punishing another, perhaps, innocent victim, a woman who happened to be married to somebody who was a disqualified driver, and who happened to drive the vehicle when he ought not to be driving it, and it happened to be registered in his name, because if the vehicle was registered in her name, she can now, according to these provisions, apply to a magistrate and ask for relief that it be returned to her.

* (2020)

The view of the association, as I conclude my remarks on this particular provision, is that when you balance what is going to be achieved by this particular provision against the problems that will be created for many innocent members of this public, I simply ask all of you to weigh in your minds that cost, because we are not talking about a vehicle being impounded permanently, that is the disqualified driver who owned the car. We want his car taken away, period. We are not talking about him, we are talking about a whole larger public that will be affected by this legislation in a real and practical sense and an economic sense that is going to cost your public, out of their pockets, for you to pursue this particular legislation, in our view. I say to you that we hope we have given you some food for thought on these provisions.

I am not one who likes to stand and just criticize, because I am not going to be so presumptuous that my argument this evening is going to persuade any of you or all of you not to proceed with this particular Bill in its present form or amended form, but might I make a suggestion if you choose to pursue this legislation that I am referring to now in some form.

It seems that you have placed on the public an onus, and I am now talking about the Minister of Justice (Mr. McCrae) whose vehicle was stolen, or the housewife whose husband happened to drive the car and many other examples that we know are going to happen. You

have created an onus upon them to have to come to a court to justify why they should get back their car. We all know that the prosecution normally has the onus of proof. We, as members of the public, are protected by the fact that they have to prove. We are making more exceptions in this case.

Why not have, as you do in cases of search warrants, at least some protection built in for your public, and I propose the following. If you are going to impound a motor vehicle that is owned by some party other than the driver who is suspended, at least have a procedure where that police officer must go to a magistrate and get an order from the magistrate, as you would in a case of a search warrant. That is, you are applying for a search warrant to search premises. You must establish to the magistrate, on reasonable and probable grounds, that there is a crime that you are in belief of, which evidence in that residence will support proof of, by analogy that the police have the onus to go to the magistrate and say to the magistrate, we have reasonable and probable grounds to believe, for example, that the owner of that vehicle gave it to that suspended driver with his knowledge, because if they do not have that then there is no way that Mr. McCrae should have to be put to the expense, in my view, of having to hire a lawyer and take remedial action.

I am not going to postulate the criterion under which you wish to have this procedure followed, but at least I would suggest it is a safeguard to your public and it is a safeguard to the system that at the very initial stage, you have an independent party, a Justice of the Peace, adjudicating the issue of the impounding of the vehicle, and that could save a lot of people a lot of problems.

* (2025)

I would like to move onto the second area of our concern and that is the proposed three-month suspension for drinking and driving. Again, I want to make the point very clear, the Bar Association does not condone or approve in any way, shape or form of drinking and driving offences, but we again have certain concerns dealing with issues involving such as the presumption of innocence, and that is the taking away of a licence from a person simply upon being charged, not convicted.

Now I think it is fair to say not every person charged with driving over .08, either driving or being in care control, or every single person refusing the breathalyzer is guilty of that offence. I am not talking now in the context of the presumption of innocence. Let us talk about factual legal guilt.

There are many people found not guilty in the course of a year, in months and years of these types of offences. I think it is very important for you to keep in mind that if there are a group of people out there that, in fact, not only are presumed not to have committed a crime but factually are innocent of any crime, then I think we ought to approach this particular piece of legislation with some care and some caution.

Now without getting too technical in terms of defences to impaired driving cases and breathalyzer cases, there

are built into the breathalyzer and refusal legislation two defences right in it, which is a reading is presumed to be a reading at the time of driving, providing it was taken within two hours, unless there is evidence to the contrary led to establish that was not the reading at the time.

I know the Minister of Justice (Mr. McCrae) who, in his former career, sat in many cases involving this and other similar issues and I know he is familiar with what I am speaking of. Let me give you another example, refusing the breathalyzer. You are only guilty of that offence providing you did not have a reasonable excuse for not refusing.

Now, I just use those two examples. I am sure you can all think on situations where people may not be guilty of that offence, but yet we have this legislation which will take their licences away. I will deal in a moment with the procedure to appeal in effect within the registrar system, that initial three-month ruling, but it does cause some concern.

Now what then happens if you have legislation that is in one sense designed to deter, which obviously this is. I would describe it in my words as pre-conviction or sentence deterrence because there has been no conviction or sentence imposed. In other words, to convey a message to the public you risk drinking and driving even before you go to trial, you have a very serious penalty to face.

Let us take another real life example. Let us take the example of the man whose livelihood depends upon driving a motor vehicle, and let us take the example of that person being one who needs a licence to support his wife and family, and let us take that very same example and say that this is a man who has a defence to the charge. Now what ultimately may happen is, you will have this man who may ultimately be acquitted of the charge, and I am not talking by a technical argument of admissibility of evidence, but rather factually was not guilty of the offence as charged.

* (2030)

Having to live without a licence for three months, having to bear the burden of somehow supporting a family during that period, yet he has unfortunately been penalized before conviction. Does this legislation in some way, shape or form deal with that person? I can assure you there are people like that out there, and there will be those people out there. As to how many, I do not know, but I think I am safe in saying there is at least going to be one, and one is too many.

We suggest if you are going to consider legislation along these lines that I think you owe it to your public to perhaps pass some form of compensation-type legislation. Then indeed if you do have that situation arise there ought to be, in my view and the view of our association, some mechanism to compensate those people who unfortunately got caught up in the legislation which was designed for people who we believe are guilty but, it turned out in these cases, were not. In our view that is something we have concerns about. Again, we are addressing our concerns about the public and those people, not the guilty but the innocent.

There is a procedure set out to appeal the 90-day suspension to the registrar of motor vehicles. We have some concerns about that as well. There does not seem to be any form of procedure that I can see in the legislation other than some equivalent of depositions being filed in front of the registrar. If you ask for an oral hearing you can appear at that point and present, I assume, oral evidence, but that does not seem to envisage a trial in the sense of a trial where the accuser is in court, be it the police or otherwise, where counsel can have an opportunity to cross-examine him.

I just bring that to the observation of you people because you will end up with a very onerous penalty being imposed in many cases, being this 90-day suspension, yet it seems that there is a very informal appeal process in place which really will not afford a person a full opportunity, in our view, to challenge, for example, the reading. All the registrar has to decide is did the person refuse, was he over .08, was he or she in care or in control or driving at the time of the offence? That is the sole issue.

I can envisage at a registrar hearing simply having a police report there and a certificate of a breathalyzer technician, yet I have other things that I think I could perhaps establish to raise certain concerns about the reliability of the test in this case. It is pretty difficult to cross-examine a police report, and although I have tried it on occasion, I can tell you most judges do not look favourably on it.

The point I make to you is that you may want to take a look at that procedure before the registrar, and perhaps somehow articulate what is going to go on there. Rather than leaving it in as vague and loose a way as possible, I would suggest that perhaps that procedure should be tightened up somewhat and hopefully afford us some form of hearing within the meaning of natural justice.

