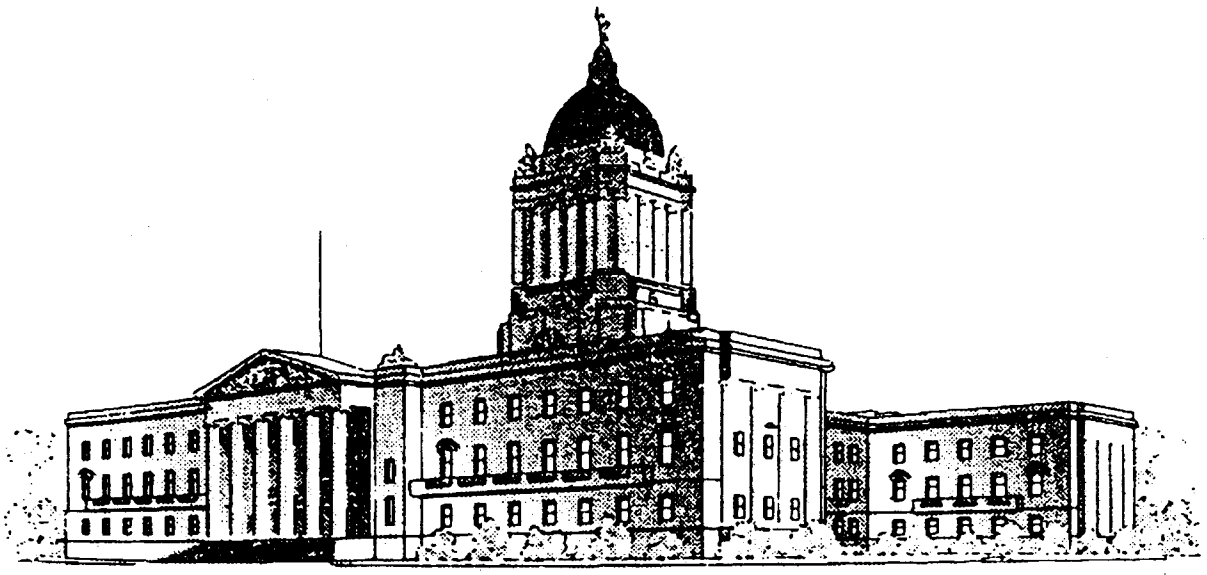
Third Session - Thirty-Sixth Legislature

of the

Legislative Assembly of Manitoba

Standing Committee on Economic Development

Chairperson
Mr. Peter Dyck
Constituency of Pembina



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MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Sixth Legislature

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LEGISLATIVE ASSEMBLY OF MANITOBA

THE STANDING COMMITTEE ON ECONOMIC DEVELOPMENT

Friday, June 13, 1997

TIME – 10 a.m.

LOCATION – Winnipeg, Manitoba

CHAIRPERSON – Mr. Peter Dyck (Pembina)

VICE-CHAIRPERSON – Mr. Gerry McAlpine (Sturgeon Creek)

ATTENDANCE - 11 – QUORUM - 6

Members of the Committee present:

Hon. Mr. Downey, Hon. Mrs. McIntosh, Hon. Messrs. Pitura, Radcliffe, Toews

Ms. Barrett, Messrs. Dyck, Mackintosh, Maloway, McAlpine, Sale.

Committee Substitutions:

Mr. Reimer for Mr. McAlpine
Ms. Friesen for Mr. Sale

WITNESSES:

Bill 2–The Arbitration and Consequential Amendments Act

Mr. Barry Effler, Arbitration and Mediation Institute of Manitoba
Mr. Gervin Greasley, Arbitration and Mediation Institute of Manitoba
Mr. Cory Lewis, Private Citizen

Bill 28–The Emergency Measures Amendment and Consequential Amendments Act

Mr. Don Bailey, Manitoba Association for Rights and Liberties
Mr. Edward Lipsett, Private Citizen

Bill 35–The Condominium Amendment and Consequential Amendments Act

Mr. Larry Beeston, Canadian Condominium Institute, Manitoba Chapter

MATTERS UNDER DISCUSSION:

Bill 2–The Arbitration and Consequential Amendments Act
Bill 19–The Human Rights Code Amendment Act
Bill 20–The Summary Convictions Amendment Act
Bill 25–The Proceeds of Crime Registration Act
Bill 28–The Emergency Measures Amendment and Consequential Amendments Act
Bill 29–The Education Administration Amendment Act
Bill 34–The City of Winnipeg Amendment and Municipal Amendment Act
Bill 35–The Condominium Amendment and Consequential Amendments Act
Bill 40–The Manitoba Employee Ownership Fund Corporation Amendment Act

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Mr. Chairperson: I call the committee to order. Good morning. Will the Standing Committee on Economic Development please come to order.

This morning, the committee will be considering: Bill 2, The Arbitration and Consequential Amendments Act; Bill 19, The Human Rights Code Amendment Act; Bill 20, The Summary Convictions Amendment Act; Bill 25, The Proceeds of Crime Registration Act; Bill 28, The Emergency Measures Amendment and Consequential Amendments Act; Bill 29, The Education Administration Amendment Act; Bill 34, The City of Winnipeg Amendment and Municipal Amendment Act; Bill 35, The Condominium Amendment and Consequential Amendments Act; Bill 40, The Manitoba Employee Ownership Fund Corporation Amendment Act.

If there are any persons in attendance today who would like to speak to the bills referred for this morning and whose name does not appear on the list of

presenters, please register with the Chamber Branch personnel at the table at the rear of the room, and your name will be added to the list.

In addition, I would like to remind the presenters wishing to hand out written copies of their briefs to the committee that 15 copies are required. If assistance in making the required number of copies is needed, please contact either the Chamber Branch personnel or the Clerk Assistant, and the copies will be made for you.

Does the committee wish to set time limits for the hearing of the presentations?

Hon. James Downey (Minister of Industry, Trade and Tourism): Yes, Mr. Chairman, I would recommend that we set 10 minutes for a presentation and five minutes for questions.

Mr. Chairperson: The recommendation is 10 minutes for presentation, five minutes for questions. Is that agreed? [agreed]

How does the committee propose to deal with the presenters who are not in attendance today but have their names called? Shall these names be dropped to the bottom of the list, or shall the names be dropped from the list after being called twice?

Mr. Gerry McAlpine (Sturgeon Creek): I would recommend for the committee that we call the names twice, and if they are not here after that period of time, that the names be dropped from the list.

We have to come to some conclusion on these, and I think that the presenters have been given sufficient notice or as much notice as we possibly can. In the interests of dealing with the legislation that we have to do as members of this Legislature, that is my recommendation to this committee.

Ms. Becky Barrett (Wellington): I think that we do not have a large number of presenters on the bills. There was not a lot of notice given. I think if we call them twice at the beginning and then at the end of the presentations call them one more time, that gives them a few more minutes. That is not going to delay our deliberations, and I think that would be a little fairer.

Some Honourable Members: Agreed.

Mr. Chairperson: That is agreed. That is the process we will use then.

Did the committee wish to indicate how late it wishes to sit this morning, or should we revisit this issue at 12 noon?

An Honourable Member: Agreed.

Mr. Chairperson: It is agreed then that the committee revisit at 12 noon.

Bill 2–The Arbitration and Consequential Amendments Act

Mr. Chairperson: Then we will move ahead to Bill 2. The first presenter on the list is Barry Effler, please. Did you have any copies prepared?

Mr. Barry Effler (Arbitration and Mediation Institute of Manitoba): Mr. Chairman, we have prepared a joint presentation. Mr. Greasley, who is listed as No. 2, will be making our presentation on behalf of the Arbitration and Mediation Institute. I have no other comments to make.

Mr. Chairperson: Okay, thank you. So Mr. Greasley is going to be making the presentation, and it is a joint presentation.

Mr. Effler: That is correct.

Mr. Chairperson: Very well. Please proceed, Mr. Greasley, please.

Mr. Gervin Greasley (Arbitration and Mediation Institute of Manitoba): Mr. Chairman, incidentally, I do not expect to get both 10-minute periods. Hopefully, we can do it in the original timing.

Mr. Chairman and committee, I appreciate the opportunity to appear before you today to comment on Bill 2, which is currently before the Legislature. I am here in my capacity as a past president of the Manitoba Arbitration Institute and also as a practicing arbitrator in the province.

Generally, we see Bill 2 as a significant improvement over the current Arbitration Act. However, based on the wording in Bill 2, there are some sections that may give rise in the future to some potential problems, and I would like to bring these to your attention. In doing so, I would like to point out that it is not our request that Bill 2 be halted in progress at the present time. We recommend that these potential areas be monitored once the bill is proclaimed with a view to developing future amendments if that becomes necessary.

I would like to deal with these in numerical sequence. Section 5(1) states: "An arbitration agreement need not be in writing." For those of you who are not arbitrators or have not been in arbitration, I might point out that the appointment of an arbitrator and the submission to arbitration are normally written documents which describe the issues that are in dispute, the decisions that the parties require, the method and timing of the hearings to which the parties agree and other items including, very importantly, a statement of agreed-upon facts of the parties. This written agreement provides the authority, the direction and the parameters for the arbitrator.

It has been my own personal experience that the longer the hearings continue, the less accurate is the memory of the parties as to what was said in the preliminary meeting. If, under a verbal agreement, such as indicated by the act, the parties at some later date disagree on what one or more of the issues was or what specific decisions they were requesting, then the arbitrator might well be placed in the position of having to make a choice.

* (1010)

The fundamental principle of arbitration is the need for complete unbiasness on the part of the arbitrator. If the arbitrator's recall of a verbal agreement matches that of one of the parties, the other party will likely perceive a bias, perhaps to the point of requesting a withdrawal of the arbitrator or a court overturn of the subsequent award. When we have written agreements, this problem does not arise. I recognize that it says: may not or need not be in writing. I suspect what will happen is all arbitrators will continue to have written agreements.

Section 25(6) refers to documents and records to be produced by the parties. There is nothing wrong with it as it stands now with respect to producing documents, except we would suggest that many of the arbitrations involve businesses. Businesses have volumes and volumes of documents, and so for clarification we would recommend that at the end of that sentence words be added so that it would read as follows: Produce records and documents that are in their possession or power and that are relevant to the matters at dispute. So it is quite clear we are not on a fishing expedition here; we are here to get the relevant documentation.

Section 35 covers arbitration, going to mediation or conciliation and then returning to arbitration. This area actually causes me as an arbitrator some personal concern. I have no problem with the fact that an arbitration can be underway and the arbitrator or the arbitral panel may decide to go to mediation or conciliation as a way to remove roadblocks or resolve the issue. That is under subsection (1). Where I do have the problem is under subsection (2) where it suggest that the mediator having then failed in mediation can become the arbitrator in the same case. It is fundamental to the arbitration process and to the unbiasness of the arbitrator that nothing from either party comes before the arbitral tribunal or the arbitrators as individuals unless the other party is present at the same time or is supplied with all of the documentation and given adequate opportunity for rebuttal. There are to be no private conversations between arbitrators and parties, no undisclosed documentation or statements, no hidden agendas, no secrets.

Mediation, on the other hand, relies to some extent upon the right of the mediator when necessary to caucus with each party separately, to give confidential information and to receive it, to hear unsubstantiated claims and comments of one party and to in withhold part or all of that information from the other party.

So we say then, how can an arbitrator under those conditions return from being a mediator to an arbitrator on the same case and take from his or her memory all that information that was received not during the arbitration process, information which may well not be acceptable as evidence in an arbitration proceeding?

How can they continue as a completely neutral unbiased third party when writing the final award? It seems to me that when Section 35 occurs in an arbitration, the party that is disadvantaged by the award may well have a legitimate claim to having the award overturned on the claim of denial of natural justice.

