Second Session — Thirty-Third Legislature

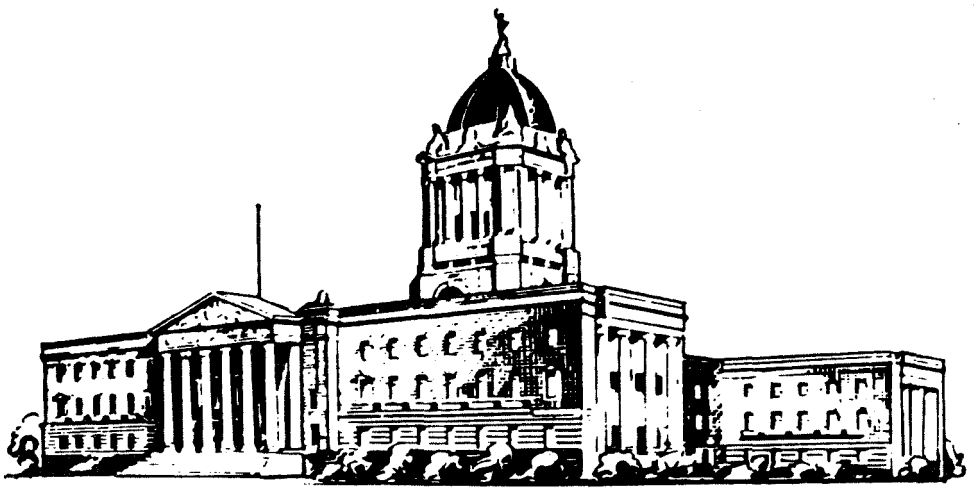
of the

Legislative Assembly of Manitoba

STANDING COMMITTEE
on
STATUTORY REGULATIONS
and
ORDERS

36 Elizabeth II

Chairman
Mr. Don Scott
Constituency of Inkster



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Thirty-Third Legislature

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LEGISLATIVE ASSEMBLY OF MANITOBA

THE STANDING COMMITTEE ON STATUTORY REGULATIONS AND ORDERS

Thursday, 11 June, 1987

TIME — 8:00 p.m.

LOCATION — Winnipeg, Manitoba

CHAIRMAN — Mr. D. Scott (Inkster)

ATTENDANCE - 10 — QUORUM - 6

Members of the Committee present:

Hon. Messrs. Harapiak (Swan River), Harper, Penner, Hon. Ms. Hemphill

Messrs. Dolin, Maloway, McCrae, Mercier, Orchard, Scott

APPEARING: Representations were made to the Committee as follows:

Bill No. 4

Mr. Alan MacInnes, Q.C., Manitoba Catholic School Trustees Association

Mr. Donald Brock, Manitoba Catholic School Trustee Association

Ms. Linda Simpson, Sooter Studios

Mr. Ed Lepieszo, Private Citizen

Bill No. 21

Mr. Norman Rosenbaum, Manitoba Association for Rights and Liberties

Bill No. 27

Mr. Frank Cvitkovitch, Legal Counsel for the Mortgage Loans Association of Manitoba

Bill No. 34

Mr. Frank Cvitkovitch, Legal Counsel for the Mortgage Loans Association of Manitoba

MATTERS UNDER DISCUSSION:

Bill No. 4 - The Re-enacted Statutes of Manitoba, 1987 Act

Bill No. 5 - An Act to repeal Certain Statutes Relating to Education and Other Matters

Bill No. 10 - An Act to amend The Queen's Bench Act

Bill No. 19 - An Act to amend The Limitation of Actions Act and The Highway Traffic Act and to repeal The Unsatisfied Judgment Fund Act

Bill No. 20 - The Crime Prevention Foundation Act

Bill No. 21 - The Family Law Amendment Act

Bill No. 27 - The Real Property Act and Various Other Acts Amendment Act

Bill No. 33 - An Act to amend The Registry Act

Bill No. 34 - An Act to amend The Real Property Act

Bill No. 37 - An Act to amend The Liquor Control Act

Bill No. 63 - An Act to repeal Certain Statutes relating to Hospitals, Hospital Districts and Nursing Unit Districts and other matters.

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MR. CHAIRMAN: Committee, come to order. Shall we proceed initially with calling those members of the public who have come this evening and wish to make presentations on the various bills.

First I will just give a quick run-through for members' and the public's information. We will be dealing tonight with Bill No. 4, The Re-enacted Statutes of Manitoba, 1987 Act;

Bill No. 5 - An Act to repeal Certain Statutes Relating to Education and Other Maters;

Bill No. 10 - An Act to amend The Queen's Bench Act;

Bill No. 19 - An Act to amend The Limitation of Actions Act and The Highway Traffic Act and to repeal The Unsatisfied Judgment Fund Act;

Bill No. 20 - The Crime Prevention Foundation Act;

Bill No. 21 - The Family Law Amendment Act;

Bill No. 27 - The Real Property Act and Various Other Acts Amendment Act;

Bill No. 33 - An Act to amend The Registry Act;

Bill No. 34 - An Act to amend The Real Property Act;

Bill No. 37 - An Act to amend The Liquor Control Act; and

Bill No. 63 - An Act to repeal Certain Statutes relating to Hospitals, Hospital Districts and Nursing Unit Districts and other matters.

Shall we follow through the bills in order as far as calling members of the public forward? (Agreed)

No. 1, we will deal first with Bill No. 4 - The Re-enacted Statutes of Manitoba, 1987 Act. Persons wishing to make presentations - I have Mr. Al MacInnes from the Manitoba Catholic School Trustees Association. Is Mr. MacInnes present? Mr. MacInnes, would you come forward, please.

BILL NO. 4 - THE RE-ENACTED STATUTES OF MANITOBA, 1987 ACT

MR. A. MacINNES: Mr. Chairman, members of the committee, I am appearing as counsel for the Manitoba Catholic School Trustees Association, and my colleague, Mr. Don Brock, is with me this evening.

I believe you will have before you a submission which Don authored and which is dated June 11, 1987, which

gives some outline as to our proposed submission and which, I believe, enclosed with it for your assistance, a copy of The Manitoba Act of 1870; a copy of The School Act of Manitoba, 1871; a copy of a judicial decision, Brophy versus the Attorney-General of Manitoba, which was reported in 1895; and a copy of a remedial order of the Federal Government, Remedial Order No. 834 passed in 1895.

What I propose to do this evening is comment, I hope not at too great length, on the concerns that my client has with respect to Bill 4 as it pertains to two specific pieces of legislation, The Public Schools Act and The Education Administration Act.

If I might just deal briefly with some history giving rise to our submission, it goes like this - and the submission paper indicates very briefly the background or history.

Prior to Manitoba's entry into Confederation in 1870, the schools of this province were denominational schools. They were funded and operated by religious denominations with assistance from the state, as it was then, the Council of Assiniboia. The denominations that were largely involved in education were Roman Catholic on the one hand and pretty much Anglican, although it was broadly described as Protestant on the other.

At the time of Manitoba's entry into Confederation in 1870, Manitobans, as had been the case with other provinces who had previously entered Confederation, had some concern about the protection of education rights for those denominational schools. For the provinces that had preceded Manitoba's entry into Confederation - Ontario, Quebec, Nova Scotia and New Brunswick - section 93 of the British North America Act was the relevant section providing that protection.

But in Manitoba's case, there was a specific section that was enacted as part of The Manitoba Act, and that section is section 22. The thrust of that section was in effect to ensure that the citizens of Manitoba would continue to enjoy after union the same rights and privileges which they had enjoyed by law or by practice prior to Manitoba's entry into Confederation. That essentially is what section 22(1) says.

In sections 22(2) and 22(3) in effect provide a remedy or right of appeal to the minority in the event there is any change that deprives them of a right which they enjoy.

Historically at the time of entry, the population was approximately equally divided upon religious lines and so neither the Catholics nor the Protestants knew which of the two might ultimately become the majority. Consequently, historically, the protection was put in to protect whichever might become the minority.

In 1871, Manitoba's Legislature sat for the first time and one of the bills which it enacted, I think it was Bill 3 of that Session, was The Schools Act of 1871. That is a document with which we have provided you. You will see when you look at that document that it has put into legislation within this province those rights which had been enjoyed by practice prior to the entry into Confederation of the province.

What it did was it set up a dual system of education. It provided for separate boards and for separate administrations, but most importantly from the point of view of the Catholic minority as it now is, and of the Catholics who were citizens of this province at the time, section 13 of that act provided for the manner in which monies would be expended for the operation of schools. After paying certain expenses, it went on to say that the residue then remaining shall be appropriated to the support and maintenance of common schools. One moiety, one half to the support of Protestant schools and the other to the support of the Catholic schools.

From 1871 until 1890 that condition continued. There was a variation as to the manner of division because, as the population of the province changed and we had more Protestants come into the province, the distribution of money became a per capita type of distribution so that the Catholics no longer were receiving 50 percent of the state funds for education because they no longer had 50 percent of the population.

But commencing in 1881, when there was a revision of the education legislation and The School Act of 1881 was passed, this same principle continued and it was continued until the enactment of The Public Schools Act in 1890.

In 1890, by the introduction of The Public Schools Act, the province introduced a system of nonsectarian public education supported by the state. It did not outlaw the denominational schools, but what it did was it removed from those schools the ability to receive or the entitlement to receive any final support from the state.

So you went from a position in 1889 where the Catholics were funded by the state, where their taxes went to the state, where they came back in part to support their schools and where the Catholics were not required to support schools to which their children did not attend, to a situation after the enactment of that legislation in 1890 where the Catholics received no aide for their schools and where they were obligated to pay taxes to the state which taxes in part then went to support the public school system. So not only did they lose the ability to enjoy state support, but in fact they continued to have to pay taxes that went to schools to which they did not send their children if they chose to send them to their own Catholic schools.

That situation commencing in 1890 has remained to the present. It's true to say that in the present day and indeed commencing approximately 20 or 25 years ago, there has been state assistance afforded, but it is not state assistance enshrined in legislation and it is not state assistance equal to the assistance that is being paid to the students who attend public schools as was the case prior to 1890.

The point of all of what I'm telling you is this, because of the recent Supreme Court of Canada decision in the French language dispute, you all are aware of the fact that the Supreme Court said all legislation that has been enacted unilingually never has been and is of no force or effect so that The Public Schools Act of 1890, although it took away these powers, rights, enjoyments and privileges that the Catholics had heretofore enjoyed, is an invalid piece of legislation.

So that in practice for 97 years, while that has continued, the fact is that there is no valid legislation permitting the government to do what it is doing or what it has done. That, I submit, is the effect of the Supreme Court of Canada decision. If that is so, then what that means is that the last valid piece of legislation pertaining to the school system in Manitoba insofar as

this funding concept is concerned was that of 1881 as amended down to and including 1889, but excluding The Public Schools Act of 1890.

Bill 4 proposes that certain pieces of legislation be reintroduced and re-enacted. One of the bills which is proposed to be included in that package is The Public Schools Act and another bill which is proposed to be in that package is The Education Administration Act.

The point that we wish to make is that in our submission this ought not to be looked upon as simply an exercise in translation and a situation where you submit a translated document, now French and English, into the House, have it approved, have it enacted, and things go on. The fact of the matter is that one way or another, either when the House deals with The Public Schools Act or subsequently when it's obligated to reintroduce and re-enact all of these other pieces of legislation as I submit must be done - that is all of the legislation between 1890 and the present - at some particular point in time, the House is going to have to come to grips with the fact that rights that were enjoyed by the Catholics of this province in 1889 were taken away in 1890. That has to be addressed either at the time you deal with the reintroduction of The Public Schools Act or at the time you deal with the reintroduction of all other legislation.

Let me just deal for a moment, if I might, with the recent Supreme Court decision. That, as you know, was a decision pronounced in 1985. The effect of it I submit is this you begin with the fundamental point that the Supreme Court declared that all unilingually enacted acts of the Manitoba Legislature are and always have been invalid and of no force or effect. That's the language of the judgment, that's not my language.

The court went on to say, though, in order to avoid legal chaos, there were certain exceptions, certain ways of trying to get around that. The court said this, "To summarize the legal situation in the Province of Manitoba is as follows: All unilingually enacted acts of the Manitoba Legislature are and always have been invalid and of no force or effect. That is The Public Schools Act of 1890 and all subsequent legislation, unilingually enacted.

"All acts of the Manitoba Legislature which would currently be valid and of force and effect were it not for their constitutional defect, are deemed temporarily valid and effective from the date of this judgment to the expiry of the minimum period necessary for translation, re-enactment, printing and publishing. Rights, obligations, and any other effects which have arisen under these current laws by virtue or reliance on acts of public officials or on the assumed legal validity of public or private bodies corporate are enforceable and forever beyond challenge under the de facto doctrine."

That means, as I understand it, even if The Public Schools Act is invalid, as I submit it is, if somebody acting under authority purportedly given by an invalid act has done something, that something that they did is valid and is beyond challenge. But that contemplates administrative, clerical, those sorts of acts.

It goes on to say, however, "All rights, obligations and any other effects which have arisen under acts of the Manitoba Legislature which are purportedly repealed, spent, or would currently be enforced were it not for their constitutional defects, and which are not saved by the de facto doctrine or doctrines, such as res judicata and mistake of law are deemed temporarily to have been and to continue to be enforceable and beyond challenge from the date of their creation to the expiry of the minimum period of time necessary for translation, re-enactment, printing, and publishing of these laws. At the termination of the minimum period, these rights, obligations and other effects will cease to have force and effect unless the acts under which they arose have been translated, re-enacted, printed and published in both languages."

