LEGISLATIVE ASSEMBLY OF MANITOBA

THE STANDING COMMITTEE ON LAW AMENDMENTS

Thursday, March 1, 1990

TIME — 8 p.m.

LOCATION — Winnipeg, Manitoba

CHAIRMAN — Mr. Helmut Pankratz (La Verendrye)

ATTENDANCE - 11 — QUORUM - 6

Members of the Committee present:

Hon. Messrs. Connery, Cummings, Downey, McCrae

Messrs. Edwards, Kozak, Maloway, Minenko, Pankratz, Roch, Storie

WITNESSES:

Mr. Michael Guardian, Private Citizen

Mr. Alex Gauer, The Association of Manitoba Land Surveyors

Mr. Bill McKenzie, Association of Professional Engineers of Manitoba

Mr. Mel Craven, Manitoba Association of Architects

Mr. Bernie Smith, Manitoba Society of Certified Engineering Technicians and Technologists Inc. (MANSCETT)

Mr. Tim Stratton, Association of Consulting Engineers of Manitoba

Mr. Sheldon Pinx, Canadian Bar Association (Manitoba Section)

Mr. George Orle, Manitoba Bar Association

Written Presentations Submitted:

Mr. John E. Leech, Applied Science Technologists and Technicians of British Columbia

Mr. C. Charles Brimley, CET, Executive Director, Canadian Council of Technicians and Technologists

Mr. Rick Chale, F.W. Sawatzky (Western) Ltd.

APPEARING:

Dr. Peter Markesteyn, Chief Medical Examiner

MATTERS UNDER DISCUSSION:

Bill No. 6—The Law Reform Commission Act

Bill No. 39—The Human Tissue Amendment Act

Bill No. 40—The Land Surveyors Amendment Act

Bill No. 65—The Fatality Inquiries Act

Bill No. 66—The Summary Convictions Amendment Act

Bill No. 68—The Court of Appeal Amendment Act

Bill No. 69—The Law Society Amendment Act

Bill No. 70—The Provincial Court Amendment Act

Bill No. 71—The Law Society Amendment Act (2)

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* (2005)

Mr. Chairman: The Committee on Law Amendments is called to order. We will be reviewing Bill No. 6, The Law Reform Commission Act; Bill No. 39, The Human Tissue Amendment Act; Bill No. 40, The Land Surveyors Amendment Act; Bill No. 65, The Fatality Inquiries Act; Bill No. 66, The Summary Convictions Amendment Act; Bill No. 68, The Court of Appeal Amendment Act; Bill No. 69, The Law Society Amendment Act; Bill No. 70, The Provincial Court Amendment Act; and Bill No. 71, The Law Society Amendment Act (2).

It is our custom to hear briefs before consideration of all the Bills. What is the will of the committee? Mr. Minister.

Hon. James McCrae (Minister of Justice and Attorney General): Mr. Chairman, I would ask the indulgence of the committee that we deal first with Bill 65, The Fatality Inquiries Act, that we hear the presenter, who may or may not be here, on that Act and then deal with the Act clause by clause so that we can accommodate Dr. Markesteyn, the Chief Medical Examiner for the Province of Manitoba, who has other matters to attend to. If I could have the indulgence of the committee for that, it would be much appreciated.

Mr. Chairman: Would the committee agree to that? Agreed? Agreed.

We will start with Bill No. 65. Is it also the will of the committee, after that, that we will hear all presenters and all Bills before we will go over the Bills clause by clause? Is that agreed? Agreed.

BILL NO. 65—THE FATALITY INQUIRIES ACT

Mr. Chairman: Bill No. 65, The Fatality Inquiries Act. Mr. Michael Guardian. Is Mr. Michael Guardian here? Yes. Mr. Guardian, do you have a written presentation?

Mr. Michael Guardian (Private Citizen): No, I have the notes but I was just going to give it orally, basically, because it is fairly straightforward.

Mr. Chairman: That is fine, very good. Excuse me, Mr. Kozak.

Mr. Richard Kozak (Transcona): There is no need, Mr. Chairman, thank you.

Mr. Chairman: Okay, Mr. Guardian, you may proceed.

* (2010)

Mr. Guardian: Thank you. Basically, as I understand it, Bill 65 will help deal with negligence and the now unreported deaths and causes of deaths in Manitoba. The Bill will help us to protect the old and the young. It will improve the accuracy of statistics used for policy decisions and preventative measures.

I am the author of the original Bill C-43. That Bill concerns negligence, self-defence, abortion, eugenics and is based on my life. I know that the documentation required for Bill 65 will prevent the types of situations that inspired me to design C-43. Bill 65 is a filter and is complementary to Bill C-43.

Prior to my birth, I suffered eye damage requiring about $5,000 of corrective surgery, in today's dollars. I was supposedly put into cardiac arrest at this time. The doctor misused the forceps to cause the damage. I was also born by caesarean. The woman doctor who delivered me was said to have killed one child and was suspected to have killed three others. When caught, she cracked up and had to be institutionalized.

The hospital concerned was Lions Gate Hospital in North Vancouver. This hospital serves the richest part of Canada, which is actually West Vancouver.

Our country has been hurt. Bill 65 would help filter out such incompetence. If the Bill is passed, I hope you will suggest the Bill to be adopted in other provinces. It actually, in my opinion, is a landmark.

Recently, the Free Press covered a story of a child dying after eye surgery. The anesthetics were suspected, but I saw no conclusion reported anyway. You may find the following account relevant. At about the age of seven and a half, I was to have a tonsil operation. I was not under when the doctors at Lions Gate Hospital started the operation. When a nurse noticed I was not under, the doctor said, give him another dose. I managed to count to 34 in two counts of 20 between when they first noticed and when they decided to give me the second dose.

Basically the anesthetic shock stopped my heart. I am fairly active and have had physicals and a cardiogram. I know that I have no measurable aftereffects other than a deep disgust for medical incompetence. The child in the case mentioned is gone, but the records exist.

If we can understand what happened in the past through the documentation of the medical records, we can make things better for the future, including dealing with the families that have to deal with the aftereffects. If we can reduce the guessing about the causes of deaths, we can prevent deaths to a greater degree. We could also reduce negligence. I am in favour of the amendments to The Fatality Inquiries Act in Bill 65. Thank you.

* (2015)

Mr. Chairman: Thank you, Mr. Guardian. Any questions to Mr. Guardian? No questions. Thank you. Is there anybody else that would like to make a presentation to Bill No. 65? If not, then it was agreed by committee that we would cover the Bill clause by clause at this point. Mr. Minister.

Hon. James McCrae (Minister of Justice and Attorney General): Mr. Chairman, I might tell the Members of the committee that Legislative Counsel have brought with them tonight a half-dozen amendments dealing with correcting of cross references, consequential amendments, spelling mistakes, those types of things, so I will be moving those as we go along.

Mr. Chairman: Thank you. Then we will proceed clause by clause. Clause 1—Mr. Minister.

Mr. McCrae: Mr. Chairman, I move

THAT the definition of "inquiry report" in section 1 be amended by striking out "subsection 7(4)" and substituting "subsection 7(5)".

(French version)

Il est proposé que la définition de "rapport d'enquête" figurant à l'article 1 soit amendée par remplacement de "7(4)" par "7(5)".

Mr. McCrae: I can tell Honourable Members that this amendment would correct a cross-reference.

Mr. Chairman: Shall the amendment pass—(pass). Clause 1, as amended, in English and French—(pass). Mr. Edwards.

Mr. Paul Edwards (St. James): Thank you, Mr. Chairperson. I just have one question with respect to the definition "manner of death." In the explanatory comment that I have, it indicates that by proposed Clause 3(2)(a) investigators would not have the authority to determine manner of death.

I am not an expert in this area. Do investigators now have that authority? Is this the effect of this Bill, to take away that authority from investigators as opposed to a medical examiner, him/herself?

Mr. McCrae: Mr. Chairman, with the indulgence of the committee, I would ask Dr. Markesteyn to answer. He has been working on this legislation for a good long time.

Dr. Peter H. Markesteyn (Chief Medical Examiner): The determination of the manner and cause of death is a medical matter. The investigators are paramedical personnel and therefore do not overstep their authority by determining cause and manner of death. That is within the realm of the medical examiner.

Mr. Edwards: For clarification then, at present they do not have that power. We are not taking it away; we are just clarifying that they do not have it. Is that right?

Dr. Markesteyn: That is correct. Yes.

Mr. Chairman: Clause 1, as amended, in English and in French—pass; Clause 2—pass; Clause 3—pass; Clause 4—pass; Clause 5—pass.

Clause 6—Mr. Edwards.

Mr. Edwards: Again, I am sorry. I have a question. It may relate perhaps more to Clause 5, but is more for clarification.

I wonder if Dr. Markesteyn could tell us with respect to reporting deaths and in particular 6(1), a person who is a witness to or has knowledge of a death shall immediately report the death to a medical examiner.

We had in this province the unfortunate circumstance last year of deaths in a seniors' home in this province. I wonder if Dr. Markesteyn can tell us: Are these amendments dealing in any way with some of the problems which arose from that and the fact that knowledge seemed to come to Members of the Legislature and indeed members of the public quite belatedly in that case?

* (2020)

Dr. Markesteyn: At the present, legislation does not make it obligatory for anybody to report a death. This amendment makes it mandatory for a person to report a death. The death in personal care homes is now included in this amendment as well. They were not in the past.

Mr. Chairman: Any more questions? Clause 6—pass; Clause 7—pass; Clause 8—pass; Clause 9—pass.

Clause 10—Mr. Minister.

Mr. McCrae: Mr. Chairman, I move

THAT clause 10(1)(b) be amended by striking out "family services under Part II of" and substituting "services under".

(French version)

Il est proposé que le paragraphe 10(1) soit modifié par remplacement de "à la partie II de" par "par".

Mr. McCrae: I would explain to Honourable Members that this amendment is consequential after the amendments made to The Child and Family Services Act earlier in this Session.

Mr. Chairman: The amendment to Clause 10(1)(b) in English and in French—pass; Clause 10 as amended—pass.

Clause 11—Mr. Minister.

Mr. McCrae: I move

THAT the English version of clause 11(1)(a) be amended by striking out "lead" and substituting "led".

(French version)

Il est proposé que la version anglaise de l'alinéa 11(1)a) soit modifiée par remplacement de "lead" par "led".

Mr. McCrae: I explain to Honourable Members that it is to correct the spelling of the word "lead."

Mr. Chairman: The amendment to Clause 11(1)(a)—pass; Clause 11 as amended—pass; Clause 12—pass; Clause 13—pass.

Clause 14—Mr. Edwards.

Mr. Edwards: Again, for Dr. Markesteyn, 14(2) indicates: ". . . a medical examiner shall not express an opinion with respect to culpability in such manner that a person is or could be identified as a culpable party." Dr. Markesteyn, do you anticipate that will change the procedure now? Is that a change in what has been happening with respect to reports forwarded to you by medical examiners?

Dr. Markesteyn: Yes, in the past some medical examiners have, on the basis of hearsay, given opinions in reports about culpability, which in our—I am not a lawyer, but in my opinion it was highly improper. This sort of eliminates that, as it is prejudicial to the person involved who may not be culpable at all.

Mr. Chairman: Does that answer your question, Mr. Edwards? -(interjection)-

Members of the committee, the Minister's next amendment is in Clause 36. If anybody has any questions before that, then I will gladly go through it one by one. If not, then I would like to ask the Members of the committee -(interjection)- no, but I want to do it in groups of clauses. Mr. Edwards.

Mr. Edwards: Mr. Chairperson, I realize that this hearing may go late into the evening, but this is a very important piece of legislation. I strongly suggest that we do clause by clause. I do not think it is unduly onerous to do that.

Mr. Chairman: Clause by clause. Clause 14—pass; Clause 15—pass; Clause 16—pass; Clause 17—pass; Clause 18—pass; Clause 19—pass; Clause 20—pass.

Clause 21—Mr. Edwards.

* (2025)

Mr. Edwards: Again for Dr. Markesteyn, this section deals with an opinion on culpability as well, this time an opinion from the Chief Medical Examiner. Is that a change, Dr. Markesteyn, from the present practice, with respect to you giving an expression, an indication of culpability, to a provincial judge?

Dr. Markesteyn: Mr. Chairman, I have not personally done so, but should I be inclined to do so in the future, I would be forbidden to do so.

Mr. Edwards: Just for clarification, this is codifying a practice which already exists, which is that you do not ever give those opinions to a provincial judge?

Dr. Markesteyn: I do not at this time, no.

Mr. Chairman: Clause 21—pass; Clause 22—pass; Clause 23—pass; Clause 24—pass; Clause 25—pass; Clause 26—pass; Clause 27—pass; Clause 28—pass; Clause 29—pass; Clause 30—pass.

Clause 31—Mr. Edwards.

Mr. Edwards: Dr. Markesteyn, with respect to whether or not an inquest is held in camera, what role does your office, and you personally, play if at all in that decision? Do you submit a recommendation to the judge with respect to whether or not it should be in camera?

Dr. Markesteyn: The inquest procedure in the medical examiner's system is separate from the investigative part of my office. I do not personally suggest to a judge that he do anything at all. It is up to the judge whether he wishes to do that.

Mr. Chairman: Any more questions? Clause 31—pass; Clause 32—pass; Clause 33—pass; Clause 34—pass; Clause 35—pass.

Clause 36—Mr. Minister.

Mr. McCrae: Mr. Chairman, I move

THAT subsection 36(3) be amended by striking out "of not more than $1000." and substituting "not exceeding $1000. and, in default of payment, to imprisonment for a period not exceeding six months".

(French version)

Il est proposé que le paragraphe 36(3) soit amendé par remplacement de "d'au plus 1 000 " par "maximale de 1 000 et, à défaut de paiement, d'un emprisonnement maximal de six mois".

I move this motion in both the English and French languages and inform Honourable Members that this amendment is to make Section 36(3) consistent with what is provided in Section 37(3).

Mr. Chairman: The amendment to Clause 36(3) as amended in English and in French be—pass; Clause 33(3)—pass; pardon me, 36. Clause 36 as amended—pass; Clause 37—pass; Clause 38—pass; Clause 39—pass; Clause 40—pass; Clause 41—pass.

Clause 42—Mr. Minister.

Mr. McCrae: Mr. Chairman, I move

THAT subsection 42(6) be amended by striking out clause (d).

(French version)

Il est proposé que le paragraphe 42(6) soit amendé par suppression de l'alinéa d).

I move this motion in both the English and French languages. This is to correct a drafting error which caused this clause to show up in Section 42(6) when it does not belong there.

* (2030)

Mr. Chairman: Shall Clause 42(6) as amended pass—pardon me, shall the amendment to Clause 42(6) pass—pass.

Clause 42 as amended—Mr. Edwards.

Mr. Edwards: Mr. Chairperson, for Dr. Markesteyn, with respect to specifically 42(3), with the new Freedom of Information Act, there is a provision in that Act that specifically talks about other statutes in the Province of Manitoba which allow for the release of confidential information. There is an interrelationship developed between other statutes in The Freedom of Information Act.

Dr. Markesteyn, do you have any particular concerns about The Freedom of Information Act's application to this Act and to your role with respect to information about deaths and about how they occurred, and do you have any experience in the last year which would lead you to suggest that there may be cause to tighten up what information can be released by the medical examiner in these cases?

Dr. Markesteyn: Mr. Chairman, I have no concerns about The Freedom of Information Act at all. In fact, our Act and our office is, I believe, more open than The Freedom of Information Act allows it to be, by habit and by legislation. My concern is on occasion the media are looking for information which is irrelevant to the task and unnecessarily hurts the reputation of third parties.

Mr. Edwards: That is precisely my concern, Dr. Markesteyn. We all know of the sensationalism of some of these incidents, and I think it is always important to take a strict approach to this, because we are dealing in many cases with people who can be greatly hurt by the release of certain information in an untimely fashion and in an ill-thought-out fashion. Are you satisfied then that this provision gives you the authority to hold back and in many instances keep for the court information which certain members of the media might want to get through The Freedom of Information Act? Are you satisfied that the interrelationship works satisfactorily with this present wording?

Dr. Markesteyn: I am, Mr. Chairperson.

Mr. Edwards: Thank you.

Mr. Chairman: Any more questions? Clause 42, as amended—pass.

Clause 43—Mr. Minister.