The final point I wish to make with respect to the drinking-driving provisions is after the hearing in front of the registrar I note that there is no further appeal. That is, the decision of the registrar is final, and once he decides you are to be suspended or he affirms the suspension of 90 days, there is nowhere you can go.

I know the Attorney-General (Mr. McCrae), now Minister of Justice, in his office is working very vigorously on cutting back the backlog so that we can probably have speedy trials. Whether we are going to have speedy trials within 90 days or not, I do not know. I assume that will be ultimately the goal, but regardless of that, whether a person is suspended for 30, 60 or 70 days is in some instances—and I am not saying necessarily all cases because obviously you will have that voice out there saying that people in fact who are guilty ought to receive this punishment because it will effectively deter others, I think it is important to accept that there is no appeal from the Motor Vehicle Registrar's decision. We as an association feel that I think it would be important to have at least a judge trained in evidence and trained in understanding the workings and operations of breathalyzers and these types of cases, to have an opportunity for an accused to have that reviewed by way of appeal.

Most cases involving the taking away of something before conviction, I would suggest, if you are going to

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pass this form of legislation, ought to at least have some safeguards to protect those innocent of any wrongdoing.

I think that essentially covers the points we wanted to raise. I thank you for your opportunity given to us to speak this evening.

Mr. Chairman: Thank you, Mr. Pinx, for making your presentation. I would now like to ask the committee Members whether they have any questions of Mr. Pinx. Mr. Edwards.

Mr. Edwards: Mr. Pinx, are you aware of the Minister of Justice is proposing 17 amendments to this piece of legislation?

Mr. Pinx: We have not seen them.

Mr. Edwards: When did you register to speak tonight?

Mr. Pinx: We received notification on Tuesday. I was asked on Tuesday to come down, on behalf of the association.

Are these amendments been proposed?

Mr. Edwards: They have been given to Members of this committee by the Minister of Justice (Mr. McCrae) I presume as motions. I am sure he can answer that question more fully. We have certainly received them, and I presume that they are proposals by him.

Mr. Pinx: Are they circulated to the public at this point?

Mr. Edwards: They certainly should be.

Mr. Pinx, I want to ask a few other questions. You indicate that—and I want to go right to the hearing. You made some interesting points about the other areas. I am particularly interested in the hearing itself. Are you suggesting that we—

Mr. Pinx: Which hearing are you referring to?

Mr. Edwards: The hearing for, I am sorry, for the pre-trial suspension before a driver's licence.

Mr. Pinx: Before the registrar?

Mr. Edwards: That is correct.

Mr. Chairman: Excuse me, you will have to be addressing the Chair first in all fairness to the people who are trying to record our conversations. Mr. Edwards.

Mr. Edwards: I gather from your comments that you may not be aware that under this Bill, in the event that you did have a trial within three months, you would not get your licence back. Are you aware of that?

Mr. Pinx: I heard something about that. Assuming you are acquitted you mean?

Mr. Edwards: Yes.

Mr. Chairman: Mr. Pinx, I would like to address you people if I could, thank you.

Mr. Pinx: I will address that to you.

Mr. Edwards: Do you have any comments about that particular provision? Would you prefer to see the licence be given back upon an acquittal in the event that it happened within that 90 days?

Mr. Pinx: Yes.

Mr. Edwards: Would you be satisfied with this administrative hearing if it occurred within a specified period of time?

Mr. Pinx: I would think that the problem with the legislation as it now stands seems to put the onus of course upon the applicant; in other words, he has to ask, as I see it, for the review. I would think that it is something that would ensure to the public that this hearing could be held within 14 days if that is reasonable or even sooner, what I think would be preferable in my view, that the quicker of course these hearings are held and if it is legislated that they have to go on in that period of time, I certainly agree that would be preferable.

Mr. Chairman: Anybody else have any questions?

Hon. James McCrae (Minister of Justice and Attorney General): Mr. Pinx, I appreciate your comments tonight. Indeed, in the development of legislation, amendments do come across our desks. There are discussions about those amendments. Sometimes the amendments are the result of discussions, sometimes amendments come forward in the course of further review of Bills to improve the drafting, any number of reasons for amendments. I could ask you, Mr. Edwards, has also shared with me some amendments that he might be proposing, and whether he will or not I do not know, but there were half a dozen or more. I wonder if Mr. Edwards shared those with you.

Mr. Pinx: I am sorry?

Mr. McCrae: Did Mr. Edwards share—sorry Mr. Chairman—with you his amendments?

Mr. Pinx: Do I have to answer that question?

Let me put it to you this way, Mr. Minister. If I could answer it as you might in my situation—I have not had the opportunity to see them in terms of any proposed amendments. What I received faxed to me two days ago, was a copy of the proposed Bill, and not attached to it were any of the amendments.

Mr. McCrae: Mr. Chairman, I can confirm that I have been involved in some criminal trials in the sense of having been there. I had the pleasure of working with yourself some years ago as well. Would I be correct if I said that your practice is confined almost strictly to criminal work?

Mr. Pinx: Yes.

Mr. McCrae: Certainly that is an honourable calling sir, if I may say so. I could not help but note, as I listened carefully to your presentation, words like “reasonable” and “probable grounds,” “reasonable excuse,” “no opportunity for cross-examination.” Are those the kinds of arguments that one often hears in the criminal courts?

Mr. Pinx: Yes, we not only hear them in the criminal courts, but many of those words are entrenched in the Constitution of this country, and in many of our legal precedents that guide us through our system of justice.

Mr. McCrae: I understand that, and I have listened to the practitioners of the criminal law as you and I have both noted. The point, I guess, I am trying to get at is that what we are dealing with here is administrative aspects of The Highway Traffic Act and administrative suspensions.

The criminal test is not what is being applied in the case of these particular suspensions, they are administrative. I wanted to make sure that I put that on the record because there does seem to have been, certainly in the media and in the reporting of the initiatives being brought forward, a lot of discussion about presumption of innocence and being punished before being found guilty and those kinds of things. When, in fact, I think if you read the Bill and, ultimately, in the context of amendments that we will be proposing, you will see that the legislation is couched in terms that are administrative in nature.

Mr. Pinx: Mr. Chairman, if I may just respond to that, and I am sorry if I interrupted you, Mr. Minister. Sometimes things do not appear to be what they might seem to be. In other words, I really do not know how you can call a suspension before conviction of one's driving privileges simply an administrative act when just a couple of years back the federal Government of Canada passed specifically an amendment to the Criminal Code that permitted the judge, upon passing sentence, to impose that minimum period of three months suspension by order of the court. That was not so long ago.

* (2040)

That is something that is built into the sentencing provisions of the Criminal Code of Canada. In effect, you may call this administrative, Mr. Chairman, but it is absolutely identical to what the Criminal Code provides for by way of these minimum three-month prohibition periods.

I appreciate that you may have attempted to draft the legislation to deal with this as administrative law, in the sense of not being something that will be an interference with the realm of criminal law for constitutional reasons, but I have some great difficulty in accepting the notion that suspending the driver for three months before conviction is anything but punishment when you consider that being there already under the Criminal Code of Canada.