So that any other acts that are not of this clerical or administrative nature are temporarily valid until the grace period, if I can call it that, elapses and then unless legislation is reintroduced, re-enacted, those rights are no longer existing or valid. In this case, what happened was the Province of Manitoba in 1890 took away certain rights that were constitutionally guaranteed to the Catholics of this province. That is not an administrative or a clerical act. That is a matter of governmental policy and governmental law and that is something which is subject to challenge. It is not forever beyond challenge as is a clerical act. It is clearly subject to challenge and the only way that challenge can be overcome is to have the new legislation re-enacted so that The Public Schools Act is going to have to be reintroduced and re-enacted, but so too continuing further with the Supreme Court decision; so too are other acts - and I'm dealing now only with Public Schools Act, education related acts - that have intervened in the period 1890 to 1983 when the last I think Public Schools Act was passed.

The Supreme Court judgment goes on, "As a consequence to ensure the continuing validity and enforceability of rights, obligations and any other effects not saved by the de facto or other doctrines, the repealed or spent acts of the Legislature under which these rights, obligations and other effects have purportedly arisen may need to be enacted, printed and published and then repealed in both official languages."

And as I understand it, pursuant to the consent order that was taken out, that is to be done. So that the upshot of the Supreme Court decision is not only must the current acts be re-enacted but so too must acts that have been repealed or spent in the intervening period.

So that brings me back to the point of saying that at some particular point in time either at the time of introduction of The Public Schools Act as part of Bill 4, or subsequently when these repealed acts must be introduced, at some point in time, the Legislature is going to have to deal with and come to grips with the fact that commencing 1890 certain rights were removed and have never been reinstated. We would hope and we would urge your committee and subsequently the House to be mindful of that fact.

We would hope that when one is considering The Public Schools Act upon its re-enactment that one will not simply look at it as being a bill that was passed in 1983, or thereabouts, and now is simply going through a translation process, but that members will step back and say, as I would hope they would do with any new piece of legislation, what is it that this new legislation gives as compared to the last valid piece of legislation? What is it that this new legislation takes away as

compared to this last valid piece of legislation? There must be a comparison made between The Schools Act of 1881 and The Public Schools Act of 1983, the current one.

When you make that comparison, you will see what it was that the Catholics enjoyed previously and what it is that this new act will take away from them which was the right to state support and we would hope, therefore, that when that time comes that you will debate the issue, take the opportunity as you will have to right the wrong that occurred in 1890 but at the very least whether you do it or you don't be mindful of the problem, be mindful of the loss of rights and have an open and strong debate as to whether that ought to continue.

The other point that I wish to make is this, it's our submission that if the Legislature enacts the 1983 Public Schools Act, or proceeds to enact repealed acts since 1890, in the state - that is in the condition - that those acts have existed without providing for the support to the Catholic minority, that the Legislature will be passing legislation that is ultra vires, that it does not have the constitutional authority to pass, and that in and of itself might give rise to a legal challenge. I say that is beyond their authority by relying upon section 22 of The Manitoba Act.

If I might just make specific reference to that section, you will see that section 22(1) provides: "In and for the province the said legislature may exclusively make laws in relation to education, subject and according to the following provisions:

(1) Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools, which any class of persons have by law or practice in the Province at the union."

That is a constitutional guarantee. That tells us that the province can pass laws with respect to education with one exception and that is so long as the laws they pass do not prejudicially affect any right or privilege enjoyed at the time of union. Clearly, there can be no doubt of this and in the Brophy case the Privy Council so found that there was a right or privilege afforded the Catholics at the time of entry into Confederation and that right or privilege was removed. Again, that is not me saying it, the Privy Council said it.

Consequently, if this new legislation that is about to be translated and re-enacted comes into being and deprives the Catholics of the rights which they enjoyed prior to 1890, in our submission, that legislation will be ultra vires. It will be contrary to section 22(1), and it will be subject to challenge in the courts.

Please understand - and we have made it clear throughout our efforts over the past few years to attempt to obtain support for our schools - we have no quarrel with and no objection to the public school system or the public schools. We do not, in seeking governmental support by any means, want, expect, or hope that will in any way diminish the level of support to the public schools or to the public school system. We simply say that we were afforded certain constitutional guarantees and those guaranteed rights were removed. By good fortune, I suppose, because of the French language reference and the result of that case, we're now in the position where in our submission at least the government must now remedy a fundamental flaw or defect in its legislative scheme. By happy coincidence, that happens to have commenced immediately prior to the passage of The Public Schools Act of 1890 which deprived us of our rights.

In reality, you have to turn the clock back to 1890, strange as that may seem and as impractical as that may seem, but that in our submission is the reality of the Supreme Court decision. That must be done and when it is done the Legislature will then have to debate, I hope, and come to grips with the loss that we have suffered. As I say, we hope sincerely that there will be a debate and that you people will see to it that the wrong that was suffered will be made right, but be mindful please that in our submission not only is it the right thing to do but in a legal and constitutional way it is the only thing to do if you want your legislation to be intra vires and not ultra vires.

That is our submission, I commend to you reading some of the material at least that we have furnished you and I hope that in doing that you will see and understand clearly the remarks which I have made perhaps not too clearly.

Thank you very much.

MR. CHAIRMAN: Thank you, Mr. MacInnes.

Are there any question from members of the committee to Mr. MacInnes?

Mr. Dolin.

MR. M. DOLIN: Yes, I'm just looking at the 1871 legislation here sections 22(1), 22(2)and 22(3). I'm wondering about funding requirements. What it says here to me and I'm wondering the way you would interpret the requirement, that the Provincial Government fund in some manner or form, it seems to protect the rights, but I don't know where the obligation of fund is. Perhaps you could explain that to me. Is it in this act? In the 1971 act?

MR. A. MacINNES: The obligation to fund I would have thought was in section 13 of that act.

From the sum appropriated by the Legislature for common school education, there shall first be paid the incidental expenses of the board etc., and the residue then remaining shall be appropriated to the support and maintenance of common schools, one moiety thereof to the support of the Protestant schools and the other moiety to the support of the Catholic schools. So that the legislative obligation was for each of the Protestant and Catholic schools to be funded equally.

MR. M. DOLIN: Are we looking at the same act?

MR. A. MacINNES: Are you looking at The Manitoba Act?

MR. M. DOLIN: No, I'm looking at The Canada Act.

MR. A. MacINNES: Well, that's The Manitoba Act. I'm sorry I thought you were looking at The School Act of 1871.

MR. CHAIRMAN: Excuse me please, go through the Chair if you would please.

Mr. Dolin.

MR. M. DOLIN: Okay, what I'm trying to clarify is, you say 22(1) and 22(2) are the basis of the case establishing these rights . . .

MR. A. MacINNES: Yes.

MR. M. DOLIN: . . . which is The Canada Act and what I'm trying to understand, is there a place in The Canada Act that establishes the right?

It appears to me superficially, I'm not a lawyer, that there is a right to have schools.

MR. A. MacINNES: Yes.

MR. M. DOLIN: Is there anything more in the Canada Act than that or is this established under the 1871 act?

MR. A. MacINNES: No, there is nothing more specific. That is actually The Manitoba Act that you're calling the Canada Act. But there is nothing more specific in The Manitoba Act with respect to schools than what you see in section 22. But section 22 was interpreted by the Brophy case which you have in front of you, and which outlined in some detail what it was the Catholics enjoyed at the time of union, what it was the Catholics enjoyed prior to The Public Schools Act of 1890, and what it was that they had after and then concluded, when you compare the position before with the position after, it would be impossible to say that the 1890 act did not prejudicially affect a right or privilege which they had by law or practice in the province at the union.

That's the essence of the argument. It doesn't speak specifically of funding. It speaks in a more broad way of rights or privileges. One of those rights or privileges happened to be funding. Another happened to be the ability to have its own school board and school administration, which was publicly funded. All of those were lost.

But in the Brophy case, rather than dealing just specifically with the question of funding, that was only one of the rights or privileges. As I say, the case outlines what it was we had, what it was we lost.

MR. M. DOLIN: Just as a matter through you, Mr. Chairman, to Mr. Brock, I'm just wondering about demographics in 1895 when the Brophy decision came down. The Manitoba Act speaks primarily of Catholics in Protestant schools, and I would assume that the population in those days was divided into those two categories. Would you have any idea about the change in demographics now in 1987?

MR. A. MacINNES: No, I don't, in specific terms that I would want to try to relate to you. But I did say and can say there was a fairly substantial swing between 1870 and 1890, in fact. In 1870, it was about equal and that is why, according to Brophy and I think according to history and historical documents, both the Catholics and the non-Catholics were concerned as to who might ultimately become the majority and so they both, in effect, wanted to be sure that their rights were protected because the Catholics didn't know that, five years from now, they were going to be the majority or the minority and neither did the Protestants. So 22 was put into the act as it is.

Between 1870 and 1890, there was an influx of Protestants and the population became more largely Protestant than Catholic and, as a result, legislation between 1870 and 1890 changed the formula. That is, come 1881 when the population was no longer equal, the Catholics weren't getting 50 percent anymore. The Protestants were getting more than 50 percent, the Catholics were getting less, but it became on a proportional or per capita basis. So still at least, if I was a Catholic parent who wanted my child to go to a Catholic school, the taxes that I paid did not go to support another system of education which I did not take part in. I did receive - that is the school that my child went to did receive state funding. All of that was removed in 1890.

MR. M. DOLIN: Just a final question on that, dealing prior to 1895 and the decision of Catholic and non-Catholic being the two demographic groups that are identified in the legislation, with the waves of immigration post-World War I and post-World War II who now have other than Catholic and Protestant, the non-Catholic population not only being Protestant but being others, what I'm wondering is how does this fit into the current scenario.

MR. A. MacINNES: We're getting perhaps a little bit off the subject, but I'm happy to do that.

Our group in fact, in conjunction originally with the Manitoba Federation of Independent Schools, has been attempting to obtain state support for some years. Indeed your colleagues, those of whom we have had dealings with at least, would I'm sure confirm this. What has recently happened is the Catholics, by sheer historical happenstance, happened to be here in 1870, and so they got their name written into the Constitution. The Jews didn't and the Mennonites didn't because they weren't here.

We are now attempting to obtain government support, because we have a constitutional basis for asking for it that the Jews and the Mennonites and the Calvinists don't have. But we have said to the government, the Provincial Government and indeed to the Federal Government with whom we've been dealing, we are hopeful that, if we are granted the relief we want, the government will do the same for the other independent schools who are not Catholic. They happen, unfortunately, not to be written into the Constitution, but we would expect - we have no basis to expect, but we would hope - that if the government saw fit to give us support, it would do likewise for the other independent schools.

MR. CHAIRMAN: Mr. Penner.

HON. R. PENNER: The last exchange indicates a difficulty with the process. With respect, Mr. Chairperson, we have a bill of 9,000 pages, 344 acts. If, during the course of a revision or the course of re-enactment . . .

A MEMBER: On a point of order, Mr. Chairman, is this a question?

HON. R. PENNER: Yes, it is a question, and I'll come to my question. That's just the premise.

MR. CHAIRMAN: Just like question period.

A MEMBER: Where is Madam Speaker when you need her?

HON. R. PENNER: If we were to get into substantive discussion of any particular act, then the re-enactment or revision from time to time might prove impossible.

My question flowing from that relates to the point that was made that if, in fact, we don't do what is requested here, that is first of all buy the argument that is made, which I don't; then, having done that, presumably at committee stage, amend the bill to re-enact the situation in 1871, that therefore at least the re-enactment of Bill 4 insofar as it deals with The Public Schools Act and The Education Administration Act will be invalid. Why would they be invalid when the Supreme Court decision seemed to say that, if we don't re-enact them, they will be invalid? It seems to me that the re-enactment in the two languages is what is required to make them valid. The comparison that is sought between a bill that is repealing another bill and that which went before is the type of thing that one would do when you're looking at The Public Schools Act amending the bill of 1983, not when you're doing a revision or a re-enactment. I don't follow the argument, other than using this as a forum to make a particular point on a particular bill.

MR. A. MacINNES: Well, the purpose of the submission is not to tell the Legislature what it can or can't do, it will do what it wants to do. And I do agree with your comment that the Supreme Court's direction is that this legislation has to be re-enacted. If it is re-enacted, it will be valid. I don't quarrel with that.

What I'm saying though is that I would hope when it is introduced, members of this committee and indeed the House will appreciate as I submit is the case that this is not simply a case of saying. That act used to be in English only, here it is again in French and English now; let's pass it; let's get it out of the way. There is more to it in our submission than that and it requires because there is chasm between 1890 and now, I submit that it requires, as it would with the introduction of any new piece of legislation, if MLA's are doing their job properly, a comparison between what's this new bill got in it as compared to what the last old one had in it. That's not a comparison of a 1975 bill and a 1983 bill; it's a comparison of what existed in 1889 as compared to what existed in 1983. I would hope that comparison will be made and that there will then be debate on that issue - that's No. 1.

No 2, I submit that while the enacting of that legislation in French and English will undoubtedly bring you within the direction or directive of the Supreme Court of Canada that, because of the state of affairs, that is, that since 1890 there has been no valid legislation in Manitoba having to do with public schools, at least insofar as its removal of these substantive rights - in our submission, to simply translate the 1983 Act and re-introduce it will introduce legislation that will be subject to attack on the grounds that it's ultra vires.

MR. CHAIRMAN: Mr. Mercier.

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

By way of preamble, Mr. Chairman, to a question, I find it somewhat ironic that the Member for Kildonan would make the remarks that he's made today as part of his questions expressing concern about the demographics as they relate to section 22 when he and others will recall our arguments made about the demographics of Manitoba as he related to section 23.

Mr. Chairman, I must admit to having somewhat the same concern as the Attorney-General with respect to your argument. Perhaps, I might pose a question in another way to confirm my understanding of your position. As I understand your position, when you refer to the invalidity of the Statutes that we are re-enacting, what you are really saying is that they are invalid to the extent that they do not comply with section 23 of The Manitoba Act which is part of our Constitution and as was interpreted in the Brophy case and in the remedial order. Would that be correct?