Mr. McCrae: Mr. Chairman, I move

THAT clause 43(1)(c) be struck out and the following substituted:

(c) whether an inquest was held or, where an inquest has not been held, whether an inquest is expected to be held;

French version

Il est proposé que l'alinéa 43(1)c) soit remplacé par ce qui suit:

c) si une enquête médico-légale a été tenue ou, en l'absence d'enquête médico-légale, si une telle enquête est prévue;

I move this motion in both the English and French languages and explain to Honourable Members that this amendment expands the present Clause (c), which does not contemplate the Chief Medical Examiner making his report before an inquest is held.

Mr. Chairman: The amendment to Clause 43 as amended—pass; Clause 43 as amended—pass; Clause 44—pass; Clause 45—pass; Clause 46—pass; Clause 47—pass; Title—pass; Preamble—pass. Shall the Bill as amended be reported? Is it the will of the committee that the Bill be reported as amended? Agreed.

Mr. McCrae: I thank Honourable Members, Mr. Chairman, for their indulgence and also the other presenters who were here tonight for their indulgence in allowing us to deal with this matter up front.

Mr. Chairman: Now I understand it is the will of the committee that we will hear all the presenters first before we will go to any Bills clause by clause. If it is the will of the committee, I will start at the top of the page, and we will just work our way down. Mr. Minister, is that the will of the committee?

Mr. McCrae: That is, Mr. Chairman, as I would proceed. I think Honourable Members would agree that the presenters should be heard in the order that they appear on our list and in the order that the Bills are presented to the committee as well as you have them here on your list.

BILL NO. 40—THE LAND SURVEYORS AMENDMENT ACT

Mr. Chairman: Very good. On Bill No. 40, The Land Surveyors Amendment Act—Mr. Alex Gauer. He is with the Association of Manitoba Land Surveyors. Have you, Mr. Gauer, got a written presentation?

Mr. Alex Gauer (The Association of Manitoba Land Surveyors): Mr. Chairman, it is Mr. Gauer. I have given our presentation to the Clerk for distribution.

Mr. Chairman: Thank you.

Mr. Gauer: Thank you, Mr. Chairman. The Association of Manitoba Land Surveyors has requested that Bill No. 40 be brought forward to have The Land Surveyors Act, C.C.S.M., Chapter L60, which governs the association's mandate, clarified. The need for this amendment, for the protection of the public against unqualified practitioners, was identified in the decision rendered by Mr. Justice Oliphant in the Court of Queen's Bench, Brandon Centre, 1986. This decision stated in part, "I am driven to the conclusion, from my reading of The Land Surveyors Act, that it is impossible to determine whether one's actions are legal or illegal."

After some consultation with other professional associations and special interest groups, it became apparent that there was a general concern with Section 2(c) of the proposed definition of the practice of land surveying and in particular with the phrase, ". . . the location of anything relative to a boundary." It is the position of the Association of Manitoba Land Surveyors that in order to define "the location of anything relative to a boundary," one must first define the position or location of the boundary. This defining of the boundary is without question the raison d'etre for the establishment of a professional association charged with protecting the public interest in the quiet possession of title to land without undue fear of continual and costly litigation.

It is apparent that we, that is, the association, have not had enough meaningful communication over the years with our sister professional associations and those special interest groups appearing before your committee today as to what is involved in the professional practice of land surveying, that is, the combination of the arts and sciences that are involved with boundary definition. There is a perception that boundary definition is a relatively simple technical exercise of measuring angles and distances from points of known position, these known points being the survey monuments.

The professional land surveyor in the performance of his duties must consider not only evidence on public record in a Land Titles office, but other corroborative evidence relating to the determination that the survey monument is indeed in its proper position. This corroborative evidence includes, but is not limited to, unregistered plans of survey not yet in the public domain; information and field notes on record in both public and private sector survey offices; original field notes on record in the office of the Director of Surveys, Department of Natural Resources; knowledge of the conditions under which the original survey was made.

This evidence, together with the specialized training of a professional land surveyor in matters dealing with assessment of survey evidence in a manner consistent with those procedures used by the courts such as legal descriptions, boundary law and measurement significantly differentiate the professional practice of land surveying from the technical exercise of measuring angles and distances. In the interest of brevity, the Association of Manitoba Land Surveyors is in favour of the two proposed amendments now before your committee dealing with Sections 2 and 3 of this Bill.

The association feels that these proposed amendments preclude any concerns our sister professional associations or special interest groups may have with this Bill. Thank you for your consideration of this matter. We are most willing to provide further information and take part in further discussions if called upon to do so. I wonder, Mr. Chairman, whether it would be in order to read the proposed amendments before you for the benefit of the presenters who follow me.

Mr. Chairman: Mr. Gauer, if you so desire you may proceed reading the amendments.

Mr. Gauer: Thank you. Proposed amendment to Bill 40, moved by the Honourable Mr. McCrae

THAT the definition of "practice of land surveying" in section 1, as added by section 2 of Bill 40, be amended by striking out clauses (c) and (d) and substituting the following:

"including the preparation of maps, plans and documents and advising and reporting with respect to any of the matters described in clauses (a) and (b)."

The second proposed amendment before the committee, moved by the Honourable Mr. McCrae

THAT section (3) be amended by adding the following after subsection 54(2):

Exception for architects and engineers
54(2.1) Nothing in this Act applies to or affects

(a) the practice of architecture by an architect practising under the authority of The Architects Act; or

(b) the practice of engineering by an engineer practising under the authority of The Engineering Profession Act.

Thank you, Mr. Chairman.

Mr. Chairman: Thank you, Mr. Gauer. Are there any questions to the presenter? Mr. Edwards.

* (2040)

Mr. Paul Edwards (St. James): Mr. Gauer, thank you for your presentation. I note that your amendments get rid of Subsections (c) and (d) of Section 2. With respect to subs (a) and (b) of Section 2, do you have any concerns that we are being overly restrictive by saying that it will be an offence punishable by a fine of up to $2,000 to involve oneself in the determination of a boundary of land?

I do not claim to be an expert in this area. I note your comment that in order to determine or locate a boundary you first have to define what a boundary is, but where is a boundary defined? Can you give me some guidance on that because I will tell you my concern. I think there are thousands of people out there in rural Manitoba who have land leases where they probably, with a handshake and maybe a piece of paper which outlines the piece of property, but maybe not, simply say you can use this quarter section or whatever and we will share the crop or we will exchange some money to pay for that. Is there any chance that that is going to be included in the definition which reads, the determination of a boundary of land? Would that be the determination of a boundary of land in your view? Or even potentially?

Mr. Gauer: No. It would be my opinion that that is not what we are looking for. The handshake between two people to share land or lease land in a rural area, that is not what we classify as determining boundary. That is a private agreement between two adjoining landowners or it may not be adjoining landowners, but two landowners.

Mr. Edwards: I completely understand that is certainly not your intent, to infringe upon that which happens every day in this province. I wonder whether or not that wording has the potential to include that. Maybe I am seeing phantoms where they do not exist, but the wording does seem fairly broad, even in (a) and (b), not that different than (c). I am just wondering if you are completely certain that we are not likely to fall into the position where that might become punishable by a fine of $2,000, because I certainly do not want to do that, and I do not think you do either. We just want to make sure that we put a law in place which does not do that.

Mr. Gauer: I think that I can assure you that would not happen.

Mr. Chairman: Any more questions to Mr. Gauer? Mr. Minister.

Hon. James McCrae (Minister of Justice and Attorney General): Mr. Gauer, just a very brief question. Is it the practice of your association to issue a warning to someone who is felt by your association to be breaching rules and practising surveying prior to coming forward with a charge being laid in the court?

Mr. Gauer: Mr. Minister, this has occurred in the past where we have written to a person that we felt was practising land surveying without having his licence, and as it turned out, he continued to do so, yes, but we did advise him, I believe in two letters.

Mr. McCrae: I guess any time there is a change in legislation, as there is here, it would be my concern that we do not just go after people, laying charges without their knowing that they are breaching the rules, and your association is there to let them know when your association feels they are breaching the rules.

Mr. Gauer: Yes.

Mr. Chairman: Any more questions to Mr. Gauer, the presenter? No. Thank you, Mr. Gauer, for your presentation.

Mr. Gauer: Thank you, Mr. Chairman.

Mr. Chairman: The next presenter is Mr. Bill McKenzie, Association of Professional Engineers of Manitoba.

Mr. Bill McKenzie (Association of Professional Engineers of the Province of Manitoba): Thank you, Mr. Chairman. Mr. Minister and Members of the Legislative Assembly, my name is Bill McKenzie. I am a professional engineer, and I speak tonight on behalf of the Association of Professional Engineers of the Province of Manitoba. With me tonight are Mr. David Ennis, who is the executive director of our association, and Mr. Wells Peever, who is our legal counsel, and we want to thank you for providing us with the opportunity to speak on this matter.

Our association, the Association of Professional Engineers, has a legislated responsibility under the terms of The Engineering Profession Act to govern and regulate the practice of engineering in the Province of Manitoba. We are appearing tonight in connection with this responsibility.

We have had an opportunity to consider the proposed amendments to The Land Surveyors Act. We have one

major concern. Neither the existing Act nor the proposed amendments—and that is excluding the one that I heard of five minutes ago—include an exclusionary clause for engineers to practise engineering under the terms of The Engineering Profession Act.

I bring to your attention that The Engineering Profession Act does include an exclusionary clause for land surveyors. Accordingly, we respectfully request the Law Amendments Committee to recommend to the Legislature that such an exclusionary clause be included as an amendment to this Act. We think it is important to emphasize, and we would like the committee to understand, that we have been in communication with the Association of Land Surveyors for some two years in connection with this matter. We have developed an understanding of their concerns, and we are supportive of the initiatives they are pursuing in this matter, and we understand the rationale behind the proposed amendments.

We fully understand the necessity of having a clear and adequate definition of the practice of land surveying in The Land Surveyors Act to enable the Association of Manitoba Land Surveyors to enforce the provisions of that Act and thus protect the interests of the public.

Now, we do understand that Members of your committee may not have detailed knowledge of the technical aspects of surveying, or knowledge of the surveying that is routinely done by engineers, or the surveying that is done routinely by land surveyors, or the surveying that is routinely done by others.

Briefly, engineers use surveying for the purpose of locating their works and portions of their works. On the other hand, as we understand it, land surveyors use surveying primarily for the purpose of establishing and certifying legal boundaries and although engineers and land surveyors understand the difference, there might be some confusion in a court of law if the respective statutes did not contain exclusionary clauses.

In connection with what I have outlined, our association has prepared a short letter which I understand has been, or will be, distributed to the Members of your committee and we believe, when you read it, that you will be able to identify our specific concern. Briefly, we believe that the inclusion of an exclusionary clause is in the public interest and if it is included will go a long way toward eliminating confusion in the future. Now we were made aware of two amendments proposed by the Honourable Minister and I can say that our association is in agreement with those particular amendments. Thank you, ladies and gentlemen.

Mr. Chairman: Thank you, Mr. McKenzie. Any question to Mr. McKenzie. Mr. Storie.

* (2050)

Mr. Jerry Storie (Flin Flon): Thank you, Mr. Chairperson. Mr. McKenzie, you mentioned that you had not heard the latest amendment, which sounds as if it does provide an exclusionary clause. I am wondering if you are satisfied with that or whether you have any comments about any changes in wording that might make it more satisfactory to your association.

Mr. McKenzie: We have looked at the wording of that proposed amendment and we are in agreement with the wording proposed.

Mr. Chairman: Any more questions to Mr. McKenzie? Thank you for your presentation, Mr. McKenzie.

Mr. McKenzie: Thank you.

Mr. Chairman: Next presenter, Mr. Mel Craven.

Mr. Mel Craven (Manitoba Association of Architects): The Manitoba Association of Architects is the licensing body for the architects of the Province of Manitoba. The Association regulates the practice of architecture.

Bill 40, The Land Surveyors Amendment Act, in its present form causes some concern to our association, specifically Section 2(c) and Subsection 54(1). They appear to infringe on the architect's right to practice architecture which is provided in The Architects Act in the Province of Manitoba.

The practice of architecture regularly involves the preparation of site plans by architects. Basically it is the identification or identifying where the location of the buildings would be in accordance to its boundaries.

Section 2(c) in conjunction with Subsection 54(1) of the proposed Bill could effectively preclude the preparation of the site plans by registered members of the Manitoba Association of Architects.

In October of 1989, the president of the Association of Manitoba Land Surveyors contacted our executive director to discuss our concerns and subsequently provided a letter indicating their intent to request a further amendment to the subject Bill which would incorporate an exclusionary clause for registered members of the Manitoba Association of Architects and also at the same time noted the Association of Professional Engineers in the Province of Manitoba. It is a clause that he had quoted, which stated, nothing in this Act applies to prevent any person who is a member of the Manitoba Association of Architects from practising architecture within the meaning of The Architects Act, and nothing in this Act would apply to prevent any person registered as a member of the Association of Professional Engineers in the Province of Manitoba from practising engineering within the meaning of the The Engineering Profession Act.

Should this clause or a similar exclusionary clause be included within the amendments of Bill No. 40, the Manitoba Association of Architects would not offer any opposition to Bill No. 40, but would stress that such a clause would have to be included in order to satisfy the association and The Architects Act.

Thank you very much.

Mr. Chairman: Any questions to Mr. Craven? Mr. Edwards.

Mr. Edwards: Mr. Craven, thank you for your presentation. I am just going to ask you the same question my friend Mr. Storie asked of the engineers. Have you had a chance to look at the draft amendment to this Act which the Minister has put in front of us tonight? Maybe I can just read it to you.

Mr. Craven: Please, no, I have not.

Mr. Edwards: It reads, nothing in this Act applies to or affects (a) the practice of architecture by an architect practising under the authority of The Architects Act. Does that meet your concerns?

Mr. Craven: Yes, it does.

Mr. Chairman: Any more questions to Mr. Craven? Thank you for your presentation. Mr. Rick Hunter? Mr. Bernie Smith? Mr. Rick Hunter, Manitoba Society of Certified Engineering Technicians and Technologists Incorporated.

Mr. Bernie Smith (Manitoba Society of Certified Engineers, Tecnicians and Technologists) Mr. Chairman, Mr. Hunter is not here this evening. I will be presenting on his behalf.

Mr. Chairman: Would you please identify yourself.

Mr. Smith: Bernie Smith, Manitoba Society of Certified Engineering Technicians and Technologists.

Mr. Chairman: Mr. Bernie Smith, you may proceed.

Mr. Smith: Further to The Manitoba Land Surveyors Amendment Act, Bill No. 40, we wish to make opposition to item 2(c), which is intended to broaden the definition of a Manitoba land surveyor and the practice of land surveying. Specifically, we are opposed to the words "or the location of anything relative to a boundary." Our interpretation of the wording suggests that the amendment Act will place all surveys within Manitoba under land surveyors' jurisdiction. It offers no exclusion.

This statement would result in the following: It would be unfair to thousands of technical and technology graduates from our community college programs who have been trained to carry out surveys and would be excluded from carrying out basic survey work. Second, it would be physically impossible for a few registered land surveyors to carry out all survey work in the Province of Manitoba. Third, it would cause confusion and potential legal challenges whenever surveying work was carried out for quality control or for other uses not involving the establishment of legal monuments.

No one is in dispute with surveying which establishes legal boundaries or benchmarks being within the jurisdiction of The Manitoba Land Surveyors Act. However, that portion of survey work which does not create the necessity for legal registration should be open to all those having recognized skills to do the work. We propose that the amendment Act should remove from Section 2(c) the words "or the location of anything relative to a boundary".

Mr. Chairman: Thank you, Mr. Smith. Mr. Edwards.

Mr. Edwards: Mr. Smith, the Minister tonight has put in front of us an amendment which I am sure you probably have not seen. It in fact appears to delete Clauses (c) and (d) of Section 2 and replace them with the following: "including the preparation of maps, plans and documents and advising and reporting with respect to any of the matters described in clauses (a) and (b)". I appreciate that is probably the first time you have heard it. I will read it to you again if you want. Does that meet your concerns, Mr. Smith?

Mr. Smith: Mr. Chairman, MANSCETT is aware of the proposed amendment and would retract opposition to the proposed amendment to Bill 40 provided that the proposed amendment moved by the Honourable Mr. McCrae is adopted.

Mr. Chairman: Any more questions? Thank you, Mr. Smith, for your presentation.

We go to the next one, Mr. Tim Stratton, Association of Consulting Engineers of Manitoba. Mr. Tim Stratton, have you a written presentation?

Mr. Tim Stratton (Association of Consulting Engineers of Manitoba): No, I do not. Mr. Chairman, we had found two areas of the Bill to be unacceptable. We required an exclusionary clause for engineers, and secondly, it was Item 2(c), and with the adoption of the two proposed amendments to Bill 40, we deem Bill 40 to be acceptable. Thank you.