As I travel across Canada talking to arbitrators and mediators, I find that a majority of them feel that allowing a mediator to later arbitrate the same case is poor practice. They believe that it impairs the impartiality of the arbitrator to the subsequent disadvantages of one or both parties. So we will now look forward to the proclamation of the act, and we will monitor this section with respect to what happens in the field and what changes in the future may be necessary in this regard.

I would like to turn to Section 42(2), termination of an arbitration. The success of this section appears to depend on the word "withdraw." If this section anticipates that the person who launches the action, then by some form of notification withdraws, the section will probably operate well. However, there are occasions where a party to an arbitration, including someone who may have initiated the action, later decides in the hearings to stay away, simply refuses to turn up even though they have received proper notification. We wonder if that does, in fact, constitute withdrawal and reason for termination under this section.

In comparison, under Section 27 the arbitrator may continue with the hearing despite the absence of one of the parties, and that would presumably, of course, include the party that launched the action. So we wonder then is there a conflict here. I would think that what would happen is that where an official notification is not received under 42, the arbitrators will simply continue to proceed under Section 27.

Section 52, regarding the service of documents and notification in other matters by fax: A very important issue to both arbitration and to mediation is the confidentiality that is required between the neutral and the parties. As we know, fax transmissions in many businesses are handled like regular mail and they are not received by the addressee directly. The arbitrator, on the other hand, is usually bound within the arbitration agreement to maintain the confidentiality of the proceedings, and many of those agreements contain clauses in which the parties agree that the final awards will not be filed with the court, again in order to maintain confidentiality.

Given the wording of Section 52, we foresee that a situation where many arbitrators are likely to include an agreement clause stating that documents and notices will not be transmitted by fax.

There is one item that is not in the current Bill 2 which we would like to discuss, and that is indemnity for arbitrators. Many of us are aware that there is a situation which has occurred in Alberta where a party successfully applied to the court to have an award overturned. The judge cited procedural matters in the decision. The party then filed a claim with Small Claims Court to recover the money paid for the arbitrator's fees and costs. The claim was rejected by the Small Claims Court, but the decision is under appeal. When a judge renders a decision and it is later overturned by a higher court, there is no liability occurring to the judge, but in the case of the arbitrator, even if court appointed, it would appear under the Alberta situation that there may, in fact, be a liability. There should be some indemnity.

On the whole, the act is a great approvement. We are aware that Manitobans may now arbitrate here cases occurring outside the province and may enforce outside of the province. Parties have more involvement in the process. There is a better procedural system and better court support. We recommend Bill 2 be passed, and that a monitoring system be established which would include representatives of the judiciary, legal profession and Arbitration and Mediation Institute which would monitor the field experiences and advise the minister. Thank you.

Mr. Chairperson: Thank you very much, Mr. Greasley. Are there any questions anyone?

Hon. Vic Toews (Minister of Justice and Attorney General): Mr. Greasley, thank you very much for your presentation. I see that you and the institute have gone to a lot of work in analyzing the bill, and I appreciate your comments. I would just ask you a few general comments.

I know that your concern is in respect of the written agreement, that it need not be in writing, the arbitration agreement. Now the intent of that was, in fact, to avoid technical kind of objections to the authority of an arbitrator, and what would concern me, Mr. Greasley, is if we stated that it had to be in writing, people may be deprived of a substantive remedy where, in fact, the writing issue is not, in fact, that important. I know that the prior government eliminated the statute of frauds the requirement for writing, and I think that this would be very consistent. Parties who do not want things in writing may do so at their own peril.

Mr. Greasley: I think that we recognize that there are many, for example, small arbitrations, neighbourhood disputes and things of that nature which do not warrant a formal document, but what we say in here, what I was saying today is that I think what you will find is despite the enabling language in that particular clause you will find that arbitrators in most cases, particularly commercial cases, will still continue to have written documents.

Mr. Toews: Just very quickly, I know my colleague has some questions of you as well, but in respect to the objections to 25(6), your concern that the statement "relevant to the matters at dispute" be added, in fact my understanding of arbitration law is that that, in fact, is implied. One cannot go on a fishing trip. It is similar to the examinations for discovery in a legal process.

Secondly, in respect to your concern about 35(2), that requires the consent of the parties. Why would you want to prohibit parties who both consent to have the same person hear the matter from hearing it? It seems to me to strike at the problem that this bill is trying to get at. That is allow the parties as much freedom as possible to choose who will determine their disputes.

Lastly, in respect to the issue of the Alberta arbitrator, now that case is under appeal and as far as I know there is no case that would, in fact, indicate that an arbitrator is liable in these circumstances.

* (1020)

Mr. Greasley: Again, as we said originally, many of these things will have to stand the test of field experience once the new bill is in. I think, Mr. Minister, our position is that–if I could share just briefly a true story with you. When I left my rural country home and came in to go to university, I made the mistake of bringing my graduation suit with me, which I found when I got to university was useless, so it hung in the back closet, but every once in a while somebody got married. I would haul it out, and the material would all be creased. One time I was complaining, and my landlady said to me, she said, well, Gervin, do not worry about it. She said, the suit is made of good material; if you put it on and wear it, the wrinkles will work themselves out.

I think what we are saying here is the bill is made of good material. If we put it on and work with it, we can work out the wrinkles together. So I think that is where we are going.

Mr. Gord Mackintosh (St. Johns): Thanks very much for your presentation. It is well thought out and well presented. My experience, though, with legislation is that wrinkles do not often work themselves out, that it is just too much of a job to get back at the legislation and get things cleaned up. I think it is important when we first pass the legislation that we identify any significant concerns.

So just on that I wonder, first of all, looking at your presentation, if you are aware of–and looking at Section 5(1), that is the allowance that arbitration agreements need not be in writing, are there particular types of arbitration agreements? In other words, are there classifications? In other words, can the legislation be more specific as to what kind of agreements should be in writing and which ones should not be? Or is that getting into a whole can of worms?

Mr. Greasley: I think it probably is. It is an enabling situation. It does not demand that they not be in writing, but I think for practical purposes it is my personal opinion and those I talked to that you will find that most practising arbitrators will still have agreements in writing.

Mr. Mackintosh: We compared the bill with the legislation that was recommended by the Manitoba Law Reform Commission based on the uniform law commissioners arbitration act, and we noted a few significant differences.

One that is of interest to me is that the Manitoba Act does not allow the parties to contract out of the requirements or of the act in its entirety, which I support, but the legislation does enable the parties to contract out of the provisions of the act, although there are a few sections that still have to remain in force.

What is your view as to whether the parties should have the right to contract out of any provisions of the act, or is it your view that the act should apply in all cases where the parties submit to arbitration?

Mr. Greasley: I feel that the one section that I strongly support in the current legislation rather than Bill 2 is the fact that it states, this act applies to all arbitrations in the province of Manitoba. I feel that that is a necessity, that you have to be bound by the act. What you get if you do not, you wind up getting a form of mediation rather than arbitration. If none of the rules apply, then you are into open conciliation, mediation, arb-med, whatever, but it is not specifically.

I think there is a formalized structure that is required here, and I do not think that we can have a situation where they are all abandoned by contracting out of everything. There is a move in that direction already. Under the current legislation, appointments are irrevocable. Under the new one, by agreement of the parties, they can rescind the agreement by means of tort law, contract law.

Mr. Chairperson: Mr. Greasley, I want to thank you for appearing before the committee and for giving us your presentation. Thank you very much.

The next presenter, please, Cory Lewis. Do you have copies?

Mr. Cory Lewis (Private Citizen): Yes, I do.

Mr. Chairperson: Okay. Please proceed, Mr. Lewis.

Mr. Lewis: Mr. Chairman, members of the committee, thank you for letting me appear here today. My presentation here is in my personal capacity. I teach a course in legal systems in ADR at the conflict resolution program at Menno Simons College, but my comments are not related to that capacity there; they are in my own personal capacity. I do not know if they reflect the view of the other faculty members there.

On the handout I have given you, there is on page 1 a brief outline of the points I plan to make as we go through this. Initially, we have a source of potential difficulties. My comments all relate to the question of the transition from arbitration to mediation and then back to arbitration.

First, you have the meaning of ex parte. There is an instance where the third party, in this case the arbitrator, could take information from one of the parties not in the presence of the other. There are fundamental differences between the two processes. If you look at page 2, diagram A, it is a diagram of arbitration in which a communication between one disputant and the arbitrator is subject to the review of the other disputant. They hear the communication, they can respond to it. They respond to the other party's case.

In mediation, it is often the case that the mediator caucuses privately and, ideally, confidentially with one of the parties, which prevents the ability of the other disputant to see and hear those comments, in other words, prevents their ability to respond to those comments.

So there is a fundamental problem. Sections 35(1) and (2), as proposed, permit this reversion from mediation to arbitration, the difficulty being that if there are ex parte communications during the mediation phase, when it reverts back to arbitration, there could be a claim of a denial of natural justice because one party did not get to respond to the other party's comments.

I understand one of the goals is uniformity with other legislation. I would like to bring to the attention of the committee three instances where that may not be the case. One is the model law and international commercial arbitration. That does not have a provision similar to 35(1) and (2). Secondly, we have Manitoba's and Ontario's international commercial arbitration acts. Now those acts presumably are drafted for more sophisticated parties because they deal with international transactions. Presumably these are people who can afford to bring in legal counsel who

understand the nuances and differences between the two processes.

You will notice on page 5 that by the wording of those acts, I have underlined the relevant portion on page 5. The agreement of the parties would be required at two points, one, before the transition from arbitration to mediation, and then again, apparently, at the transition back, or the reversion, from mediation to arbitration. So the parties get to decide a second time whether or not they want to revert to arbitration given that the third party may have heard ex parte communications from the other party during the mediation phase. The question is whether a similar protection may be helpful when we are dealing with less sophisticated students, which presumably would be contemplated by the act we are talking about passing here.

The third piece of legislation is Ontario's arbitration act. Now, the version of that that I was able to review has in Section 35 an express prohibition of what is being attempted by 35(2) in our legislation. In other words, Ontario–and this is also on page 5 of my handout and near the bottom–expressly prohibits the arbitral tribunal from reverting after engaging in a mediation-type process. The concern expressed there is they do not want to involve themselves with a process that might compromise or appear to compromise the arbitral tribunal's ability to decide the dispute impartially.

* (1030)

This raises the question: if we are looking for uniform legislation, uniform with which other legislation? We have Ontario that prohibits this. We have got Alberta that expressly permits it. In fact, our legislation looks like Alberta's legislation, and as a practical matter, it may be a question of which legislation do you want to match up with. Pragmatically, that may depend on where are the most disputes. If most disputes are between Manitoba citizens and Ontario citizens, then you are going to have more conflicts of law situations there if you do not match with their legislation than if you do match with Alberta's, so it is just a question of where are the most disputes.

Second, we have the possibility of resort to the courts. This would be based on a denial of natural justice claim. If you check the Canadian abridgment, you will see there are a number of cases where the courts have addressed this question, and in most of them they agree that the taking of ex parte evidence by the arbitral tribunal constitutes the denial of natural justice.

Section 45(1)(f) of Bill 2 contemplates this expressly. It says that the court may set aside cases where a party does not have the opportunity to respond to the other party's case. I presume that is there to deal with this denial of natural justice issue.

Again, we come to the timing of consent problem. In 35 as drafted, 31 requires the consent or the agreement of the parties only before they go to mediation, not when they revert back to arbitration. In the international commercial arbitrations act, we have the two opportunities. Even with that second opportunity, though, there is the problem that parties still do not know what ex parte communications occurred, and if they do not know, it is difficult to see how they can consent to it or respond to it.