MR. A. MacINNES: Yes. Right now they're invalid because they're in one language only but, even if they are translated into French and re-introduced and re-enacted, The Public Schools Act will then not comply with section 22 of The Manitoba Act. Unless it does, then in our view, it will be in breach of section 22(1) and it will therefore be ultra vires.

MR. CHAIRMAN: Any further questions from Mr. MacInnes? Thank you for your presentation Mr. MacInnes.

MR. A. MacINNES: Thank you very much.

MR. CHAIRMAN: The next person I have wishing to make a presentation on Bill No. 4, is Ms. Linda Simpson. Are you present Ms. Simpson?

MS. L. SIMPSON: Good evening, Ladies and Gentlemen.

My name is Linda Simpson. I am an employee for Sooter Studios photo lab. In speaking under Bill 4 this evening, this has given me and other employees, which I am representing at Sooters, a chance to voice opinions regarding the laws under The Manitoba Labour Relations Act.

I would like to go back approximately five months ago when I read a notice on the lunchroom bulletin board at work. This notice briefly read that the United Food and Commercial Workers Union, Local 3, had made a certification bid to the Labour Board. It also stated that if there were any opposed named in the bargaining unit, they could oppose, in writing, to the Manitoba Labour Board by a certain date.

We did this by showing approximately 70 percent of the workers named in the bargaining unit who were opposed to this certification bid. We did this off company premises and off company time. During this time, unfair labour practice charges were laid by both sides. We proceeded to present our petition of opposition . . .

HON. R. PENNER: On a point of order.

MR. CHAIRMAN: Mr. Penner, on a point of order.

HON. R. PENNER: I think there may be a misunderstanding here. The Labour Relations Act, as such, is not before this committee. The Labour Relations Act will be coming before another committee before the end of the Session at which time this or any other submission might be more relevant. What is before the committee is Bill 4, The Re-enacted Statutes of Manitoba, where all or 85 percent of the statutes, 344 of them, are being re-enacted in two languages, and that's what is before this committee. I think that this presentation is therefore out of order.

MR. CHAIRMAN: The Member for Brandon West.

MR. J. McCRAE: On the same point of order, Mr. Chairman, the Attorney-General sat here quietly and listened to Mr. MacInnes make comments about The Public Schools Act and The Education Administration Act as did the Chair, and I see no reason why the Attorney-General should be raising this point of order at this time, when we consider that The Manitoba Labour Relations Act is another act which is part of Bill 4, The Re-enactment of Statutes Act. As Mr. MacInnes said in his statement, to which the Chair listened intently as did the Attorney-General and everyone else in this room, a re-enactment is intended to provide for the same in-depth examination by the Legislature as other bills presented for the first time.

The opportunity is available to eradicate from these statutes, provisions that are inappropriate and to add necessary provisions that have been omitted. So that Your Honour having sat and listened to Mr. MacInnes's presentation on a couple of other statutes contained within Bill 4, the Attorney-General cannot now at this late stage make the argument that Ms. Simpson should be denied her democratic right to be heard before this committee.

HON. R. PENNER: I not at all want to be put in the position of denying Ms. Simpson her democratic right to be heard before the committee . . .

A MEMBER: Carry on, carry on.

HON. R. PENNER: I haven't finished, I'm on the point of order, and I don't particularly care much to be heckled or harangued. Do me the courtesy of listening to my point, as I did you the courtesy of listening to yours.

MR. J. McCRAE: You might do the same courtesy to Ms. Simpson.

HON. R. PENNER: Mr. Chairperson, I did not raise a point of order with respect to Mr. MacInnes because it seemed quite clear that he was addressing a constitutional question which I thought touched on the validity of the whole re-enactment bill, and that's why I asked them. If you would have listened, my question as to whether or not he was raising the issue that perhaps in validity of The Education Act touched the validity or invalidity of the bill as a whole. That's why I was listening to that and didn't raise it. It's not out of excessive courtesy to Mr. MacInnes or a discourtesy to Ms. Simpson. However, if the Member for Brandon West is anxious to hear the submission, rather than read it, so be it. I withdraw the point of order.

MR. CHAIRMAN: What are you speaking on?

HON. R. PENNER: No, I've withdrawn the point of order.

MR. CHAIRMAN: Well, he's withdrawn the point of order, so there's no point of order before us, and I'm going to back to Ms. Simpson.

Ms. Simpson, would you please continue?

MR. J. McCRAE: You wonder why it was raised in the first place, Mr. Chairman?

HON. R. PENNER: It was a valid point of order.

MR. J. McCRAE: Then why withdraw it?

A MEMBER: Harassment on the government side.

HON. R. PENNER: Well, do you want to vote on it?

MR. CHAIRMAN: Would the Member for Brandon West please come to order?

HON. R. PENNER: Very well, I don't withdraw it. I make the same point of order. Let's have a vote on it.

MR. J. McCRAE: Mr. Chairman, on the same point of order . . .

HON. R. PENNER: No, if that's what the Member for Brandon West wants, we'll oblige.

MR. J. McCRAE: If this Attorney-General, Mr. Chairman, wants to employ this kind of method when people come before this committee to be heard, then let him stand on the record and say so. He seems to be doing that now, so let me make my point, Mr. Chairman. That the Supreme Court decision did not just say that all we had to do was translate all the statutes that we see listed in Bill 4. It said they had to be repealed and re-enacted, so this is a legitimate part of the process.

MR. M. DOLIN: On the point of order, Mr. Chairman. Very simply, I think the person is here, she's willing to present a brief. I think what the Attorney-General is suggesting to Ms. Simpson, is this the most appropriate time to present a brief from re-enactment or should it be in the Labour Bill. I would be perfectly happy to go with the ruling of the Chair, since Ms. Simpson is here, she does want to present now. I think, for her own benefit, is this the most appropriate time to do that. If she wishes to do it now and she feels it's most appropriate, I think a decision should be between her and the Chair. I have no problem listening to it now, if she feels it's the most appropriate place to do that.

HON. R. PENNER: I am persuaded by the sweet reasonableness of the Member for Kildonan and I do withdraw the point of order.

MR. CHAIRMAN: Hear, hear. Ms. Simpson, address the Chair.

MS. L. SIMPSON: It also stated that if there were any opposed named in the bargaining unit, they could oppose, in writing, to the Manitoba Labour Board by a certain date. We did this by showing approximately 70 percent of the workers named in the bargaining unit who were opposed to this certification bid. We did this off company premises and off company time. During this time, unfair labour practice charges were laid by both sides.

We proceeded to present our petition of opposition at the hearing and found that it was basically scrutinized with the hope of finding out we did something illegal in the eyes of the Labour Board. We had a perfectly legal petition showing the majority of workers support and it was practically laughed out of the hearing.

From a legal source, we learned that the cards were already stacked in favour of the union before we even attempted the petition. There seems to be a loophole in our legal system in that a majority of opposing employees are encouraged to voice their opinion, in legal form, and then have it filed away without any importance whatsoever in a hearing. This case was dragged out for several months.

When I testified with an unfair labour practice charge I had filed against the union, I found the Labour Board seemed rather apathetic regarding my testimony. I had been told that I could be fired if I didn't sign a union card, which I did, though I regret it. I didn't realize at the time that it was unlawful to put such pressure on a person for not signing a card. Nobody was protecting my rights as an employee. The entire time, I felt the union lawyer was laughing and criticizing me to the apparent delight of the Labour Board members. Is this what the Labour Board is paid for? Why then did we, the opposing employees, bring our case to the Labour Board and not have been given a chance to a fair hearing?

Another problem which disturbs the opposing employees is where are we to turn to for financial assistance in regard to lawyers' fees and time spent away from work? At the time of our hearing, we did manage to collect a few thousand dollars from concerned opposing employees who felt the crunch of the union bid as I did.

Meanwhile, the employees supporting the union received all the financial support and backing of the UFCW. They were even paid by the union for the time taken off work. We most certainly were not compensated for the time we had spent. Does this appear fair? Where do we turn to for help? Certainly not our employer, that's not legal. Where can we go for a fair hearing if the Labour Board, so it would seem, does whatever the union tells them to do? Is this the type of government we have in Manitoba, where the rights of the working class have no say in what is to become of them? Who's who in our bureaucratic rat race? Where do you turn to when the government seems to be in cahoots with the union and Labour Board?

What about the Springhill Farm Slaughtering Plant, with its obvious opposition to the union, which was given certification on a silver platter by the Manitoba Labour Board, without a vote! Is this democratic? The workers in the company simply refuse to deal with a union they do not want. Our Labour Minister simply refused to step in when asked for help. It's a sad day when such unfair practices are going on in our labour relations and our Minister of Labour refuses to step in. Now the workers at Springhill have to pay union dues and give up their rights to deal with the union of their choice, or seek employment where the union and government cannot take away their rights.

The union say they are looking out for the best interests of Springhill. If so, why didn't they just make an open proposal, instead of threatening and coercing and let them, like us, have a secret ballot vote to let the workers decide for themselves. Even so, if there was a vote, why can't those who are opposed opt out? Then perhaps, eveyone's rights could be looked after. Maybe the opposed workers in this province, in the future, will look for employment in other provinces where the government, union or Labour Board cannot interfere on their right as individuals.

Currently, the UFCW Union has been certified at Sooter Studios by the Labour Board due to an agreement made by the union and our employer. The union posted a notice on our lunchroom bulletin board informing the employees that there will be a meeting. The notice invited "All Sooter Employees;" in other words, opposed or not. I went to this meeting to find out exactly what the union intended on doing for us, and fell victim to their insults and accusations. Nothing was accomplished at this meeting, except to cause more bitterness between fellow employees.

The union chairman, in my opinion, was rude, sarcastic and attempted to herd us like sheep in for the slaughter, which they do quite well! When questions such as "Where do our union dues go?" we got a reply of "To administration fees." Very nice, but I already pay taxes. They made promises of big raises which, in one case, an assistant supervisor was given a letter by a union chairman stating she was guaranteed a raise and I thought the owner of Sooter Studios was my employer, not the UFCW.

Currently, I have begun an employee association in an effort to ease some of the pain and anger of the opposing employees. Through legal advice, I was told we were not allowed to talk about the association at our workplace including the employee lunchroom during breaks. And yet, the pro-union employees can say and do whatever they want, including continued intimidation, coercion and threats that they have become famous for doing. They have their backs covered by the union and we have our mouths covered by the law.

I rented a hotel room in order to hold a meeting in which employees could discuss the formation of a Sooter Employee Association. No sooner had this been posted in the lunchroom, when a union representative stormed into my employer's office demanding that the notice be taken down - under a threat of an unfair labour practice charge, once again. This notice contained nothing discriminating, nor did it undermine the union in any way, yet they have the gall to demand it removed. I don't believe they would threaten such an action unless they believed they had the backing of the labour laws.

And, again, who's paying for our association? We have been given strict rules as to who can and cannot contribute. It's coming from our pockets, again, but at

least we have a choice on whether we want to contribute or not, unlike the union dues.

In conclusion, I would like to say that I, as well as others, believe the labour laws are less accommodating of the working class than they should be. I believe the time has come for us to scrutinize our labour laws. We must make drastic and appropriate changes to allow workers the freedom of speech, association, and opinion.

Thank you.

MR. CHAIRMAN: Thank you, Ms. Simpson. Any questions for Ms. Simpson?

The Member for Brandon West, Mr. McCrae.

MR. J. McCRAE: Mr. Chairman, I just have one question. Whatever happened to the unfair labour practice complaint you personally filed against the union at the Sooter plant?

MS. L. SIMPSON: All the unfairs were dropped in an agreement made by our employer and the UFCW.

MR. J. McCRAE: Did you at any time consent to having the charge that you filed dropped?

MS. L. SIMPSON: No, I didn't.

MR. J. McCRAE: Can you tell us a little bit about the atmosphere among the workers at the plant today?

MS. L. SIMPSON: Actually, it's very divided. There's a lot of bitterness. A lot of people are frightened. They don't know exactly whether or not they should join the union against their will in order to still be friends with the ones who are union members. Others just do not want to get involved either way.

MR. J. McCRAE: Thank you.

MR. CHAIRMAN: Mr. Orchard.

MR. D. ORCHARD: Ms. Simpson, you mention in your brief that approximately 70 percent of the workers were opposed to the certification bid at the time. Is that opposition still roughly 70 percent?

MS. L. SIMPSON: I believe it is. I don't know for a fact that it is because some people who were opposed are afraid now to come forth and let us know that, because they do believe now that the union is running the plant, rather than our employer.

MR. D. ORCHARD: Ms. Simpson, on page 2, you indicated that when you appeared before the Labour Board, the union was represented by their lawyer. Were you able to retain legal counsel or did you appear yourselves as workers?

MS. L. SIMPSON: We did have legal counsel but he - I'm not quite sure how they put it but he had no legal bearing as far as the Labour Board was concerned - he had no status. I'm not quite sure how that is. He could ask some questions but it would really bear no hearing.

MR. CHAIRMAN: If I could, I would like to just caution the members that when we have people before us here, the idea of asking questions and the basis for asking questions is for clarification of points raised during their presentation. I would not like it to get into a dialogue or into a debate with members who volunteer to come forward before the committee.

Mr. Orchard.

MR. D. ORCHARD: That's exactly what I'm trying to do. I'm trying to determine, because the point was made in the brief that the union with its funding provided, Mr. Chairman, pay to pro-union workers to go to the Labour Board and had a lawyer present paid for by the union. The point made in the brief by Ms. Simpson was that they managed to . . .

MS. L. SIMPSON: Raise our own money.