If I might just add one other point, Mr. Chairman, I find it again difficult to understand the impounding of

vehicles is something that is simply administrative. It was not the car that drove and committed the offence, it was the driver. I find the taking of property something more than just an administrative act. It is the deprivation of property, to my mind, that equates to some form of punishment.

Mr. McCrae: The purpose of these questions at the tail end of your presentation is not for the purpose of arguing a case, it is to seek clarification. I say that for my own benefit. I would ask you—and I know you are—if you are aware of the terms, I take it, of the Constitution of the United States which does set out driving privileges as a property right, something that is absent in the Canadian Constitution, yet in 21 states of the United States this exact form of administrative suspension has been in effect in some states for as far back as 1976?

Mr. Pinx: Mr. Chairman, I happened to see the news the other night. I believe it was a lawyer from Minnesota who I saw interviewed on television who commented that apparently the Supreme Court of the United States—was it—ruled similar legislation to be constitutional. I am not going to presuppose that this particular piece of legislation will reach the Supreme Court of Canada, but I would not be a bit surprised to see that happen. I am well aware of your point, sir.

Mr. Doer: I have not attended all the briefings, so this question may be right out of left field, but I am trying to seek clarification on this. The provisions set out in the Act for suspensions—and I have noted your comments in your presentation—for a three-month period of time or the 90 days is an administrative procedure under this Act.

How would this interrelate with the Criminal Code which also has similar provisions, and is there any possibility of a person being in double jeopardy with the one Act versus the federal Criminal Code? In other words, how is this sentence taken care of administratively with the Criminal Code imposition? As I say, I am just an amateur at this, so I am just asking a question as a citizen.

Mr. Pinx: Mr. Chairman, with Mr. Toews sitting to my right, he knows well that my field is not constitutional law, but I will express the following observation. There is nothing in the Criminal Code I am aware of that permits the suspension of driving privileges pre-conviction, so I think I am safe in making that statement, that what we now have is strictly this particular piece of legislation that permits on charge—we are talking in this situation—the suspension of privileges for three months.

Mr. Doer: Could there be a situation then, following on the application of this Act and then the application of the Criminal Code, for a person to get disqualified for two periods of 90 days, two suspensions? Is there any possibility of double jeopardy under this Act? I just want to have that clarified. How is that taken care of in this Act? I just read it again, and from an amateur's perspective, I did not see how that would mesh with the Criminal Code.

Mr. Pinx: In terms of double jeopardy, the suspension for 90 days only flows upon charge for refusing the

breathalyzer and driving over .08. It does not flow for any other offences.

I am trying to think of a hypothetical, unless perhaps Mr. Edwards could help me, because he may have given this some further thought than I, of a double-jeopardy situation arising. I guess the only double jeopardy in a sense is that you are suspended for three months before you are convicted. Assuming that the day that your three months were up, you plead guilty and it was not an accident situation, your total suspension then would be nine months. Am I correct?

There is a further six-month suspension provided by law under The Highway Traffic Act, within which there is a minimum three-month prohibition imposed by the court. So your total suspension now would be nine months, in effect, if I am not mistaken, which would be the three before conviction plus the six after. Again, I would have to give it more thought in that context, but on first blush I do not see it as a double jeopardy, although one might consider perhaps the approach of making penalties perhaps more severe, a post-sentence as opposed to pre-sentence, but that is another matter for debate.

Ms. Maureen Hemphill (Logan): I was just wondering, you had made the point that not everybody who is charged is convicted. I wondered if there was any experience or any numbers that you can indicate, as a result of the previous practice, that gives us some idea of how many are not convicted?

Mr. Pinx: Mr. Chairman, without trying to be cute, and putting aside the braggery of a lot of lawyers that I know, it is difficult because I do not know if statistics are kept for the number of people who are found innocent of these types of offences. All I can tell you is that I am sure the Honourable Minister of Justice (Mr. McCrae) would be able to confirm that he has probably been in courts himself where acquittals were registered in these cases. I do not think there are statistics that are kept. Unless I am otherwise advised by the Minister, I just do not think records of this kind are kept.

Mr. Chairman: Any more questions to Mr. Pinx?

Mr. Doer: Perhaps the Minister would have that number. Does the Minister have the answer to the question the Member asked, raised?

* (2050)

Mr. McCrae: Mr. Chairman, I do not have numbers of the type before me that the Honourable Member for Logan (Ms. Hemphill) would be looking for. I can see if the department has those kinds of numbers available, but I would like to say that criminal courts do not find people innocent, they find them guilty or not guilty.

Mr. Edwards: Just briefly, I have been rereading parts of the Bill that you spoke on.

Perhaps this is a technical question, but you are obviously a person with great experience in the criminal

law. Section 263.1, where it is talking about what the peace officer has to do to satisfy—the word that is used is “satisfy” in Part 2 and “has reason to believe” in Part 1—do you have any comment on the different standards that are used there, and whether or not those, and in particular, does “satisfied” have any meaning in the law? Does that cause you any concern that those are different standards and the wording of those standards?

Mr. Pinx: Mr. Chairman, there are a number of concerns about this legislation, some of which I did not touch upon, and you have now addressed another, which is language and what it means.

“Reason to believe,” if that is one of the terms that I believe is used in the legislation, scares me as a lawyer because that word is used in the impounding vehicle provisions, that all the officer needs is reason to believe that the Honourable Minister was driving a motor vehicle while suspended and it happened to be the Member yourself, for example, whose vehicle he was driving. Those words are a very minimal standard. It is not reasonable grounds.

“Satisfies” does not mean satisfied beyond a reasonable doubt or on the balance of probabilities even. It is just simply satisfied, which to my mind simply does not create in our view any kind of standard that, with respect, conveys some feeling of security to your public. I find those terms vague. I do not really know what they specifically mean in terms of the standard in the mind of that officer.

Mr. McCrae: I would like to ask a hypothetical question, if I may, Mr. Chairman. It is something we frown on in Question Period.

You used the expression a moment ago, “balance of probabilities,” and I would like to ask you this hypothetical question. As a private citizen, and perhaps not as a lawyer, but if you like as a lawyer, if you knew that a restaurant in the City of Winnipeg was serving mussels from New Brunswick that were tainted and deadly, if you knew that on a balance of probabilities only, would you agree that the doors of that restaurant should be closed while we are trying to find out?

Mr. Pinx: Perhaps the Minister could repeat the question. I am sorry, Mr. Chairman.

Mr. McCrae: If you knew on a balance of probability that poisonous mussels were being served in a restaurant in the City of Winnipeg, not on a test of reasonable doubt, but on a balance of probabilities, which is the test in the administrative sense in which we are dealing with these licence suspensions, if you felt that on a balance of probability that people's lives were endangered because of tainted mussels at a certain restaurant, would you agree that health officials should close down that restaurant while they are finding out if indeed a danger exists?

Mr. Pinx: Assuming, Mr. Chairman, there was a law to so permit, of course. That seems to me a very reasonable standard under those circumstances.

Mr. McCrae: Thank you, Mr. Chairman.

Mr. Chairman: I would like to remind Honourable Members that the purpose of asking questions of the presenters is to seek clarification of information and not to enter into a debate.

Mr. Edwards: Mr. Chairman, this is very specific to the question put forward by the Minister.