The next point is a clarification of operation; 35(1) uses the phrase "during the arbitration" and 35(2) uses the phrase "resume their roles as arbitrators." Diagram C draws a chart that raises the question of what process is going on during the application of this mediation technique, and which role do the parties perform. Are the arbitrators still arbitrators during the mediation technique or are they mediators? Is the technique mediation or is it arbitration? That is not entirely clear. I suppose the courts will have to resolve it unless there is some specification in the statute.

Finally, the objection of the legislation is, I think, as was mentioned, to provide the parties with control over their process. While they do appear to have control by giving them the opportunity to consent to or resort to mediation, there is a question of the sophistication of the parties. In this province, we do not have any requirement for training for arbitrators or training for mediators, so we could in some instances have unsophisticated arbitrators not able to advise the parties of the consequences of their switch to mediation, and

then 35(2) lets them switch right back by reversion to arbitration. What we may end up with is disappointed parties, not ones who felt they had control of the process but ones who felt they were surprised by it.

There are a number of possible solutions that may be inserted into our Bill 2. Those are all listed on the last page of the document. One is we could adopt Section 35 of the Ontario act and prohibit the switch. If you want to go to mediation, go to mediation, but go to a third party, a different party.

Second, we could have the second consent in there, but it still raises the question of how do they know they are consenting to it. They were not present for the ex parte communications.

Thirdly, we could, as already stated, have the mediator or the third party, in whichever capacity they are playing, provide a written clarification to disputants of what ex parte communications occur. There is a judicial precedence saying that that would not constitute denial of natural justice. Next, we could have the conciliation or mediation or whatever other technique is being applied operated by people other than the arbitrators.

Finally, the reversion to arbitration could be done before a new arbitrator. Those are some possibilities for revision.

Mr. Chairperson: Thank you much, Mr. Lewis, for your presentation.

Mr. Toews: Thank you very much, Mr. Lewis. I appreciate the comments that you have made. I do have concerns, though, with your approach to Section 35 and your solution. If we adopt, for example, the Ontario solution, then we are out of step with British Columbia, Alberta, Saskatchewan and New Brunswick.

What it appears to me this act is trying to do is, we are trying to be as consistent with as many provinces as possible, and if the parties wish a different format, they can contract out and they can contract into the Ontario situation. Indeed, in Ontario today, they can contract out of that provision and then allow for mediation to occur in the course of the arbitration. Is that not correct?

Mr. Lewis: I have not thoroughly reviewed the other statutes. If so, that may work, though again there is a presumption about the sophistication of the parties and do they know what they are doing when they are contracting out. If the arbitrators are sufficiently trained to provide them with enough information to let them realize the predicament they are creating, then their consent would be good consent and there would not be a problem. They know what they are getting into. The question is if it does not require the arbitrator to do that, or if it does not provide wording they could follow to do that, you may have disappointed parties.

In terms of which legislation you want to conform with, it may come down to where are the largest number of disputes, and you may want to pick the jurisdiction or jurisdictions where the least conflicts of law or the fewest conflicts of law problems would arise.

Mr. Toews: Given that British Columbia, Alberta, Saskatchewan and New Brunswick already have what Manitoba is proposing here, or the government is proposing here, are you aware of any problems that have arisen in these other jurisdictions that cause you, specifically, concern?

Mr. Lewis: I have not seen any cases where it has come to light yet, although this is an area that seems to hold some promise for the future, the whole movement for ADR. My guess is at some point we are going to have some of these resolved in the courts, and that will give us more guidance on how these provisions operate.

Mr. Mackintosh: Mr. Lewis, I take it you have established some clear expertise in the area of arbitration. What is your role insofar as arbitration? Are you a licensed arbitrator, or how do you come into this area?

Mr. Lewis: It is just simply an area of personal interest. I teach a topic in the area.

Mr. Mackintosh: Have you had the opportunity to discuss your views with the government as it developed this legislation, Mr. Lewis?

Mr. Lewis: No, I was not aware of this issue until it came up in the preparation for the class. That was the only introduction to the issue, and I thought it looked

like an interesting point and did a little research into it. The result is the paper.

Mr. Mackintosh: Just considering the views of the minister and yourself as well–I mean, you were on all fours with your concern with the earlier presenter–would a solution not be simply that Section 35(1)–although I recognize that it does not address all the issues–be changed so that instead of the words "during the arbitration," read "and may adjourn the arbitration."

In other words, you want to see a clear delineation between the arbitration and any mediation. You want to ensure that one does not just slip into the other, and there is some confusion as to who is the key and what kind of procedures are applying, right?

Mr. Lewis: Even if there is a switch into a clear delineation between arbitration process, mediation phase, then back to arbitration, the difficulty in this is the knowledge of the ex parte communications by the third party, that difficulty and then a claim of denial of natural justice or a claim under 45(1)(f). That will not be eliminated by saying this is clearly mediation and I am now wearing a mediator's hat. The problem is if they are wearing a mediator's hat and they do what is commonly required in mediation, which is the taking of ex parte evidence–and that is forbidden in arbitration–if they do what they are then supposed to do as mediators, well, they are violating a common rule of arbitration.

What could work is to say, well, now it is going to mediation with some other party, a fourth party, and then we do not have the problem of the arbitrator having ex parte information.

* (1040)

Mr. Chairperson: Thank you very much for appearing before the committee. Thank you for your presentation.

Bill 28–The Emergency Measures Amendment and Consequential Amendments Act

Mr. Chairperson: We will move next to Bill 28, The Emergency Measures Amendment and Consequential Amendments Act. I would like to call on our first presenter, please, Donald Bailey. That is in place of Valerie Price. Did you have any–

Mr. Don Bailey (Manitoba Association for Rights and Liberties): No. As I will hope to have time to say, we have not had an opportunity to prepare a written document.

I might start off simply by saying that I now walk to work over the Osborne Bridge, and last summer I noticed that the water sprinklers along the sidewalk here do a very efficient job of sprinkling the sidewalk and not the lawns of the Legislative Building. So I phoned the minister of public works and mentioned that point, and I think I should say, wherever I have an opportunity, that they are still sprinkling the sidewalk 12 months later, and I would hope that the minister of public works could get somebody out there to improve the situation.

Now, I am representing as the past president of the Manitoba Association for Rights and Liberties. Our response to Bill 28, which on the whole is an appropriate bill–it is really window-dressing, changing some nomenclature and a few other things, but I wanted to explain that we are coming up to our 20th year of existence.

In 1997-98, MARL will be in its 20th year, and one of the most important things that we have tried to do every year for 20 years is to read all of the proposed bills and legislation that flow through the Manitoba House. Naturally, all bills have problems with drafting or with substance and one can discuss them, defend them, argue, attack them from many, many points of view. Our only interest is the defence of rights and liberties.

We are trying to read the bills to make sure that every Canadian citizen is protected in terms of opportunity so that people with various disabilities are not overlooked when sidewalks are put into place or something of that nature. We think this is very important work, but it has become extremely difficult to do because bills now reach us at the last minute, hearings are called with very little notice and they meet for very little time. We are deeply concerned that in the last two or three years, the government has really lost all concern for the proper

representation of citizens in general in being able to be represented in terms of the issues that come before us.

The haste and speed of government has really flagrantly violated several hundred years of parliamentary traditions and procedure, and MARL is scrambling now. We are a group of volunteers. We are reduced to only one staff. Not all of us are lawyers, and it has become extremely difficult to do what we think is very, very important work for the province of Manitoba, to give an objective look at bills merely to see whether the freedoms and opportunities and rights of Manitobans are fully protected.

Now, Bill 28, as you know, is dealing with emergencies in the province of Manitoba, and by its very nature it has to grant sweeping powers to the minister and to officials and to local government agencies. Any and all of these powers can be exercised quite arbitrarily and, yet, given the emergency, it seems reasonable to put in place the kinds of powers in advance that one needs to do.

This is in the tradition of the whole British parliamentary system and system of government, that the Crown has considerable powers and then when they are abused there is redress or there are the barons meeting at Runnymede to force Magna Carta on the king. Our whole tradition has been to give governments powers to act and then when they are abused to try to trim them, refine them and cut them back a little bit.

In the case of this bill, the major problem is that there is no provision for remonstrance after the fact, and so this is really the only thing that we can say. In our committee discussion–we only got to this three nights ago in our monthly meeting–one of the members of the committee thought that the powers were altogether too sweeping.

Only in the most dire extravagant, catastrophic emergency would one of our members of our committees like to see this range of powers. Most of the members took a much more moderate, modest approach, think that the powers in themselves are reasonable but are concerned about how you would respond if you just at the time feel that a local agent or the minister is using bad judgment or is being high-handed or is discriminating in choosing this person to fulfill a responsibility and not that person, to raise this barn or to move this livestock and not other. There seems to be no provision to respond at the time. There is no provision after the fact for an appeal. There is no provision for redress.

We would like to see these clauses, and I think particularly of 7(d) or Clause 12, 12(1), Section 20, Clause (1). All of these seem to fail to give opportunities if somebody were to be personally injured or to even lose one's life in performing a conscripted obligation, suffer property damage. Where is the redress? Where is the compensation?

These things are really our concern in principle. We would like to see some concern for due process. Presumably, there is some redress in the civil courts under common law, but a bill like this that is so arbitrary, that is sort of a war measures act in the absence of war but in the presence of every other emergency and which grants such sweeping powers, really ought to have within itself appeal, and the only appeal that we can find is to the minister who can accept or reject the appeal. The minister appoints a committee of appeal in one case–I forget whether that is 21–but it is an internal circularity. There is no genuine appeal to a third party who is in existence outside the system so that the person who abuses the act is, in fact, going before an appeal committee which has been established under the officer who issued the right in the first place.

So I apologize that my words are so general, so provisional and not as articulated as effectively as I would like, but we learnt only late yesterday afternoon that this was the time for this hearing. I had other obligations so this was done between eleven o'clock and midnight last night. There was no opportunity to write. I think as long as this is the manner in which legislation will proceed in Manitoba, our province will have a very difficult time maintaining its proud tradition of parliamentary government and a free society.

Mr. Chairperson: Thank you, Mr. Bailey, for your presentation.

Hon. James Downey (Minister of Industry, Trade and Tourism): Mr. Bailey, I wonder if you are aware that Manitoba is one of the few provinces that does allow for public input into a legislative committee such as we are doing at this particular time.

Mr. Bailey: I am aware of that. It is a matter of the scheduling and that sort of thing. The hearings have become a kind of an arbitrary window-dressing in themselves. If you really are committed to them, if you really believe in them, you will give adequate notice, adequate time delays. Bills would get to people, and there will be time to respond. It is no good saying we are the only province that does it, if the way in which it is done is not effective.

Mr. Downey: Mr. Chairman, I have probably more of a comment than a question. I have been involved in the legislative process for the last approximately 20 years and, to my knowledge, nothing has basically changed in this process over that particular time, although I would make one further statement that something has changed as it relates to constitutional change within our province, that there have to be public hearings as well, which there were not prior to this government being in office.

Hon. Linda McIntosh (Minister of Education and Training): I thank you for your comments on the bill itself and just would like to ask a question regarding the process which you referred to.

I have not been here 20 years, but 17 years ago I was making presentations to committee–exactly 17 years ago, as a matter of fact–and the process I went through is exactly what you are going through today. We received notice the day before, except that we sat till 2:30 in the morning and then were sent away to come back, but the process has not changed. Yet you made reference in your preamble to changes that have been made, that the process has changed away from the broad, proud tradition that we used to have.