MR. D. ORCHARD: . . . out of their own pockets raise money to present a 70 percent due against the certification efforts of the UFCW. I was attempting to find out whether they retained legal counsel at that hearing, and presumably left those questions to the Labour Minister as to why legal counsel so retained was not able to fully represent them.

MR. CHAIRMAN: Is that a part germane to the provisions of the act itself, or is that something in process though, is my question?

MR. D. ORCHARD: Mr. Chairman, I'm certain I don't know, because I don't know how much the act governs what happens at the Labour Board. That is something that we'll have to take up with the Labour Minister, and I don't intend to take it up with the witness night.

MR. CHAIRMAN: I'll let the member proceed but just recognizing the limitations that we have with the procedures of the standing committees.

MR. D. ORCHARD: One more question, Mr. Chairman, on the last page, Ms. Simpson, you indicate that, when you put up a notice indicating that you had rented a room to hold a meeting with employees, that notice was not even allowed in the building.

MS. L. SIMPSON: That's right. They had threatened an unfair labour practice charge if it were not to be removed.

MR. D. ORCHARD: A very interesting set of laws we have in this province for the protection of the workers.

Thank you very much for your statement.

MR. CHAIRMAN: Thank you very much for your presentation, Ms. Simpson.

MS. L. SIMPSON: Thank you.

MR. CHAIRMAN: Next, I have a Mr. Ed Lepieszo. Mr. Lepieszo, come forward, please.

MR. E. LEPIESZO: Good evening committee members. You will see on your sheet that I am speaking as a

private citizen, so I hope you'll forgive me if I don't know all your points of order as I proceed with my presentation.

My name is Ed Lepieszo and I'd like to thank you for allowing me the opportunity to speak this evening on Bill 4. I do not, however, wish to address the actual matter of translating our laws from English to both official languages, but instead wish to voice my concerns regarding the validity and hypocrisy of some of these laws, particularly certain sections of The Labour Relations Act.

Over the past several months, many of my co-workers and I have received a first-hand lesson in this government's system of labour management courtesy of the Manitoba Labour Board, a system that, in my opinion, squashes any attempt of freedom of speech by not only employers and management but also that of those who do not believe in the philosophy of the system. That philosophy is clearly laid out in the preamble of the Labour Relations Act which states: "It is in the public interest of the Province of Manitoba to further harmonious relations between employers and employees by encouraging the practice and procedure of collective bargaining between employers and unions as the freely designated representatives of employees."

The question is, I suppose, at what point does a government's "encouragement" become an enforceable policy? I believe this occurs when such a program effectively silences its critics. It is my fear that recent and proposed revisions to The Manitoba Labour Act have brought us to this point.

Our particular case is an interesting one because I feel it illustrates the kind of chaos one may go through opposing a certification bid by a union. From the management level right down to the dissenting employees, we took part in a fiasco, in my opinion, where the results seem to have been ordained at the start by the laws of a labour act clearly on the union side.

We Canadians, so I'm told, enjoy many freedoms such as the freedom of speech and the freedom of association. Yet under the Manitoba Labour Relations Act, a large and important segment of the population may have these rights suspended due to the belief that under certain circumstances these basic rights may be used to interfere with the formation of a union. Unfortunately this has now been taken to such an extreme as to render the idea of fairness in employer-employee bargaining arrangements a joke.

Let me give you an example as I briefly relate the story of how the United Food and Commercial Workers union became the freely designated bargaining agent for some 120 Sooter lab employees.

I really don't know how long the union drive had been going on before the certification bid had been posted. What I do know is that any dissenting employees included in the bargaining unit had but five days to organize a petition against the certification of the UFCW. Five days when, for all we knew, the UFCW may have been organizing for five months. It is important to note that the membership drive by the UFCW was very selective in who was approached and this brings me to my first criticism of the act.

When a government, at least in this country, approaches the end of its mandate, it calls an election. From that point on all parties are free to woo the electorate for votes as long as they don't break any laws in the process. By law the election must be announced before official campaigning takes place. Every citizen who is eligible to vote may know about the coming election and is free to make his or her choice once polling day rolls around and all sides have been heard. This is the cornerstone of democracy so often lauded by politicians' losing speeches. It is the political right above all others, so revered wars have been fought for it. But as any good union organizer will tell you, when it comes to The Labour Relations Act, there are ways to suspend the right of the ballot.

During the UFCW membership drive at Sooters, many employees who would become part of the bargaining unit were never even approached. They were never given the opportunity to say yes or no to signing a union card. And when, after learning of the posting of the certification bid, they sought legal counsel and organized a petition of 70 names opposing certification, it was ruled that in the opinion of the Labour Board this petition was fit only to be filed, not heard or considered in the time alloted. What the law gives the law can take away.

I wonder what kind of indignation the NDP would feel if seven years ago the Progressive Conservatives passed a law allowing them to inform only businessmen and big, fat oil company executives about the upcoming election. Those opposed to the PC's, of course, would be told the result after the sympathetic 55 percent had already re-elected the new Conservative government as the freely designated representatives of the electorate.

Sooter lab employees form a real melting pot. Comprised of people from the Philippines, India, Uganda, Iran, Vietnam, and many communist bloc countries. To many of these people Canada was a place of freedom from oppression where the thoughts and beliefs of each individual counted. I say this because many of these people were left out of the organizing drive due to the fact that it was known they would never sign cards because they disagreed with the union philosophy. It may not seem like much but the sense of betrayal many of these people felt was very real. Yet the power given to the Labour Board which allows the certification of a union due to an unfair labour practice is perhaps even a larger injustice.

A lawyer once told me that almost all certification bids are accompanied by charges of unfair labour practices whether or not any are committed. A union may not get a majority of workers to sign membership cards but if a union says the employer manipulated the employees through an unfair labour practice, the labour board could impose certification and it doesn't take much, under The Labour Relations Act, to rile the Labour Board.

Employer intimidation is a particularly contentious item. This can take many forms yet all have one thing in common: It is the Labour Board that decides if a particular instant may be deemed intimidation. In my opinion, this is one of the most far-reaching intrusions of freedom of speech in North America. It may be partly workable, though in my opinion not at all desirable, if applied equally to both management and labour. But recent incidents tend to show the interpretation of this policy to be quite one-sided.

Take the Jennifer Campbell incident, for example. Her questioning regarding the soundness of a strike

against Westfair only solicited a $3 million unfair labour practice by the union! Of course, it is ludicrous to think the Manitoba Food and Commercial Workers Union really expected to get that type of money from Ms. Campbell, so why do it?

Forgive me if I belabour the obvious, but they did it to send a message to those who dare question the wisdom of their masters: Don't mess with us; the Labour Board won't give us $3 million, but next time we may only go for a couple of thousand.

Is this, in the eyes of the Manitoba Labour Board, intimidation? Or is the President of Sooter's, John Kresz, intimidating employees by stating, after receiving complaints by certain employees being harassed by union supporters, that he would "use whatever legal means to protect anyone in his plant who is being threatened or coerced." You tell me which form of intimidation constitutes the making of an unfair labour practice?

I'll tell you what advice the lawyers gave Mr. Kresz. Negotiate and bring the union in; unions have been certified with less.

It is my opinion that the Manitoba Labour Board has too much power. Though all unfair labour practices should be heard, it should be made law that unless all members of a possible bargaining unit are approached by those seeking to form a union, a secret ballot vote must be ordered so that all may have the opportunity to choose union or no union. Further, I believe employers should have the same right to present their side to the employees before such a vote takes place. Freedom to decide and freedom of speech are two sides of the same coin. To censure one is to tarnish the other.

Where does this government stand on all this? A meeting I and representatives from Springhill Farms had with the Minister of Labour made it very clear the government would not investigate our concerns. Yet it is the current Minister's belief, and he has stated so publicly, most recently on the CJOB Action Line, that history has shown employees tend to be more effective when they are united rather than on their own. True, this may be the case, but this answer was given in response to a caller's question regarding her specific circumstance. The lady, a SuperValu employee, wanted to know what repercussions she might expect if she crossed the picket line.

The Honourable Minister did not, in my opinion, steer neutral in his answer, as he did regarding the Springhill Farms and Sooter Foto labour disputes, but instead warned her that she could face hassling by her co-workers, and it was best she talked it over with them, adding the sentiment about united workers that I have already mentioned. More encouragement, I suppose, but this seemingly innocuous answer worried me. What about this woman's rights? Does she not have the right to work? Further, does the law not protect any and all citizens from harassment and intimidation by any individual or group? It is significant to note that nowhere in The Labour Relations Act could I find mention of any form of protection for such an individual to freely exercise such a right. Though unions are protected on all fronts from any harrassment one must look to the Criminal Code for security when crossing a picket line.

I am also troubled by recent proposed legislation by Mr. Mackling which has proved to be quite controversial. I am speaking of course about final offer selection, also known as Bill 61 and the "Bail out Birnie Bill". I would like to quote from an editorial which appeared in the Free Press, June 9, 1987:

> "With its high taxes and with what some businessmen regard as a hostile atmosphere, Manitoba is getting a reputation as a bad place to invest. The reputation is not entirely deserved. Blatantly one-sided legislation like Mr. Mackling's latest proposal, however, is guaranteed to reinforce that reputation."

Then again I suppose any legislation CUPE finds distasteful can't be all bad.

We are here tonight because a minority felt that the rights of its members have been violated due to a parking ticket. Manitobans must now pay millions of dollars to right this injustice. It is my firm belief that the rights of tens of thousands of Manitobans are being violated due to the unfair nature of The Manitoba Labour Relations Act. Unless there is a radical change in the direction of labour legislation of this province, I suspect there will be more rewriting of the laws when some time in the near future the Supreme Court hands down it's next landmark decision returning rights to those who have under this NDP Government been discriminated against most of all.

Thank you very much.

MR. CHAIRMAN: Thank you. Any questions for Mr. Liepieszo?

Mr. Penner.

HON. R. PENNER: A couple of questions for clarification.

In both reading your submission and listening to it, it wasn't clear to me whether you were or are an employee of Sooter's, or were or are an employee of Springhill Farms or both?

MR. E. LEPIESZO: I am a supervisor in the Sooter plant.

HON. R. PENNER: Oh, you're a supervisor at Sooter.

MR. E. LEPIESZO: May I also clarify that the supervisory position was ruled by the Labour Board to be an employee and only through negotiations between the company and the union were supervisors removed from the bargaining unit.

HON. R. PENNER: I'm not questioning that, I just wanted to find out because you appeared to have some inside knowledge with respect to Sooter's but it hadn't been stated to that degree of clarity in the brief that you were in fact an employee of Sooter's.

MR. CHAIRMAN: Are there any further questions?

Mr. McCrae.

MR. J. McCRAE: Mr. Lepieszo as a supervisor at Sooter's could you describe the Labour relations or industrial relations' regime between the employees and the employer previously and now.

MR. CHAIRMAN: Mr. McCrae, that does not have anything to do either with this bill or even the previous

bill. You're asking the public delegate to express an opinion of what he feels about industrial relations in a particular location. It is not dealing with elements of this or other legislation, and I would caution the member and ask him to ask questions for clarification of the brief presented in relation to the act before us.

MR. J. McCRAE: Mr. Chairman, is it something about each question that I ask that causes you to want to get involved in the discussion.

Mr. Chairman, the question . . .

MR. CHAIRMAN: I don't know that I've said anything in the questions that the member has asked previously. It's certainly not your voice.

MR. J. McCRAE: I seem to have the same trouble in the House quite often, not being able to get my questions out. I don't know why that is, but the question, Mr. Chairman . . .

MR. CHAIRMAN: One of the reasons is they're usually out of order, but proceed.

MR. J. McCRAE: The question flows from the presentation given to us by the presenter here this evening who dealt in his presentation at length with the situation in his work place and I'm asking him - he's given us a story about how this whole thing unfolded - to tell us what the comparison is of relations between the employer and the employees before the certification. I think flows directly from the presentation given to us and you told us a little while ago that our questions should be questions relating to the presentations, and that's what my question is, Mr. Chairman. Now, would you allow Mr. Lepieszo to answer the question please?

MR. CHAIRMAN: It's stretching a little bit the basis on which questions are asked, but I will be very lenient and certainly allow Mr. Lepieszo to respond to the member's comment and question.

MR. E. LEPIESZO: Thank you, I'll try and answer that to what I know about the act as well. The morale of the plant is a lot lower now. No one is completely happy I think in any workplace, you just have to go to the post office to see that. So, you're always going to find dissenters, but generally the policy that ran Sooter's was a policy of meritocracy. You got ahead by showing effort, vigilance, and doing your work well. As I understand it, The Employment Standards Act sets a minimum to protect all employees from unfair manipulation by an employee.

From that point, I believe that conditions were generally better because the opportunity for advancement was there solely on your abilities and on your merit. I think that relations have definitely soured.

MR. J. McCRAE: Mr. Lepieszo, on the fifth page of your brief, you referred to the phrase, I take it was this in a letter, or how did this phrase come from the President of Sooters, Mr. Kresz, "that he would 'use whatever LEGAL means to protect ANYONE in his plant that has been threatened or coerced'."

MR. E. LEPIESZO: He called a meeting in the lunchroom for all employees because apparently many complaints had been received by management about this and he wanted to clear the air.

MR. J. McCRAE: Was it as a result of that meeting that an unfair labour practice was filed against Mr. Kresz for making these statements to his employees; that he would use legal means, he might, to protect anyone in his plant from being threatened or coerced?

MR. E. LEPIESZO: Yes.

MR. J. McCRAE: Thank you.

MR. CHAIRMAN: Thank you very much for your presentation, Mr. Lepieszo.

MR. E. LEPIESZO: Thank you very much.

BILL NO. 21 - THE FAMILY LAW AMENDMENT ACT

MR. CHAIRMAN: Next we'll move to Bill 21.

Mr. Norm Rosenbaum please.