Mr. Pinx, do you equate "is satisfied" to be a balance of probabilities standard?

Mr. Pinx: No, Mr. Chairman. No, I do not.

If I might just respond further, I would like to address, if I might at this stage, the Minister's attention to 242.1, and I will hopefully conclude my remarks with this reference, providing I am not questioned further. A peace officer who has reason to believe that a person has operated a motor vehicle—and I just emphasize the words "reason to believe"—that does not say reasonable and probable grounds, it just says reason to believe. To me there is a very significant difference. If I might, Mr. Chairman, just say to the Minister that you make a breathalyzer demand based on reasonable and probable grounds, and those words are right there in the legislation. I simply say that if that is the intention of this legislation, that the words "reason to believe" or "satisfied" are intended to mean reasonable and probable. If they are not, then I have nothing further to say.

Mr. Chairman: Anybody else have any questions of Mr. Pinx? If not, I would like to thank you for making your presentation.

I would like to call on the next citizen, Mr. Pollock, Citizens Against Impaired Driving.

Mr. Harvey Pollock (Citizens Against Impaired Driving): Mr. Chairman, Honourable Members, I marvel at the ability of seasoned counsel to transform the accused into the victim and the victim into a non-entity. Now, we must remember that Mr. Pinx and I are both here because of vested interest; Mr. Pinx on behalf of the Bar, representing potential clients, and I am here representing potential victims, victims of people who drive and drink.

The purpose of this exercise is to determine whether or not the proposed legislation, as set forth in Bill No. 3, and in respect to Section 242.1 and 263.1, are within the legislative competence of the provincial Government, as falling within the terms of property and civil rights. One must ask himself whether or not the proposed legislation is regulatory or criminal in nature. If it is criminal in nature, then it is not within the competence of the Legislature.

My reading of Section 242 and 263 of the Bill is that they attempt, that is, you attempt to regulate the rights of persons to operate a motor vehicle on a highway in Manitoba. Clearly, the right to hold a driver's licence is a privilege. The Legislature has not only the right, but the duty to set up conditions under which a person may exercise the privilege to hold a driver's licence, thereby permitting him or her to operate a motor vehicle.

We know that there are certain conditions precedent to holding a driver's licence. That is, a person must be sighted, he must not be otherwise restricted by virtue of an impediment by health, i.e., epilepsy, he must be over 16 years of age, he must be able to pass a written exam as well as a driver's test. The Highway Traffic Act and the regulations lays down the conditions which permits a person to operate a motor vehicle. The Legislature can likewise create law that takes away the privilege of holding a driver's licence and operating a motor vehicle on a highway. The proposed Bill limits the privilege of holding a driver's licence and operating a motor vehicle, given certain conditions.

In respect to Section 263, if a person blows over .08, or if a person fails on demand to take a breathalyzer test or is charged in relationship to having care and control of an automobile while impaired, be it by alcohol or a drug, then the privilege to drive a motor vehicle is suspended.

* (2100)

These provisions merely remove from the individual the privilege of continuing to exercise the right which was given to him under the licence, that is, to operate a motor vehicle. The privilege to operate a motor vehicle has been removed. It has been argued that this contravenes the presumption of innocence, and it is the police officer who in effect is determining that the individual is guilty of an offence before prosecution. I do not agree with this proposition.

The individual's rights have not been compromised in respect to the charge that is outstanding against him. All that has happened is that he has been prohibited from operating a motor vehicle for three months unless those provisions dealing with his rights of appeal have been exercised and his licence in the meantime returned.

What the proposed law then says is that you have been a naughty boy or girl who has been operating a motor vehicle having consumed alcohol which caused you to be impaired, and because you have done this your privilege to operate your motor vehicle has been revoked. Clearly, you were given your driver's licence on the understanding that you would not consume alcohol and drive and thereby commit a driving offence.

It has been argued that there has been a breach of the individual's rights and freedoms. Section 1 of the Charter says, "The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in its subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."

I am sure you are aware that six Canadians are killed daily by impaired or drunk drivers, that 70 to 94 Manitobans lose their lives each year as a result of impaired or drunk drivers. One of those was my son, 1982. Did you know that 65 people die daily on the United States roads as a result of impaired or drunk drivers? Did you know that 50 percent of all fatal accidents in Manitoba have been caused by impaired or drunk drivers? Did you know that 30 percent of all accidents involving injuries are caused by impaired or drunk drivers?

Did you know that 10 percent—and there are thousands of these—of all fender-benders are caused by people who are either impaired, drunk or have consumed alcohol to some degree? Did you know that the Insurance Bureau of Canada has determined that nine out of 10 people want the police to check all moving traffic, and that three out of four want blood samples to be taken from persons who have caused injuries or deaths while operating a motor vehicle where there is some evidence of alcohol consumption?

Clearly, consumption of alcohol and the operation of a motor vehicle has become the scourge of the highway. More people die as a result of drinking and driving in any given year than there were killed in any given year in World War II, and I am talking about Canada.

It has been determined by a research study done in the United States on drunk and impaired drivers, that the war against drinking and driving can be successfully waged if there is an application of the following: threat of apprehension, that is, getting caught going through an ALERT Program or by any other proposed surveillance method; swift justice, let us get on with the matter and get the case before the court; licences revocation, the fear of their licences will be suspended, and then education.

The threat of apprehension and the revocation of a licence poses for the offender various serious curtailment of their privilege and to them their freedoms and liberties. There must be law which allows the authorities the right to remove from an offender his licence as prescribed by the provisions of this Bill. The history of legislation in this area has indicated that we are losing the war, and that more and more people are being maimed and killed at an incredible waste of human life, suffering and cost to both the individual and to the community at large.

The proposed legislation is reasonable. It is fair and it attempts to prevent the loss of life and injuries with attending costs. Certainly, the Legislature has a jurisdiction to bring into law the proposed sections of this Act.

If you examine the provisions of The Wildlife Act, Section 11—now we are dealing with animals. I have a respect for life, all areas of life. I have a respect for animals life, but here we are dealing with wildlife. It says, "No person shall hunt while his ability to do so is impaired by alcohol or a narcotic drug."

Section 71(1) states, "Any officer acting in the course or scope of duty who discovers an offence being committed against this Act or the regulations may seize any wildlife or the pelt, the skin or hide of any wildlife, any firearm, ammunition, decoy or other implement, or appliance used for shooting, hunting or trapping and any vehicle, boat, aircraft or other conveyance, which is being used to commit the offence or which is evidence of the offence and may bring it before a justice, or report on it to a justice, to be dealt with according to law."

Section 57 of that Act, which deals with the cancellation of licences or permits says, "The Minister may cancel any licence or permit if he is satisfied that

the holder thereof, or any other person with the connivance of the holder thereof, has failed to comply with any provision of this Act or the regulations or with any of the terms and conditions of the licence or permit, notwithstanding that no prosecution has been instituted or conviction had in respect of the failure to comply."