Mr. Chairman: Thank you very much, Mr. Stratton. Any questions to Mr. Stratton? Thank you for your presentation.

The next presenter is Mr. Alf Simon. He is not here. We have a written presentation by Mr. John E. Leech, which has been distributed. No, we do not have it. The Clerk indicated that they will try to contact him once more and see whether we can get the written presentation from him, but at the present we do not have it.

That is all the presenters we have for Bill No. 40. Then we will go to Bill No. 70—The Provincial Court Amendment Act. We have one presenter recorded, Mr. Sheldon Pinx. Mr. Pinx, you may proceed.

Mr. Sheldon Pinx (Canadian Bar Association, Manitoba Section): Thank you. Perhaps, should we have circulated the written submission that we have presented, sir?

Mr. Chairman: A submission of yours is being circulated right now, thank you.

Mr. Pinx: Thank you. I am here appearing on behalf of both the Canadian Bar Association and the Manitoba branch of the Canadian Bar Association to address Bill 70, which is before you for your consideration this evening.

The Canadian Bar Association and the Manitoba branch of the Canadian Bar Association fully support and endorse Bill 70, The Provincial Court Amendment Act in its entirety. Both our national and provincial

associations commend the Minister of Justice, the Honourable Jim McCrae, for proposing what we believe to be critically important amendments, which confirm both the actual and perceived independence of our provincial judiciary. We are particularly pleased that this Bill reflects the position taken over a number of years by the Canadian Bar Association and feel that Manitoba can take considerable pride in being in the vanguard of Canadian provinces in taking this initiative.

* (2100)

The statutory creation of a nominating committee to address the appointment of provincial judges and the creation of a judicial compensation committee to review their remuneration satisfies, in our view, the responsibilities the Government must discharge to its public and as well to our judiciary. We are pleased to see that Government will be required to select judges for appointment from the list proposed by the nominating committee. This ensures for our public that the most qualified of candidates are being considered for appointment to our Bench.

The review by a judicial compensation committee of issues relating to the remuneration of judges, once again confirms that a defined procedure must be followed, which will result ultimately in the presentation of a report to our Legislative Assembly for their approval. This proposed amendment clearly establishes both for our public and our judiciary that the remuneration of judges no longer will be determined by the Government in power, but rather by a vote of our Legislative Assembly. This significant change in policy and procedure recognizes the need for a judiciary to be perceived publicly as being totally independent from Government and its departments, some of which, through their agents, appear regularly in the Provincial Judges' Court of our province.

Our associations hope that the proposed amendments can be proclaimed as quickly as possible so that your independent committees can proceed to perform their most important duties. We are pleased to see that the Honourable Minister of Justice (Mr. Mcrae) struck a judicial nominating committee whose recommendations recently resulted in the appointed of a provincial judge in Brandon, Manitoba.

Mr. Chairman: Thank you for your presentation, Mr. Pinx. Mr. Minister.

Mr. McCrae: Mr. Pinx, I will be very brief. I note, in your comments, you have asked that the Bill be proclaimed as soon as possible. Would it give you any comfort if I told you that the Act comes into force on the day it receives royal assent?

Mr. Pinx: Yes.

Mr. McCrae: That means that could happen very shortly, with the co-operation of my colleagues in the Legislature. One other quick point, I think I will be proposing an amendment later on to make the rules apply to an Associate Chief Judge, that an Associate Chief Judge can be chosen by the Attorney General in consultation with the Chief Judge, but that Associate Chief Judge appointee must be from the Bench and not from the street, as it were. Would you be agreeable to that kind of an amendment?

Mr. Pinx: Yes.

Mr. Chairman: Thank you. Mr. Edwards.

Mr. Edwards: Mr. Chairperson, there has been a concern raised to, I believe the Minister as well, but certainly Members of the Opposition, with respect to the change in the legislation from what was proposed by the Manitoba Law Reform Commission, and specifically with respect to a representative from the Faculty of Law onto the judicial selection appointment committee. Does the Manitoba Bar Association have any comment with respect to that and any concern which has been raised with us by the Dean of the Faculty of Law?

Mr. Pinx: The position that our association takes is that we feel that the make-up of the committee, as set out in Section 3.1(2) of the proposed amendments, provides in our view a very balanced roof. We have, as I note, the Chief Judge, who is the chairperson of the committee, three persons who are not lawyers, judges or retired judges—in effect, we would consider those as laypersons—a judge designated by the judges of the provincial court, a person designated by the president of the Law Society of Manitoba and a person designated by the president of the Manitoba branch of the Canadian Bar.

So, in my view, we have in effect two lawyers who will be appointed, being representatives of the Law Society and the Bar Association. In addition, you will have two judges—and in addition, of course, three laypersons. In my view, I think the balance that is set out in the legislation is a fair balance, and I think it would properly reflect the interests of the most important aspects of both the profession and the public. Not at all to minimize the contribution of a professor, for example, from the law school, but I do think that it might, in effect, be something unnecessary considering the quality of people that will be sitting on that committee.

Mr. Chairman: Any more questions to Mr. Pinx? There are no more questions. Thank you for your presentation, Mr. Pinx. Is there anybody else that would like to make presentation to Bill No. 70? If not, we will go to Bill No. 71, The Law Society Amendment Act. Mr. George Orle. Mr. Orle, have you a written presentation?

Mr. George Orle (Manitoba Bar Association): No, I do not, Mr. Chairman.

Mr. Chairman: Thank you. You may proceed.

Mr. Orle: Mr. Chairman, I appear as president of the Manitoba Bar Association, and I appear on behalf of the association in opposition to the amendment to The Law Society Act. We have made our comments known since the first proposal came forward of allowing

nonlegally trained persons to appear in the courts of this province. I would like to begin my submission by dealing with a few misconceptions in regard to what the position of the Bar Association, the position of lawyers, is to this particular amendment and to the proposal.

First of all, lawyers are not against paralegals. Lawyers have in fact worked hand in hand with paralegals for a number of years. Most legal offices have within them paralegals who work within those offices. Paralegals have done extensive work in the area of corporate law, real estate work and litigation support work. The use of paralegals in a law office maintains the efficiency of the lawyers' office and does that at an affordable cost. The effective utilization of paralegals has in fact lowered the cost of legal fees to the general public in Manitoba. I think it goes without saying, and it can be seen very easily, that comparing the cost of doing land transactions in Winnipeg today as opposed to five or 10 years ago indicates that there has been a substantial reduction in the cost of those legal services. To a large extend that has come about because of the utilization of paralegals within the lawyers' offices themselves.

The second misconception I would like to deal with is that lawyers are trying to somehow monopolize all legal services. That in fact is not true. Lawyers have over the years voluntarily given up many aspects of the practice of law within the province and within Canada. We have shared aspects of our practice with accountants, tax accountants, estate planners. We have done this throughout the years by virtue of passing on to other trained professionals those areas in which they might more benefit the public and to use their experience in a way that benefits the public in a better fashion. At all times lawyers have been prepared to share their expertise and to share the areas in which they practice with those other trained professionals within the province or within Canada.

The third misconception is that lawyers do not oppose paralegals because of a belief that paralegals will lower the level of legal fees within the province. It has been the position of the Bar Association throughout that the cost of providing the services that are being undertaken by the paralegals who are to be the beneficiaries of this particular amendment is the same as what was being charged by lawyers. You will know that in fact the paralegal organization that came into Manitoba and attempted to set up their offices within Manitoba and were offering services at a certain level of fee are in fact not operating within Manitoba. The lawyers who were prepared to provide that service, and to provide that service at the same cost as was being provided by the paralegal organization are still operating, are still providing those services at the same cost, have not changed their services, have not changed their costs, and are available to the public in the same fashion that they were before, during and after the paralegal service came into Manitoba.

I wanted to deal with those three areas because there has been a misconception that somehow lawyers were opposing this particular amendment solely for self-interest. There is a measure of self-interest. No one is going to deny that, but it has not been the mainstay of the opposition to this particular Bill.

Our concern can be summarized on the basis that if a member of the public is to pay a fee for a service then there ought to be a value for that service. If the representative is providing nothing more than what could be obtained from having a friend or someone off the street attend with them in court, then there is no justification for paying a fee for that service. It is our submission that to receive value for their fee a member of the public should as a minimum have someone representing them who has taken a course in criminal law, constitutional law and the interpretation of statutes such as The Highway Traffic Act.

* (2110)

This particular amendment allows for the giving of legal advice for remuneration to those persons who have received no legal training whatsoever. Our primary submission is that this Bill ought to be withdrawn, but if that is not appropriate, we are asking for the consideration that the remuneration portion of the Bill be withdrawn. If parties are to assist members coming before the courts and to offer a service for which they have not been legally trained, they ought not to be able to ask the public to pay them a fee for that particular service. If the concern is to allow those people who are not able to articulate their position to the court or to put forward their position and they require to have a friend or an assistant to come with them, then allow that assistant to come on the basis of helping out and not doing so solely for the benefit of gain.

We have a concern with the Bill in that it allows for the independent operation of paralegals through their own clinics, through their own offices, through their own operations. The independent paralegals are not required to have any training. They are allowed to practice in a very narrow and specialized area of employment. It is not possible to recognize the implications that a course of action in one area may have on a client's legal rights in another area without having an overall general knowledge of the law. A paralegal that may have experience with the use of radar, or breathalyzer or other technical aspects of law enforcement may not have the knowledge in areas such as constitutional law or conduct within the court to be able to provide a service to a client.

The client, being swayed by the fact that there is a technical expertise on the part of the paralegal, thinking that same expertise and knowledge of radar and breathalyzer can be carried over into knowledge as how to conduct oneself in court or to provide a defence in court. The legislation does not address any matters relating to training, education or background training of independent paralegals and their ability to practise within the province.

The legislation provides one area of protection, and that is if a judge that sits in the same court as the paralegal appears feels that the paralegal is not competent, the judge may remove that person from appearing in the court. It is our submission that is an inappropriate role for a judge. A judge in a court should not be there to decide which one of the parties being represented before the court is being competently represented. In many cases there are defences or

evidence that may be put forward or that a legal advisor may decide should not be put forward. A judge will have no way of knowing when the matter is coming up before the judge, whether that particular defence or that particular evidence is being withdrawn because it is not of any benefit to the accused, or whether in fact the person appearing for the accused does not even know about it or has no idea that that particular area ought to be dealt with.

For the judge to enter into an area of the competence of the representative, the judge may be in fact taking part in the actual case himself or herself, which is inappropriate. Our opposition to this legislation also includes that portion of putting the onus upon a judge to decide who in that court is properly before the court and whether the representation that is being made on behalf of an accused is a proper representation or not.

We feel there ought not to be any occasion where a judge will have to say to an accused, I require you to give me testimony in this particular area because I do not know whether your representative has covered it or not. By doing so, the judge in effect is leading the case on his or her own, may be bringing up evidence that is detrimental to the accused, but because of the fact of having to satisfy themselves that the accused is getting proper representation will in fact act to the detriment of the accused.

We are concerned that nonlawyers, while they may have certain technical abilities within the courts, are totally immune from any control, regulation, or in the case of misconduct, from discipline from any governing body. The legislation does not provide for any body to deal with the ethics of the practice of paralegals or nonlegally trained persons before the courts. Although we are talking of the lower level of courts within Manitoba, one should not think that because it is a lower court that somehow lower standards ought to be imposed.

Our concern is that in order to establish the type of control that may be necessary the Government will embark upon the creation of another bureaucracy that will have to deal with the question of paralegals competence and ethics, that will in fact be duplicating the efforts of the Law Society of Manitoba. That will be presenting a cost to the public that, while they may not see in the cost of the fees to a paralegal, will have to come from somewhere. If it means setting up a body for licensing, for training, for reviewing and governing, that cost will come from somewhere. If it comes from the general public, then it is unfair to say that the public is receiving a benefit by lower legal fees if in fact the cost is coming through taxes to establish these governing bodies.

A very major concern we have with the legislation is the fact that it allows incorporated bodies to represent people within the courts of Manitoba. Lawyers have been prohibited from incorporating themselves and holding themselves out to their clients as incorporated bodies. When a member of the public in Manitoba deals with a lawyer, they deal with that person on an individual basis. They know who stands behind the services provided, and they know that there is the protection of either the Law Society or the personal guarantee of the lawyer that they are dealing with or the partners that lawyer is dealing with.

The manner in which the legislation is drawn will allow incorporated bodies to contract with members of the public. Members of the public will have no idea as to whether these are shell companies that they are dealing with, whether there are any assets in these companies, whether these companies have in fact been able to put forward the type of protection for the members of the public that they already enjoy by dealing with lawyers. We regard this as a very serious area of the legislation and we would submit that if anything, there ought to be an amendment withdrawing the right of any independent paralegal to incorporate and to offer their services through an incorporated body.

It is not something that has ever been offered through lawyers in Manitoba, and we feel that it would be detrimental to the public to allow them to deal with people. While they think they may be dealing with a John or Jane Smith, paralegal, who has the backing of a franchise or paralegal office behind them, in fact they are contracting with a company. Their only remedy if something goes wrong is against a company that may have no assets, may have nothing in Manitoba except a name that has been registered.

We are also concerned that the legislation does not provide any obligations upon paralegals for the collection or retention of their fees. Lawyers are obligated under The Law Society Act to maintain funds in trust, to meet certain conditions prior to being able to disperse those funds for fees. These are very strict regulations imposed upon lawyers. There is nothing in the legislation to indicate that any such conditions will be imposed upon independent paralegals. Paralegals may collect the fees disperse those fees, be able to use those fees without providing any service whatsoever.

In Ontario they have already had the experience of having paralegal operations where huge amounts of fees were collected up front, no services were provided, the operation closed down, no avenue for the clients to receive any protection for the monies they have paid in. We look at this legislation, and on the face of it, it may provide a benefit to the public, but it is those areas that are not addressed in the legislation, those areas that we have no idea as to how they are going to be addressed that cause us some real concern, cause us concern from the point of view of consumer protection within Manitoba. The Law Society Act is in essence a form of consumer protection. It is set out a way that the public is guaranteed that the services they receive from lawyers through the Law Society are proper services, and they have recourse in the event that anything goes wrong.

* (2120)

There is nothing in the legislation that indicates what type of consumer protection there will be for those parties using independent paralegals. There is nothing that indicates that the fees for the independent paralegals are going to be limited in any way. Lawyers pursuant to The Law Society Act, if they render a fee, may be obligated to attend to arbitration under the

Law Society. The Law Society can review fees. Lawyers acting in the courts are subject to the rules of court which can force a lawyer to tax their bill.

So if a client is dissatisfied with the manner in which they have been represented and feel that they have not paid for the type of service that they were entitled to, he or she may go to the court or to the Law Society to receive recourse. There is nothing in the legislation that allows for a similar provision with paralegals, and because there is nothing that limits the amount of fees that paralegals charge, although paralegals may say, and the intent of the legislation may be to reduce the costs, in fact there is nothing in the legislation that will prevent paralegals from charging as much as they want, more than lawyers, and not having any of the protection for the public that they have when they deal with lawyers themselves.

We support the current Law Society Act. We support the fact that those persons who wish to give legal advice to the public of Manitoba must be licensed by the Law Society, must be trained in legal proceedings, must attend law school in order to provide a legal service to the public. We feel that it is a backward step as opposed to a forward step to start increasing the number of persons that may practise law without having any protection given to the public as to how those persons may practise, so that in effect we regard this as a retrogressive step as opposed to a progressive one.

We would ask that the Bill be either withdrawn or amended, or that sufficient protection be put into the legislation so that the public of Manitoba is in fact protected.

Thank you, Mr. Chairman.

Mr. Chairman: Thank you for your presentation. Any questions? Mr. Edwards.

Mr. Edwards: Thank you, Mr. Orle, for your presentation.

With respect to Section 2 of this Bill, specifically the new Section 57.1(4), which states that a person may act as an agent on behalf of another person and provide legal advice to another person respecting an offence under The Highway Traffic Act in the Provincial Court, (a) if the penalty for the offence does not include imprisonment, and then (b) if there are no personal injuries arising out of the occurrence of the event that gives rise to the offence.

My concern has been with this that you do not always know that there are personal injuries right after an accident in which a Highway Traffic Act offence is laid, a charge is laid, and that oftentimes of course you have to deal with The Highway Traffic offence fairly expeditiously after you have been charged, yet the personal injury may not be known for some time. Do you have any ideas about what we might do to protect the public in that situation?

Mr. Orle: We had also taken a look at that section and we had some concerns as to how one might define personal injuries. As there was no definition in the legislation, we were not sure as to whether it would be proper in an Act such as The Law Society Act, to start dealing with things such as how do you define personal injuries.