Mr. Rosenbaum, welcome.

MR. N. ROSENBAUM: My name is Norm Rosenbaum and I'm a member of the Manitoba Association for Rights and Liberties. We wish to comment upon section 21 of proposed Bill 21.

The Manitoba Association for Rights and Liberties is a nonprofit organization dedicated to the enhancement and protection of human rights and civil liberties of all Manitobans. We have studied and discussed the Act from the point of view of civil liberties and human rights. MARL brings the following concerns and recommendations to your attention.

MARL wishes to comment on section 23.2, subsection (1) of The Family Law Amendment Act, Bill 21, which provides that a person who fails to comply with an interim order or other order of Court is guilty of an offence and liable on summary conviction to a fine of not more than $500 or imprisonment for not more than six months or to both.

Now, on the one hand, MARL recognizes that there should be set penalties for contempt of court orders under the act, for breaches of court orders. To that extent, MARL commends the legislation, however MARL is concerned that no form of defence is set out in the proposed section. Only by contrast, sections 250.3 and 250.4 of the Criminal Code of Canada, for example, deals with explicit defences to charges by way of abduction of children by parents in breach of custody orders.

Thus, for example, it would appear that where under the Criminal Code the defendant has secreted or otherwise taken a child from a custodial parent, for the protection of life and limb of the child, that a defence exists.

While it appears that in practice judges enforcing penalties under the provincial legislation would likely take into account the facts of a breach of a court order in consideration of mitigation of a sentence; so, for example, where a noncustodial parent explains that

one of the reasons that they acted in such a way was to protect a child, on the other hand, there doesn't appear to be any special defence to a charge of breach of court order, regardless of the circumstances.

Now on the one hand, there would appear to be some form of defence in necessity, in the event that there is a breach of a custodial order, but MARL is concerned that there should be an express defence set out under the act.

MARL therefore is concerned that without some form of expressed defence set out in the act, the section proposed may become an intimidating device. So, for example, one party may say to the other, regardless of the circumstances, that regardless of what they do, they may be subject to a fine or imprisonment. It's true that ordinarily parties should attend to court for variation of court orders; however, there maybe situations in which, through the emergency of the moment, that a party may have a valid defence that in fact they are acting to protect, for example, a child in the event of danger.

That would constitute the remarks of MARL upon the legislation.

MR. CHAIRMAN: Thank you.

Are there any questions for Mr. Rosenbaum?

Mr. Penner.

HON. R. PENNER: Mr. Rosenbaum, literally hundreds of the statutes of Manitoba which set out penalties for violations of the statutes or for failure to obey an order in some instances, except for special defences which may apply in special circumstances, and none of them re-enact or enact the basic common-law defences, which nevertheless have always been held to be applicable to them, the Crown has to prove the act, the Crown has to prove the requisite mental element, all of that.

Why is MARL suggesting that an exception be made here to the general rule, and that is, not only are specific defences which are set forth in a particular statute applicable, but the common-law defences are applicable; so, too, with the Criminal Code? This is similar to the contempt provision of the Criminal Code. The Criminal Code doesn't set out defences.

MR. N. ROSENBAUM: Yes, I certainly accept Your Honour's remarks. One point, however, this is provincial legislation and, for example, defences of lack of mens rea, lack of intent would not appear to apply. We had some concern through the lack of a specified defence in view of the similar legislation under the code under section 250.3, for example, specifically an act in the defence. Again presumably, there would be a defence of necessity, a common-law defence. However, again the pleas certainly does leave the matter to the court.

I have some concern that there may be situations in which the facts of the matter may be somewhat ambiguous in regard to the willfulness of a breach of the court order. So, for example, there may not be a willful breach of the court order but this would be a strict liability offence, apparently set up.

HON. R. PENNER: My understanding is that what we were doing here is re-enacting what is already within the law but it's just increasing the penalty to comply with the general penalties available in summary conviction matters. Hasn't it been the case? I don't know, Mr. Rosenbaum, whether you're involved in maintenance enforcements proceedings, that where someone is charged for failure to pay maintenance pursuant to an order, they're entitled to advance defences.

MR. N. ROSENBAUM: Yes. In fact, we favour some form of penalty to be set out. I think one of the difficulties in the Family Law area is that frequently parties will be in breach of court orders. Certainly, in the event of a breach, we don't wish to have a situation of a slap on the wrist by the court. By that token, we commend the setting out of express penalties in matters of contempt of the court orders so that, for example, if a non-custodial parent should breach a custodial order, refuse to return a child after an access visit, and that person is hauled up before the court, it's not simply a matter of the judge saying, "You won't do that again," and that person says, "Yes, I'm sorry."

So we accept that there should be forms of express penalty. We had some concern wherein the equivalent section of the Criminal Code appears to set up an express defence and they simply don't leave it to common-law defences.

MR. M. DOLIN: Not being a lawyer, I'm wondering if I could ask Mr. Rosenbaum for some clarification.

Right now here, in 23(2), which is at issue, it says, "A person who fails to comply with a provision of this Act or with a provision of the order or interim order . . . "- one would assume that somebody has to be shown to have failed to comply and that they would have a right to present some defence, saying "No, I have not failed to comply," or give some reason, which is my first point I'd like some information.

The second one is the penalties and maximum penalties. It says "not more than $500. or to imprisonment for not more than six months or to both," which would seem to allow some discretion if someone says, "Yes, I did do it but here's the reasons," for the judge to say okay, you know "not more than" could be none.

Also, where it says "A person who fails to comply" would strike me as meaning you are being told you failed to comply and you have, under common-law, I presume, some right to say, "Well, I did try to comply or I did comply." I'm not clear as to what you're saying.

MR. CHAIRMAN: Mr. Dolin, I would urge members not to enter the fray of debate with delegates as well.

Mr. Rosenbaum.

MR. M. DOLIN: Excuse me, Mr. Chairman, but I'm not entering the debate. I would like some clarification.

Mr. Rosenbaum was saying there should be something specific stated here, and from the way I read it, it would seem that what he's presenting in brief is already met in the section. I'm asking him to clarify for me because I don't understand why it is not met in the section as detailed. Perhaps Mr. Rosenbaum could say. Was there something I'm missing?

MR. N. ROSENBAUM: Mr. Chairman, I certainly understand that the question is by way of clarification.

My understanding and our understanding is that currently, regarding breaches of court orders, the common-law remedies of contempt exist that would involve wilful breach of court orders, and that would, it seems, indicate some element of intent and a defence of a lack of wilfulness in the breach of an order. Therefore, currently, there appears to be a defence.

Therefore the contemnor, the person in contempt, says that they weren't served with the order or they weren't personally handed the order. Even if perhaps the order was thrown at that person's feet, they say, "Well, I didn't know anything about this order and it's not my fault. How could I have broken something; how could I have wilfully disobeyed this order? I didn't wilfully intend that."

The proposed penalty section, the proposed section suggests that the element of wilfulness is taken out. It becomes like any other provincial section whereby an offence is created and therefore it becomes a strict liability offence - the elements of intent no longer being present. That was the concern that we attempted to express in the brief itself.

The Criminal Code appears to anticipate that by saying that notwithstanding that there is a breach of a custody order, for example, there should exist a defence that the contemnor was attempting to prevent danger to a child, imminent danger to a child.

I appreciate the Attorney-General's remarks, but it seems that it's not quite on the same footing as the Criminal Code, whereby we have a situation where defences of mens rea, defences of intent or lack of intent exist, and therefore the section under 250.3 may be somewhat more redundant. We submit that it's somewhat strengthened by reason of the fact that our understanding is that, in general, provincial offences are strict liability offences and therefore strictly do not require an element of intent of wilfulness on breach.

That was the point that we wish to bring up under the section, that perhaps the Legislature can consider some form of express defence. Again, there exists common-law defences to breaches of provincial legislation, but those exist within the regime of strict liability. Therefore, again, there should be some issue regarding the intent, the wilfulness of breach of court orders.

MR. CHAIRMAN: Thank you.

Are there any further questions for Mr. Rosenbaum? Seeing none, thank you, Mr. Rosenbaum, for your presentation.

MR. N. ROSENBAUM: Thank you very much.

BILL NO. 27 - THE REAL PROPERTY ACT AND VARIOUS OTHER ACTS AMENDMENT ACT

BILL NO. 34 - THE REAL PROPERTY ACT

MR. CHAIRMAN: The next presenter we have before us is Mr. Frank Cvitkovitch on Bill No. 27 and Bill No. 34.

Mr. Cvitkovitch.

MR. F. CVITKOVITCH: I'm here this evening, Mr. Chairman, on behalf of the Mortgage Loan Association of Manitoba. Many of your members here tonight have heard representations before, but for those who haven't, I would explain that the Mortgage Loan Association of Manitoba is a voluntary association of mortgage lenders. There are approximately 40 members, comprised of the major trust companies, the chartered banks, Credit Union Central, the Caisse Populaire Federation and some other mortgage lenders, the chartered banks, and basically the mortgage lending community of Manitoba.

We're concerned with Bill No. 27 with respect to one particular section. I apologize to the members that I have not, as in usual form, presented a written brief to them, but it is a fairly simple point of service not only to the mortgage lending community but to the consumer and to the lawyers in our community which we raise. It deals with subsection 5 of the bill relating to the amendment proposed for subsection 97(2) of the existing act.

In the event that the members don't have in front of them the existing 97(2), it's very short. It's two lines; I would read it. This is an amendment to The Real Property Act. The existing act says: The district registrar shall furnish to the owner of a mortgage or encumbrance a certificate of charge.

The amendment which the government is proposing will restrict or reduce the availability of a certificate of charge so that now the District Registrar will only be required to issue that certificate at the time the mortgage is originally registered. There are some members on this committee that I recognize that practice real estate law and there are some other lawyers also here, particularly those who are in the practice of real estate law, who would recognize that the certificate of charge is an important document in terms of the solicitor reporting to the mortgage lender and, indeed, reporting to the mortgagor, the consumer public, the status of the mortgage once all of the previous registrations have been disposed of.

The legislation has been proposed. My understanding - and it's unfortunate, perhaps, he's not here tonight, the Registrar General, Mr. Colquhoun, to whom I've spoken about this legislation - my understanding is that he has proposed this amendment through the Attorney-General on the basis that the Land Titles Office staff can simply not take the time to deal with these requests as they were in the past.

The other consideration for bringing in the amendment is that when the Land Titles Office goes to an electronic system, the Certificate of Title and the search of a Certificate of Title or a copy will be such that it will be current and up to date. So the need for a separate certificate on your mortgage will become obsolete. We don't dispute that in the future it will become obsolete but we say the idea of restricting its availability right now is premature.

One of the basic things, and probably all of you have paid your mortgage off a long time ago, so you're not used to these things . . .

A MEMBER: Dream on. We're not all lawyers.

MR. F. CVITKOVITCH: . . . but one of the things here is that when you purchase a new house you usually put a mortgage on. There is an existing mortgage from

the owner. We're all mortgaged. What happens is the Land Titles Office will give you a certificate of charge with your new mortgage but that certificate is still subject to the old mortgage. Subsequently, that old mortgage will be paid off by your seller and it will be discharged and the present system is for the Land Titles Office, on request, to issue a new certificate showing that the only mortgage is the new mortgage that you've put on. Now what the proposal is, is that you will no longer be able to get that new certificate.

Mr. Chairman, in connection with this matter being premature, I came to this committee, or it might have been the Law Amendments Committee, two years ago to talk about an amendment to The Mortgage Act. I suggested at that time it was premature and I'm almost pleased to say that two years later, although that act was passed, it still has not been proclaimed because the machinery that goes with it is not ready yet. I don't fault the government for not having the machinery ready but I fault the situation of bringing in law that isn't yet appropriate.

We're experiencing in the mortgage lending community the same situation now, in terms of prematurity, with regard to new forms. We are favourably disposed to the new forms that are coming in but we've been told they're coming in April 1, May 1, June 1, maybe July 1, we don't know when they'll be coming. I submit, in regard to this legislation, we don't know in terms of the electronic system in the Land Titles Office when it will come.

What does it mean if you don't get a new certificate of charge? What it means in terms of the lender, is that he is then even more reliant on the lawyer's opinion. I brought along with me - and I didn't make 25 copies, I made one copy of an instruction sheet from a lender which overlaps into Ontario and which provides for a blank for title insurance.

We in Manitoba here, have been blessed with a government system of insured title. But once the Land Titles Office stops, or reduces its responsibility in terms of certifying, then the alternative for the lending community is to look for private insurance of title. It's not unique. It happens in many other jurisdictions. As I indicated, it happens in Ontario, it happens in the U.S., it happens in other provinces in Canada on commercial loans. It doesn't hurt the lender - and I represent the lender. The lender passes on that cost to the borrower. The only rationale, as I say that I've heard from the department for bringing in this amendment, is the fact that the department is a little overloaded right now, and a certificate that they've been able to produce for perhaps the last 40 years, suddenly is a little bit too much to produce. That's the only rationale I have.

I suspect, Mr. Chairman, that there is a little overlap here with regard to what's called the Cartilage case and the amendments to the general register. Because in the certificate of charge there is a possibility that the District Registrar assumed a liability or a responsibility in that case because he said, in effect, there are no prior encumbrances to this mortgage; whereas the court had now decided in the Cartilage case, that a judgment was prior even though that certificate of charge was clear. I suspect therefore, that the department is trying to reduce or relieve itself from that responsibility by bringing in this amendment. As I indicated, I believe it's very premature.

In terms, of again the side effects of bringing it in now; one thing might be that the lenders would look for title insurance. The individual would have to pay a premium. Another possibility is, frankly, the liabilities of the Law Society, and I had hoped, Mr. Chairman, to have them with me here tonight, but I can't say that they are, to support me in suggesting that this is premature. Because it means that the lawyer in giving his opinion as to the security will not have the additional authority of a certificate of charge. It's not the sole authority of his opinion, but it's one of the roots, one of the bases of his opinion.