I wonder if you could tell me what those changes are, so that I can be cognizant of them, because I am not aware of them.

* (1050)

Mr. Bailey: Well, I am a volunteer representing a volunteer group, and all I can represent is that everybody that I speak to representing volunteer agencies is finding that they are having cutbacks in staff, cutbacks in opportunities.

The governments are proceeding with rapid-fire changes, some of them massive and very significant, and they are coming at the private organizations, the nonprofit groups, the groups that are trying to help Manitobans faster than we can keep up with. The complaint is more urgent and newer than I have heard before, but it is a very general complaint. The specifics I would not be able to give you.

Hon. Frank Pitura (Minister of Government Services): Thank you very much for your presentation, Mr. Bailey. I appreciate your comment on the sprinklers, but I find it sometimes difficult, even at home, to set my sprinkler so that it does not hit the house. But I appreciate your comment there.

Just for clarification, you referred to the minister appointing an appeal board. That is true, but this is an appeal board that is a permanent appeal board, and it stays in effect year round for the purposes of addressing those individuals who feel that they did not get a just award with regard to the disaster assistance. The other area is that within the existing act, as it now stands, any injury, personal injury or death or whatever that is caused as a result of the disaster is addressed under The Workers Compensation Act. So there are these kinds of things in place, firstly, to address individual issues with respect to their claims, and secondly, over the broad area of the disaster with regard to personal life.

The other area, too, is that within this legislation the minister may only declare a state of emergency for 14 days, so there is a lapsed time that this state of emergency will expire at the end of that time. Of course, with this 1997 flood, without that state of emergency, we would not have been able to build that Brunkild dike in the time period that was required, but the state of emergency did give the province the powers to second all construction equipment that was necessary to put that dike in place, and that would be the more normal process that the state of emergency would encompass, that and evacuation for the person's own safety.

Mr. Bailey: I think we are agreed on the latter statements that the minister just made, that emergencies have to be met, and governments have to have the powers to meet them, so we are not really objecting, even to the apparent arbitrariness of this. We know that it is a time-honoured practice and it is essential.

I would like, though, to pursue the issue of the workmen's compensation. When we are talking about private citizens who are suddenly conscripted to do a job for which they may or may not be trained, are they suddenly also covered by workmen's compensation benefits and protections, or are we merely talking about workers who are hired to do the job in this emergency, or, in the case of loss of life, are we talking about innocent victims of the catastrophe who will lose their lives in its pursuit but not because they have been conscripted to participate in meeting it? It is the people who are jerked out of their private lives or their private careers and jobs, who are virtually given a sheriff's badge to do a job to meet an emergency.

We are not objecting to the power to ask people to do that or to put their equipment at the disposal of the Crown or to even have a building moved or razed or destroyed because it interferes with the response to the emergency. What we are concerned about are the protections that those people will have to appeal that what was required of them was not necessary or that they were put into hazardous positions without adequate training or protection, that they suffered a personal injury of property or to their body in some fashion, and we do not feel that this bill states within itself adequate ways for the citizen to seek redress after the fact if the injuries have been severe.

Mr. Chairperson: Thank you, Mr. Bailey, for your presentation and for appearing before the committee. Thank you very much.

Bill 29–The Education Administration Amendment Act

Mr. Chairperson: We will move on to Bill 29, The Education Administration Amendment Act, and call on our first presenter, Diane Beresford, please. Calling second time, Diane Beresford.

Floor Comment: Not here.

Bill 34–The City of Winnipeg Amendment and Municipal Amendment Act

Mr. Chairperson: We will move on to Bill 34, The City of Winnipeg Amendment and Municipal Amendment Act. I have, as my first presenter, "to be determined" from the City of Winnipeg. Is there a presenter here?

Floor Comment: Not here.

Mr. Chairperson: Okay, then we will move to the second one, Valerie Price, also not here. Valerie Price, calling a second time.

Bill 35–The Condominium Amendment and Consequential Amendments Act

Mr. Chairperson: Then I will move on to Bill 35–I have one presenter–The Condominium Amendment and Consequential Amendments Act–Larry Beeston.

Mr. Larry Beeston (Canadian Condominium Institute, Manitoba Chapter): Good morning, my name is Larry Beeston, and I am here to represent the Canadian Condominium Institute, Manitoba Chapter. I would like to provide a brief introduction as to what the Canadian Condominium Institute is and how it is involved in the bill which is before you this morning.

The Canadian Condominium Institute is a nonprofit organization which is a national organization with 10 independent chapters across the country. The purpose of CCI is to assist board members in the fulfillment of their duties which are established by The Condominium Act, to improve the quality of life which is afforded to unit owners in condominium buildings and to assist the various levels of government in their deliberations and involvement with the condominium community. Mostly we fulfill this mandate through educational programs for condominium board members and unit owners. As well, we have newsletters, magazines and other publications which are made available to people who are involved in the condominium community.

In Manitoba, we have a membership of over a hundred condominium corporations representing approximately 8,000 condominium units, as well as individual members who are either unit owners or

professionals who are involved in the condominium community, including lawyers, accountants, engineers, real estate salespeople, insurance professionals and others.

Over the past three or four years, the Canadian Condominium Institute has worked on a procedure which resulted in the bill which is here before you today. We set out to revise The Condominium Act in regard to issues that we thought were important to the condominium industry and which would deal with problems that we saw arising in the condominium community. In this regard, we created seven position papers which address the problems that we saw in the condominium community. Initially, we requested, through our newsletter to our members and to all unit owners and condominium corporations who are our member corporations, suggestions come forward in regard to the process and in regard to the suggestions for change.

In addition, all unit owners in all our member condominium corporations were provided with copies of our position papers in order to ensure that we had the maximum communication with them and the maximum involvement in regard to the position papers which we brought forward to the government. Finally, we had the position papers adopted by the Canadian Condominium Institute at our annual general meetings.

At this point, we began to deal with the government in regard to the position papers, and they requested that we circulate our position papers to various interest groups. Our position papers were circulated to approximately 15 groups which were identified by the province, and with the exception of one position paper, which is not in the act before you, we received a very favourable response from the interest groups.

* (1100)

I would like to start out by saying that the Manitoba chapter is extremely pleased with the provisions which have been included in Bill 35. We have some thoughts in regard to the bill that could make it better, and I would like to present some of those facts here today but largely, with the exception of one item, the bill is a very good attempt at dealing with the problems that we brought forward to the government.

Notwithstanding our pleasure with what is in the bill, we are disappointed that something is not in the bill, and at this point I would like to indicate that we did have a position paper on collection of common element fees. Common element fees are the fees which are charged to the unit owners in order to pay for the services which are provided by a condominium corporation. In every other jurisdiction in Canada, a common element fee which is charged by a condominium corporation has lien priority over all other encumbrances other than the property taxes.

In Manitoba, the provision is that the first mortgage may have a priority over the common element fees which are charged by the condominium corporation. I say "may" because that provision is in the declaration of the condominium corporation. However, I am not aware of any declaration that has been registered in Manitoba that does not provide the mortgage company with the lien priority.

In order to understand our concern in this regard, consider for yourself the situation where somebody moves into the single-family detached home beside yourself. You get friendly over the next couple of years and then the person moves out, and then subsequently the City of Winnipeg provides you with a bill for perhaps $200 or $300 in regard to the property taxes that that person did not pay. I think you would be upset in the circumstance and ask why you are being asked to pay this bill since you had no contractual connection with the person next door and, therefore, why are you ending up paying the bill. You had no connection of a commercial nature with the person next door and, therefore, why are you expected to pay this bill.

The services which are provided by a condominium corporation are very similar to the services which are provided by a municipality. Services include the provision of utilities to the suite, the provision of roadway repair and maintenance, the provision of landscaping repair and maintenance and other services that are obtained by the group of people in a collective.

The City of Winnipeg has lien priority over the mortgage company in regard to common element fees for providing these services. We believe that a condominium corporation should also have lien priority in regard to the provision of these services.

As you may be aware, when we sent out our position papers in regard to this situation, the Canadian Bankers' Association and the Mortgage Loans Association of Manitoba opposed this bill, probably for obvious reasons. We have been in discussion with these organizations in regard to their opposition, and we are hopeful that in the future we will be able to bring forward a joint position. Notwithstanding that, Manitoba is the only jurisdiction which does not have lien priority in regard to common element fees in Canada, and I have reason to believe through our connections with the Community Associations Institute in the United States that we may be the only jurisdiction in North America that does not have this right. Therefore, we would like to bring it forward to the government that perhaps it is not here now, but it is not going to go away because we are going to be back because we consider this to be our most important issue.

Finally, I would like to say on this issue how important it is to some condominium corporations that over the past two years there is a circumstance in a condominium which is downtown, a five-unit condominium corporation with three residences in two commercial properties. Approximately two years ago the owner of the commercial property went into difficulty, has gone into bankruptcy and has disappeared from the scene. The mortgage company never became the mortgagee in possession of the unit and therefore never became the owner for the purpose of determining common element fee. In any event, the reserve funds of the condominium corporation that were put in by all of the other unit owners have disappeared.

Finally, I would like to bring up some thoughts in regard to the specific parts of the bill. I was almost ready to have a written presentation, and perhaps it might be better if I could get this to somebody on Monday. Is that possible?

An Honourable Member: Yes.

Mr. Beeston: Then perhaps I will leave that because it is self-explanatory because it is only a minor adjustment to the bill. I guess at this stage I can say that I will take questions.

Mr. Chairperson: Thank you very much, Mr. Beeston. I will open it up for questions.

Hon. Mike Radcliffe (Minister of Consumer and Corporate Affairs): Thank you, Mr. Beeston, for your remarks. I just wanted to check. I thought I heard you say in one of your comments that all the existing by-laws of the condo corps in the city of Winnipeg at the present time provide for a first mortgagee to have existing priority?

Mr. Beeston: That is correct. To understand why this is the situation, the declaration of a condominium corporation is created by the declarant. When converting a building to condominium, one of the things that a declarant must put in place is mortgage financing for the prospective purchasers. The existing mortgagee must pass on the terms of the declaration prior to it being registered and therefore the declarant does not want to change the priority which is given to the mortgage company.

Further, in order to change a declaration after it has been registered, one needs an 80 percent vote. Mortgage companies have what is known as a revokable proxy that they can use at any time in regard to any important vote. In the event that somebody was suggesting that their lien rights be adjusted, I am sure the mortgage companies would pull their proxy and vote the issue, and therefore it would be defeated.

Mr. Radcliffe: Have you commenced any negotiations with the mortgage holders at this point or is this just prospective?

Mr. Beeston: We have had discussions with the Mortgage Loans Association and the Canadian Bankers' Association. They have discussed issues under which they would be prepared to bring lien priorities; however, they have not advised us when they took it back to their larger bodies that their larger bodies have supported the compromise that we tried to iron out.

Mr. Radcliffe: Thank you, sir, very much for your presentation, and I would certainly invite you, once that response has been received by your group, to forward it to my office, and we would certainly entertain it very favourably.

Mr. Jim Maloway (Elmwood): I would like to ask Mr. Beeston then, is this not a case of the government showing preference to the banks and the mortgage lenders over condominium owners?

Mr. Beeston: I do not think I would answer it quite that way. In our discussions with the Mortgage Loans Association, they have quite rightly said that they have been lending under a certain set of rules for the past 10 years, and if the rules are changed the risk in their existing portfolio has changed, and they may run into some losses which they would not otherwise have on loans that they would not otherwise have provided. I do not know the full extent of whether I believe that or not; however, it is a reasonable concern that they are bringing forward.

I will admit that what I told the Mortgage Loans Association is that this issue is not going to go away and that we will be back and that they should be changing their lending policies right now in order that five years from now, two years from now or whatever, when this thing comes through, they cannot use that as an excuse again.