Well, you have done it before. You have done it with The Wildlife Act, you can do it with The Highway Traffic Act. You can save lives. The focal point here is the issue whether taking away an individual's rights for a determined period prior to conviction contravenes the notion of presumed innocence. The taking away of a driver's privilege to operate a motor vehicle, once he has been found to contravene Section 263 is not unreasonable, it is justified in a free and democratic society. We must weigh the potential for disaster in that particular driver against the rights and the freedoms of the community at large. We cannot allow innocent victims to go on in this way. We cannot allow the roads to be the graveyards of our young. I implore you to bring into law this legislation, and I thank you.

Mr. Chairman: Does anybody have questions of Mr. Pollock?

Mr. Edwards: Thank you, Mr. Pollock. I know you have been a long-time advocate of getting tougher on those who drink and drive, and I think we all appreciate your work in this area over the many years.

I want to ask you, and you made some very passionate comments about the thrust of this Bill. If you do not mind, a few questions on some of the specifics, and I appreciate that you did not get into them in your presentation. Do you think that if we were able to get people to trial within three months, you mentioned swift justice, would that in any way lessen the need to bring in a pre-trial suspension, in your view?

Mr. Pollock: Mr. Chairman, I will try and comply with the rules of this committee meeting.

I think that the suspension of a man who has been drinking, and in the opinion of a police officer, trained in that area believes him to have been drinking, that the suspension for a period of three months, that is the taking away of his driving privilege before trial is eminently reasonable and is eminently fair. What it does, as I said earlier, is it says you are not supposed to drink. You have promised us, when you applied for your licence that you would be an honourable person, that you would comply with the law. You have not complied with the law, therefore, go to your room Johnny. Put in your three months of standing in the corner, and we will concern ourselves with whether or not you are guilty of the charge of impaired driving when the occasion arises—that is at a trial.

* (2110)

Now the fact that the case can be heard and disposed of earlier than three months, if he is found not guilty at the trial, then certainly his licence should be returned to him without question because it would be unjust for an innocent man to be punished in that way.

I doubt whether or not in the foreseeable future, on the basis of my knowledge of what is happening in the

courts today, that we are going to have cases disposed of in three months. As a matter of fact, the tactic of the defence attorney is well-known to all defence attorneys in this city I am sure, and in the province, that the longer they can keep the case going, the better it is for them because witnesses disappear, people's memories fade away. So they are really the ones who are putting the cases off for as long as they can. They do not want quick justice. Thank you, sir.

Mr. Edwards: Mr. Pollock, would you have any problems with putting in a standard of, say, "balance of probabilities" as suggested by the Minister, instead of "satisfied?" That is the standard that the police officer has with respect to both the impoundment and the pre-trial suspension.

Mr. Pollock: Mr. Chairman, I think they both mean the same. I cannot see the difference between the two of them. I have to believe that the police officer is a reasonable person when he is examining the accused at the moment for making that determination, and that he is working on the basis of probability. He is weighing it and in his mind he says, it is reasonable that I should do this, or it is not reasonable and if it is not reasonable I will not do it. As far as I am concerned, those words mean precisely the same.

Mr. Edwards: To that extent then, can I presume that you would have no objection in "balance of probabilities" being the specific standard?

Mr. Pollock: Mr. Chairman, I see no reason to change the proposed legislation. The wording is eminently fair.

Mr. Edwards: Do you agree or do you disagree that a time limit within which the hearing had to be given, the administered hearing in the case of a pre-trial suspension, do you think that would give this piece of legislation and that particular aspect of it greater protection in the event of a constitutional challenge? I know that you and I have spoken on the radio about this Bill, and I know you acknowledged at that time that, as Mr. Pinx has said, it is very likely there will be a constitutional challenge. Do you think that adding that time limit would assist the court? I know you were not at the briefing with the people in Minnesota, but it was acknowledged by the lawyer there that they had a time limit and that time limit was recognized by the U.S. Supreme Court in upholding their law.

Mr. Pollock: Mr. Chairman, I do not think that it makes any difference. I do not think that time factor is going to pretend to legitimize something which otherwise is illegitimate if it, in fact, is found not to meet the test.

Mr. Chairman: Anybody else have any questions? Mr. Edwards.

Mr. Edwards: I just have one more. You indicated that The Highway Traffic Act talks about licences and in your view this was purely an administrative piece of legislation. Mr. Pinx raised the comment that in fact the Criminal Code now deals with offences in this area by imposing mandatory driver's licence suspension. Do

you think that in any way compromises your earlier argument, or what response do you have to that?

Mr. Pollock: The mandate of the Criminal Code is punishment, deterrence and rehabilitation. That is what the mandate of the Criminal Code is. That is not the mandate of this legislation.

Mr. Edwards: Very simply then, are you saying that the taking away of a person's driver's licence, even though it is in the Criminal Code, is in no way penal?

Mr. Pollock: Mr. Chairman, this is not penal legislation. This is regulatory legislation. This has got nothing to do with punishment. It has to do with dealing with a privilege, taking away a privilege from a person. It has got nothing to do with punishment.

Mr. Edwards: I understand the point that has been made, Mr. Pollock. I want to be perfectly clear that never in any circumstance taking away someone's driver's licence would in your view be penal?

Mr. Pollock: Mr. Chairman, we have to look at the circumstances and we have to look at the legislation on the table.

If we are dealing with the Criminal Code, then we will look at the Criminal Code. The Criminal Code talks about charging, conviction, sentencing and the test that goes with it in respect to the criminal aspect of the matter, but we are not dealing with the criminal aspect. We are dealing with something that is regulatory within the competence of this Legislature to deal with. We are dealing with taking away of a privilege, so we have to look at it in the narrow confines of that purpose. You are confusing these things, sir.

Mr. Edwards: Thank you, Mr. Pollock. Those are all my questions.

Mr. Allan Patterson (Radisson): Mr. Pollock, I would like to clarify something, a matter of definitions. These terms in my view are tossed around rather loosely at times. What specifically do you mean by drinking and driving, and impaired and drunken driving? Would you distinguish between the two? You have used the terms in your address.

Mr. Pollock: Mr. Chairman, the honourable gentlemen, I take it, is asking me to define the difference between impaired driving and drunk driving. May I have an answer to that question?

Mr. Patterson: No, it was more or less concerning impaired and drunk driving synonymous, but I am talking about drinking and driving vis-a-vis impaired driving. In short, would you call the average man or woman who might stop off at a pub for a couple of beers or a lounge for a couple of drinks for an hour, an hour and a half on the way home, is that impaired driving?

Mr. Pollock: To answer the honourable gentlemen's question, impairment starts the moment you ingest the

first millilitre of alcohol. It then becomes a question of how much alcohol have you ingested and to what degree are you impaired.

Mr. Patterson: Would you cite the evidence for the impairment starting the moment of the first millilitre?

Mr. Pollock: Mr. Chairman, it is a medical fact, it is a scientific fact that when the body consumes alcohol into the blood system it affects the brain, it affects the cortical system. All the thinking processes are affected by alcohol or a drug, but we are talking about alcohol here specifically. There is no question. Science has already answered that question.

Mr. Patterson: Might I ask you more specifically, you stated that the first millilitre causes impairment, would you cite the medical and scientific evidence for that proof?

Mr. Pollock: You are asking me to establish to your satisfaction a fact that has already been accepted by medical science, has been accepted by the Criminal Code and has been accepted by the community at large.