I would suggest, Mr. Chairman, that this committee consider very strongly the possibility of striking this amendment from the legislation. It's my understanding that it would not make any other change to the bill. All that you're talking about here is amending a section that's not related to the rest of the things that you were doing in this bill. There would be no problem whatsoever in simply leaving 97(2) the way it is, which says: The District Registrar shall provide a certificate of charge on request. If he feels that there is additional work involved and there has to be an additional charge - right now the charge for that is $2 - then I suggest increase the charge. The consumer public will pay for that charge, not the lender; but allow the government to continue to provide a service to the consumer and the lender that they now have until the electronic system gets to the point where this certificate of charge is obsolete.

Finally, Mr. Chairman, I would like to acknowledge on behalf of the lending industry, the other amendments that are proposed here relating to the Cartilage case, and I think I could indirectly say on behalf of the Law Society, because I spoke today with Alex Morton, who is the chairman of the committee that was dealing with this, that between the Law Society and the lending industry, we're pleased with the amendments that will help to clarify the situation and as far as we're concerned, continue to protect the indefeasibility of title which we have enjoyed for many years in Manitoba.

Thank you, Mr. Chairman.

MR. CHAIRMAN: Thank you.

Mr. Cvitkovitch, is that dealing with Bill 34 as well - your latter comments?

MR. F. CVITKOVITCH: Yes.

MR. CHAIRMAN: Okay. Very well.

Mr. Penner.

HON. R. PENNER: Indeed, the intention of the bill was to deal primarily with the Cartilage case and it was my understanding - this is just a premise - that 97(2) was consequential thereto, that is that when the GR disappeared from the scene, as ultimately it will and must, everything that anyone dealing with that title, purchaser or mortgager needed to know, would be there on the title. Mr. Cvitkovitch suggests that this is premature, that that won't happen for a year or two. I just want to say that I will check immediately with the Registrar General and if that is indeed the case, that there's still the need for awhile for the certificate of charge, I want to assure Mr. Cvitkovitch that we can

do one of two things - I'll check with Mr. Mercier - we can either bring in an amendment at Report Stage or we can pass this bill except for the decision to report it, and the next time this committee meets we can see if we can amend the section or bring clarity to it. We'll do something.

I certainly take your point. You have talked, I understand, to Mr. Colquhoun and if you could do so again all the better and I'll speak to him in the next day or so.

MR. F. CVITKOVITCH: I wouldn't want to mislead the Attorney-General. I haven't been able to persuade Mr. Colquhoun. What I'm saying, though, is that the certificate of charge; he is not doing away with it because of the Cartilage case. It's still there. It's the case of how many times you can order it and when you can order it and there is an effective time actually other than when you initially register a mortgage that you should be getting it. It's that point in time that will be eliminated when an electronic title comes out. There's no dispute about that. It's just the timing of it. To that extent even if it were passed and not proclaimed into force, but that's, I don't think, a good thing for legislation. So, I would prefer if it could be deleted.

HON. R. PENNER: We might do that as well; have the act come into force on the date it receives Royal Assent except for 97(2) which comes into effect on the day of its proclamation. You're suggesting that.

MR. F. CVITKOVITCH: Yes, that would be another possibility but I'm saying it's not kind of good in terms of having legislation on the books that's not in force. I'm saying that as one that has to explain that to lenders from time to time.

HON. R. PENNER: You'll understand I'll have to check it out with the Registrar General.

MR. F. CVITKOVITCH: Yes.

MR. CHAIRMAN: Mr. Mercier.

MR. G. MERCIER: Is there any consideration given to the provisions of this bill as it relates to the Cartilage case being implemented retroactively?

MR. F. CVITKOVITCH: That the Cartilage case be retroactive?

MR. G. MERCIER: No, that this bill be effective . . .

MR. F. CVITKOVITCH: That the bill be retroactive.

It was my understanding that that was how it was going to be introduced. I have to be honest, and I haven't checked the final issue of the bill, but earlier drafts, I understood, were going to provide for that. I could say, when you asked if there was consideration, I would like to also recognize that part from the Department of the Attorney-General that there has been consideration - that initially, even with the certificate of charge, there was a suggestion and a draft that perhaps the whole concept of certificate of charge would be dropped.

When that was challenged, it was revised to what you see in the present bill, that they would issue one, but only one at the beginning as opposed to through the transaction. There has been consideration in the negotiation, but frankly, I can't speak to the retroactiveness of the legislation with regard to the Cartilage case.

The lenders have agreed to accept modified reports from lawyers so that the liability with regard to current loans is not on the shoulders of the lawyer, providing he has done the proper searches, which unfortunately may not have been done in the Cartilage case.

MR. CHAIRMAN: Mr. Mercier, any further questions?

MR. G. MERCIER: No.

MR. CHAIRMAN: Are there any further questions from Mr. Cvitkovitch?

Hearing none, thank you very much sir, for your presentationf

MR. F. CVITKOVITCH: Thank you, Mr. Chairman, and members of the committee.

MR. CHAIRMAN: You obviously didn't need to have something to pass out to us with the clarity with which you made your presentation.

Members of the committee, shall we return? Being as there are no other presentations before us, return to Bill No. 4, and proceed to go through clause-by-clause consideration of the bills.

BILL NO. 4 - THE RE-ENACTED STATUTES OF MANITOBA, 1987 ACT

MR. G. MERCIER: Mr. Chairman, on Bill No. 4, we received what I thought was a very valid submission by Mr. MacInnes. I think, as all members of the committee are aware. this has been an ongoing matter for some considerable time now. And it's time, I think, that the Legislature attempted to deal with this.

The very valid argument is made, that section 22 of The Manitoba Act has the same constitutional validity as has been determined by the Supreme Court with respect to section 23. The authorities that are provided to us, seem to be very explicit. What I would like to do, and I'll make it in the way of a motion, Mr. Chairman, what I think the committee should have before it, is an opinion from Legislative Counsel.

Certainly as an individual member of this Legislature, I am entitled to seek from Legislative Counsel, as is any other member, an opinion. We have a very significant submission made to us with respect to this matter, and I think, I, as one member of the Legislature, and I think, a number of other members of the Legislature would like to have that opinion available to them.

I would therefore, Mr. Chairman, move, second by the Member for Pembina:

THAT Bill No. 4 be deferred for consideration until Legislative Counsel provides a legal opinion to members of the committee in regard to Mr. MacInnes' submission tonight.

HON. R. PENNER: I must oppose that.

It seems to me that it would be wrong in principle to use Legislative Counsel to give an opinion on a matter of very great controversy, legal controversy, a matter that is not at all clear, in my view, from the judgments of the Privy Council and the Barrett and Brophy cases, the decisions of which I read as giving the Governor General-in-Council the right to make him a remedial order. Thereafter if the remedial order is not dealt with - or Parliament to pass a remedial act. It's also my advice from Mr. MacInnes and Mr. Brock who is with him, that, indeed, they have made that very request to the Governor General-in-Council and that the Governor General-in-Council is presently considering that matter.

It's my further information, in fact, that within days, recent days, Senator Lowell Murray has received a legal opinion from the Department of Justice with respect to that matter, a legal opinion that he has not yet made available to myself. I don't know if he will and that, in fact, within a week or 10 days the Prime Minister of this country has asked Mr. Murray for his opinion on how to proceed in this matter.

With all of that step having been taken by the client of Mr. MacInnes and Mr. Brock who is with him represent, in the proper forum, it would be singularly inappropriate to attempt to deal with it now, given the long and torturous and, I would admit, unhappy history of this matter. Certainly, I come back to my original point. To ask Legislative Counsel to thrust himself into this maze is to ask Legislative Counsel to do something which is not, in my view, within the mandate of Legislative Counsel and would be improper. So, I must oppose the motion strenuously.

MR. G. MERCIER: Mr. Chairman, the situation before this committee is that we are being to approve Bill 4, which includes a Public Schools Act in which it has been alleged that the act is deficient in the sense that it does not provide to Catholic schools, Roman Catholic schools in this province, what they are constitutionally entitled to under section 22 of The Manitoba Act and which is part of our Canadian Constitution.

As the Attorney-General himself admitted, this matter has been ongoing for years and years and years and in my view it's about time that it was settled. I would say to the Attorney-General if he were prepared to undertake to me that if this matter is not resolved within a few months that he would undertake to refer the matter to the Manitoba Court of Appeal under the Constitutional Reference Act for a determination as to the validity of the arguments that we have made, then I would be prepared to withdraw my motion. Otherwise, I think this committee is quite entitled to, and justified, and deserves to have an opinion from Legislative Counsel on the matter that has been brought to the attention of the committee tonight.

HON. R. PENNER: It must be remembered that the Privy Council in the Barrett Case, in fact, as I read it - I'm not asking anybody to accept my legal opinion - said that pursuant to section 22(1) of the Canada Act, there was in fact, no right under that section; so that it cannot be said that The Public Schools Acts which followed - and we're dealing with the particular one which is encompassed within Bill 4 - is in violation of a declared constitutional obligation.

In the subsequent case which followed, that is in the Brophy Case, the Privy Council in effect said, we're not now going to try to reverse or second guess the Privy Council on that issue. We are solely going to deal with whether or not, despite the fact that there is no constitutional requirement, as alleged by the Catholic minority as they then were, is there the right of the Governor General-in-Council to give a remedy, so-called remedial order? There is therefore, as a result of those two decisions, only one forum that has the right to deal with this issue, and that is the Governor General-in-Council and/or the Parliament of Canada.

For me to give an undertaking, which with respect I am unable to do, that we will refer the matter under the Constitutional References Act to the Court of Appeal is futile, because the Court of Appeal does not have jurisdiction to deal with it. The constitutional issue itself has been resolved by a decision which has no longer been asailled under the Barrett Case. The only remedy that is left is under the Brophy Case, i.e., in the hands of the Governor General-in-Council in the Parliament of Canada.

MR. CHAIRMAN: Mr. Mercier, do you have the motion written out yet?

MR. G. MERCIER: It's in the process, Mr. Chairman.

MR. CHAIRMAN: Okay, very well. Do you have another point to make on that?

MR. G. MERCIER: I have another comment, yes.

MR. CHAIRMAN: Very well. Mr. Mercier.

MR. G. MERCIER: Mr. Chairman, the rules of this House, and the traditions and practices of this House, clearly indicate that Legislative Counsel is here to assist all members of the House. That is part of his duties and obligations. He is a law officer of the Assembly and, thereby has to be available to all members. Therefore, I am asking in the form of my motion, that this matter be deferred, particularly if the Attorney-General is not prepared to give the undertaking that I refer to, that this matter be deferred until I, as an individual member of this Assembly, can obtain an opinion from Legislative Counsel, that I or any other member of this Assembly is entitled to ask for.

On that basis, Mr. Chairman, I would seek the Attorney-General's concurrence in that motion. Surely he nor any other member of Executive Council nor any other member of the Assembly would want to rush something through without allowing a member to obtain an opinion from Legislative Counsel, which we are entitled to. The material has just been presented to the committee this evening.

HON. R. PENNER: The material presented in committee this evening is none of it new, at all. It is material with which the Member for St. Norbert is fully familiar. It's material that has been argued in a number of forums and in a number of courts. It's material with respect to which, in fact, in my dealing, as the Attorney-General with this matter, I have obtained legal opinions from the department. It's upon that that I rest the opinions

that I have made and I've obtained it from the proper people within the department, the Constitutional Law people, and I'm quite willing to make that available to the Member for St. Norbert, but that's no more binding on him than it is on me. Nor would the opinion of Legislative Counsel, if appropriately given, be binding on either the committee or on the member or on myself.

It's only decisions of the court that become binding. But we have decisions of the court and I'm simply saying that it would be, in my view, unfair to put it mildly, to Legislative Counsel, to ask Legislative Counsel who has a duty with respect to many things, to interject himself into a legal wrangle that is now over a century old and to add his weighty opinion to 10 other weighty opinions but would have no force or effect. It's futile and it's wrong and it's for that reason that I oppose it.

I never have opposed, quite the contrary, the right of members who wish to get a legal opinion from Legislative Counsel. They can still do it but it's being suggested that this matter be held up pending a legal opinion from Legislative Counsel. I have no way of knowing because I've never asked him what his legal opinion on this matter is. I'm sure that if he were directed to do so he would try to find time to give such an opinion but so what? If it's something that is ad idem with the legal opinion that I have, it would not resolve the matter.

A MEMBER: Question.

MR. CHAIRMAN: Well, I'm waiting for Mr. Mercier to hand me a copy of it first so I can read it out.

Have you got your motion written Mr. Mercier?

MR. G. MERCIER: Yes I do, Mr. Chairman.

I want to say that I find it very difficult to accept that this whole legislative process was put in turmoil for almost two years over section 23 of the Manitoba Constitution and yet the Attorney-General and members of the government want to rush this matter through when we're discussing section 22 of the same Constitution. Mr. Chairman, this is a matter, as members have said, that's been ongoing for many, many, many years and it's time that it was resolved. Surely this committee should be considering the matter. We should be getting an opinion from Legislative Counsel and we should be considering whether or not there should be amendments made to The Public Schools Act in accordance with the submission that's been made to us tonight.

HON. R. PENNER: What the Member for St. Norbert forgets is that section 23 of The Manitoba Act had never been the subject of a decision by the Supreme Court of Canada or the Privy Council. section 22 had.

There is an extant decision of the Privy Council on section 22. That was not the situation of section 23, so the analogy does not follow. It wasn't until the Supreme Court pronounced on section 23, that we had any final authority on the legal signficance of that section. The final authority on the legal significance of section 22 we've had since 1895 and before that, 1890.