Mr. Chairperson: Thank you very much, Mr. Beeston, for your presentation and for appearing before the committee. Thank you.

* (1110)

Bill 28–The Emergency Measures Amendment and Consequential Amendments Act

Mr. Chairperson: I will move back to Bill 28. We have another presenter. Edward Lipsett, please. Do you have any written copies, Mr. Lipsett?

Mr. Edward Lipsett (Private Citizen): I am afraid not, Sir. Mr. Chairman, honourable members–by the way, how long do I have?

Mr. Chairperson: You have 10 minutes for a presentation.

Mr. Lipsett: That is more than enough. I am Edward Lipsett. Today I am speaking in my capacity as a private citizen, but I was on the MARL committee and I am MARL. I was the person Professor Bailey referred to in his eloquent presentation. I agree with much of what he said, but I just wish to clarify why, unfortunately, you have to speak so impromptually. Rightly or wrongly, I and some of us were under the impression that it would be like last year. They pass the second reading in June and in September they would hold the hearings.

As I said, I am not blaming anybody. It is my own error in this case, so that is why I am speaking here in a very impromptu manner. All I can hope is that maybe I will bring some points for your consideration. I will not even be able to refer to the exact sections now–if I just refer to the general principles. One thing I would like to bring up first of all, in referring to a local authority and referring to Indian bands, it puts the minister of Indian and Northern Affairs as the local authority.

I was wondering if that is consistent with current norms of aboriginal rights. At the very least, would it not be fair to give the band council and/or band chief the powers of the local authority analogous to giving the mayors or reeves and the city councillors local authority? I would hope that one would check with members of the First Nations first. As I said, I have not had time to check it, but I realize the analogy to municipalities is not satisfactory to some First Nations groups as well. It seems that to have the minister have the power, that is the minister of northern affairs in Ottawa, rather than a band council, that would be an even further intrusion on First Nations autonomy. So I just brought that for your honourable members' consideration and hopefully for consultation with members of the First Nations as well.

Getting back to the main point here, again I am not going to deny, and none of us would, that there should be emergency powers. I would not even deny that in some rare, exceptional cases there should be power to conscript. That is not new to this act. It is in the old Emergency Measures Act. There are various other legislations, but I would respectfully suggest that the power to conscript people should only be used as an absolute last resort where the danger is clearly overwhelming and would far outweigh the harm to the person conscripted, a form of proportionality test.

Furthermore, there should be some guidelines in the legislation, rather than leaving all of the powers to either the minister or the municipality. Furthermore, at least when time permits, there should be a possibility for immediate judicial review in the first instance. What the terminology should be, I cannot state that at this point.

As I said, this problem applies to other legislation as well. I mean, The Wildfires Act gives summary powers to a police officer to conscript. That could be dangerous also. I am just saying that if there is a power to conscript in a national or a local emergency, it should be clearly defined, and there should be greater defences. I notice later on in the provision, it has a summary conviction offence punishable by imprisonment for up to a year and a fairly substantial fine. I do not remember what that is.

If you have that, make it an offence, it should at least only be an offence if it is a violation of a reasonable order. I do not think that word is in the current section, and there should be a defence for failure of, let us say, lawful and just excuse in relevant provisions of the Criminal Code. When there is an offence of failure to comply with a positive duty, there is at least a defence available unless just excuse or lawful excuse exists. There should at least be that qualification in this year also.

Again, time did not allow me to check through all of the statutes on this, but I just brought this for your attention. There are other problems in this also. I think there are certain matters in this bill that are actually an improvement over the current act regarding hearings for persons affected by flooding or other damages. I was wondering whether it is proper to have the right to compensation merely ex gratia or as of discretion or there should be some right and whether or not there should be some further power of judicial review.

I am just pointing it out for your honourable members' consideration, and I just want to put as an aside, recent events in the city of Winnipeg should prove that the power to conscript probably is not usually necessary. There were many volunteers who gave tremendous service. There were many professional persons, whether the armed services or local forces, who gave tremendous service.

So I was wondering if the power to conscript is something from a bygone age anyway. Again, there might be cases where it is necessary but, as I said before, it should only be used as a last resort. There should be some sort of proportionality. Some criteria should be put in the act itself, and there should be some greater defences in the offence provision.

Unless you have further comments, that is all I can usefully say at this point. I will try and answer any questions, if you have any. Thank you.

Mr. Chairperson: Thank you very much, Mr. Lipsett, for your presentation. Are there any questions?

Mr. Gord Mackintosh (St. Johns): Mr. Lipsett, I also share your concern about the appeal rights respecting compensation under the act. I anticipate that there may be some problems uncovered as we process the claims, and people may become dissatisfied with certain aspects of the decisions at the staff level which, I think, given the amount of claims, may be bound to happen.

Do you have some concerns or would your concern about the lack of appeal rights be met if the appointment of the appeal board was made in a fairer process than simply three people by the cabinet or by the minister?

* (1120)

Mr. Lipsett: As I said, I have not given it that much thought. What I had really done, as I said, was pointed out notes for further consideration. I brought them to the MARL meeting Wednesday night. Professor Bailey was given this bill to look at. I was hoping that maybe at some future time, if agreed, we would both look at it in further depths. At a quarter to 10 when I was still at home, I was indirectly called that there would be a meeting here. So I regret I have not given it as much further thought as I would have liked. I just noted this for your further consideration.

Mr. Mackintosh: I know, Mr. Lipsett, you study, as a love, I would say, constitutional law and Charter law in the country. I am just wondering–you raise the issue of jurisdictional and issues of respect regarding First Nations and the powers of the act–is it your view that

the powers of the act would not extend to giving orders respecting First Nations communities?

Mr. Lipsett: If I recall that, my main concern, as defined in the definition of local authority in the reference to reserves, it gives the power to the minister of Indian and Northern Affairs. My point is if there is to be a power concerning reserves, why should it not be given to the band council or in an emergency, the chief, analogous to the powers given to a municipal council and band. But I say that with questions also, because I realize there are some members of the First Nations community who are uncomfortable with the analogy between municipalities, which are, after all, only derivative rights and First Nations, which some believe to be inherent rights.

So, again, I do not have an answer for you here. I just wanted to bring this thing to your attention, and I would respectfully suggest that you consult the various representatives of the First Nations communities before you enact this, if there is time.

Mr. Chairperson: Okay, if there are no more questions, thank you very much, Mr. Lipsett, for your presentation and for appearing before the committee. Thank you.

Mr. Lipsett: Thank you very much.

Mr. Chairperson: Okay, I will now call again for those previously called but were not present. On Bill 29, Diane Beresford. Calling a second time, Diane Beresford. She is not here. Bill 34, The City of Winnipeg. City of Winnipeg for Bill 34 and under Bill 34, as well, Valerie Price. Calling Valerie Price for Bill 34 and not here.

Then I will canvass the room to see if there are any other persons wishing to give a presentation. Are there any others wishing to give a presentation? If not, then seeing none, is it the wish of the committee to proceed with clause-by-clause consideration of the bills?

Committee Substitutions

Hon. Mike Radcliffe (Minister of Consumer and Corporate Affairs): Mr. Chairman, I would like at this point with leave of committee to make an amendment to the constituency of the committee.

Mr. Chairperson: Is there leave to make a committee change? [agreed]

Please proceed.

Mr. Radcliffe: I would move, with leave of committee, that the honourable member for Niakwa (Mr. Reimer) replace the honourable member for Sturgeon Creek (Mr. McAlpine) as a member of the Standing Committee on Economic Development effective immediately with the understanding that the same substitution will also be moved in the House to be properly recorded in the records of the House.

Mr. Chairperson: Is there leave of the committee? [agreed]

Ms. Becky Barrett (Wellington): I would also like to make a substitution, if I may.

Mr. Chairperson: Please proceed.

Ms. Barrett: I would like to move that the member for Wolseley (Ms. Friesen) replace the member for Crescentwood (Mr. Sale), and I would then make the necessary official motions in the Legislature.

Mr. Chairperson: Is there leave of the committee to do that? [agreed]

* * *

Mr. Chairperson: Then we shall proceed. Is it the wish of the committee to proceed with clause-by-clause consideration of the bills?

An Honourable Member: Clause by clause.

Mr. Chairperson: Clause by clause. We shall then proceed. Just for clarification, would that be blocks of clauses?

An Honourable Member: That is correct.

Mr. Chairperson: Thank you. That is correct.

Bill 2–The Arbitration and Consequential Amendments Act

Mr. Chairperson: Then we will move to Bill 2. Does the minister have any opening statements? No. Does the official opposition have any opening statements?

Mr. Gord Mackintosh (St. Johns): I have a few questions. Maybe we can deal with those first and then move through the bill more expeditiously. I wonder if the minister has any amendments that he could outline at least at this time.

Hon. Vic Toews (Minister of Justice and Attorney General): No amendments. I am not proposing any amendments.

Mr. Mackintosh: I guess if there was any disturbing concern from the presentations, it was the respective roles of arbitration and mediation. Certainly, there does appear to be some unclear provisions if not discrepancies in the legislation in that regard. I am wondering if the minister will be looking at further refining the legislation, given the presentations.

Mr. Toews: Clearly, I appreciated the comments of Mr. Lewis in that respect. I know that there are concerns in respect of movement between arbitration, mediation and back to arbitration. Given, however, the specific purpose of this act to allow greater flexibility and given that the majority of provinces that have adopted the uniform law commissioners positions, mainly in British Columbia, Alberta, Saskatchewan and New Brunswick, I would think the nature of the problems, while raised, are at this time more hypothetical than real, and I would prefer to wait to see if there are, in fact, any problems.

I think what is going to happen is that arbitrators will develop a system of cases that will deal with this over a period of time. The suggestion that perhaps we block off certain types of arbitrations to prevent mediation in those context gets into, I think the member for St. Johns used the comment, can of worms. I think that is exactly the point. This is not a fine science; it is more of an art, and I think we have to let it progress.

Mr. Mackintosh: If there were actual instances in the provinces with this legislation where a real problem was identified and recorded, I certainly would be pushing the matter more, but I agree with the minister. I think that it is an area certainly to look at and perhaps if the presenters, Mr. Lewis in particular, are aware of court decisions which had to deal with this problem, I certainly would be willing, and I am sure the minister would, to review them.

The second area of questioning was about the application of the act. We note that Section 2(1) removes the allowance that the Law Reform Commission recommends for the parties to avoid the application of the act holus-bolus, but Section 3 still allows the parties to contract out of most provisions of the act. I am just wondering how the minister can defend such a wide power on the part of the parties to avoid what appears to be a good process for arbitration as set out in the law.

Mr. Toews: I think what you will see in the act is that the provisions that one cannot contract out of are those that relate to the fairness of the process. In all other respects, what the intent of the act is–the uniform law commissioners and the other provinces who have adopted this wanted to give the greatest measure of flexibility. So what this act does is then provide a core statute that even people who are not sophisticated, if they want to move into this area, they have certain core guidelines.

In order to exempt themselves from those guidelines, they have to specifically address those issues, subject, of course, to those principles where one cannot contract out of, which I think we all recognize as principles fundamental to the principles of natural justice. So I think this is a good approach. It gives the flexibility, and it gives the appropriate guidance especially to people who may not be always using arbitration and mediation.

* (1130)

Mr. Mackintosh: Looking at Section 25(6), the issue was raised by the arbitration and mediation institute that there should not be directions to produce records or documents that would not be relevant to the matters in dispute. It seems to be just a good common sense suggestion, and I am wondering if the minister would not be agreeable to simply adding at the end some

words to the effect that the documents must be relevant to the matter in dispute or the matter before the arbitration or the matter raised in the arbitration, or something to that effect, just to ensure that there are no fishing expeditions.