It is a known fact that alcohol affects the brain, that is, once it has been ingested into the system in such a way as it impairs function and it starts with the head, it starts with the head down. The more alcohol you take, the greater the impairment, and it works its way from sight to mouth, to tongue, to down the road to feet, to the point of where you cannot walk.

* (2120)

It becomes a question then, of how much alcohol has one ingested. For example, we know that one bottle of beer, 9 percent proof Manitoba, has 22 milligrams of alcohol per 100 millilitres of blood. If you consume two bottles of beer you have 44 milligrams of alcohol in your blood, but then at the same time that you are consuming the alcohol, it is evaporating, it is being metabolized at the rate of about 12 to 15 millilitres per hour. If you drink more than you metabolize, you are going to get drunk. So the more you drink the more you become impaired.

They have used a figure of .08 as the arbitrary figure of impairment. I can tell you sir, Mr. Chairman, that in the Nordic countries, in Sweden and in Norway, they use .05 and it has been advocated in these countries that they reduce that to less than .05. We use .08, which is just about twice as much as what they use. We are prepared to say that a man is not impaired until he drank about twice as much as what a person would drink in order to be deemed to be impaired in Sweden. We are still far behind that country.

Mr. Patterson: I take it then that you mean that no one should ever, never, never, ever, ever, have one drink and then drive?

Mr. Pollock: Absolutely, Mr. Chairman, pardon me, Sir. I am getting a little incensed over that kind of a question. You will forgive me for my own personal approach and attitude.

I do not advocate, and CAID does not advocate that people should not drink. This is a right that every man has. If we go back to the Bible, the vine has produced wine, and it is a sacrament. It is used in the sacrament, it is something that is God given, in a sense. We do not deny the right to an individual to drink. We are saying, for goodness sakes, out of respect to life, out of respect to yourself, out of respect to your family, out of respect for that innocent victim, if you are going to drink, get somebody else to drive your car.

You start off in the evening and you know you are going to a pub. Take a taxi. Phone me, I will take you home. Take a taxi home or get somebody to drive you home, or do not go to the pub. Go get 12 bottles of beer or a twenty-six, a mickey, or whatever it takes to get you high, take it home, sit down at your television set with your wife and your friend and have a drink and get corked there, but do not go out on the highway. You can drink as much as you want, just do not hurt anybody else.

Mr. Chairman: Any more questions to Mr. Pollock?

Ms. Hemphill: You mentioned four points that I think would help with success. One was threat of apprehension, swift justice, licence revocation, and education. What do you mean by swift justice?

Mr. Pollock: Mr. Chairman, by swift justice—this came from a study—I mean that if the individual believes he is going to be immediately on drinking and being found to be impaired and operating a motor vehicle, apprehended, lodged in jail, having to get a lawyer to get him out of jail, having to hire counsel, having to pay counsel—if the person believes that before too long, he will be facing the judge, that is a factor.

The longer down the road he is going to have to meet the music, the less of a deterrent it becomes. The quicker you attack, and the quicker you prosecute him, that is in his mind. He believes that when he is being apprehended or is about to be apprehended that he will then be incarcerated and have to meet that test, that is where the point is taken.

Ms. Hemphill: I am wondering if I misunderstood one of your previous responses when the point was made about the Minneapolis presentation. One of the things I also noted is that they were trying to suggest that they believed one of the reasons why they were successful in the court challenges, one of the reasons was that swift justice by the requirement that it be dealt with within a 15-day period. I understood your response on that to suggest that there did not need to be a time limit. Did I misunderstand what you said?

Mr. Pollock: No, I do not think that the Honourable Member misunderstood me. I think that I stand by what I originally stated in the context of that particular answer. I think that you have to look at these two points separately as they are to be applied to the context of the point.

Swift justice, within the context of these four points that I have mentioned, has been explained by me just

a moment ago. When we were talking about it, if I remember correctly what the point was, we were talking about the question of appeal and how the courts viewed that whole point, whether or not it was part and parcel of the legislation. The court was then viewing the legislation and saying, well, within that legislation you do have the provisions for "quick justice." That does not contravene the individual's rights. It does not look like the legislation has taken away from the individual his rights to an immediate redress within the court system.

Therefore, we say that legislation is good legislation. It does not prejudice the citizen. That is how that is to be considered, within that light, in terms of the test that the court applied to the legislation as being, "is this constitutionally acceptable in that it has not taken away from the individual that right to accessibility to the court and to be tried by his peers as quickly as possible." So I think there are two separate things.

Mr. Chairman: Any more questions to Mr. Pollock? Mr. McCrae.

Mr. McCrae: I do not have so much a question, but it is a point of information. Getting back to the discussion you had, Mr. Pollock, a few minutes ago with the Honourable Member for Radisson, Mr. Patterson, when we talked about degrees of impairment starting at: no alcohol—no impairment; one milligram—one milligram's worth of impairment, and so on.

The arbitrary limit in Minnesota on the highways is .10. The arbitrary limit in Manitoba is .08. The limit to be set in the United States by 1991 for all truckers in the United States is .04. So somebody in the United States is saying, if you are going to drive a truck in this country you are far more alert and a better truck driver at .04 or less, then you are at .01 or .08. So I just thought the Honourable Member for Radisson might be interested in that.

Mr. Chairman: Any more questions to Mr. Pollock? Mr. Edwards.

Mr. Edwards: While we are perhaps learning something here from Mr. Pollock's vast experience in this hearing, you mentioned 70 to 94 deaths in Manitoba every year as a result of drinking and driving. Any idea how many of those are innocent victims and how many are the drivers themselves? Has that ever been—do you know that statistic?

Mr. Pollock: Mr. Chairman, I cannot answer that question, I do not have those facts.

Mr. Chairman: Any more question? If not, we want to thank you, Mr. Pollock, for your presentation.

Mr. Pollock: Mr. Chairman, thank you for having me and for allowing me to speak here this evening.

Mr. Chairman: I call on the next presenter, Mr. Myer Cosman, a private citizen. Mr. Cosman.

Mr. Myer Cosman (Private Citizen): Members of the committee and Mr. Chairman, I would like to just take

a few minutes of your time to address you as just a private citizen.

I have been reading and following the legislation with regard to the drunk driving, impaired driving, whatever you want to call it. I cannot get into all the technicalities of what is good, or what is bad, what is high, what is low. All I know is that when you are involved with people that are drinking and driving and accidents and death, somebody suffers. You people are sitting here in complete judgment of what is going to happen to the people after this, whether some are going to be killed, some are going to be maimed, some are going to be crippled for life, be in wheelchairs, and you have control over that. You have complete control over that by passing this legislation.

Let all the Members forget all their differences and concentrate on getting this through so that your grandchildren, your child, your daughter, your son, can go down the street and know that some guy is not going to say, I am sorry I only had 12 bottles of beer, 2 shots of whiskey, and I thought I had my foot on the brake when it was on the gas. This is the type of thing that is happening with these people who are drinking. I am sure you will find it in your hearts and in your minds to keep this part of the Act to go through, so this thing will become law.

* (2130)

Let the man who is causing all the trouble, let him take the bus. We have free buses that run around downtown. He can do business downtown. There are buses that start in six in the morning to go to work.