I can also say to the Member for St. Norbert - in a friendly and a frank way - that if I had Mr. MacInnes' and Mr. Brock's legal opinion, if I had Mr. Pepper's legal opinion, and with great respect to Mr. Pepper, it was supportive of Mr. MacInnes; I can tell him now, that the government would not be prepared to bring in amendments to The Public Schools Act of the kind that he is suggesting simply because there's another legal opinion on the other side.

MOTION presented and defeated.

MR. G. MERCIER: Recorded vote.

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

Yeas, 3; Nays, 6.

MR. CHAIRMAN: The motion is accordingly defeated.

Proceed with Bill No. 4, Mr. Mercier?

Pages 1 to page 16, inclusive, were each read and passed.

Page 17. Yes, the Member for Brandon West.

MR. J. McCRAE: Mr. Chairman, in view of some of the comments we heard tonight from of the presenters this evening, specifically Ms. Simpson and Mr. Lepieszo, about how they feel their rights of freedom of association, freedom of speech and expression, they feel they have been abridged by provisions in the Manitoba Labour Relations Act.

In view of questions I have previously asked of the Attorney-General regarding certain sections of that act and the constitutionality of those sections, I wonder if the Minister can now tell us whether, since the Minister, the Attorney-General and I have discussed this matter, he has consulted Legislative Counsel or the Constitutional Law Division of his department respecting specifically section 6(2) which makes the statement that employers certainly shall not discuss with their employees how they feel about a union or whether they like unions or what would happen should they have a union. That section, regardless of a later section which says nothing in the act deprives anyone of his constitutional rights, that section appears to me at least to be a direct prohibition of the right of freedom of speech, which is guaranteed by our Charter of Rights and Freedoms in this country.

I wonder if the Minister has had a chance to have Legislative Counsel or his Constitutional Law Division have a look at that part of The Labour Relations Act.

HON. R. PENNER: I'm perfectly satisfied that The Labour Relations Act in its entirety is constitutionally valid and, as the person sworn to uphold the validity of the laws of the province, I am bound to do so until successfully challenged in court or until counsel, in the normal course of their duties, direct me to a passage or passages in an act which in their opinion may not be constitutionally valid, in which case on advice received, I would, as I do with the Charter Compliance Bill, seek to remedy the situation.

In the material that I have canvassed and my own familiarity with the act, with that section, with the free speech section, having in fact litigated that in the courts myself, I'm satisfied that there's no invalidity.

MR. J. McCRAE: The matter of unfair labour practices - I think it's section 22 of The Manitoba Labour Relations

Act - has also been a matter of discussion in the Legislature in this Session. We now know that the charge against Jennifer Campbell of an unfair labour practice has been withdrawn, but what we didn't know was that the amount that Jennifer Campbell was exposed as a result of the laying of a charge was not $3.2 million but actually $6.4 million because there were two unfair labour practice charges laid against her, and if applied against all of the employees, including herself. So I guess you'd have to take $4,000 off that amount because Jennifer Campbell would have been found guilty and had to have paid, herself, that amount of money as well.

That kind of situation strikes me as obscene in a free society and in view of that I ask the Minister if he makes the same comments about the Unfair Labour Practices section of The Manitoba Labour Relations Act?

HON. R. PENNER: Of course, I don't accept the premise at all. It's not my view of that section that, indeed, there is that exposure or that the sections can be read in the way in which either the member or, in this case, his ally on that point, Mr. Christophe, reads the act. There's been no finding ever of the Labour Relations Board or the courts that that indeed is the exposure which is intended by the act.

MR. CHAIRMAN: Pages 17 to 26, inclusive, were each read and passed. Title—pass.

Bill be reported.

BILL NO. 5 - AN ACT TO REPEAL CERTAIN STATUTES RELATING TO EDUCATION AND OTHER MATTERS

MR. CHAIRMAN: The next bill before us is Bill No. 5, An Act to repeal Certain Statutes Relating to Education and Other Matters.

Would someone care to fetch the Minister of Education? -(Interjection)- Oh, he is, excuse me, okay.

A MEMBER: The whole bill.

MR. CHAIRMAN: The whole bill? Pass the bill—pass; Title—pass.

Bill be reported.

BILL NO. 10 - THE QUEEN'S BENCH ACT

MR. CHAIRMAN: The next bill is Bill No. 10, An Act to amend The Queen's Bench Act.

Page 1 of the bill - Mr. Penner.

Mr. Dolin.

MR. M. DOLIN: I move, seconded by the Member for Logan,

THAT Bill No. 10 be amended by adding the following section immediately after section 1 of the bill:

Section 7 renumbered 1.1; section 7 of the act is renumbered as section 7(1), and is further amended by adding immediately after that subsection the following subsection:

Supervision of the Courts.

7(2) The Chief Justice has general supervision and direction over sittings of the court and assignment of judicial duties.

HON. R. PENNER: Pass.

MR. CHAIRMAN: Pass; en fran;çais—pass; bill as a whole—pass; Title—pass.

Bill be reported, as amended.

BILL NO. 19 - THE LIMITATION OF ACTIONS ACT AND THE HIGHWAY TRAFFIC ACT AND TO REPEAL THE UNSATISFIED JUDGMENT FUND ACT

MR. CHAIRMAN: Bill No. 19, An Act to amend The Limitation of Actions Act and The Highway Traffic Act and to Repeal The Unsatisfied Judgment Fund Act.

The whole bill—pass; Title—pass.

Bill be reported.

BILL NO. 20 - THE CRIME PREVENTION FOUNDATION ACT

MR. CHAIRMAN: Bill No. 20, The Crime Prevention Foundation Act.

As a bill? Title—pass; bill as a whole—pass.

Bill be reported.

BILL NO. 21 - THE FAMILY LAW AMENDMENT ACT

MR. CHAIRMAN: Next is Bill No. 21, The Family Law Amendment Act.

Mr. Mercier.

MR. G. MERCIER: The Attorney-General undertook to order the bill to the Family Law subsection for their comments. I'm asking whether or not he's received those comments?

HON. R. PENNER: We want to make sure that they're talking about the same bills, Family Law.

MR. CHAIRMAN: Bill 21, Family Law . . .

HON. R. PENNER: . . .- (inaudible)- . . . I'm not sure whether in fact it has received comment from the Family Law subsection, and in the written form it certainly could be discussed with them by Robyn Diamond, but the major amendments on The Marital Property and Property Acts will be the subject of a White Paper that is presently in discussion.

MR. G. MERCIER: I take it you've received nothing negative.

HON. R. PENNER: No.

MR. CHAIRMAN: Bill-pass; Title—pass.

Bill be reported.

BILL NO. 27 - THE REAL PROPERTY ACT AND VARIOUS OTHER ACTS AMENDMENT ACT

MR. CHAIRMAN: Next is Bill No. 27, The Real Property Act and Various Other Acts Amendment Act - Mr. Penner.

HON. R. PENNER: I've got some amendments when we get to part 16, but there was the question that was raised by Mr. Cvitkovitch with respect to 97(2), and I'll just check with the Member for St. Norbert whether perhaps what we might do is amend section 27 so that it says: "This act coming into force on the day it receives Royal Assent, except for section 97(2) which comes into effect on a day . . ."

Mr. Balkaran suggests if we want to go that route, we can simply say that the act comes into force on proclamation, and when we come to proclaim, don't proclaim that unless we've satisfied the concern.

MR. G. MERCIER: I appreciate he did not like that method and I think he's probably correct. I'd be prepared to accept that, but I'd also say he makes an extremely valid point in what he's saying.

HON. R. PENNER: It sounds like we might want to talk to Colquhoun and, if necessary, have a meeting with Cvitkovitch and Colquhoun.

MR. CHAIRMAN: Other amendments?

HON. R. PENNER: Yes, there are. Let's go to part 16 and then there's some amendments. So can we pass the bill till page 21?

MR. CHAIRMAN: Pass to page 21.

HON. R. PENNER: I'll go ahead and move the amendments here.

I move

THAT Part XVI of Bill 27 be struck out and the following part be substituted therefor:

Part XVI
AMENDMENT TO THE SOCIAL ALLOWANCES ACT

Subsections 21(1) and 21(2) of The Social Allowances Act rep. and sub.

25 Subsections 21(1) and (2) of The Social Allowances Act being Chapter S160 of the Continuing Consolidation of the Statutes of Manitoba are repealed and the following subsections are substituted therefor:

Registration of statement.

21(1) Where

(a) a debt becomes due and owing from a person to the Crown under section 20; or

(b) the government has made any payment to or for a person to cover

(i) the principal portion of any instalment payable under a real property mortgage or an agreement for the sale of land, or any part of that principal portion, or

(ii) arrears of real property taxes, or any part of those arrears, or

(iii) the cost of such building repairs as may be defined in the regulations to be major repairs;

the minister may cause to be registered in any Land Titles Office in the province a statement showing the minister's address for service certifying the amount of the debt, payment, assistance or social allowance, as the case may be, and in the statement the Minister shall name the person indebted.

Statement of charge and registration.

21(2) From the time of its registration, a statement registered under subsection (1), except as hereinafter mentioned, binds and forms a lien and charge on all lands of the debtor against which the statement is registered by instrument charging specific land, and, while registered in the general register, against all lands of the debtor in the Land Titles District in which the statement is registered that are held in a name identical to that of the debtor set out in the statement whether or not the lands registered under the Real Property Act for the amount certified in the statement and the amount of

(a) any debt that subsequently becomes due and owing from the person to the Crown under section 20 after the statement is registered; and

(b) any payment of a kind described in clause (1)(b) subsequently made by the government to or for the debtor.

MR. CHAIRMAN: Any discussion? Explanation maybe. Page 21, as amended—pass.

HON. R. PENNER: Amendment, I move that section 27 be amended to read as follows: This act comes into force on a day fixed by proclamation. Amendment pass?

MR. CHAIRMAN: Amendment—pass; an amendment again please, I'll just write it in here.

HON. R. PENNER: We'll give it to you.

MR. CHAIRMAN: Okay. This act comes into force on the day it receives proclamation. Passed, as amended; Bill pass as amended then; Title—pass.

Bill be reported.

BILL NO. 33 - THE REGISTRY ACT

MR. CHAIRMAN: Bill No. 33, An Act to amend the Registry Act, as a whole. Bill as a whole—pass; Title—pass.

Bill be reported.

BILL NO. 34 - THE REAL PROPERTY ACT

MR. CHAIRMAN: Bill No, 34, An Act to amend The Real Property Act.

HON. R. PENNER: Where are we, on 34? I'm just checking whether or not that same point arises under Bill 34, and I don't think there's any reference to the certificate of charge. No, okay.

MR. CHAIRMAN: No references? Bill as a whole—pass; Title—pass.

Bill be reported.

BILL NO. 37 - THE LIQUOR CONTROL ACT

MR. CHAIRMAN: Bill No. 37, An Act to amend The Liquor Control Act.

HON. R. PENNER: Yes, we're going to pass the bill that we have here, but not report it - we'll leave the committee seised of the bill.

MR. CHAIRMAN: On Bill No. 37?

HON. R. PENNER: Yes, we're going to go through the bill but leave the committee seised of the bill.

MR. CHAIRMAN: Okay, very well. We will not pass the bill this evening.

HON. R. PENNER: No, we'll deal with the bill that we have, page-by-page, but not report the bill out.

MR. CHAIRMAN: Okay, very well.
Page 1 - Mr. Mercier.

MR. G. MERCIER: Just a question to the Attorney-General on this one. In the previous definitions were included Veterans Organizations, but they are left out of this definition. Are Veterans Organizations in any way affected by this bill other than the Remembrance Day provisions?

HON. R. PENNER: No, they're not.

MR. CHAIRMAN: Page 1—pass; page 2—pass; page 3—pass.

HON. R. PENNER: There are some amendments and with leave to revert to page 2.

MR. CHAIRMAN: Page 2, excuse me. Yes, revert to page 2, or is that page 3 - Controlled Beverage - no the middle of page 2.

HON. R. PENNER: I move that the definition of Controlled Beverage set out on page 2 of Bill 37 be struck out and the following definition be substituted therefor;

"controlled beverage means a potable beverage which contains more than .5 percent and less than 1.0 percent alcohol by volume.

It's a much clearer way of expressing the intent—pass.

MR. CHAIRMAN: Page 2—pass; as amended.

HON. R. PENNER: Page 3.

MR. CHAIRMAN: Page 3—pass.
Fortified wine, fortified wines are back here as well.

HON. R. PENNER: I move
THAT the definitions of "fortified wine" and "table wine" set out on page 2 and page 5 of Bill 37 be struck out.

MR. CHAIRMAN: Mr. Mercier said, why is that?

HON. R. PENNER: It no longer has any use because the former provision in the act which required listings to indicate whether a wine was fortified or not, is no longer part of the act, so we don't need a definition of fortified wine.

MR. CHAIRMAN: Is that the last amendment for page 2?
Page 2 as amended—pass; page 3—pass; page 4—pass; page 5—pass.
Page 6; there's an amendment on page 6, I believe.

HON. R. PENNER: Yes, on page 6.

MR. G. MERCIER: Mr. Chairman, my amendment is with respect to section 3, by way of explanation. I spoke to this item on Second Reading of the bill. I don't believe that the Liquor Control Commission should be in competition with private sector in regard to the sale of non-food items. I've indicated, and frankly, my support for the commission as a monopoly with regard to the sale of liquor, but I don't think they should be going beyond that.
I would therefore move
THAT section 3 be amended by deleting all the words after "liquor" which would be in the 3rd last line.

HON. R. PENNER: I will not oppose that amendment. As I explained in the House from our point of view, it's a minor question that can, after we've had an opportunity to clarify with the commission and get a much more sharply focused notion of what it is that they want to sell and the way that might be acceptable to members of the Opposition, content to leave it out of this particular amending bill.