I agree with you that it is so ambiguous that one would never know if they were entitled to represent a client in any automobile accident because you do not know if there has been a personal injury. Whiplash injuries are ones that are not readily identifiable. In many cases injuries come up quite a bit later after an accident occurs. One never knows when that injury will reoccur or when it may manifest itself.

I am in agreement with you on that particular point that by having that provision in the legislation, having it as ambiguous as it is there, one may find that paralegals or nonlegally trained persons are dealing with a particular matter and may find out that after the matter has been disposed of in court that they in essence did not have the right to deal with it in any event. Then one has to wonder, what will the client do? Does this give another remedy to the client to say that I should not have been dealt with in court because it now appears that I did have a personal injury and it now voids anything that had happened in the lower court? It will cause a problem. We are not sure how that problem will manifest itself or where that problem can be more readily addressed.

I would not like to see The Law Society Act start becoming a catalogue of a number of types of injuries or the types of incidents that would give rise to whether or not this is to be dealt with as a legal matter by a lawyer, or a legal matter by a nonlegally trained person.

Mr. Edwards: I guess flowing from that, what also concerns me and the natural ramification of my earlier question and your response, is that if there is later on a personal injury suit, a number of questions flow from that for me. Firstly, if the person involved, at the time they were handling The Highway Traffic Act charges, did not know there was a personal injury and, let us say, advised that person to plead guilty, that plea of guilty may have quite a serious effect on that person's ability to claim in a personal injury claim from MPIC. Secondly, I would like your thoughts as to whether or not the POINTTS agent could in fact be subpoenaed by MPIC in a personal injury claim to testify against his or her former client, and specifically on that, whether or not a POINTTS agent would be entitled to solicitor-client privilege.

Mr. Orle: It is our opinion in the Bar Association that there is no solicitor-client privilege between an agent and a client, that it is a privilege that extends only to lawyers. What that means in effect is that anyone who deals with a nonlawyer paralegal and discusses any matter with them must be advised that particular person can be subpoenaed and give evidence as to what they discussed with the paralegal. If a member of the public goes to see a lawyer and discusses an accident or something that gave rise to a charge, they know that whatever they have discussed with a lawyer remains privileged and confidential, and the lawyer cannot be allowed to disclose that information.

There is no such protection to a paralegal. I am in agreement with you there, sir, that the legislation does

not deal with the matter, and that members of the public thinking that they are receiving confidential advice, or receiving a confidential interview, may in fact be surprised to see their paralegal in court as a witness against them at some date after they had actually paid them fees to represent them.

Mr. Chairman: Those were the comments of Mr. Orle. Mr. Edwards.

Mr. Edwards: Mr. Chairman, it is miraculous how quickly this has come across my plate here. There is an amendment which has been proposed by the Minister, Mr. Orle, specifically dealing with the concern I just raised and you just responded to. If you allow me, I would like Mr. Orle's comment on whether or not this satisfies the concern expressed. The amendment reads: that a communication between (a) a person acting as an agent on behalf of another person and that other person; or (b) a person providing legal advice to another person and that other person is privileged in the same manner and to the same extent as the communication between a solicitor and a solicitor's client.

I appreciate you have just received a copy of that and maybe we can give you a minute to take a look at it, because I would appreciate your advice as to whether or not that covers the concern. Specifically, I would also like to know, is there any jurisdictional problem with the province purporting to create solicitor-client privilege?

Mr. Orle: I think that this would go a long way towards clearing up the problem of privilege between a member of the public and an agent. As far as the jurisdictional part of it is concerned, there are a number of statutes already within Manitoba where privilege attaches to the types of communications between mediators in domestic proceedings, things of that sort, so I believe it can be done. This would go a long way towards curing that particular problem that was raised regarding privilege.

* (2130)

Mr. Edwards: You spoke about what a new administration which will be required to review and regulate paralegals. Do you suggest that it would be more appropriate to have this, assuming that this legislation goes forward, administered and regulated through the Law Society?

Mr. Orle: Mr. Chairman, we would be very hesitant to agree to allow the Law Society to take over the regulation of nonlegally trained lawyers. The basis for that is that the Law Society is the basis of a self-regulating society for a professional. The profession has maintained that self-regulation for centuries. It is something that is particular to lawyers and other professions. To extend it to those that we consider to be either assistants or to be dealing with a very small portion of a profession I think is an unwarranted extension. In dealing with the regulatory part of it I think there is also a problem in that to a large extent the Law Society is funded and operated by the lawyers of this province who provide that as part of the return of being a self-regulated society.

To have an independent group who is coming to the province solely for gain, because that is true. The paralegals that wish to set up shop in Manitoba are not doing it for altruistic reasons; they are not a legal form of United Way that are coming here to help the public. They are here to make a profit. If they are being regulated, if they are being governed, if their regulations are being set by the Law Society which is being operated by the lawyers, for the lawyers and paid for by the lawyers, there is something wrong with the concept of having the lawyers pay for the bureaucracy being set up to deal with their competitors. From the point of view of a marketplace, I would say, no, we would prefer not to have the Law Society deal with the paralegals.

Mr. Edwards: I know, Mr. Orle, that the Bar Association has regular contact with members of the provincial bench and through various forums and seminars which are given, and as various issues arise. Has the Bar Association had a chance to discuss any of the ramifications of the section in this which states that a provincial court may bar any person from appearing as an agent if the justice finds that the person is not competent or does not understand or comply with the duties and responsibilities of an agent? Can you give us any guidance on any feelings expressed to you by judges as to whether or not they feel that as an appropriate thing to be placed upon them?

Mr. Orle: Mr. Chairman, we do not have a formal position from the judges of any level of court. All I can give you is personal observations in discussions with various judges, and the concerns are similar to the concerns that we have raised, that a judge is there to judge on the facts, the evidence and the law and not there to judge on the capabilities of the parties appearing before the court. The manner in which our justice system has always been set up is that the judges and the lawyers make up an integral part of the judicial system. The lawyers are officers of the court. The judges are officers of the court. To ask that one portion of the court, one group of officers of the court, somehow have to sit over in judgment on the capabilities of the other portion of the court, I think would be, if not offensive, certainly inappropriate.

Mr. Edwards: Does the word "may" in that statement give you any comfort? I appreciate that it does put some responsibility on a judge to look for incompetence or where an agent does not understand or comply; but does the word "may" give you any comfort in respect that it is a discretionary power, not so much an obligatory one?

Mr. Orle: No, to the contrary. I would be even more concerned by the use of the word "may," because it leaves it entirely discretionary, and then one does not know whether in all circumstances agents are being judged by the same criteria, whether every judge will feel that it is their obligation to report those that are incompetent before their court. Some judges may have different standards. I think by using the word "may,"

and then not having any form of criteria for judges to use, that in fact makes it a more dangerous provision rather than a better provision.

Mr. Edwards: Would you suggest then, as an alternative, or would you get more comfort from having a regulatory power given to the Lieutenant-Governor-in-Council under the next section with respect to licensing requirements and establishing certain standards required for a person to act as an agent. Is that something which would give you more comfort as an alternative to placing that burden on the judges?

Mr. Orle: It certainly would. One of the real problems we had with the legislation is that it really did not address the question of how are you going to train the people that are going to be out representing members of the public. Are they going to be trained through facilities such as Red River Community College? Will they be trained through the independent colleges, office training colleges? Will they be trained through the law school? We have no idea as to what the standards are going to be or where those standards will be set. So if we do not know who is setting the standards or what those standards are, it would be very difficult to say to a judge, we are not going to tell you how these people are going to be trained, or who is going to train them, or how they are going to be trained, but we are going to leave it up to you to decide whether what they have is adequate training or not.

Mr. Edwards: Lastly, with respect to your point about monies being held by agents, and the requirements for lawyers that there be all kinds of trust accounts that are tightly monitored, and also the issue of the review of fees if they are excessive, and what fees can be charged for certain things, would it give you some comfort to have that power built into the regulatory scheme to the effect that the Lieutenant-Governor-in-Council could make regulations respecting the manner in which fees are held, charged and reviewed?

Mr. Orle: Sir, it would give us great comfort for all of these provisions to be put in. My only concern is that once you have put all these provisions in you have, in effect, created another law society and what is the point of that. Our whole feeling on this matter is that we are not against paralegals. We feel that they have an integral part in the provision of legal services within Manitoba, but they ought to be done within the context of a lawyer's office, or under the supervision of a lawyer, in the same way that other professionals have assistants that deal with particular aspects of their profession and they have those assistants under their supervision so that there will always be an ultimate authority to review the legal advice, the legal proceedings that are being taken.

That system is already in place. We have a Law Society; we have lawyers, we have lawyers' office; we have paralegals operating in those offices. We would be happier with provisions being set up to put paralegal training facilities into the province, to have better courses at the colleges to deal with paralegals, to have these people trained so that they could come and work with lawyers, in lawyers' offices, have the benefit of providing the service, but also having the benefit of having someone that they can refer to. We do not see a pressing need in this province for independent paralegals, or independent persons to give legal advice for gain. There is an adequate mechanism and provision of that service in Manitoba right now.

Mr. Chairman: Any more questions? Thank you, Mr. Orle, for your presentation. Mr. Storie, I am sorry.

Mr. Storie: Thank you, Mr. Chairperson. I would like to thank Mr. Orle as well for coming out to present his views and those of the Manitoba Bar Association. I guess if I read anything into your presentation, or the gist of your presentation, it was that you are a little uncomfortable, and the Bar Association may be as little uncomfortable, with the way this is being appended to The Law Society Act. Is that fair?

* (2140)

Mr. Orle: I think that would be fair. We would have preferred to have seen a much better program put together for putting legal assistants out into the community and to attach them under an amendment to The Law Society Act. It was our feeling that it was a reaction to one particular group that was coming into the province, that it was a reaction to an advertised stance that there would be lower fees to the general public, and the general public would benefit from that. I would hope that I have been able to convince you that there are not only benefits but certain responsibilities that will come by having additional people practice law within the Province of Manitoba and that one cannot open up the doors without placing some sort of safeguards in before opening that door.

Mr. Storie: Again, Mr. Orle, I do not think anyone here certainly wants to open up the doors without putting some safeguards in. Although the draft legislation is not perfect I think it does provide, particularly the section on regulations—the Government to provide some assurances that there is some protection.

I think, if I can paraphrase you, you said that before we put legal assistants out in the community we should make sure that there is some protection. I am wondering whether you are arguing for perhaps a rethinking in this Bill and that we should be in fact establishing a separate Bill, a paralegal services Bill, the creation in fact of a separate set of people who can provide services at a different level. Is that what you are proposing that we do?

Mr. Orle: Mr. Chairman, I do not know if I am going that far, sir. I think our position is that there are paralegals and that paralegals are an essential component in the delivery of legal services, but that they ought to be done under the supervision of lawyers. Whether you set up a separate statute dealing with paralegals so that they have an identity of their own, our concern always comes down to the fact that there ought to be someone who has the ultimate responsibility for that paralegal, that any legislation that incorporates independent paralegals who can operate without any

supervision or referral to persons who are legally trained that that would be an inappropriate opening of the door.

Mr. Storie: But you are not opposed to it, providing we provide some of the guarantees that you talked about. I would just go back and—you have mentioned a couple of times that you are not opposed to the use of paralegals and reference the fact that many offices use paralegals. I guess my question is, are paralegals allowed presently to charge fees for any of their services?

Mr. Orle: Mr. Chairman, the fees of paralegals are generally incorporated either into the overhead of law firms or are charged to clients for the service that has been provided to that client. When I had mentioned earlier, specifically with real estate transactions—at one time it was very common that real estate transactions would be dealt with on a percentage basis as to the value of the home. That is no longer done. In fact, the cost of the legal services for real estate has dropped dramatically. The reason why it could drop dramatically and why lawyers could provide a service at a lower cost was because the lawyers themselves were basically supervising as opposed to doing the actual work. This is where the paralegals were very effective. They worked in combination with lawyers, but there are not any paralegals who are doing real estate transactions on their own without having a lawyer do the final review and in fact put their name to the documentation so that they are the ultimate, responsible body.

Mr. Storie: Mr. Orle, it is true that many lawyers currently use paraprofessionals, but the question I asked you whether they are allowed to charge—do you not believe that if paralegals were allowed in the province to offer services, for example, in terms of real estate transactions, property transfers, wills, the preparation of wills, et cetera, that the cost would be significantly lower if they were actually competing amongst each other and perhaps with lawyers? Would the cost to Manitobans not be greatly reduced?

Mr. Orle: I do not think that necessarily follows, sir. We found that many of the services being offered by the paralegals who did come into Manitoba were similar in cost to that already being dealt with by lawyers. Certainly if you carve out from the role of a lawyer specific areas of expertise you may be able to lower the costs. You could possibly do that with any profession; if you mandated that certain people could only do tonsillectomies and said that they were the only ones who could do them, you would certainly be able to lower the cost of medical services in that area. The question comes down to how far do you want to fragment a particular profession in order to make a saving in terms of fees.

One of the areas that we have often heard that there would be a great savings in fees is if paralegals were able to do wills. The fact of the matter is that one of the greatest areas that they have problems with, paralegals, is the wills that have been made by paralegals that were not ordinary simple wills. You cannot legislate that you can only do a simple will because no one knows what a simple will is, but without having the training that comes along with all of the other aspects of the law in doing a will you may not do a will. You may not even do a simple will that will be of any value.

So you can carve out these areas and say that you can provide them at a lower service. Certainly any time you take one small area, someone focuses on it and develops it, you will be able to reduce the cost, but I do not know if at the same time you can say we will not allow any other areas of the law to impose upon that area, because I do not think that will work. It has not worked where it has been tried before and it may open up a greater can of worms for the public than other areas.

If one is concerned about fees, there are ways of dealing with fees. We have had that in terms of fee guidelines, of having avenues open to clients to be able to challenge fees, arbitration areas for fees. The question of fees should not be the only criteria in deciding how a legal service is provided.

Mr. Storie: I appreciate Mr. Orle's comments. I look forward to the time when the Law Society allows its members to advertise its fees and compete openly with each other with respect to their fees. I do not see that happening in the near future, but certainly I believe that the approach that we are taking in this Bill, that has been suggested in this Bill, has some merit. I was interested in your remarks on some of the strengths of paraprofessionals to begin with.

You mentioned in your remarks something that I thought was perhaps a bit pejorative when you talked about the advocates, the POINTTS group in particular, but advocates of the use of paraprofessionals or paralegals. You said that they are not doing this for altruistic motives and that led me to wonder whether you are suggesting that lawyers do these things for altruistic motives.

Mr. Orle: No, Mr. Chairman. Sir, I would certainly not at any point say that lawyers are only doing the work they do for altruistic motives, but let me add that there is a component of that. There is no paralegal organization in North America that deals with law reform, that deals with legal training, that provides its members to law faculties for educational purposes, that goes out in the community for community legal assistance programs, that sends its members out to do public speaking, to assist in various charitable organizations. I am not going to say we are entirely altruistic but there is a benefit that the legal profession provides to the community that is not related solely to fees. It is one that only they, the lawyers, can provide because a paralegal will not be able to provide that type of service.

Mr. Storie: Mr. Chairperson, I think we are all prepared to acknowledge the time and effort that are put in by professionals regardless of their particular vocation, whether it is doctors or lawyers or anything, in that the professional societies in Manitoba have provided a great deal of input and thought and so forth into many issues that affect the province.

However, I am wondering whether, when you were talking about the need to put in place some method to protect people who might use these services, whether you did not feel that the regulations—and particularly number (e) which talked about establishing a licensing scheme for the purposes of this section—would not allow the Government to put in place training, guidelines for curriculum, et cetera, so that we could be assured that people who were offering paralegal services were in fact trained and had some background and some commonality of curriculum or something like that.

Mr. Orle: That may be true if licensing was extended to that point. The legislation does not give us any idea as to what is meant by licence. A licence may be the same as a driver's licence, that you pay your $35-a-year fee and you have a licence as an independent paralegal. The other part of your comments, sir, about setting up the training, the education, whatever, I just come back to my feeling that if you are only trying to set up another Faculty of Law and another Law Society, then why bother? It is already there and until you can demonstrate that there is an actual saving to the public or that there will be a saving in public tax dollars by setting up this alternative educational system, then why set it up?

* (2150)

I am worried that on many occasions we have these proposals going forward more as a reaction toward lawyers than they are as a reaction to what may benefit society. If you have to set up an entirely new school to compete with the Faculty of Law, an entirely new body to compete with the Law Society, then you have not saved the general public a dime. I hope that when we deal with these matters we are not reacting to the fact that, well, here are lawyers, and we can carve out some part of the work that they do only because of the fact that we do not want the lawyers to do all of this work.