For generations of people went to Transcona to work in the shops only by bus. They got there, they went to work. It was not the case they did not have a car. If the wife does not have the car, that is the problem of the husband that she should straighten out, not the problem of yours. That is a problem amongst the family. Let them straighten it out, not you people. You people are going to do the right thing, I am sure. That is all I have to say. God bless you.

Mr. Chairman: Thank you, Mr. Cosman. Are there any questions to Mr. Cosman?

Mr. McCrae: Mr. Cosman, just for your interest, I appreciate your presentation. I have a book in my hand called, "The Surgeon-General's Workshop on Drunken Driving," and there is a reference on page 47 to judicial and administrative processes. It says, "In jurisdictions with hard licence revocation,"—that is the type of revocation we are taking about here—"it has been found that very few people have lost their jobs, and none have been unable to attend treatment or after-care programs." It seems to back up what you have just told us and I appreciate your comments.

Mr. Cosman: Thank you very much.

Mr. Chairman: Anybody have any questions to Mr. Cosman?

Mr. Doer: Does the Attorney General or the Minister of Justice have a copy of that publication for all

Members of the committee hearing? I thank you very much as well for your comments, sir.

Mr. Cosman: Thank you very much.

Mr. Chairman: Are there any other presenters that would like to come forward at this time? Is this Mr. John Campbell?

Mr. John Campbell (Winnipeg Police Association): That is correct, Mr. Chairman.

Mr. Chairman: Okay, he is from the Winnipeg Police Association.

Mr. Campbell: Honourable Ministers, Honourable Members, I must apologize. I am here, I will be very brief. I only learned early this morning that this opportunity existed for us today. I would have come quite prepared actually to speak on this proposed Bill, had time permitted me to put the necessary research together. I am certainly here, of course, on behalf of the Police Association to speak in favour of the Bill that is before you.

I can tell you from my 14 years as a police officer in Winnipeg, that if you wish to reduce crime, one of the significant things that has to happen is that you have to increase risk. As it turns out, it was a police officer who took the call in which Mr. Pollock's son lost his life. That was an impaired driver. The call I took before that was another impaired driver who took the life of four other innocent people on the St. James Bridge.

I have heard the comments made by Mr. Pinx and others. I think probably for you, in a legal sense, the one point I would like to make in addressing the legality of the application of this law, and we have heard of the rights of the accused. I am sure that we are all aware of the rights of victims, but I can tell you that when people are arrested and are placed in jail, there is a law in the Criminal Code called the Bail Reform Act.

While the presumption of innocence always applies to accused until they have had their day in court and have been found guilty in that court, there are at least three conditions that have to be met under the Bail Reform Act before those people, those presumed innocent people can be released from jail. One, of course, is to ensure their appearance in court. If there is doubt, that person shall remain incarcerated. The second is to ascertain the true identity of the individual who has been accused of a particular crime. The third is to prevent the continuation of the offence. I think if you look at this Bill in the sense that really what you are doing by passing the Bill is preventing the continuation of the offence. You are not penalizing the individual, you are not presuming a guilt, but you are taking away that individual's demonstrated desire perhaps to recommit that offence. I would make that observation.

I would certainly close with again a statement to you that you give active, serious, immediate consideration. I agree with Mr. Cosman. There are Manitobans who

will be alive next year if you pass this legislation. There will be many, many more the following year. I would certainly urge Government to even consider taking other active measures to reduce what I would have to tell you from a professional point of view and that my members would tell you, is becoming a very, very serious problem in our community. Thank you.

Mr. Edwards: Mr. Campbell, there is a scenario in the law which goes something like this. When you have capital punishment, juries do not convict so often. When you have stricter penalties, sometimes people back off a bit, even though the person may in other circumstances have been charged or have been arrested. Is there any concern, with this very immediate and obviously quite harsh punishment which will be levied against somebody on the spot without a trial, that police officers may in any way shy away from imposing it in the same numbers that they now lay charges?

Mr. Campbell: No, I would not think there would be any difference in the application and enforcement of the law.

Mr. Edwards: Thank you.

Mr. Chairman: Any more questions? Mr. McCrae.

Mr. McCrae: Mr. Campbell, could I suggest to you that more stringent regulations, and I will not use the word punishment as my colleague did with respect to an administrative driving suspension, because that is not what it is—the knowledge that these provisions are there and available for police officers, will that make a difference in the way your rank and file members will feel about their jobs and do their jobs?

Mr. Campbell: Mr. Attorney General (Mr. McCrae), I can certainly tell you that police officers will feel far more satisfied in the conduct of their everyday job knowing that the law is now behind them with respect to this particular offence. It is quite clear and it is quite true that impaired drivers are arrested and, while the police officer is typing the report, that impaired driver has been picked up by a relative or a friend, has been released on an appearance notice. There is a 12-hour suspension involved, but in less than 12 hours, while the police officer is still processing the paper, that impaired driver could be back on the road, behind the wheel and still impaired.

* (2140)

Mr. McCrae: Would it interest you to know that—I believe it was in 1976, the Minnesota Administrative Licence Revocation was brought in. My information is it was up and running, in high gear if you like, by 1978. In 1978 there were 18,000 driving while impaired arrests in Minnesota. In 1988, there were 32,827 driving while impaired arrests. I think that tells me that certainly the Minnesota population has not grown that much, and it tells me that there is more enforcement. As a principle, we talked earlier about swift justice and education and those things, but certainly swift enforcement and the

knowledge among drivers that enforcement is there, in your opinion, I take it you will agree with me, is going to have an impact.

Mr. Campbell: Oh, absolutely, wholeheartedly. You will find that the enforcement of the law, as I say, would probably go up. You are going to find that the incidence of the offence being committed is going to go down because again, with this Bill, you have significantly increased risk to the offender.

Mr. Edwards: You made comments about the bail process, and analogized that in some way to this process. As you know, the bail process has a hearing within a definite specified time, like the next morning. It is a full hearing in front of a judge. Obviously a bail hearing can be about much more, about murders and rapes and everything else. Do you have any problem? Do you think the Police Association and the police would have any problem with a hearing within a specified period of time, the administrative that is already in here?

Secondly, if I might at this time, would they have any problem with meeting a standard of balance of probabilities, not beyond a reasonable doubt, but balance of probabilities, the lesser, the civil standard?

Mr. Campbell: I think that is a complicated question. With respect to the bail reform provisions that you mentioned, peace officers apply those standards in release of many accused.

In the more serious of crimes, of course that standard is applied by a magistrate or a judge of the Provincial Court. My reason for mentioning that was not that it had some firm legal foundation, but the continuation of the offence as a reason to detain did not presume guilt where there was a presumption of innocence. What I was merely saying was that you should extrapolate that logic to the implication of this Bill.

With respect to the second part of your question, on the balance of probability, I frankly would feel more comfortable not making a comment on that from the association's point of view.

Mr. Edwards: I am sorry. I did not mean to make it complicated. Specifically, does the Police Association have any problem with having this administrative hearing within a specified period of time?

Mr. Campbell: No, not at all.

Mr. Chairman: Does anybody else have any questions?