Mr. Toews: The advice that I have received, and clearly from a reading of that, is that it is clearly in there already. I am just wondering what confusion that might cause, given the other provinces have exactly this type of wording. If we now insert another phrase, the arbitrators in Manitoba will say, ah, they must have meant something else. Then what will happen is a diversion in Manitoba that may not be occurring in the other provinces and which are not necessary.

The phrase "subject to any legal objection," that is exactly, in my opinion, what that phrase addresses, that the documents must, in fact, be relevant to the matters at dispute. I am worried, by specifically adding that phrase, we are going to add a difference that some arbitrator and indeed some court looking at jurisdictional issues is then going to seize upon in order to raise what, in my opinion, will be technical arguments, so I am concerned about that, and I would prefer not to divert from the existing wording unless it is very compelling. I do not find the argument presented here today compelling, although I recognize the concern.

Mr. Mackintosh: I think the minister's analysis that any arguments to deviate from the uniform law should be compelling. I mean, I agree with that, but I just leave this on the record, that in (a) examinations can only be with respect to the matters in dispute, but (b) does not say that, and I think by the reading of the section, then (b) seems to suggest that you can actually go beyond the matters in dispute when you are looking for documents, so I have some concern about that.

The next section that I have some questions on, Section 28, with regard to the appointment of experts. I notice that there is a significant deviation from the recommendations set out in the Law Reform Commission report on that. I am just wondering if there is any particular concern that the government had with regard to the recommendation of the Law Reform Commission report, and the uniform law, as the minister said, what compelling reason was there for the deviation?

Mr. Toews: If you could just repeat the section, I missed that.

Mr. Mackintosh: Section 28 regarding the appointment of an expert.

Mr. Toews: Perhaps if the member could explain how this diverts from the recommendations of the Law Reform Commission.

Mr. Mackintosh: Well, one difference, for example, is that there must be agreement by the parties as set out in the recommendation of the Law Reform Commission, and failing agreement, the arbitral tribunal shall appoint a particular expert. That wording does not appear to be reflected in the current bill. I might also add that the uniform law sets out how the expert is to be paid.

Mr. Toews: Perhaps the member could point out where in the Law Reform Commission's report that recommendation is made, because there are three recommendations that I recall that have been addressed in the act. I do not seem to recall that recommendation from the Law Commission.

Mr. Mackintosh: In Section 28(1) of the Law Reform Commission's recommended act, which is Alberta's arbitration act, there are provisions there which I described and that are not reflected in Manitoba's act.

I mean, there are very few deviations from Alberta's legislation in the bill, but this is one where there is a deviation, and I am just wondering what was driving the government's view, what compelling reason there was to deviate from the recommended law.

Mr. Toews: It may well be–and we are checking this–that this is the Alberta act, and the Alberta act for some reason has not followed the uniform law commissioners. Our understanding is that we have followed the uniform law commissioners' recommendation, but we are just checking that detail now.

Mr. Chairperson: Okay. Shall we proceed?

Mr. Toews: I have just had a quick chance to review the uniform law commissioners, and we, in fact, have adopted. Alberta for some reason has not. So I would submit that we stand by the uniform law commission because that process is a very lengthy process. All kinds of thought goes into that. If there was some particular problem in Alberta that they felt they had to address, they may have done that. I would rather not follow Alberta, simply because they have done it. I would like to see reasons before I would deviate from what the uniform law commissioners have recommended.

Mr. Mackintosh: Just in conclusion, that likely explains then the different approaches on the appeal rights and taxation of costs as well. We are prepared to look at this bill page by page, if that is the will of the committee.

Some Honourable Members: Page by page.

* (1140)

Mr. Chairperson: We shall proceed then. Clause 1(1)–pass; Clauses 1(2), 1(3), 2(1), 2(2) 2(3) and 3–pass; Clauses 4, 5(1), 5(2), 5(3) and 6–pass; Clauses 7(1), 7(2), 7(3), 7(4), 7(5)–pass; Clauses 7(6), 8(1), 8(2), 8(3), 8(4) 8(5)–pass; Clauses 8(6), 9, 10(1), 10(2), 10(3), 10(4), 11(1)–pass; Clauses 11(2), 11(3), 12, 13(1), 13(2), 13(3), 13(4) and 13(5)–pass; Clauses 13(6), 13(7), 14(1), 14(2), 15(1) and 15(2)–pass; Clauses 15(3), 15(4), 15(5), 15(6), 16(1), 16(2) and 16(3)–pass; Clauses 16(4), 16(5), 17(1), 17(2), 17(3), 17(4) and 17(5)–pass; Clauses 17(6), 17(7), 17(8), 17(9), 17(10), 17(11), 18(1) and 18(2)–pass; Clauses 19(1), 19(2), 20(1), 20(2), 21(1), 21(2), 22(1) and 22(2)–pass; Clauses 23(1), 23(2), 24, 25(1), 25(2) and 25(3)–pass; Clauses 25(4), 25(5), 25(6), 25(7), 26(1), 26(2) and 26(3)–pass; Clauses 26(4), 27(1), 27(2), 27(3), 27(4) and 27(5)–pass; Clauses 27(6), 28(1), 28(2), 28(3), 29(1), 29(2), 29(3) and 29(4)–pass; Clauses 29(5), 30, 31, 32(1), 32(2) and 33–pass; Clauses 34, 35(1), 35(2), 36, 37, 38(1), 38(2), 38(3) and 38(4)–pass; Clauses 39, 40(1), 40(2), 41(1), 41(2), 42(1) and 42(2)–pass; Clauses 42(3), 42(4), 43(1), 43(2) and 43(3)–pass; Clauses 44(1), 44(2), 44(3), 44(4), 44(5) and 45(1)–pass; Clauses 45(2) and 45(3)–pass; Clauses 45(4), 45(5), 45(6), 45(7), 45(8) and 46(1)–pass; Clauses 46(2), 47(1), 47(2), 48 and 49(1)–pass; Clauses 49(2), 49(3) and 49(4)–pass; Clauses 49(5), 49(6), 49(7) and 49(8)–pass; Clauses 50, 51(1), 51(2), 51(3), 52(1), 52(2) and 52(3)–pass; Clauses 52(4), 52(5), 52(6), 52(7) and 53(1)–pass; Clauses 53(2), 53(3), 53(4), 53(5), 53(6), 53(7) and 54–pass; Clauses 55(1), 55(2), 55(3), 55(4), 55(5), 55(6) and 55(7)–pass; Clauses 55(8), 56, 57(1), 57(2), 58, 59 and 60–pass; Clause 61–pass; preamble-pass; table of contents–pass; title–pass. Bill be reported.

Bill 19–The Human Rights Code Amendment Act

Mr. Chairperson: I would like to move on then to Bill 19, The Human Rights Code Amendment Act. Does the minister responsible for Bill 19 have an opening statement?

Hon. Vic Toews (Minister of Justice and Attorney General): No, other than the comments that I have already made in the House, I do not have anything further to add.

Mr. Chairperson: Does the critic from the official opposition have one?

Mr. Gord Mackintosh (St. Johns): We are opposed to this legislation. We said so in the Legislature yesterday, and we gave fully the reasons for that. Just in summary, the Human Rights Commission has been suffering cuts for three years in a row. The challenge of countering hatred and discrimination in Manitoba is not any easier today than it was when the commission was established, and, in fact, arguments can be rallied that that challenge is becoming greater over time. We think that the elimination of some Human Rights Commissioners is one thing. It is another thing to take that money and not allow the commission to appropriate it to purposes that will better enable them to deal with the challenge. So, with those remarks, let us deal with the bill.

Mr. Chairperson: Then we will proceed with Bill 19.

Shall Clause 1 pass? Oh, just a moment. During the consideration of the bill, the preamble and the title are postponed until all other clauses have been considered in the proper order.

We shall proceed. Shall Clause 1 pass?

Some Honourable Members: Pass.

Some Honourable Members: No.

Formal Vote

Mr. Mackintosh: A count-out, Mr. Chair.

A COUNT-OUT VOTE was taken, the result being as follows: Yeas 5, Nays 4.

Mr. Chairperson: The clause is accordingly passed.

Shall Clause 2 pass?

Some Honourable Members: Pass.

Some Honourable Members: No.

An Honourable Member: Same division.

Mr. Chairperson: On division. Okay, the clause is accordingly passed on division.

Shall Clause 3 pass?

Some Honourable Members: Pass.

Some Honourable Members: No.

An Honourable Member: On division.

Mr. Chairperson: On division. The clause is passed on division.

Shall Clause 4 pass?

Some Honourable Members: Pass.

Some Honourable Members: No.

An Honourable Member: On division.

Mr. Chairperson: The clause is accordingly passed on division.

Shall the preamble pass?

Some Honourable Members: Pass.

Some Honourable Members: No.

An Honourable Member: On division.

Mr. Chairperson: The preamble is passed on division.

Shall the title pass?

Some Honourable Members: Pass.

Some Honourable Members: No.

Mr. Chairperson: The title is passed on division.

Shall the bill be reported?

Some Honourable Members: No.

Some Honourable Members: Agreed.

Mr. Chairperson: Again, on division. The bill is reported on division.

Bill 20–The Summary Convictions Amendment Act

Mr. Chairperson: Then we will move on to Bill 20, The Summary Convictions Amendment Act. Does the minister responsible for Bill 20 have an opening statement?

Hon. Vic Toews (Minister of Justice and Attorney General): Mr. Chairman, I have indicated very briefly in the House the purposes of this particular act and basically indicating that the increase in costs on the fine will put Manitoba at approximately the median range of fines for similar offences in other provinces. Other than the comments I have made already in the House, I have nothing further to add.

Mr. Chairperson: We thank the minister. Does the member for the official opposition?

Mr. Gord Mackintosh (St. Johns): I have questions, two of which I have given notice to the minister of on the second reading debate.

The first question is: Why is it the policy of the government that we should only do a catchup to the median point of the level of fines in Canada?

Mr. Toews: It is always a matter for discussion, what is the appropriate level. My officials essentially have looked at the situation, and I have taken their recommendations. I think that they are reasonable recommendations. If the member wants to propose higher costs, well, perhaps he can propose them, and we will see what the committee says.

Mr. Mackintosh: That is a heck of a convincing argument. Moving right along, my next question is, where is the money going to be appropriated to? In other words, what percentage of the additional amounts will go to victims assistance and to local authorities?

Mr. Toews: I understand that all of it goes to general revenue in the province, and those monies then are being paid to support programs for the people of Manitoba, some of them who are victims, some of them who are nurses and some who are doctors and some who require medical care, and we feel that those funds are well expended in the hands of the people who are serving the people of Manitoba.

* (1150)

Mr. Mackintosh: The last question is, does the minister have the collection rate of fines for the province? Is that a figure that the province has identified?

Mr. Toews: I received a very interesting report from the branch of my department who looks at collecting fines. It is an astounding number of common offence notices that are processed by this office, and I know that by and large most of these fines are collected. I do not have the exact detail here, but the amount and the very efficient way that my staff deal with this issue, I was quite impressed when they took me on a tour of that particular facility about two weeks ago. There was a report that they prepared for me after I toured that, and some of those figures may well be in that report and perhaps we can extract the relevant information for the member for St. Johns.

Mr. Mackintosh: Well, I would appreciate receiving that. The first thing a government has to do to improve its collection rate is to identify what the rate is, and I am just wondering if the minister can provide the rate over the last five years, if that information is available.