As I said, we have given up areas that we thought might be better dealt with by other professionals. We also offer services at a comparable fee to what other legal providers may give that service for. Until it is demonstrated, at least to us, that there is some real benefit to the public other than just being able to say, we are going to be able to provide you with an alternate legal system, then why do it?

Mr. Storie: The presenter makes a good point. I guess there are sufficient numbers of people out there who believe that these services are going to serve them at the same time as they prove to be less expensive or groups like POINTTS would not exist.

I guess that leads me to my other question, with your suggestion that somehow these people should be allowed to operate, but they should be operating on a voluntary basis and should not be allowed to charge a fee. Should not the consumer decide whether he is getting satisfaction?

Mr. Orle: That may be so if the consumer is able to make a real choice, sir. When you set up legislation that allows someone to incorporate and set up a company to have no restrictions on how they advertise, one wonders to what extent you have an educated consumer. We have seen from the type of advertising in the United States, within the legal profession itself, that one may convince the public solely through advertising that one has capabilities that are nowhere near to what one actually is able to provide to the client so that when you say, let the consumer make their choice, then that almost sounds like the old adage, let the consumer beware.

I think we are not quite prepared to go to that point where we say, well, you have the choice, and if you make the wrong choice, that is too bad for you. There are too many ways that this can be manipulated on the part of advertising, of incorporating, that really does not give the consumer a real choice.

Mr. Storie: You feel that way even though the Government is proposing, and I think certainly we agree that there need to be regulations governing these activities. They include the necessity of bonding and providing insurance and some training and a licensing scheme that involves more than simply POINTTS.

You feel that is not going far enough. If we added some amendments to include, for example, what Mr. Edwards had suggested, some control over fees to be charged and some review of fees, would that be going far enough?

Mr. Orle: It would be going a long way towards it. I started my presentation by indicating I thought there were a number of changes that could be made to this legislation, and I do not back away from those. I am not saying, either throw it out or we do not think anything should be done to it. We want to assist in ensuring that there is legislation that is properly before the province, that will be of benefit to everyone in the province. To that extent we are prepared to make the suggestions, and we would appreciate as much of those suggestions being incorporated into the legislation as possible. There is no question about that, sir.

Mr. Chairman: Those were the comments of Mr. Orle. Mr. Storie.

Mr. Storie: One final question. I am just wondering if you had your druthers, or the Bar Association, whether you would have us proceed to have these amendments incorporated into The Law Society Act or whether you would have us start afresh and develop a new Act, new regulations governing the activities of paraprofessionals in terms of legal services.

Mr. Orle: I would have a third druther, if I could, sir, and that would be that someone actually do a study to see whether there is any benefit to the public by having paralegals operate. There has been no study that shows that there is any saving to the public whatsoever. Rather than having legislation drawn up on the basis of POINTTS telling this province that we will save you money, we would like to see somebody prove to the public of this province that there will be a saving to them. The experience in other jurisdictions

has been that you very quickly approach a level of legal fees from paralegals that you have from lawyers. If there is not going to be a saving, then why are we putting this entire process into place?

Mr. Storie: Mr. Orle makes a very interesting point, Mr. Chairperson. It is interesting, and we are focusing on a rather narrow area in this Bill. We are focusing on The Highways Traffic Act infractions. I am wondering if Mr. Orle would support the idea of opening up the use of paralegals more broadly and allowing for paralegals to operate in other areas of legal services, that what we do is something more innovative, and offer the opportunity for paralegal services on a broader basis with a sunset clause to allow the province and the people of Manitoba to judge whether paralegals can operate and offer a better service at less cost. Would Mr. Orle support that kind of a suggestion?

Mr. Orle: I think, Sir, you have on several occasions now tried to draw me into the question of whether to have this Bill withdrawn to bring in something even greater, with more powers and with greater responsibilities from paralegals. I would not support that. To be frank and blunt about it, I do not support it. I say that paralegals are already doing this work in Manitoba. Our difference, Sir, is who is to be responsible for the paralegals and who is to have the ultimate authority in deciding where and how they operate. That is where, I think, we are at a difference, not so much in whether paralegals can do the work. We have already accepted and acknowledged the fact that legally-trained paralegals do very good work within this province and they are doing it right now.

Mr. Storie: But, if I understand you correctly, you are not willing to carry the experiment the next step to see whether in fact if they were a separate entity operating under their own guidelines, under their own fee schedules, whether they would, as you suggest we should know before we move on with this Bill, save the consumers money.

Mr. Orle: I am not prepared to have the public used for an experiment. I have suggested that there may be reason to have a study done. I would not see that going so far as to say, let us spring it on the public and see how it works and then if it works fine, great; if it does not, we will sunset that. I would not go that far, Sir.

Mr. Storie: I certainly do not want to have it left on the record that I was suggesting that we spring it on the public. Obviously, the same kinds of protections would have to be in place regardless of the services that were going to be provided. There would still have to be bonding, as there is in your profession. There would still would have to be a mechanism to establish a training curriculum. There would have to be guidelines established. But it would certainly be an interesting experiment, and I do not think one that would do any damage in the province.

Mr. Orle: I will just say, I disagree, Mr. Chairman. I do not think that we—I would love to continue the debate with Mr. Storie, but I think we both know our positions on the matter.

Mr. Chairman: Thank you. Mr. Minenko.

Mr. Mark Minenko (Seven Oaks): Mr. Orle, you mentioned earlier about a body to deal with ethics. I presume we could tack on discipline, matter of standards, these types of issues. Do you have maybe some suggestions of some of the things that should go into this kind of body, how it could operate some of its functions?

* (2200)

Mr. Orle: The only suggestions I could give is that if the paralegals are to be doing work in services analogous to that of a lawyer, that they should be subject to the exact same codes of ethics, disciplinary and judicial proceedings. To the extent that you extend their rights and obligations, I think you to have to extend their responsibilities. The Law Society works very well in dealing with ethics and discipline. That would be a model for the system.

Mr. Minenko: Well, some of the recent reports in the papers—and I am sure Members have been consulted by constituents about some of the concerns about how the Law Society is in fact enforcing certain of its regulations and standards. You also mentioned earlier something about duplicating a cost to the Law Society. I am just wondering if you could comment on what you meant by that expression.

Mr. Orle: Mr. Chairman, I just meant that by the time you set up a system to deal with independent paralegals, you will have a system almost the same as the Law Society itself. The cost of operating the Law Society is not insignificant. To a large extent, it is maintained by the dues of its members. There will not be sufficient paralegals to maintain dues to operate a system of that sort. Therefore, the funds will have to come from somewhere, more than likely from the public purse.

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

Mr. McCrae: Mr. Orle, thank you for coming tonight. I think you can confirm for me and the other Members of the committee that you and I and representatives of the Law Society have spent a good deal of time discussing some of the provisions in this Bill. While we know your position, I think you can also appreciate that we have extended some effort to trying to bring forward a draft piece of legislation that does deal with a number of the concerns that you and your colleagues have brought to my attention.

I assume you are aware that paralegals operating under the direction of licensed practitioners of the law would also be able to appear in provincial court by virtue of this legislation. I would want to ask you if you know of members of the legal profession in the Province of Manitoba who plan to take advantage of these amendments to allow their paralegals to go to court and defend clients for a fee?

Mr. Orle: Mr. Chairman, beginning with the first part of your comments, Mr. Minister, yes, we were involved

early on in this process, and we thank you and have thanked you for the opportunity to make comments, suggestions and to have some involvement as to concerns raised with the Bill. It was an opportunity that we welcome.

To the second part of your question, I am afraid that I cannot give you an answer from an organizational or an association point of view in the same fashion as the earlier question on the judges. All I can provide you with is personal experiences or discussions. There has not been any organized movement put forward to have paralegals in legal offices right now take on the responsibilities that will be allowed to them under the Act.

The only comments that I have heard relate to lawyers who may set up competing firms of paralegals on their own. Instead of having to work with lawyers and work within the guidelines of the Law Society—and I will just stress the fact that the important criteria is whether or not there is Law Society control or not—that lawyers seeing this type of legislation passed that would allow incorporated entities to deal with the public should have no hesitation in then incorporating their own paralegals to be able to provide services, the same services provided by lawyers at the same cost that their lawyers are providing, but without having the additional overhead of having to pay Law Society fees or Law Society insurance rates. So the cost to the client would not change because many of these lawyers provide that service at the same cost as POINTTS would, but the profit margin to the lawyers would be much greater because of the significant costs involved in being part of a self-regulating society.

Again, Mr. Minister, I do not put that forward as an organized position or even one that is advocated by the association or any law offices. I put it forward as being one matter that has been discussed and that under the terms of this legislation it would certainly not be prohibited.

Mr. Chairman: Thank you, Mr. Orle, for your presentation. If there are no more questions, I would like to thank you for making your presentation.

Mr. Orle: Thank you, very much. Good evening.

Mr. Chairman: I would like to remind all Members of committee that there was another presentation made to Bill No. 71, on December 21, 1989, by Mr. David Goddard from POINTTS Advisory Ltd.; his written presentation is included in the Hansard from that committee. If someone wishes to get a copy of that, you would have to request it from the Clerk.

Okay, we have also received the written presentation from Mr. John E. Leech, which has been distributed to all Members. We also received another one which was not mentioned earlier from Mr.—F.W. Sawatzky (Western) Ltd. Those have also been distributed. Mr. Charles Brimley, Canadian Council of Technicians and Technologists has also written a brief which has been received and has been distributed.

Okay, if there are no more presenters then I would, at this time, like to go on Bills. We will start, if it is the wish of the committee, with the lowest Bill first and then -(interjection)- the lowest numbered Bill, thank you.

BILL NO. 6—THE LAW REFORM COMMISSION ACT

Mr. Chairman: Bill No. 6—has Bill No. 6 been distributed? Very good. Bill No. 6, Clause 1—pass; Clause 2—pass.

Clause 3—Mr. Minister.

Hon. James McCrae (Minister of Justice and Attorney General): Mr. Chairman, I have an amendment to move. I move

THAT clause 3(4)(c) be struck out and the following substituted:

(c) is declared under The Mental Health Act to be mentally disordered or incapable of managing his or her affairs.

(French version)

Il est proposé que l'alinéa 3(4)c) soit remplacé par ce qui suit:

c) est déclaré atteint de troubles mentaux ou incapable de gérer ses biens en vertu de la Loi sur la santé mentale.

Mr. Chairman, I move this motion in both the English and French languages and explain to Honourable Members that this wording reflects the wording contained in The Mental Health Act.

Mr. Chairman: The amendment to Clause 3—pass; Clause 3 as amended—pass; Clause 4—pass; Clause 5—pass; Clause 6—pass; Clause 7—pass; Clause 8—pass; Clause 9—pass; Clause 10—pass; Clause 11—pass, Clause 12—pass; Clause 13—pass.

Clause 14—Mr. Edwards.

Mr. Paul Edwards (St. James): My question for the Minister: With respect to funds received by the Commission for the ongoing work of the Commission, can the Minister indicate, and I appreciate it is not specifically to do with this section, but what has been the level of support of the Manitoba Law Foundation of the Manitoba Law Reform Commission?

Can the Minister indicate if they have been supportive on a regular basis?

Mr. McCrae: Mr. Chairman, to answer the Honourable Member's question, the grant from the Law Foundation of Manitoba to the Law Reform Commission this fiscal year was $30,000.00. The next fiscal year the grants will be two grants of $31,500 each.

* (2210)

Mr. Edwards: I appreciate the indulgence of the Minister on this. Roughly what percentage of the budget of the Law Reform Commission is that?

Mr. McCrae: Mr. Chairman, my arithmetic—I am not even going to pretend is any good, so I will just tell the Member the numbers. The budget is $366,000.00.

The grant of 30 is what, something less than 10 percent. Next year the grant of 60—well, use your own calculator. I am sorry, I am not very good at arithmetic.

Mr. Chairman: Clause 14—Mr. Edwards.

Mr. Edwards: Just one other question with respect to the use of funds. I note that in Section 15 there is an annual report to the Minister. Is there any requirement here of an auditing of the funds on a regular basis, of maintaining control of these funds? I note that by this legislation the commission gets a substantial amount of autonomy which they have not had in the past, and I generally support that thrust. I just wondered what arrangement have been made or will be made? Is it necessary to put in law something which allows accountability for these funds in a very autonomous fashion which the Law Reform Commission is going to have?

Mr. McCrae: Up until now, and as it will continue, the accountability for the funds directed to the commission by the Government is the accountability Honourable Members have during the Estimates of the House. Honourable Members could use that 240 hours to discuss the financial arrangements of the Law Reform Commission.

Mr. Chairman: Clause 14—

Mr. McCrae: I am sorry, Mr. Chairman, to finish—the Provincial Auditor has the same powers respecting the Law Reform Commission as other agencies of Government.

Mr. Chairman: Clause 14—pass. Clause 15—Mr. Minenko.

Mr. Mark Minenko (Seven Oaks): Clause 15 talks about an annual report and special reports to the Minister and that the commission may publish any report. Does the Bill in its present form allow then the commission to publish its reports on various topics, as it has done in the past, because again it really deals only with this annual report in 15.1? Do the first several words grant that authority to the Law Reform Commission to publish these reports that they publish on various topics?

Mr. McCrae: I am not sure if I am hearing everything the Member said. I will answer, and if it is not the right answer or does not respond, he can let me know.

The annual reports of the commission are something that is tabled in the Legislature annually. In addition, all the other reports on the specific projects the commission is working on are something that is released by the commission, and they are public. Is that the question the Honourable Member was asking?

Mr. Minenko: Does the Law Reform Commission require a section suggesting exactly that, that they can publish their own reports on various topics, or is it just a matter of course kind of thing?

Mr. McCrae: I do not know if it is a question of needing this in the legislation, but I think at every turn, since the rekindling of the life of the Law Reform Commission, we have tried to stress the importance of its being independent. I think that independence renders the reports of the commission more credible. I mean, Governments do not follow all of the recommendations made by the Law Reform Commission and may not always follow all the recommendations, but at least I think the idea is to try to ensure by this legislation that the commission is and is seen to be an independent body.

Mr. Chairman: Members of the committee, we will have to take a four-minute break because we have to change the tapes in the machines. So at this point in time we will have to stop the proceedings of the committee.

RECESS

Mr. Chairman: I call the committee back to order. Clause No. 15, were there any more questions in respect to Clause 15? Clause 15—pass; Clause 16—pass; Clause 17—pass; Clause 18—pass; Clause 19—pass; Preamble—pass; Title—pass. Shall the Bill as amended be reported? Agreed. Is it the will of the committee that I report the Bill as amended? Agreed.

BILL NO. 39—THE HUMAN TISSUE AMENDMENT ACT

Mr. Chairman: If it is the will of the committee, we will go to Bill No. 39. Clause 1—pass; Clause 2—pass; Clause 3—pass; Preamble—pass; Title—pass. Shall the Bill be reported? Agreed. Is it the will of the committee that I report the Bill as amended? Agreed. That is Bill No. 39. There were no amendments to it.

BILL NO. 40—THE LAND SURVEYORS AMENDMENT ACT

Mr. Chairman: Bill No. 40. Clause 1—Mr. Minister.

Hon. James McCrae (Minister of Justice and Attorney General): Sorry, Mr. Chairman, pass.

Mr. Chairman: Clause 1 in Bill 40—pass. Clause 2—Mr. Minister.

Mr. McCrae: Mr. Chairman, I move

THAT the definition of "practice of land surveying" in section 1, as added by section 2 of Bill 40, be amended by striking out clauses (c) and (d) and substituting the following:

"including the preparation of maps, plans and documents and advising and reporting with respect to any of the matters described in clauses (a) and (b)."

(French version)

Il est proposé que la définition de "exercice de la profession d'arpenteur-géométres", ajoutée à l'article 1 par l'article 2 du projet de loi 40, soit amendée par substitution, au point-virgule qui se trouve à la fin de l'alinéa b), d'un point et, aux alinéas c) et d), de ce qui suit:

"La présente définition vise notamment la production de cartes, de plans et de documents ainsi que la prestation de conseils et l'établissement de rapports sur les sujets précisés aux alinéas a) et b)."

I move this motion in both the French and English languages.

* (2220)

Mr. Chairman: The amendment to Section 2—(pass).

Clause 2 as amended—Mr. Edwards.