Mr. John Plohman (Dauphin): There are certain sections that empower a peace officer to take possession of a licence or impound a vehicle if he has "reason to believe." That is the terminology used. Do you feel that should have some qualification, reason to believe as a result of a blood test or breathalyzer test or whatever, or do you think it should be left wide open?

Mr. Campbell: I do not have that exact section in front of me, but reason to believe obviously refers to the

offence. That wording, as far as I am concerned, is satisfactory.

Mr. Plohman: To constitute a wide range of activities to give a peace officer that kind of belief.

Mr. Campbell: Sorry, Mr. Chairman. Mr. Campbell—my dad was Mr. Campbell. I am John.

Again, I do not have that section in front of me, but I assume that wording refers directly to the offence of impaired driving.

Mr. Plohman: As deemed by the peace officer in his observation?

Mr. Campbell: Yes.

Mr. Chairman: Any more questions to Mr. John Campbell? I want to thank you, Mr. Campbell, for making your presentation.

Mr. Campbell: Thank you.

Mr. Chairman: Is there anybody else who would like to make a presentation? If not, since all presenters have been heard regarding Bill No. 3, The Highway Traffic Amendment Act, I would like to ask the Minister responsible whether he has a statement to make at this time.

Mr. Driedger: Very briefly, I do not know what the will of the committee will be in terms of dealing with this, whether we want to deal on it today because of the amendments that we have brought forward. Many of them are basically of a technical nature, but there are some that are more substantive, and if the committee Members feel that they want to take more time to peruse them, certainly our objective is, because we know we are striking a new road, new legislation, that we want to try and make it as good as possible.

At the same time our concern, and I think it has been mentioned before that we would like to, if possible, have this Bill passed before we adjourn for the summer, for the simple reason the implementation time is approximately three months. If we have to wait until we come back in the fall for the implementation of the Bill, once we have it approved in whatever form, and we want to make provision for that as well—if we have to wait until September or October, then there is that possibility we would not be able to get the legislation in process by Christmas or New Year's.

We raise that point only, and we certainly do not want to try and force or rush through with the legislation. If, during the course, if we do not deal with it today and I suspect we probably will not, when we deal with it next time if there are concerns beforehand if you could bring them forward. Our people have been working on this many, many hours and are prepared to take time to discuss it. We have to consider further amendments from what we have here or if there are some concerns about these that we have here, we would be prepared and delighted to make contact and have our staff work with you people on that, so that the next

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time when we meet we can possibly deal with it on a clause-by-clause basis.

Mr. Chairman: I would like to ask the Opposition critics whether they care to make any comments. Mr. Doer.

Mr. Doer: There were some excellent presentations tonight. It was on both sides of the dilemma dealing with our challenge to deal with the carnage on the streets, and also the principles in our justice system and our administrative systems of Government.

We would like to take a look at the amendments and get an explanation of the amendments and how they fit. We know that some of them arise out of discussions that have taken place on the basis of the briefing that took place with MLAs the other day. We would like to discuss this with our own group of MLAs, which is very important and perhaps set aside some more debate to finish off some of this other work early next week, but in sufficient time to be able to complete it by the end of the week.

Certainly we believe, if there is agreement in the Legislature, that it is better to have it implemented in such a time that we can deal with the issues raised in the Bill. They are very important principles here. I think all of us can agree in the amendments we have just seen. We have glanced at them, but we certainly want to be very sure of what we are attempting to do on behalf of our constituents on this very, very important Bill.

That would be our preference, to have perhaps an early morning session again to go at some of the amendments, and the content and the debate of the Bill, perhaps Tuesday, also to discuss this with our own caucus, because it is a report we would like to report back to our caucus. We would certainly be in a position from there on in to expedite the matter in the Legislature, consistent with the Minister's request for an implementation time, if it is possible, on agreement on the legislation.

Mr. Edwards: Mr. Chairman, I will be very brief. I certainly agree with the comments of the Leader of the New Democratic Party (Mr. Doer). I would like some time to look at these amendments. I think we have all looked at this Bill, even though it is very short in words, very carefully because of its impact. We all want to achieve, I think, the same goal. It is just a question of how we get to that goal. I am certainly prepared to meet as early as Tuesday as well. I think that would be advisable given the very interesting and provocative presentations we have heard tonight, and the many amendments which have come forth from the Government.

* (2150)

Hon. Gerald Ducharme (Minister of Urban Affairs): Let us set the date tonight and say Tuesday morning.

Mr. McCrae: Mr. Chairman, with regard to the setting of the date, Tuesday morning sounds like something we should look at. I will take that up with my opposite Members in the other Parties.

Mr. Edwards keeps referring to numerous amendments. Amendments come about for several reasons. I have had very constructive discussions with my colleague, the Honourable Member for Logan (Ms. Hemphill). I had some discussions with the Honourable Member for St. James (Mr. Edwards). We had a presentation from some people in Minnesota who have experience with this. We have heard from people again tonight. We knew some of the things that would be said before they were said tonight. We expected them. We anticipated them.

For all of those reasons, and for the same reasons mentioned by the Leader of the New Democratic Party (Mr. Doer), we just want to do this right. That is why you have some amendments. There are amendments dealing with drafting, amendments dealing with issues raised by the Honourable Member for St. James himself, that may go some way to allaying some of his fears expressed, on behalf of whom we are still not sure, when we see the Honourable Member's attitude towards the fact that there are some amendments coming forward.

We extend every possible co-operation to the Honourable Member for St. James (Mr. Edwards) and of course to the other Honourable Members. Staff people tell me that they are available tomorrow. They will make themselves available at every possible opportunity to explain the reasoning behind the amendments being brought forward by the Government, what they do to the Bill and how they may modify certain portions of the Bill, how they may strengthen the Bill. That is what the amendments are for. I do not quite understand the criticism that there would be amendments when we have been told that is what Honourable Members wanted to see in the first place.

Mr. Patterson: Just another question, having concentrated on chemistry, in my days as an undergraduate, a few years ago, something just struck me about an hour ago about the expression of the alcoholic content of the blood. Milligrams, a gram was a measure of weight and alcohol is a liquid. - (Interjection)- No, you would not substitute millilitres. A gram is a measure of weight and alcohol is a liquid, and the litre or millilitres are the measures that should be properly applied.

Mr. McCrae: I still think a kilogram is the measure of length down the highway.

Mr. Edwards: Mr. Chairman, I want to respond very briefly to the accusations made by the Minister.

In raising the issue of 17 amendments which came forward in a 16-section Bill, those were directed towards any idea that we might consider this Bill responsibly section by section tonight, given Section 17 amendments which came forward tonight. It was in that context that those statements were made and I believe they are valid and have been supported by all Members here tonight. I leave it at that, Mr. Chairman.

Mr. Chairman: What is the will of the committee? Are we setting a date for the next meeting?

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Mr. McCrae: First thing tomorrow, I will meet with my colleagues, the House Leaders for the other Parties, and hopefully make an announcement for Tuesday morning in the House tomorrow, but I do not want to say that until I have met with the House Leaders.

Mr. Chairman: Is it the will of the committee to rise?
(Agreed)

Committee rise.

COMMITTEE ROSE AT: 9:52 p.m.