Mr. Toews: Well, I will see what is available in a report. I think the report simply addresses the current fiscal year's or the past fiscal year's rate of collection and steps that they take in order to collect on those particular fines.

Mr. Mackintosh: Can the minister this morning tell us what the outstanding amount of uncollected fines is and how many fines are still outstanding currently?

Mr. Toews: No, I could not tell you that.

Mr. Mackintosh: Well, would the minister undertake to provide the information? We did have the information as of last April. I am wondering if he could undertake to provide it on a timely basis to me.

Mr. Toews: I will undertake to see if that information is available. If it is available, I will produce it.

Mr. Chairperson: During the consideration of a bill, the preamble and the title are postponed until all other clauses have been considered in their proper order.

Clause 1–pass; Clause 2–pass; Clause 3–pass; preamble–pass; title–pass. Bill be reported.

Bill 25–The Proceeds of Crime Registration Act

Mr. Chairperson: Then we will move on to Bill 25, The Proceeds of Crime Registration Act. Does the minister responsible for Bill 25 have an opening statement?

Hon. Mike Radcliffe (Minister of Consumer and Corporate Affairs): Mr. Chairman, I made the remarks on this in the House, and I think anything further would be redundant at this time.

Mr. Chairperson: We thank the minister. Does the critic from the official opposition have an opening statement?

Mr. Gord Mackintosh (St. Johns): Two questions: No. 1, is there such legislation in other jurisdictions currently?

Mr. Radcliffe: British Columbia is the only jurisdiction that has legislation on this matter at the present time.

Mr. Mackintosh: Does the minister have a report on how that legislation is working, and have there actually been filings in the PPSR?

Mr. Radcliffe: It is new legislation in B.C., so we have nothing on report at this point in time.

Mr. Mackintosh: My second question is, what protocol is in place to ensure that any orders made under, whether the Criminal Code or the other two federal statutes, are transmitted or knowledge is given of those orders to the provincial government for filing?

Mr. Radcliffe: The legislation itself is enabling and so, therefore, once the order is registered, it is effective pari passu. The order of the court is as if it were a registration in the registry.

Mr. Chairperson: During the consideration of the bill, the preamble and the title are postponed until all other clauses have been considered in their proper order.

Mr. Radcliffe: Mr. Chairman, the legislation refers to two pieces of federal legislation which have now been changed by the federal jurisdiction since the introduction of this bill. This was known at the time that the bill was introduced–

Mr. Chairperson: Excuse me. I would just like to interrupt. I think we need to get to the clause first before this.

Mr. Radcliffe: All right. Surely. No problem.

Mr. Chairperson: Then we will proceed on Clause 1.

Clause 1–pass. [interjection]

Oh, they are in Clause 1, okay. The minister, please proceed.

Mr. Radcliffe: Mr. Chair, I now would bring my two motions for amendment, and the reason was the federal legislation underlying this legislation has changed, and so we want to update the references in this act to the appropriate federal legislation.

The first amendment would be

THAT the definition "Attorney General" in section 1 be amended by adding "or" at the end of clause (a) and by striking out clauses (b) and (c) and substituting the following:

(b) in subsection 2(1) of the *Controlled Drugs and Substances Act* (Canada),

[French version]

Il est proposé que la définition de "procureur général", à l'article 1, soit amendée par substitution, aux alinéas b) et c), de ce qui suit:

b) au paragraphe 2(1) de la Loi réglementant certaines drogues et autres substances (Canada).

That is the new legislation.

Mr. Chairperson: Amendment–pass.

* (1200)

Mr. Radcliffe: I have a subsequent amendment in the same clause, and it reads as follows:

THAT the definition "proceeds of crime restraint order" in section 1 be amended by adding "or" at the end of clause (a) and by striking out clauses (b) and (c) and substituting the following:

(b) section 23 *of the Controlled Drugs and Substances Act* (Canada),

[French version]

Il est proposé que la définition de "ordonnance de blocage relative aux produits de la criminalité", à l'article 1, soit amendée par substitution, aux alinéas b) et c), de ce qui suit:

b) en vertu de l'article 23 de la Loi réglementant certaines drogues et autres substances (Canada).

Mr. Chairperson: Amendment–pass. Clause 1 as amended–pass. Clause 2.

Mr. Mackintosh: I have a question following the minister's answer to my last question. I understand he said that once an order is given under, say, the Criminal Code for a restraint order, it automatically becomes a document under the personal property registry. Was that his answer, because Section 2 seems to say that there has to be a filing actually of that order by some person. In other words, someone has to know that there was a federal order given and then go and file it in the PPSR.

Mr. Radcliffe: The honourable member was correct that that was my remark or my response, and, in fact, I would amend my response accordingly that there actually has to be a physical filing in the PSR. It will be by way of financing statement, and it would be at the behest and the initiative of the Crown that this would be done. The Crown has been in communication with the PSR on this issue and has expressed co-operation and acquiescence to follow this process.

Mr. Mackintosh: I encourage the minister–and the Justice minister is here–to ensure that there is a formal protocol to ensure that information is shared and that there is a timely filing. Otherwise, this is all just theoretical work.

Mr. Radcliffe: My honourable colleague's remarks are certainly so noted, and we will be looking into that. Thank you.

Mr. Chairperson: Clause 2–pass; Clause 3(1)–pass; Clause 3(2)–pass; Clause 4–pass; Clause 5–pass; Clause 6–pass; Clause 7–pass; preamble–pass; title–pass. Shall the bill be reported as amended?

Mr. Mackintosh: One further question. This also involves the federal Crown in Manitoba, so the protocol will have to require the involvement of the federal Crown to ensure that they know this legislation is in Manitoba, they know they have some further work to do once they obtain an order.

Mr. Radcliffe: Good point, and we will certainly attend to that. Thank you.

Mr. Chairperson: Again, shall the bill as amended be reported? [agreed]

Bill 28–The Emergency Measures Amendment and Consequential Amendments Act

Mr. Chairperson: We will move on to Bill 28, The Emergency Measures Amendment and Consequential Amendments Act. Does the minister responsible for Bill 28 have an opening statement?

Hon. Frank Pitura (Minister of Government Services): No, I do not.

Mr. Chairperson: I thank the minister. Does the critic from the official opposition have an opening statement?

Mr. Jim Maloway (Elmwood): I think it is fair to say that it is a new ball game in terms of the quantum of settlements in complexity as far as the flood claims this year are concerned, so it seems to me that we are certainly going to be looking at some problems in terms of the settlement.

When these problems arise, we are concerned about the mechanism that will be in place to deal with them at the time, because what we are going to be dealing with are largely first-time claimants who really do not understand the system and are not necessarily familiar with the process and will not know their rights. So, as a result, we are planning to introduce an amendment to this bill which essentially will institute claimant advocates. The claimant advocates are really designed to provide the claimant with information, advice, assistance, including the assistance of the claimants in getting their appeal ready, to make presentations on behalf of the claimants and advise the claimant in terms of the interpretation of the act and other aspects of the act.

It is also important to note that this amendment will make the claimant advocates independent of the Emergency Management Organization, so I would encourage the minister to look favourably on the amendment that we will be bringing in at this stage,

because I think at the end of the day it will be saving him a lot of time and effort in this process.

Mr. Chairperson: We thank the member. As previously agreed, at 12 noon we are going to assess our situation. What is the will of the committee? Is it agreed that we proceed? [agreed]

During the consideration of a bill, the preamble and the title are postponed until all of the clauses have been considered in their proper order.

We shall proceed with Clause 1–pass; Clause 2(1)–pass; Clause 2(2)–pass; Clauses 3(1), 3(2)–pass. We are going page by page? Clauses 3(3), 3(4) and 3(5)–pass; Clauses 6(1), 6(2), 6(3), 6(4)–pass; Clause 7(1), 7(2)–pass; Clause 8, Clause 9–pass. Clauses 10, 11(1), 11(2), 11(3), 11(4).

Some Honourable Members: No. We cannot do that.

Mr. Chairperson: One moment, please. There is an amendment. Okay, we will repeat that. Clause 10, 11(1).

Mr. Maloway: I would like to introduce an amendment, and I think you have copies of it, 11.1. The following is added after Section 17, Claimant advocates, 17.1(1). I think it is a good idea; it is a great idea. Do you want it read? Thank you, Mr. Chairman. I appreciate the opportunity to read it.

THAT the following be added after section 11 of the Bill:

11.1 The following is added after section 17:

Claimant advocates
17.1(1) Claimant advocates and other persons necessary to enable claimant advocates to carry out their duties effectively shall be appointed or employed in accordance with The Civil Service Act.

Role of claimant advocates
17.1(2) Claimant advocates may provide claimants with information, advice and assistance, including

(a) assisting a claimant in a claim for disaster assistance or a disaster assistance appeal to the Disaster Assistance Appeal Board, including making representations on behalf of the claimant in the claim or appeal;

(b) advising claimants as to the interpretation and administration of this Act and any regulation made under this Act, and of the effect and meaning of decisions made under this Act; and

(c) performing such other duties and functions as the minister may require.

Independent role
17.1(3) Claimant advocates are to carry out their duties under this section independently of the Manitoba Emergency Management Organization or the Disaster Assistance Appeal Board.

Il est proposé d'amender le projet de loi par adjonction, après l'article 11, de ce qui suit:

11.1 Il est ajouté après l'article 17, ce qui suit:

Représentants des demandeurs
17.1(1) *Sont nommés ou employés conformément à la Loi sur la fonction publique des représentants des demandeurs ainsi que les autres employés dont les représentants des demandeurs ont besoin pour s'acquitter efficacement de leurs fonctions.*

Fonctions des représentants des demandeurs
17.1(2) *Les représentants peuvent fournir des renseignements, des conseils et de l'aide aux demandeurs qu'ils représentent et notamment:*

a) les aider, y compris les représenter, dans le cadre d'une demande d'aide ou d'un appel à la Commission d'appel de l'aide aux sinistrés;

b) les conseiller en matière d'interprétation et d'application de la présente loi et de ses règlements et en ce qui concerne l'effet et la portée de décisions rendues sous son régime;

c) accomplir toutes les autres fonctions que le ministre peut prescrire.

Indépendance

17.1(3) Les représentants s'acquittent des fonctions que leur confère le présent article indépendamment de l'Organisation de gestion des mesures d'urgence du Manitoba et de la Commission d'appel de l'aide aux sinistrés.

Mr. Chairperson: As Chair, I would rule that this amendment is out of scope–out of order.

* (1210)

Mr. Maloway: I would challenge that ruling on the basis that this amendment is part of the appeal process, and the appeal process is duly covered by this bill.

Voice Vote

Mr. Chairperson: The question has been called. Is the ruling of the Chair sustained?

Some Honourable Members: Nay.

Some Honourable Members: Yea.

Mr. Chairperson: The Yeas have it.

Formal Vote

An Honourable Member: A recorded vote.

A COUNT-OUT VOTE was taken, the result being as follows: Yeas 5, Nays 4.

Mr. Chairperson: The ruling of the Chair has been sustained.

Mr. Pitura: I realize the amendment was not able to make it to the floor for discussion, but I would like to indicate to the honourable member that the way the appeal process is set up now, it is a radical change from what it was before. As you will recall, the Disaster Assistance Appeal Board, which was established by a Lieutenant Governor Order-in-Council, delivered the disaster assistance policy and then at the same time entertained appeals which they, in effect, were hearing an appeal on a program that they delivered.

The present appeal board is set at arm's length from the disaster assistance program. So therefore, I would think, given the opportunity, that this appeal board will work and work well on behalf of those that are appellants to the board with regard to their claim, since none of the emergency management staff per se will be representing the disaster assistance program at this appeal. It will only be the appellant in front of the appeal board.