Mr. Paul Edwards (St. James): For the Minister, with respect to the comment that the line of questioning pursued with some of the presenters, I wonder did the Minister have any opportunity in drafting this Bill to speak with any of the farmers' organizations like the Keystone Agricultural Producers or any others, with respect to whether or not they felt this might infringe on things they do as a daily matter in determining what pieces of land are leased and what are not and determining where boundaries are. I know that is done on a regular basis. I harken back to comments made by the Member for Interlake, Mr. Uruski, who made quite an impassioned plea to the House that in his experience there were many in the farm community who did their own—

An Honourable Member: Their own surveys.

Mr. Edwards: Well, my friend says, their own surveys—As a matter of course, draw it on a piece of paper or simply say, well, this quarter section and this part of this section of land, you get for this year, we sharecrop or some other arrangement is made. Were any of the farming groups consulted on this definition, and whether or not they had any concerns?

Mr. McCrae: I can tell the Honourable Member that as recently as today, I had discussions with the representatives of the Union of Manitoba Municipalities respecting The Surveys Act, not a direct discussion about the changes in Bill 40. I can say that our staffpeople have had discussions with representatives of the Manitoba Land Surveyors Association and throughout our contacts with that association, unless someone nearby can correct me if I am wrong, I have not been led to believe that there was a problem with relation to agricultural producers. I can tell the Honourable Member quite candidly, I am unaware of any difficulties the association has had with farm practitioners, if I can use that expression.

Hon. Edward Connery (Minister of Co-operative, Consumer and Corporate Affairs): As a farmer, we rent land or whatever we do; that is a description. When we have a conflict over where a boundary is, we use a surveyor, as one neighbour unfortunately wished we had not, and we use the surveyors when we come down to a legal dispute where the line is. So that is not a problem in the farm community as I foresee it.

Mr. Mark Minenko (Seven Oaks): I think one of the concerns that was raised in debate on this legislation was in situations where perhaps a father and his children decide to divvy up some property that the father owns and that ultimately that perhaps passes onto a third party and these types of matters. During the debate that particular issue was discussed, and I think this prompted Mr. Edwards in asking the previous questions. I guess, at that time the concern was, will these people then be prosecuted or could be prosecuted under this legislation for having done some of the things that I believe would be included in the definition of the practice of land surveying. The question then to the Minister is: could someone in that type of situation be prosecuted pursuant to this legislation and these changes?

Mr. McCrae: Well, it is precisely because of the type of concern the Honourable Member is raising that I asked Mr. Gauer, when he was here earlier, that when his association becomes aware of people perhaps breaching the rules laid down in this particular legislation, how they handle that. The answer I was given is that they issue concern letters, warnings, that type of thing. I do not really know very many farmers who would want to be knowingly in breach of the law after being told that. Unless there is some good reason to dispute the association's claim that they are somehow breaching this legislation, I do not think the farmers of this province would want to find themselves in breach of the law.

Mr. Edwards: Just one further question, Mr. Minister. Can I take it from the Minister's answer then, it will be the case that the association is going to be at least primarily responsible for enforcing this, to the extent they are going to be the ones sending out letters warning people? Are they being given responsibility for enforcing these provisions?

Mr. McCrae: I can only tell the Honourable Member my own experience. It may be somewhat of a coincidence, but it is an interesting point that the judgment of Mr. Justice Oliphant that we heard about earlier was a judgment as a result of a review of a decision by Judge Allan, I think it was. I am not sure if it was Judge Allan, but a Brandon judge with respect to the case of the Queen versus Carefoot. I think that is the case we are talking about. I was the Court Reporter on the case. I know that the land surveyors in that case did issue warnings, and the land surveyors were the prosecutors in the case as I recollect. They had to, now Mr. Gauer can correct me here, but I think they had to hire a lawyer to prosecute the case under their own Act.

Mr. Chairman: Clause 2 as amended—pass.

Clause 3—Mr. Minister.

Mr. McCrae: Mr. Chairman, I move

THAT section 3 be amended by adding the following after subsection 54(2):

Exception for architects and engineers
54(2.1) Nothing in this Act applies to or affects

(a) the practice of architecture by an architect

practising under the authority of The Architects Act; or

(b) the practice of engineering by an engineer practising under the authority of The Engineering Profession Act.

(French version)

Il est proposé que l'article 3 soit amendé par adjonction, après le paragraphe 54(2), de ce qui suit:

Exception pour les architectes et les ingénieurs
54(2.1) La présente loi ne s'applique pas à:

a) l'exercice de la profession d'architecte par un architecte inscrit aux termes de la Loi sur les architectes;

b) l'exercice de la profession d'ingénieur par un ingénieur inscrit aux termes de la Loi sur les ingénieurs.

I move this motion in both the French and English languages, and I believe, Mr. Chairman, this responds directly to the concerns that were referred to this evening by representatives of the architectural and engineering professions.

Mr. Chairman: The amendment to Clause 3—pass; Clause 3 as amended—pass; Clause 4—pass; Clause 5—pass.

* (2230)

Mr. McCrae: Mr. Chairman, I have a motion, not to a particular clause of the Bill. I move

THAT Legislative Counsel be authorized to change all section numbers and internal references necessary to carry out the amendments adopted by this committee.

(French version)

Il est proposé que le conseiller législatif soit autorisé à changer tous les numéros d'articles ainsi que les renvois nécessaires pour l'adoption des amendements faits par le présent comité.

I move this resolution in both the French and English languages.

Mr. Chairman: Shall this amendment to Bill 40 pass—Mr. Minenko.

Mr. Minenko: In earlier debate on a Bill in committee, there was discussion about the gender neutrality of particular legislation a few months ago. The Minister at that time undertook to introduce some time in this Session an Omnibus Bill, I think it was under The Real Estate Brokers. Is this what the Minister is suggesting then, that the Legislative Counsel can make amendments to the legislation to deal with that particular issue as well, or will the Minister be introducing legislation to deal with that particular issue later on in this Session?

Mr. McCrae: Mr. Chairman, this motion deals only with the consequential renumbering and changes to the legislation as a result of changes we made tonight.

With regard to the issue related to The Manitoba Real Estate Brokers Act and the gender neutral issue, we have a large body of laws in our province and the policy of Legislative Counsel is that wherever amendments that we bring forward in our present Legislatures, wherever those amendments can be made gender neutral without doing harm to the parent Act, that is the policy. With respect to a total—what is the word I should use? What is that word we are using with regard to the re-enactment process? We are trying to revise our legislation because of a Supreme Court ruling to put our legislation into two languages. I am told that to make all of our legislation gender neutral would cost us in the neighbourhood of $1.5 million. I think that is the figure I have been given by Legislative Counsel. That would be a pretty big undertaking.

I have written to the Honourable Member's House Leader, and the House Leader (Mr. Ashton) for the Honourable Member for Flin Flon (Mr. Storie) with respect to the dilemma that I had. The day that we had The Real Estate Brokers Act before the committee certain commitments were made based on some advice I got, but when we got into it, when Legislative Counsel got into it, it is a far, far bigger project than what we had foreseen at that moment. I have had a meeting with representatives of women's interests and I have explained the situation. It is a very big project. I think we are bound by a Supreme Court ruling to get on with the re-enactment process. As I say, as we bring legislation forward wherever it is humanly possible without doing harm to legislation, we bring it forward in gender neutral language. I hope that answer is satisfactory.

Mr. Chairman: Once again, shall the amendment to Bill 40 as read into the records by the Honourable Mr. McCrae pass—pass; Preamble—pass; Title—pass; the Bill as amended—pass; be reported—pass. Is it the will of the committee that I report the Bill as amended? Agreed.

BILL NO. 66—THE SUMMARY CONVICTIONS AMENDMENT ACT

Mr. Chairman: Bill No. 66, The Summary Convictions Amendment Act. Clause No. 1 of Bill No. 66, Clause No. 1—pass; Clause No. 2—pass; Clause No. 3—pass; Clause No. 4—pass; Preamble—pass; Title—pass; the Bill be reported—pass. Is it the will of the committee that I report the Bill as agreed? (Agreed)

BILL NO. 68—THE COURT OF APPEAL AMENDMENT ACT

Mr. Chairman: Bill No. 68, The Court of Appeals Amendment Act. Clauses No. 1 to Bill No. 68: Clause No. 1—pass.

Clause No. 2—Mr. Edwards.

Mr. Paul Edwards (St. James): Mr. Chairperson, to the Minister—

Mr. Chairman: Excuse me. Pull that mike right close to you, Mr. Edwards, because we all have trouble hearing you.

An Honourable Member: He is very shy.

Mr. Edwards: Yes, I am quite shy. I am glad that has finally been recognized.

Mr. Chairman: And do not be nervous, Mr. Edwards, just relax.

Mr. Edwards: Mr. Chairperson, for the Minister, the proposed 12(1) says, "The Chief Justice of Manitoba shall be responsible for the judicial functions of the court . . . ." It is my understanding that now there is a process of consensus within the Court of Appeal whereby it is not specified who is responsible specifically to direct who sits where or on what case. It is rather a case, I think, where they perhaps sit around the table and say, well, this person may sit on this case with his brother or sister judges and it is simply a question of consensus. I wonder if it is necessary to bring in this particular provision and what has led to that needing to be brought in.

Hon. James McCrae (Minister of Justice and Attorney General): The provision that you see here reflects a wish on the part of the Government to bring the practices of the Court of Appeal of Manitoba into line with the practices of the Court of Queen's Bench, and the practices of the Provincial Court and no doubt many other courts across the land. The consensual approach is I suppose something that should be behind us. I think that what we have before us is some reform of the Court of Appeal; we have done some reform of the Queen's Bench in the last Session. A little later on we will be reviewing the Provincial Court. It is a matter of bringing under the control of a Chief Justice the administrative operations of a court.

Mr. Edwards: I take some issue with that comment to the extent that I think that fraternal approach to it, where there is some consensus building and an exchange of opinions as to who would be best on what particular case rather than an approach whereby someone simply demanded that X judge sit on X case, is preferable. I think it is important to have judges on cases who want to be there. I trust the Chief Justice in certain circumstances to use his or her discretion and power to determine, perhaps, what judges should not be on certain cases. But I would just ask the Minister, were there discussions with the former Chief Justice on this matter and justices of the Court of Appeal?

Mr. McCrae: There have been communications between my office and representatives of the court. You see, Mr. Chairman, this particular amendment does not have to do away with forever and for all time a consensual approach, if that is the approach that the Chief Justice of the court wants to use. On the other hand, chief means leader, and I think in our court systems and everywhere else where there are administrative functions, there needs to be somebody in charge. This does not mean to say that if the members of the court are able to work together in a consensual way, that should not happen. But it does say, the buck has to stop somewhere, and it will stop on the desk of the Chief Justice by virtue of this amendment.

Mr. Edwards: Do I just take it, for clarification then, that some of the response from the Court of Appeal members was negative to this provision?

Mr. McCrae: To be quite honest and frank with the Honourable Member, yes.

Mr. Chairman: Clause 2—Mr. Minenko.

Mr. Mark Minenko (Seven Oaks): Subsection (2) of 12, The court shall sit in The City of Winnipeg—is there any provision in the legislation at the present time for that requirement, or can they indeed move and sit elsewhere in the province, in the present legislation the Minister is amending?

* (2240)

Mr. McCrae: Mr. Chairman, the present legislation has it that the court shall sit in the City of Winnipeg, and we would like the Chief Justice who, by virtue of the previous subsection, will be given certain administrative power. We would like the Court of Appeal to have an option to sit outside the City of Winnipeg to reflect the nature of our province, which is that there are a number of people being judged by these judges outside the City of Winnipeg. Therefore we wanted to give the Chief Justice the opportunity to use his or her discretion to make the decision that the court can sit in Thompson or Brandon or Winnipeg.

Mr. Minenko: So, by still leaving the word "shall" in there, does that not necessarily exclude what the Minister seems to suggest?

Mr. McCrae: I am sorry?

Mr. Minenko: By leaving the word "shall" in there, does that not necessarily exclude what the Minister is suggesting?

Mr. McCrae: No, Mr. Chairman, the words "subject to subsection (1)" have to be read together with the word "shall." It says that "the court shall sit in The City of the Winnipeg" subject to the direction of the Chief Justice. The Chief Justice can make arrangements so that the court can indeed sit outside the City of Winnipeg. If it was not for this change, the court would be bound to sit in the City of Winnipeg. This allows it to sit outside the City of Winnipeg.

Mr. Chairman: Do not argue about it—Mr. Minenko.

Mr. Minenko: Well, okay, if the Minister's legal advice suggests that "shall" in (2) is tempered by (1), fine. The Minister—although I guess I have some concerns, but that is all right. In (1) then, the Minister suggested in a previous comment, I believe, that the judge has also administrative functions. Was that simply a misplay of words, or is that something extra that is anticipated, or does the Minister anticipate an amendment to change (1)?

Mr. McCrae: Mr. Chairman, I think maybe I can explain it a little better if I explain Subsection (2) in the context

of Subsection (1), which I tried to do and did not do a very good job of it. The Chief Justice of Manitoba shall be responsible for the direction over the sittings of the Court. That is in (1). It says it shall be in Winnipeg, but subject to that part of Subsection (1) the Court can sit elsewhere.

Mr. Chairman: Mr. Minenko.

Mr. Minenko: Forget it.

Mr. Chairman: Okay, fine, very good. Mr. Edwards, did you have a question?

Mr. Edwards: Yes, I do. Mr. Minister what was the problem that led to having to put in 12(1)?

Mr. McCrae: Mr. Chairman, the Honourable Member refers to a problem. I think what the wish of the Government was to ensure that should it be necessary that the Chief Justice of the Province of Manitoba could exercise certain administrative responsibilities which, as the Honourable Member has already told us, was up until now consensual. What if you want the court to hear a case and five judges are sort of indicated to be needed to hear a case and the Chief Justice cannot find five who really feel like hearing that case? It is in that kind of a situation where the Chief Justice can then exercise the power given to the Chief Justice in this section to ensure that the work of the court is done, to organize the rota of the court in an orderly fashion so that a consensual approach does not become an ineffective or an approach that could work better. I think what you need at the head of every court in the land is strong leadership. Where that strong leadership is needed, then it should be provided for in the legislation.

Mr. Edwards: In the 120 years that the Court of Appeal of this province has been sitting, is the Minister aware of any occasion on which a case came up and five judges were needed and five judges were not found to sit on that case?

Mr. McCrae: I can tell the Honourable Member I am not aware of any cases where the Court of Appeal has sat outside the City of Winnipeg, and I think it is time that changed.

Mr. Edwards: I see. I was unaware, and if it is a clarification the Minister can make for me, I would appreciate it. This, it is felt by the Minister, is necessary in order to allow the court to sit outside the City of Winnipeg. Is that his rationale behind this? His earlier rationale that they need somebody if they cannot find enough judges I, frankly, do not buy. It has never happened before, and I cannot see it happening because I think these Court of Appeal judges take their job seriously. If it needs five judges, they find five judges. If it is needed somehow to expand the court's ability to sit in outlying areas, and, I guess, specifically in the event that some judges—I do not know why—would not want to travel to some of the other areas outside the City of Winnipeg, it is felt necessary that the Chief Justice be able to in fact demand that that occur. Is that the Minister's rationale for this?

Mr. McCrae: I will be quite honest with the Honourable Member and tell him that I used the example as an example. I do not know of any cases where they could not find five judges either, and that is a comfort to me, I must say.

Mr. Chairman, I will answer the Honourable Member's question with a question, too. Why should the Court of Appeal operate differently from the other levels of court where the chief judge is given certain powers? I say to the Honourable Member that I believe the matter of the ability of the court to sit outside the City of Winnipeg is important. If a Chief Justice in the past, by the consensual method, would try to have the court sit somewhere other than Winnipeg, and the other judges did not agree, then that Chief Justice would not have been in a position to exercise leadership. So I want to see an updating of our court; I want to see it brought into line with other courts; and I want to see a level of leadership. We make much of the importance of the appointment of a Chief Justice. I believe this Bill reflect that importance.

Mr. Chairman: Clause 2—Mr. Edwards.

Mr. Edwards: Mr. Chairperson, with respect to the Chief Justice, and the Minister has referenced that we are going to have a new Chief Justice in this province, will the Chief Justice be going through the committee established by the federal Solicitor General in this province to review federal judicial appointments? Is the Minister—I realize he does not have jurisdiction over the appointment of that position—aware of whether or not that elevation, or indeed new appointment, will go through that committee?

Mr. McCrae: I cannot for the life of me figure out how that question relates to Section 2, but, Mr. Chairman, I will try to answer by saying that the policy laid down in 1988 by the then Minister of Justice, Mr. Hnatyshyn, as he then was, was that judges, other than the Chief Justice, are chosen by that committee system. The Chief Justice appointment is a Prime Ministerial appointment.

Mr. Edwards: It certainly does relate, given that the Minister raised how Chief Justices get to where they are and the powers they should have. But is the Minister saying that he knows that appointment of the Chief Justice will not go through that committee? Does he know that?

Mr. McCrae: Mr. Chairman, my office has been in frequent contact with the office of the federal Minister of Justice and now the new federal Minister of Justice, and I have not received any indication that the Chief Justice appointment for the province would be one that would flow from a committee system. However, if the new Chief Justice is one who already sits on the bench, I think that covers it because someone—presumably had that system been in effect for the last number of years, everyone on the bench would have been through the committee. So I think the policy applies to people who do not presently sit on the bench.

Mr. Edwards: Does the Minister know then that the new Chief Justice will be someone from the existing bench?

Mr. McCrae: No, I do not know that, Mr. Chairman.

Mr. Chairman: Any more questions? Clause 2—pass; Clause 3—pass; Clause 4—pass; Clause 5—pass; Preamble—pass; Title—pass; Bill be reported—pass. Is it the will of the committee that I report the Bill as passed? Agreed.

BILL NO. 69—THE LAW SOCIETY AMENDMENT ACT

Mr. Chairman: Bill No. 69, The Law Society Amendment Act. Clause 1—pass; Clause 2—pass; Clause 3—pass; Clause 4—pass; Clause 5—pass; Clause 6—pass; Clause 7—pass; Clause 8—pass; Clause 9—pass; Clause 10—pass; Clause 11—pass.

Clause 12—Mr. Minister.

Hon. James McCrae (Minister of Justice and Attorney General): Mr. Chairman, I move

THAT section 12 be deleted and the following substituted:

Section 36 amended
12 Section 36 is amended

(a) in clause (x), by striking out "a chartered accountant, certified public accountant, or accredited public accountant" and substituting "an accountant";

(b) by striking out the period after clause (gg), substituting a semi-colon, and adding the following:

(hh) by resolution, appoint a person who is not a bencher to sit for a specified period of time as a voting member of a committee of the governing body, where the governing body considers it in the public interest and in the best interests of the society.

(French version)

Il est proposé que l'article 12 soit remplacé par ce qui suit:

Modification de l'article 36
12 L'article 36 est modifié:

a) par suppression, à l'alinéa x), des termes "agréé, d'un expert comptable licencié ou accrédité";

b) par substitution, au point qui se trouve à la fin de l'alinéa gg), d'un point-virgule et par adjonction de ce qui suit:

hh) nommer, par résolution, une personne qui n'est pas un conseiller afin de siéger pour une période précisée à titre de membre votant d'un de ses comités, s'il estime que la nomination est dans l'intérêt public et au mieux des intérêts de la Société.

Mr. Chairman I move this amended in both the French and English languages.

The amendment to Section 12 incorporates what is already in Section 12 of the Bill as (a) and it adds Clause (hh) at the request of the Society.

Mr. Chairman: Shall the amendment as read into the record by the Minister pass? Mr. Minenko.

* (2250)

Mr. Mark Minenko (Seven Oaks): Can the Minister explain what the factors were in the Law Society proposing the amendment as set out as 12(hh)?

Mr. McCrae: This is to give the society the opportunity to have non-Benchers come in to sit on these standards committees. The Honourable Member may think they have the authority just because they do it now. What we are trying to do is make what they are doing something that is appropriate under the legislation.

Mr. Chairman: The amendment as read into the records by the Honourable Mr. McCrae—pass. Clause 12 which is deleted, as amended—pass; Clause 13—pass; Clause 14—pass; Clause 15—pass; Clause 16—pass; Clause 17—pass; Clause 18—pass.

Clause 19—Mr. Minister.

Mr. McCrae: Mr. Chairman, I have an amendment here dealing with Sections 19, 20 and 21. I will move them one at a time. I move

THAT section 19 be amended by striking out "the" after "Form A of".

(French version)

Il est proposé que l'article 19 soit amendé par suppression, dans la version anglaise, de "the" après "Form A of".

I move that motion in both the English and French languages and it relates to a minor drafting error.

Mr. Chairman: The amendment to Clause 19—pass; Clause 19, as amended—pass.

Clause 20—Mr. Minister.

Mr. McCrae: I move

THAT section 20 be amended by adding "of Schedule A" after "Form B".

(French version)

Il est proposé que l'article 20 soit amendé par insertion, après "La formule B", de "de l'annexe A".

I move the motion in both English and French languages for the same reason as the last one.

Mr. Chairman: The amendment to Clause 20—pass; Clause 20, as amended—pass.

Clause 21—Mr. Minister.

Mr. McCrae: I move

THAT section 21 be amended by striking out "Form C is amended by striking" and substituting "Form C of Schedule A is amended by striking".

(French version)

Il est proposé que l'article 21 de la version anglaise soit amendé par substitution, à "Form C is amended by striking", de "Form C of Schedule A is amended by striking".

I move the motion in both the English and French languages for the same reason I moved the last two.

Mr. Chairman: The amendment to Clause 21—pass; Clause 21, as amended—pass; Clause 22—pass; Clause 23—pass; Preamble—pass; Title—pass. The Bill, as amended, be reported—agreed. Is it the will of the committee that I report the Bill, as amended? Agreed and so ordered.

BILL NO. 70—THE PROVINCIAL COURT AMENDMENT ACT

Mr. Chairman: Bill No. 70, The Provincial Courts Amendment Act. Clause 1—pass; Clause 2—pass; Clause 3—pass; Clause 4—pass.

Clause 5—Mr. Minister.

Hon. James McCrae (Minister of Justice and Attorney General): Yes, Mr. Chairman, I move

THAT section 9 of the Act, as proposed in section 5 of the Bill, be deleted and the following substituted:

Appointment of Associate Chief Judges
9 The Lieutenant Governor in Council may, on the recommendation of the minister, after consultation with the Chief Judge, appoint from among the judges such Associate Chief Judges as may be required for the proper administration of the court.

(French version)

Il est proposé que l'article 9, figurant à l'article 5 du projet de loi, soit remplacé par ce qui suit:

Nomination des juges en chef adjoints
9 Le lieutenant-gouverneur en conseil peut, sur recommandation du ministre et aprés avoir consulté le juge en chef, nommer parmi les juges les juges en chefs adjoints nécessaires à l'administration du tribunal.

I move that motion in both the French and English languages. I have discussed with the Honourable Member for St. James (Mr. Edwards) the intent of this. I do not remember if I discussed it with the Member for Flin Flon (Mr. Storie), but the idea behind this amendment is to ensure that judges chosen as Associate Chief Judges are judges who have gone through the committee selection process.

Mr. Chairman: The amendment to Clause 5—pass; Clause 5, as amended—pass; Clause 6—pass; Clause 7—pass; Clause 8—pass; Clause 9—pass; Clause 10—wait a minute, there is no 10.

An Honourable Member: May I suggest we not pass it then.

Mr. Chairman: I wanted to just check to see how many of you Members were alert and we even passed—

Preamble—pass; Title—pass. Shall the Bill as amended be reported? Is it the will of the committee that I report the Bill as amended? Agreed.

BILL NO. 71—THE LAW SOCIETY AMENDMENT ACT (2)

Mr. Chairman: Bill No. 71, The Law Society Amendment Act (2), Clause No. 1 on Bill No. 71. Clause 1—pass.

Clause 2—Mr. Minister.

Hon. James McCrae (Minister of Justice and Attorney General): Mr. Chairman, I move

THAT clause 57.1(4)(b) as added by section 2 be struck out and the following substituted:

(b) if no report of bodily injury is made under subsection 155(4) of The Highway Traffic Act in respect of the event giving rise to the offence.

(French version)

Il est proposé que l'alinéa 57.1(4)b), figurant à l'article 2, soit remplacé par ce qui suit:

b) aucune déclaration de blessures corporelles n'est faite en vertu du paragraphe 155(4) du Code de la route à la suite de l'événement qui a donné lieu à l'infraction.

I move this motion in the English and French languages, and I move it because a better definition of personal injury was needed and that is why we have this amendment.

* (2300)

Mr. Jerry Storie (Flin Flon): I appreciate the explanation for why this amendment is before us. I had had a couple of amendments drafted. One of them referred to personal injury so I gather from the Minister's comments that would not be appropriate because of the difficulty in providing a definition.

This, I guess, is more limiting than what the POINTTS representative requested when he first appeared before committee. If memory serves me correctly, he suggested that 57.1(4)(a) was an unnecessary provision in that many, or some, of the offences under The Highway Traffic Act had as a possibility imprisonment, but in fact it is seldom or ever the case that someone convicted actually was imprisoned. He argued, I think quite reasonably, that this was an unnecessary requirement or a provision that was going to limit the business so much that it would make operating within Manitoba difficult, to say the least, if not impossible.

I would be concerned after the Minister has gone to so much effort with the support certainly of the New

Democratic Party in bringing this forward, over the objections of some vested interests in the Province of Manitoba. If we were to create a situation where the group that we had intended to benefit could not benefit from this and therefore I do not know that I would like to support the amendment, and I am wondering whether it would not be possible to amend in a way that I hope will be considered friendly and that will not be quite as limiting.

I will not put it forward as a motion at this point, but I would like the Minister to consider wording that was prepared earlier that says that Subsection 57.1(4) as proposed in Section 2 of the Bill be amended by striking out Clauses (a) and (b). In other words, getting rid of both (a) and (b) and substituting the following: except where the offence results from an accident that is required to be reported to a peace officer under Subsection 155(4) of The Highway Traffic Act.

That is still more limiting I guess than what the POINTTS representative would recommend, but it does not limit their ability to present were the possibility of imprisonment there, but in all practicality imprisonment is never a punishment for the offence. I wonder if the Minister could comment on it and my concern.

Mr. McCrae: The Honourable Member can correct me if I am wrong, but I think what he is doing is accepting our definition of injury, but saying that the section dealing with penalties, including imprisonment, should go. We are halfway there.

If I could get the Honourable Member to agree that the section dealing with imprisonment is needed for the protection of the public to ensure that agents dealing with people who do face the prospect of jail, because we are not providing for all of these educational standards and training and all of that, we think that if a citizen faces going to jail or some such penalty, that person should have the benefit of the help of someone with some legal training.

I reminded Mr. Goddard when he was here that, even with what we have put in here regarding imprisonment, there are over 175 offences for which agents can act. I say this to the Honourable Member that I think there is a danger to go further than we are going at this time.

What I am saying is what we are doing here is something that provides and makes services available to the public, should the public want those services, we think there is some demand for it, but we also have to balance what we are doing with a certain level of protection for the public. We think these subsections do provide protection. We have cleaned up that clause dealing with what constitutes a personal injury and we think that was necessary because it was, I must confess, somewhat ambiguous.

I must say, I guess I disagree with the Honourable Member when he wants to take out that Subsection (a) because I believe if you are facing going to jail, that is not a very nice place to have to go. I think if you are facing that, you should have a trained legal practitioner at your side rather than someone without that training.

Mr. Storie: I guess it boils down to a question of whether in fact imprisonment is a realistic possibility. If it is never applied then I am not sure it is. I appreciate that there is no certainty. If the Act provides for that as a penalty, it is certainly possible at some point that would be imposed as a penalty.

I guess the question is, has the Minister discussed this amendment with the POINTTS representative? Has there been any indication from them that this would be an acceptable amendment, that they could live with the amendment as worded? Frankly, if that has not been done, then the Minister may end up defeating his own initiative inadvertently.

Mr. McCrae: Let us get something straight before we go any further. This legislation was not tailored for one particular operator out there. This legislation is—the Honourable Member looks a little incredulous, but I must tell you if the legislation was brought forward specifically for one individual or one group of individuals out there, I hardly think that is a proper way to legislate.

I am just not in the business of legislating for one person who happens to come forward and have something to say. We listened carefully to Mr. Goddard when he came. I replied in writing to his concerns and Mr. Goddard knows that we are making a change with respect to a definition for injury. He knows, I suggest, and he believes me when I tell him that there are 175 offences out there that agents can work on.

If you look at the list, which I do not have with me, but I can make it available to the Honourable Member—well I now have it available. The list deals with a number of offences, rather than go through the 175 or so that there are, I could offer to make available to the Honourable Member the list. It provides quite a scope for agents to operate and offences that are committed with a fair amount—quite often shall I say, so that it is the types of offences that people, I would think, might be interested in using the services of a nonlegal person whose fees might be a little, maybe a lot, cheaper, I do not know.

The majority of the charges we hear about or the ones that we tend to find ourselves in court with are relating to speeding and imprudent driving, offences like that. Agents can operate in those circumstances. You notice I correct myself when I say paralegals because we are not talking about paralegals in the true sense of the word. We are talking about anybody.

I think we have been very, very careful in the drafting of this legislation to provide enough restriction there that there is a reasonable degree of protection for our fellow Manitobans, but also not to defeat the purpose we set out to achieve. I really do want the Honourable Member to know that we do not just pass legislation for one person who comes along and asks for it.

Mr. Storie: I accept that we do not pass legislation for one person. On the other hand, if we were trying to—

Mr. McCrae: Except—I forgot Bernie.

Mr. Storie: Except for Bernie. I hope that means that the Member for Seven Oaks (Mr. Minenko) has not had

a change of heart and is still opposing legislation for working people.

Mr. Chairperson, I accept that the amendment is necessary. I accept that we are not going to be implementing or passing this legislation for one group. On the other hand, they were the first group to come and ask specifically for this type of legislation and obviously anyone out there, individual can use this legislation. We would want to make sure that it was possible to use it and be able to provide the service. It seems to me we are dealing only with offences under The Highway Act in any event. It seems to me we should leave it as open as we can.

If the Minister is not prepared to entertain an amendment that leaves it more open, I am prepared to accept his amendment. I looked at it. I think it is reasonable, but I leave on the record, I think opening it further would be more beneficial.

* (2310)

Mr. McCrae: Mr. Chairman, very briefly, I do appreciate that the Honourable Member is trying to be helpful. I accept that. In this type of thing where we are breaking some new ground, we are not going to be in total agreement, but I think we are in agreement with the thrust of what we are trying to do here. I invite the Honourable Member to watch how this legislation works as I will be doing.

Perhaps the day will come in the future, I do not know when, but there will be a time to review it again, then we will discuss it again.

Mr. Paul Edwards (St. James): Mr. Minister, just one question, the specter raised in discussion with Mr. Orle tonight was that someone would deal with their Highway Traffic offence through a POINTTS agent, while not knowing at that time that they had a personal injury from an accident. Quite often, a personal injury does not come to someone's attention until some time after the accident. That is why you have two years to start an action for a personal injury.

The issue which comes to mind for me is if someone is represented by an agent, and that agent wrongfully or negligently perhaps persuades them to enter a plea of guilty, that plea can be held against them in a future liability case with MPIC. I simply want to make sure that the insurance requirements which are provided for under the regulations will be sufficient to cover that specter where personal injuries perhaps are not known at the time that the POINTTS agency is made and the person goes to Highway Traffic Court, but later on that personal injury becomes known, and it may turn out that the POINTTS agent has been negligent in dealing with that case.

I am not saying that POINTTS agents are going to be negligent more often than lawyers. What I am saying is that people make mistakes in all professions. I simply want an assurance from the Minister that in setting insurance standards it will be taken into account that there may be personal injury claims in which someone may ultimately have to look to a POINTTS person for compensation, if that claim has been prejudiced or lost by the negligence of a POINTTS agent.

Mr. McCrae: My experience in personal injury cases, not sitting as counsel of course, but that a conviction for offence is one piece of evidence that goes forward in a civil trial, and that is taken with a whole lot of other ones, including quantum and all of that. That is only one item that goes into the consideration of liability.

I can assure the Honourable Member that when we put together regulations that would come under this legislation, we would take what the Honourable Member has said into account.

Mr. Storie: Mr. Chairperson, before we pass Section 2, I have another amendment.

I would like to move, seconded by the Member for—

An Honourable Member: You do not need a second.

Mr. Storie: Mr. Chairperson, do we pass the Minister's amendment first, or do we deal with them both at once?

Mr. Chairman: Mr. Storie, is your amendment to the amendment?

Mr. Storie: No, I have an amendment of a different—

Mr. Chairman: Mr. Storie, could we deal with this amendment first after which I will address you.

Mr. Storie: Absolutely.

Mr. Chairman: I will read it into the record. Proposed amendment to Bill No. 71

THAT clause 57.1(4)(b) as added by section 2 be struck out and the following substituted:

(b) if no report of bodily injury is made under subsection 155(4) of The Highway Traffic Act in respect of the event given rise to the offence.