So I think, given the opportunity, that this process will work. However, I will always be monitoring the effectiveness of the appeal board, and if at such time that I feel that there is room for improvement, at that time I will take a look at it.

Mr. Gord Mackintosh (St. Johns): Has the appeal board been appointed already or are there appointees in mind?

Mr. Pitura: The appeal board is appointed. I am sorry, I am not even aware of their names at this point in time. They were appointed, I believe, last year.

Mr. Chairperson: We will proceed then.

Clauses 10, 11(1), 11(2), 11(3), 11(4)–pass; Clause 12–pass; Clauses 13(1), 13(2), 13(3) and 14–pass; preamble–pass; title–pass. Bill be reported.

Bill 29–The Education Administration Amendment Act

Mr. Chairperson: We will move on to Bill 29, The Education Administration Amendment Act. I will just allow for the minister to take the chair.

Hon. Linda McIntosh (Minister of Education and Training): I made comments in the House on the bill, Mr. Chairman, which I think sufficiently cover the bill in terms of clarifying its intent and our rationale.

Mr. Chairperson: Does the critic from the official opposition have an opening statement?

Ms. Jean Friesen (Wolseley): Mr. Chairman, I have some questions on the two sections of this bill, and if I could suggest a procedure, as you have been doing, the questions first and then just go through the bill at the end.

Mr. Chairperson: I thank the member. During the consideration of a bill, the preamble and the title are postponed until all other statements and clauses have been considered.

We will backtrack. We will ask for questions first. Pardon me.

Ms. Friesen: I had indicated the questions I was going to ask I think when I spoke in the House, so the staff may be prepared.

I am interested in the, the first chunk deals with, the first two or three sections deal with copyright. I think the reason for this stems from the new federal copyright legislation, but the difference between this and the previous sections of the act are not that great. I wonder if the minister could tell us what actually will be different. How will people in the field perceive it as different?

Mrs. McIntosh: We were advised by legal counsel that the existing legislation does not give the flexibility to enact regulations, so that basically this gives us the ability to enact regulations. Did I say regulations or legislation before? Anyhow, the current legislation does not give us the ability to put in regulations, which we will need to be able to do as federal rules shift and change.

Without this particular wording, we would have to change legislation each and every instance rather than being able to adjust regulations, and that is basically the reason for that particular one. That was on the advice of legal counsel.

Ms. Friesen: Mr. Chairman, but the original Section 3.1(4) which this replaces says specifically "the minister may, by regulation, designate" which is what this one does. The only word changes are really from "prescribe" to–the new regulations omit "prescribe" and say "may make regulation respecting terms" or "requiring educational institutions."

Mrs. McIntosh: Basically the word "prescribe" is one that will only limit. So when you use prescribe, you can say things such as the rate shall be X, but taking away the word "prescribe," you can be more flexible in the way in which you describe or write your regulations; you are not as limited in the writing of the regulation.

Ms. Friesen: Mr. Chair, I understand that. I am still on the aspect of the copyright. The minister may make regulations designating educational institutions. No elsewhere in this act educational institutions are defined, and they are obviously K to 12 institutions. Does the minister have any plans beyond this to designate institutions? Not under this act. I am not asking about the act; this is for information. How are you going to handle copyright with post-secondary institutions?

Mrs. McIntosh: Mr. Chairman, this particular section remains unchanged, and I think the member is cognizant of that. This act, this Education Administration Amendment Act, is to deal with K to S4. I do not at this point have any plans to do something similar in post-secondary, although I can certainly take that under advisement for future consideration as we deal with our post-secondary items.

* (1220)

Ms. Friesen: Mr. Chairman, one of the issues that has been raised with me and that I raised in the House was whether or not the minister has any estimate yet of what the cost of the new copyright legislation is going to be. I mean, the same process for charging is here, but is there any sense of the change in dollar amounts?

Mrs. McIntosh: I do not have the figures. We do not have an estimated amount in terms of any difference in costs. If the member is asking us to look ahead into the post-secondary, that is certainly something that we can talk about. It is beyond the scope of this particular amendment but could be maybe considered under the council, but in terms of the costs or the difference between now and the new system, I am sorry, I cannot tell her what that difference might be.

Ms. Friesen: Moving to the next chunk of the act, which deals with protection from liability, again, there does not seem to be a great deal of difference between Section 19, which is repealed, and Section 19(1) which is the new section of the act. There is a slight difference in wording.

I want to come to 19(2) in a minute; there is a particular issue there, but 19(1) does not seem very much different from the old Section 19. So what is the intent here? What is the purpose?

Mrs. McIntosh: Mr. Chairman, essentially, again, at the recommendation of legal counsel, this is just an updating on the wording to make it more in line with similar kinds of clauses in other acts in other places so that we get a more consistent kind of wording. There is some actual difference, as you indicated, in 19(2).

Ms. Friesen: Mr. Chairman, I should say for the record that in the House I had concerns about whether or not the Crown, in fact, could be sued, and this went back to federal days in actually the 1960s and early '70s when it was my understanding that they could not, and that is not the case. I have talked to Legislative Counsel, and it has been explained that there is a particular act for that in Manitoba and many acts do contain that kind of provision.

I want to ask finally about Section 19(2), which protects from liability civil servants on the issue of teacher certification, classification, and people that I have talked to are very puzzled about where this has come from. Have there been particular cases that we are not aware of? Has there been an increase in the number of cases or is it just one case that the minister feels may become more generally applicable?

Mrs. McIntosh: Mr. Chairman, yes, indeed, there have been instances. We currently have two lawsuits pending, and there have been other incidents but, at the current time, we still have two lawsuits pending. This is to ensure that where the civil servant has acted in good faith–well, maybe I will back up and say, the way the system currently works, if an educator in the field does not send in enough pertinent information and the civil servant makes a decision based on the information presented, that civil servant can be sued three years down the road and held liable for all kinds of things if the teacher was overpaid or underpaid. Usually it is if they are underpaid that would be the problem.

There also have been some nuisance claims, as well, where there was no civil servant error but where the person in the field coming in and putting in a claim has nothing to lose and so there have been some nuisance claims that have taken up a lot of time and energy that have not resulted, that have not been based upon a real cause.

We felt this would indicate that where it is clear that the civil servants acted in good faith, based upon all available information, that the civil servant should not be held personally liable. This, of course, would not protect someone who had consciously, who had acted in bad faith, so to speak. So the words "in good faith" are really critical to the clause. In a direct short answer to your question, yes, there have been instances, and two right now are in court or before the courts.

Mr. Chairperson: During the consideration of a bill, the preamble and the title are postponed until all other clauses have been considered in their proper order.

Clause 1–pass; Clause 2–pass; Clause 3–pass; Clause 4–pass; preamble–pass; title–pass. Bill be reported.

Bill 34–The City of Winnipeg Amendment and Municipal Amendment Act

Mr. Chairperson: Moving on to Bill 34, The City of Winnipeg Amendment and Municipal Amendment Act, does the minister responsible for Bill 34 have an opening statement?

Hon. Jack Reimer (Minister of Urban Affairs): No.

Mr. Chairperson: We thank the minister.

Does the critic from the official opposition have–

* (1230)

Ms. Becky Barrett (Wellington): Mr. Chair, just very briefly, as we stated in the House in our discussion on second reading, the vast majority of this bill is a positive bill, and we have no problems with it.

However, there is one clause that I am alerting the minister to that we will be voting against, and that is the clause dealing with new home grants, credits or refunds to property owners. The reason we are going to vote against this particular clause was, it was an opportunity for the government to recognize the concerns that had

been raised by many people in the city and in the province about urban sprawl, urban sprawl meaning not just outside of the Perimeter but within the Perimeter. There was an opportunity in this particular clause for the province to say and take cognizance of that concern about urban sprawl and give even more support to infill housing to putting new homes into older areas in the city. We feel that it was an opportunity missed by the government, so that is why we will be voting against this particular clause.

Mr. Chairperson: I thank the member.

An Honourable Member: Page by page.

Mr. Chairperson: Page by page. Okay. During the consideration of a bill, the preamble and title are postponed until all other clauses have been considered in their proper order.

Clauses 1 and 2–pass; Clauses 3, 4, 5 and 6–pass. Shall Clause 7 pass?

An Honourable Member: No.

Voice Vote

Mr. Chairperson: All those in favour, please say yea.

Some Honourable Members: Yea.

Mr. Chairperson: All those opposed, please say nay.

Some Honourable Members: Nay.

Mr. Chairperson: The Yeas have it.

Formal Vote

Ms. Barrett: Mr. Chair, I would request a count, please.

A COUNT-OUT VOTE was taken, the result being as follows: Yeas 6, Nays 4.

Mr. Chairperson: The Yeas have it.

Clause 7–pass; Clauses 8, 9(1), 9(2), 9(3), 10(1) and 10(2)–pass; Clauses 10(3),10(4), 10(5) and 11–pass; Clause 12–pass; Clause 13–pass; Clauses 14 and 15–pass; Clause 16(1)–pass; Clauses 16(2), 17, 18, 19 and 20–pass; Clauses 21, 22, 23, 24 and 25–pass; Clauses 26, 27, 28, 29, 30, 31(1) and 31(2)–pass; preamble–pass; title–pass. Bill be reported.

Bill 35–The Condominium Amendment and Consequential Amendments Act

Mr. Chairperson: We will now move on to Bill 35, The Condominium Amendment and Consequential Amendments Act. Does the minister responsible for Bill 35 have an opening statement?

Hon. Mike Radcliffe (Minister of Consumer and Corporate Affairs): No.

Mr. Chairperson: We thank the minister. Does the critic from the official opposition have an opening statement?

An Honourable Member: No, I do not think so.

Mr. Chairperson: No. Accordingly not, then we thank you for that.

During the consideration of a bill, the preamble and the title are postponed until all other clauses have been considered in their proper order.

Clauses 1, 2 and 3(1)–pass; Clauses 3(2) and 4(1)–pass; Clauses 4(2)–pass; Clauses 4(3) and 5–pass; Clause 6–pass; Clause 7–pass; Clause 8(1) and 8(2)–pass; Clauses 8(3) and 8(4)–pass; Clauses 9, 10, 11(1), 11(2), 12(1), 12(2) and 12(3)–pass; Clauses 13, 14(1), 14(2) and 14(3)–pass; Clause 14(4) and 15–pass; preamble–pass; title–pass. Bill be reported.

Bill 40–The Manitoba Employee Ownership Fund Corporation Amendment Act

Mr. Chairperson: Moving on to Bill 40, The Manitoba Employee Ownership Fund Corporation Amendment Act, does the minister responsible for Bill 40 have an opening statement?

Hon. James Downey (Minister of Industry, Trade and Tourism): Yes, I do, Mr. Chairman.

Mr. Chairman, the comments that I put on the record will stand for the introduction of the bill to committee.

Mr. Chairperson: We thank the minister. Does the critic from the official opposition have an opening statement?

An Honourable Member: Pass.

Mr. Chairperson: Okay, then we will move on. During the consideration of a bill, the preamble and the title are postponed until all other clauses have been considered in their proper order.

Clauses 1, 2 and 3–pass; Clauses 4, 5, 6(1), 6(2), 6(3), 6(4) and 6(5)–pass; Clause 7–pass; Clause 8–pass; Clause 9 and 10(1)–pass; Clauses 10(2), 11, 12, 13 and 14–pass; Clause 15–pass; Clause 16–pass; Clause 17 and 18–pass; preamble–pass; title–pass. Bill be reported.

The time being 12:35 p.m., what is the will of the committee?

An Honourable Member: Committee rise.

Mr. Chairperson: Committee rise.

COMMITTEE ROSE AT: 12:37 p.m.