(French version)

Il est proposé que l'alinéa 57.1(4)(b), figurant à l'article 2, soit remplacé par ce qui suit:

b) aucune déclaration de blessures corporelles n'est faite en vertu du paragraphe 155(4) du Code de la route à la suite de l'événement qui a donné lieu à l'infraction.

The amendment to Clause 2—pass; Clause 2 as amended—pass.

No, I would not think so, Mr. Storie. Did you not want to have an amendment to that? -(interjection)- Well, then you should not say pass.

An Honourable Member: He has a whole new one coming.

An Honourable Member: We just passed the amendment.

Mr. Chairman: I asked you also for the clause. Okay, we will go back. Mr. Storie, I realize you had raised a point.

Mr. Storie: Mr. Chairperson, I apologize if—

Mr. Chairman: It is my error, Mr. Storie. Go ahead.

Mr. Storie: I move that Subsection 57.1(7) be renumbered as—

Mr. McCrae: On a point of order, Mr. Chairman. I have an amendment. Numerically, it would come ahead of 57.1(7). I have one that would amend 57.1(5), so I wonder if the Honourable Member would entertain my amendment and then we will get on to his.

I am not sure where the Honourable Member for St. James' (Mr. Edwards) amendment comes in. His is 57.1(7)(2) so it should be mine or the Member for St. James followed by the Member for Flin Flon (Mr. Storie). Now the question is, shall I go first or the Honourable Member for St. James?

Mr. Chairman: Mr. Minister.

Mr. McCrae: I move

THAT section 57.1, as added by section 2 be amended

(a) by renumbering subsections 57.1(5) to (7) as subsections 57.1(6) to (8); and

(b) by adding the following as subsection 57.1(5):

Privileged communication
57.1(5) A communication between

(a) a person acting as an agent on behalf of another person and that other person; or

(b) a person providing legal advice to another person and that other person;

is privileged in the same manner and to the same extent as a communication between a solicitor and the solicitor's client.

(French version)

Il est proposé que l'article 57.1, figurant à l'article 2 du projet de loi, soit amendé:

a) par substitution, aux numéros de paragraphe 57.1(5) à (7), des numéros de paragraphe 57.1(6) à (8);

b) par insertion, aprés le paragraphe (4), de ce qui suit:

Communications protégées
57.1(5) Sont protégées au même titre que les communications entre les avocats et leurs clients les communications entre:

a) les personnes qui agissent à titre de représentants pour d'autres personnes et celles-ci;

b) les personnes qui donnent des conseils juridiques à d'autres personnes et celles-ci.

I move this motion in both the English and the French languages. I move it because of concerns raised at the first sitting of this committee about the protection of the public vis-a-vis discussions with his or her agent as opposed to his or lawyer.

Mr. Chairman: The amendment as read into the records by the Honourable Minister—pass.

Now, Mr. Edwards.

Mr. Edwards: Mr. Chairperson, I move an amendment that Subsection 57.1(7), which is now the new (8)

THAT subsection 57.1(7), as proposed in section 2 of the Bill, be amended

(a) by striking out "and" at the end of clause (d);

(b) by adding "and" at the end of clause (e); and

(c) by adding the following after clause (e):

(f) respecting the manner in which moneys paid on account of fees and disbursements are held, and respecting procedures for the review of fees and disbursements.

(French version)

Il est proposé que le paragraphe 57.1(7), figurant à l'article 2 du projet de loi, soit amendé:

a) par suppression de "and" à la fin de l'alinéa d), dans la version anglaise;

b) par substitution, au point qui se trouve à la fin de l'alinéa e), de un point-virgule;

c) par adjonction, aprés l'alinéa e), de ce qui suit:

f) prendre des mesures concernant le mode de détention des sommes versées à titre d'honoraires et de débours ainsi que les procédures de révision de ces honoraires et de ces débours.

Mr. Chairman: Shall the amendment pass—pass.

Mr. Storie: Mr. Chairperson, I am not sure how this is going to be numbered. I am afraid I am lost now, but I move

THAT subsection 57.1(8) be renumbered as subsection—that may be (9) now and the following be added after subsection (7)—

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Mr. McCrae: Point of order.

Mr. Chairman: Mr. Minister.

Mr. McCrae: Did we pass the amendment moved by the Member for St. James?

Mr. Chairman: Yes. The amendment is passed.

*****

Mr. Storie: I move

Appointment of advisory committee
57.1(7) The minister shall appoint an advisory committee of not less than four persons to advise him or her from time to time on the operation of this section, including any regulations enacted under subsection—whatever it is—(8), and the advisory committee shall consist of

(a) a barrister that is selected by the minister from a list of six persons to be submitted by the society at the request of the minister;

(b) a barrister employed by the Department of Justice; and

(c) not less than two persons who are not barristers.

THAT the following be added after subsection (8):

Advisory committee to be consulted
57.1(10) The advisory committee appointed under subsection (7) shall be consulted before a licencing scheme is established under clause (8)(e).

(French version)

Nomination d'un comité consultatif
57.1(7) Le ministre nomme un comité consultatif composé d'au moins quatre personnes et chargé de le conseiller sur l'application du présent article, y compris les réglements pris en vertu du paragraphe (8). Le comité consultatif est constitué:

(a) d'un avocat que le ministre choisit parmi six personnes dont le nom figure sur la liste qu'il demande à la Société;

(b) d'un avocat qui travaille pour le ministére de la Justice;

(c) d'au moins deux personnes qui ne sont pas avocats.

Il est proposé que le projet de loi soit amendé, par adjonction, aprés l'article 8, de ce qui suit:

Consultation du comité consultatif
57.1(9) Le comité consultatif nommé en vertu du paragraphe (7) doit consulté avant qu'un systéme d'attribution des licences ne soit créé en vertu de l'alinéa (8)e).

* (2320)

The purpose of this amendment basically is to make sure that there is input again from outside the Lieutenant-Governor-in-Council—lay people. I believe the Minister introduced this legislation to respond to an opening up of the legal process. It seems to me this advisory committee may be very useful to the Minister in making sure that all of the regulations referred to in 57.1(7) in the amendment Act would be useful and seen as positive in that it would bring in a new perspective to assist the Minister in developing the regulations and in establishing the licensing scheme, and dealing now with the amendment introduced by my colleague for St. James (Mr. Edwards) respecting fees. It is quite a useful committee.

Mr. Edwards: I know the Minister is reviewing this. Perhaps I can just ask the Member for Flin Flon (Mr. Storie), through you, Mr. Chairperson, with respect to this, if he had consulted the Law Society at all in this, if they have expressed an opinion with respect to this advisory committee.

Mr. Storie: I have not consulted with the Law Society.

Mr. McCrae: Mr. Chairman, I have had significant consultation with the Law Society, with a representative of the paralegals, and other members of the general public. Here again, the Honourable Member is suggesting something by legislation that I have already more or less committed myself to, and that was to set up some kind of a committee to review the activities of paralegals and agents in our province. I am already on record as saying that I am going to do that. I have done that in consultation with the Law Society, so I would ask that while I appreciate the Honourable Member's very good intentions and motivations, they are precisely the same as mine, do not need to be in legislation. The Honourable Member has not discussed this with the Law Society. I have, and I know more or less the kind of—not his amendment, but the principle in his amendment, and I would prefer not to have this as part of the legislation.

Mr. Mark Minenko (Seven Oaks): I have a question to the Member, why the Member selected, of four.

Mr. Storie: Mr. Chairperson, this is only an advisory committee. We are not looking for a majority rule. They are there to provide input to the Minister. It is an arbitrary number. The Minister may want to have this dismissed because the Law Society was not consulted. The Minister reminded me not too long ago that we do not pass legislation for single groups. This legislation is not for the Law Society of Manitoba. In my opinion, it is for the people of Manitoba. The amendment is on the table. If the Minister does not want to support it, then certainly he does not have to.

Mr. Edwards: I just wonder if the Member for Flin Flon has considered—I do not see it in here—the cost of this, if we are going to ask four people to sit, and advise Government. There is no statement here as to how often they would do that, but presumably it would be on a regular basis, at least the beginning. What are the cost ramifications of that? Is it the Member's intention that we ask these people to do it for free? I am not sure that is realistic if we want to get quality people. Will a per diem be built in and what would the cost of this be? I think we are already setting up an administrative regime if you will for this, a regulatory regime. That is going to be a cost to the Government to do. What extra cost does this add to the entire initiative?

Mr. Storie: Mr. Chairperson, there are many, many advisory committees who serve Ministers and Governments and Government agencies that do not receive remuneration. I had not anticipated that it would be necessary. I do not see this as a full-time job. I see it as a short-term activity that would be quite useful.

Hon. James Downey (Minister of Northern and Native Affairs): Mr. Chairman, I move the question be put on this amendment.

Mr. Chairman: The amendment before us, on the proposed amendment of Mr. Storie, regarding Clauses 57.1(7) and also 57.1(9). All those in favour of the amendment, please say aye. All those opposed indicate. I believe the Nays have it.

All those in favour, please raise your hand.

Clerk of Committees (Ms. Bonnie Greschuk): Six.

Mr. Chairman: All those opposed, three.

Madam Clerk: One, two, three, four.

Mr. Chairman: I believe the amendment of Mr. Storie has been passed.

Section 2 with all the amendments—Mr. Edwards.

Mr. Edwards: Mr. Chairperson, there is one comment with respect to 57.1(6) that I want to make. There were some serious concerns raised by Mr. Orle previously in this committee with respect to the onus on judges finding someone incompetent to represent them. I have now learned through the assistance of the Minister -(interjection)-

Mr. Chairman: Go ahead, Mr. Edwards.

Mr. Edwards: Mr. Chairperson, I understand it is late in the evening, but I do think it is important to advise all Members of this committee that that particular wording which does place some responsibility on a judge comes from three statutes in Ontario. I have been advised that the wording is very similar or identical to some statutes which impose a similar obligation.

So I think we can take some comfort that this is not entirely new and there is some precedence in another jurisdiction. It is for that reason that I feel able, at this point anyway, to accept this section which does place some responsibility on a judge. I simply want to ask the Minister to review that and to maintain contact with provincial judges on this issue and determine whether or not they are uncomfortable with it.

In conclusion I would ask the Minister if he had had any discussion with provincial court judges? I have indicated that I am prepared to support it at this point, but did he have contact with the provincial court judges and what were their feelings?

Mr. McCrae: I did not want to—when Mr. Orle was here, really get into that in much detail. The judges with whom I have had contact have assured me they do not have a problem with what I am proposing.

Mr. Chairman: Clause 2 with all the amendments—pass; Clause 2 as amended—pass; Clause 3—pass. Mr. Minister.

Mr. McCrae: I move

THAT Legislative Counsel be authorized to change all section numbers and internal references necessary to carry out the amendments adopted by this committee.

(French version)

Il est proposé que le conseiller législatif soit autorisé à changer tous les numéros d'articles ainsi que les renvois nécessaires pour l'adoption des amendements faits par le présent comité.

I move this motion in both the English and French languages.

Mr. Chairman: The amendment by the Honourable Minister—pass; Preamble—pass; Title—pass. Shall the Bill as amended be reported? Is it the will of the committee that I report the Bill as amended? Agreed.

Committee rise.

COMMITTEE ROSE At: 11:28 p.m.

PRESENTATIONS SUBMITTED BUT NOT READ

Written presentation of Mr. John E. Leech

Applied Science Technologists and Technicians of British Columbia 200 Discovery Park, 3700 Gilmore Way
Burnaby, B.C. V5G 4M1
Telephone (604) 433-0548

Bonnie Greschuk
Clerk of Committees
Manitoba Legislature
450 Broadway
Winnipeg, Manitoba
R3C OV8

Please add our Association to the list of those individuals and groups that have concerns with Bill 40, Manitoba Land Surveyors Amendment Act. I received a copy of a letter written to you by C. Charles Brimley, CET, Executive Director, Canadian Council of Technicians and Technologists.

In British Columbia there are quite a number of professionals who are legally able to perform functions which would appear to be restricted under Bill 40. I believe this is the same in Manitoba and as a consequence you have already heard from several professional groups who carry out their responsibilities in your province.

I am not aware of any other piece of provincial legislation in Canada which restricts "the location of anything relative to a boundary" - Clause 2(c) of Bill 40.

Although we are outside your immediate jurisdiction I would ask that you carefully consider these concerns and, if it is possible, keep me posted on developments.

(Signed)
John E. Leech, A.Sc.T., C.A.E.

Executive Director

c.c. C. Charles Brimley, CET
Executive Director
Canadian Council of Technicians and Technologists

Terry Whiteman, CET
Executive Director
Manitoba Society of Certified Engineering Technicians and Technologists

*****

Written presentation of C. Charles Brimley

CANADIAN COUNCIL OF TECHNICIANS AND TECHNOLOGISTS
880 rue Wellington Street, Suite 807,
Ottawa, Ontario K1R 6K7

October 31, 1989

Ms. Bonnie Greschuk
Clerk of Committees
Manitoba Legislature
450 Broadway
Winnipeg, Manitoba
R3C OV8

Dear Ms. Greschuk:

It is with great concern that we have learned that the Manitoba Land Surveyors Amendment Act, Bill 40 has passed first reading during the second Session of Manitoba's 34th Legislature.

After reading the Amendment Act as proposed, we take particular exception to item 2(c) since it effectively broadens the definition of a "Manitoba Land Surveyor" and the "practice of land surveying" to a degree where it will have negative impact for Certified Survey Technologists and Technicians as well as Civil Engineering Technologists and Technicians in Manitoba and across Canada.

We believe that two recent cases have precipitated this attempt to "broaden" the definitions in item 2(c) of Bill 40.

The first case was Association of Manitoba Land Surveyors v. Carefoot (1986) where the Manitoba Court of Queen's Bench in upholding the acquittal of Mr. Carefoot noted the absence of any definition of "surveyor of lands" and therefore they could not determine the legality or illegality of Mr. Carefoot's actions.

The second important case was The Corporation of Land Surveyors of the Province of British Columbia v. Infomap Services Inc. and John R. Wannamaker (1989).

In this case, the defendants (Infomap) were not deemed to have carried out a land survey in the preparation of mortgage location certificates.

Although Infomap did "locate something relative to a boundary", which would put them in contravention of the proposed Land Surveyors Amendment Act of Manitoba as it now reads,

> The judgment was made in favour of the defendants, since they, in fact, used existing monuments (established by land surveyors) to locate a building within the property boundaries.

This judgment stresses the possible effect of the clause 2(c) "for the location of anything relative to a boundary."

If it is allowed to remain, it will prevent Survey and Civil Technologists as in the Infomap example from performing work which to this point has never been part of the practice of land surveying.

The potential impact of this Amendment Act could affect several thousand Survey Technologists and Technicians across Canada and indirectly impact on an estimated ten thousand Civil Engineering Technologists and Technicians, since they too locate things relative to established survey boundaries as part of their duties.

In conclusion, we find ourselves as representatives of more than 35,000 Certified Engineering and Applied Science Technologists and Technicians, unable to support the Amendment Act, Bill 40 in its present form. However, specifically to clause 2(c) we would have no problem in accepting this statement if a period appeared after the word boundaries and with the deletion of the words "or the location of anything relative to a boundary."

Sincerely,

CANADIAN COUNCIL OF TECHNICIANS AND TECHNOLOGISTS

(Signed)
C. Charles Brimley, CET
Executive Director

cc: All Constituent Members

*****

Written presentation of Rich Chale

F.W.Sawatzky (Western) Ltd.
531 Marion Street
Winnipeg, Manitoba, R2J OJ9

RE: BILL 40—THE LAND SURVEYORS AMENDMENT ACT

We attach hereto a copy of proposed legislation which has gone through first reading recently. The wording is of concern to us and we believe it should be of concern to the entire construction industry.

Section 2(c) will require that only Certified Manitoba Land Surveyors (MLS) be allowed to determine "location of anything relative to a boundary." We believe that the wording could be interpreted that all new building layouts and pile layouts would have to be done by a certified MLS. As you know Contractors regularly use foremen or layout specialists to do this work where lot lines are readily identifiable. The mandatory use of MLS personnel to carry out this work could significantly add to the cost of construction and would likely cause project delays while waiting for an available MLS to undertake the work.

We believe this matter should be addressed by the WCA a soon as possible.

Yours truly,

(Signed)
Rick Chale
Secretary/Treasurer
F.W. Sawatzky (Western) Ltd.

c.c. Hon. Mr. Jim McCrae, Attorney General
Bonnie Greschuk, Clerk of Committees