MR. M. DOLIN: If it's in order, if I could direct a question to the mover of the amendment. I'm just wondering, at present the Liquor Commission does sell decanters and packages with glasses in them as packages, and I'm just wondering, I'd like an opinion, you know, whether or not if you sell a package kind of thing, as they do on Christmas, with a corkscrew and a couple of wineglasses as a Christmas gift, as is now sold in the Liquor Commission, would that be prohibited if this amendment were to pass?

HON. R. PENNER: I don't think so. I mean they've done it without specific authorization now but that's included with the bottle. I mean you just don't buy those separately.

MR. CHAIRMAN: Mr. Mercier, any comments?

HON. R. PENNER: You know, that's been done without those last few words of this section up till now and I expect that no one is going to seriously challenge it. I will undertake to get this matter clarified by the next time around. As my mother would say, I should live so long.

MR. CHAIRMAN: So the amendment to clause 3 presented by the member - Mr. Mercier.

MR. G. MERCIER: I move

THAT section 3 be amended by deleting all the words after the word "liquor."

MR. CHAIRMAN: Okay, it's moved by Mr. Mercier, seconded by Mr. McCrae, that section 3 be amended by deleting all words after the word "liquor."

MR. G. MERCIER: I guess it should be in the 3rd last line. In the 3rd last line, "liquor" appears twice.

MR. CHAIRMAN: In the 3rd last line, yes. Okay, I'll add that to this.

Pass page 6 as amended - no, we've got another one. I'm sorry.

Mr. Penner.

HON. R. PENNER: Do I have an amendment here? . . .- (Inaudible)- . . . on page 7 isn't it? Oh, yes, with respect to 4.1, I move

THAT the following sections be added to Bill 37 immediately after section 4.1;

Section 10 of the Act is repealed and the following section is substituted therefor;

Subject to the approval of the Lieutenant-Governor-in-Council, the commission may make regulations regulating advertising with respect to licensed premises and liquor.

No, wait a minute. That's the one we're holding. That's the one that is being held.

MR. G. MERCIER: You can't withdraw a motion.

MR. CHAIRMAN: Where are we now?

MR. G. MERCIER: You need the consent of the committee to withdraw a motion, Mr. Chairman, I don't consent.

HON. R. PENNER: It didn't have a seconder.

MR. CHAIRMAN: You don't need a seconder.

MR. G. MERCIER: You need the consent of the committee to withdraw a motion.

HON. R. PENNER: We'll leave the bill on the table.

MR. CHAIRMAN: One minute, please. Just hold our horses for a second here.

MR. G. MERCIER: I'll consent.

MR. M. DOLIN: He recanted. It's okay now. He recanted. He saw the error of his ways.

MR. CHAIRMAN: So committee consents to the withdrawal of that last motion which is on the handout section 10 Repealed and Substituted. That whole thing, scratch?

A MEMBER: Scratch.

MR. CHAIRMAN: Okay, Now, on 3. We still have need for the French amendment and I believe apres le mot "alcoolisées" and delete all the words after that. Okay, the amendment en françois aussi—pass.

Page 6, as amended—pass; page 7 - Mr. Mercier.

MR. G. MERCIER: Just a couple of questions. With the establishment of liquor stores, do they not now go to Cabinet? Does this mean the Commission will have the sole authority to establish a store?

HON. R. PENNER: Which section are you looking under?

MR. G. MERCIER: Right at the top, 16(1).

HON. R. PENNER: No, they don't go to Cabinet. What's happened is the Commission goes through a process of determining who should be a vendor and then that is sent to me and in almost every instance, I can't think of an instance to which I haven't said okay.

MR. G. MERCIER: Just another question, at the bottom of section 62, what is the change there?

HON. R. PENNER: The addition is "or other authorized place."

MR. G. MERCIER: Okay.

MR. CHAIRMAN: Pages 7 to 13, inclusive, were each read and passed.

Page 14 - you have an amendment on page 14, Mr. Penner.

HON. R. PENNER: I move

THAT the French version of proposed section 81(1) of The Liquor Control Act as set out on page 14 of Bill 37 be amended by striking out "ni entre 2 h et midi le Vendredi saint et le jour du Souvenir ni entre une 2 h et 11 heures" and substituting therefor "entre 2 h et 12 h le Vendredi saint et le jour du Souvenir et entre 2 h et 11 h".

MR. CHAIRMAN: After that performance I have to look up the numbers here. This is Service dans les hôtels - is that the section - 82 . . . ?

HON. R. PENNER: No. 8l(1).

MR. CHAIRMAN: Okay 8l(1)—pass.

HON. R. PENNER: Mr. Chairperson, I move

THAT the French version of the subsection 81(2) of the act as set out on page 14 of Bill 37 be amended by striking out "2 heures et demie et 11 heures" and substituting therefor "2 h 30 et 11 h".

MR. CHAIRMAN: Pass as amended.

HON. R. PENNER: Page 14 as amended . . .

MR. CHAIRMAN: Page 14 as amended—pass.

I would like to revert back to page 3 again, if I could, for the French section. We did not formally delete the

French section, I don't believe. Did we do that formally or not? We deleted it. We were okay.

Page 15—pass; page 16—pass.

Page 17.

HON. R. PENNER: I move

THAT the French version of proposed subsection 85(1) of the Act as set out on page 17 of Bill 37 be amended by adding immediately after "Certificat d'enregistrement d'hôtel" the words "lorsque les conditions qui suivent son réunies."

MR. CHAIRMAN: Pass.

HON. R. PENNER: Seventeen as amended.

MR. CHAIRMAN: Page 17 as amended—pass.

Mr. Mercier.

MR. G. MERCIER: Mr. Chairman, just a comment on page 18, I would perhaps ask the Attorney-General to perhaps consult with the Liquor Commission on 85(7) which requires every person in a beverage room to leave the room within 30 minutes of the time when the sale of liquor is required to cease.

Actually in some conversations with some small hotel owners, many of them frankly would like to see that 30 minutes extended. They hate - in fact, what they do is they worry about kicking some people out within 30 minutes. They find that a person will gulp their beer or whatever they have to drink, and they really shouldn't be leaving that quickly. I can perhaps see the rationale why it's there. Maybe it discourages ordering extra drinks right at the end, but perhaps there's some room for some flexibility there.

I'm sure that's an old, old -(Interjection)- Yes, you must leave within 30 minutes. The owner has to eject them from the premises, and I just wonder how civilized that is. You know, if an owner wanted to serve coffee for an hour or whatever, should that not be allowed?

HON. R. PENNER: Yes, I'll look into that. It's perhaps a little more complex than it appears at first glance, but I'll certainly look into it and consult both the Liquor Commission and the Drinking and Driving Subcommittee of the Manitoba Traffic Safety Committee and the Commission.

MR. CHAIRMAN: Shall we proceed and pass that page or, since we're not going to pass the whole bill tonight, do you want to . . .

HON. R. PENNER: No, no, we'll pass the page.

MR. CHAIRMAN: Pass the page?

Mr. Dolin.

MR. M. DOLIN: Just a comment to the Attorney-General while he's consulting this, it would strike me that the owner has the option of setting a time when patrons have to leave. What we're doing here is setting by law when they must vacate the premise. The owner could set an hour, an hour and a half. He could say, I'm closing the bar at such and such an hour. The law is saying a half-hour, the way I understand it, that they must be out of the place.

In effect, we're really setting 30 minutes earlier for the time to be called for patrons to be stopped served. So, if we say midnight is the time, it's really 11:30 by this section, the way I read it

A MEMBER: No, it works the other way.

MR. M. DOLIN: It's the other way? So it goes to . . .

HON. R. PENNER: They stop serving at 2:00 a.m., and you can hang around until 2:30 a.mf

MR. M. DOLIN: But they don't serve after 2:00, is that right? Okay.

MR. CHAIRMAN: Would the members of the committee allow the Chair to ask a question of clarification on this as well? It's your question. I'm just wondering if within 30 minutes they have to leave. Does that mean they have to leave the premises or do they just have to leave the room? Can they come back in afterwards, leave in 30 minutes and return back 45 minutes later for coffee?

Mr. Penner.

HON. R. PENNER: Step outside in the hallway and then come back? No.

MR. CHAIRMAN: Everybody outside for five minutes . . .

HON. R. PENNER: I'm sorry, I let you ask the question.

Page 18—pass.

MR. CHAIRMAN: Pass.

HON. R. PENNER Page 19.

MR. CHAIRMAN: Pass.

Page 20 - Mr. Penner.

HON. R. PENNER: I move

THAT the French version of proposed subsection 87(4) of the Act as set out on page 20, Bill 37 be amended by striking out the "le Vendredi saint et le jour du Souvenir" and substituting therefor, "les jours fériés."

Pass.

MR. CHAIRMAN: Page 20, as amended—pass.

Pages 21 to 27, inclusive, were each read and passed.

Page 28 - the Honourable Attorney-General.

HON. R. PENNER: I move

THAT the French version of proposed subsection 97(1) of the Act, as set out on page 28 of Bill No. 37 be amended by striking out "une heure et demie" wherever it occurs and substituting therefor "2 h".

Pass.

MR. CHAIRMAN: Page 28, as amended—pass; page 29—pass.

Page 30 - Mr. Penner.

HON. R. PENNER: I move

THAT the proposed new subsection 106(1) to The Liquor Control Act, as set out in section 9 of Bill 37 be amended by adding thereto, immediately after the word "parent" in the 7th line thereof, the words "spouse or guardian."

MR. CHAIRMAN: Page 30, as amended—pass.

Page 31 to 38, inclusive, were each read and passed.

Now, we're not going to pass the title and report the bill at this point in time?

HON. R. PENNER: Pass the title.

MR. CHAIRMAN: Title—pass. Preamble—pass.

Bill be reported, we shall hold on.

BILL NO. 63 - AN ACT TO REPEAL CERTAIN STATUTES RELATING TO HOSPITALS, HOSPITAL DISTRICTS AND NURSING UNIT DISTRICTS AND OTHER MATTERS

MR. CHAIRMAN: Bill as a whole—pass; Title—pass; Preamble—pass.

Bill be reported.

I thank members for their indulgence all evening. We've accomplished quite a bit. Thank you very much.

Committee rise.

COMMITTEE ROSE AT: 10:58 p.m.

WRITTEN PRESENTATION TO COMMITTEE:

June 11, 1987

Committee on Statutory Orders and Communications
Legislature of Manitoba
Legislative Building
Winnipeg, Manitoba

Submission of the Catholic Minority in Manitoba respecting Bill 4 -
The Re-enacted Statutes of Manitoba, 1987, Act

BACKGROUND

Since the first settlement of the part of Canada now known as Manitoba, the Catholic Church has played a significant role in providing Christian education to our citizens.

Education in Catholic schools has always included instruction respecting the Catholic faith, morals and heritage of the church as well as the curriculum of secular academic studies.

In Canada, this important role of Catholic separate schools, and the right of Catholic parents to determine that their children receive the Catholic education, was recognized in the BNA Act of 1867 which joined the provinces of Ontario, Quebec, Nova Scotia and New Brunswick into the country of Canada, and The Manitoba Act of 1870, which established the Province of Manitoba.

From the time of Confederation until the present, most jurisdictions in Canada provide for a continuance of the Catholic separate schools and for the provision by the Provincial Governments of a proportionate amount of public funds to support these Catholic separate schools.

So it was in Manitoba. The Catholic Church provided for the education of Catholic students in Catholic separate schools prior to the incorporation of the Province of Manitoba in 1870. The system of denominational schools was codified in 1871 and continued until 1890 with proportional financial support provided by the Provincial Government to the Catholic separate schools.

SUPREME COURT OF CANADA, REFERENCE RE LANGUAGE RIGHTS UNDER SECTION 23 OF THE MANITOBA ACT, 1870

The decision of the Court of June 13, 1985 found the statutes passed by the Manitoba Legislature since 1890, and contrary to the provisions of section 23 of The Manitoba Act, were flawed. These statutes would become void unless re-enacted as provided by the judgment.

It is significant that the flawed statutes are to be re-enacted and not simply translated into bilingual form.

Re-enactment is intended to provide for the same in-depth examination by the Legislature and the people of Manitoba as other bills presented for the first time. The opportunity is available to eradicate from these statutes, provisions that are inappropriate, and to add necessary provisions that have been omitted.

PUBLIC SCHOOLS ACT,
EDUCATION ADMINISTRATION ACT

These statutes are included in Schedule A, Part II and are the successors of The Public Schools Act and The Department of Education Act passed in 1890 by the Provincial Legislature.

It is these statutes of 1890 that were flawed in that they did not comply with the linguistic requirements of section 23 of The Manitoba Act and also offended the provisions of section 22 of The Manitoba Act by taking away certain significant rights of the Catholic minority as to denominational schools.

MANITOBA ACT, SECTION 22

The Manitoba Act provides in section 22, in part:

S.22. In and for the province the said Legislature may exclusively make laws in relation to education, subject and according to the following provisions:

(1) Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools, which any class of persons have by law or practice in the province at the union.

(2) An appeal shall lie to the Governor General-in-Council from any Act or decision of the Legislature of the province, or of any provincial authority, affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to education.

(3) In case any such provincial law, as from time to time seems to the Governor General-in-Council requisite for the due execution of the provisions of this section, is not made, or in

case any decision of the Governor General-in-Council on any appeal under this section is not duly executed by the proper provincial authority in that behalf, then, and in every such case, and as far only as the circumstances of each case require, the Parliament of Canada may make remedial laws for the due execution of the provisions of this section, and of any decision of the Governor-General-in-Council under this section.

BROPHY VS. ATTORNEY GENERAL OF MANITOBA (1895)

The Petition of the Catholic minority in Manitoba under section 22(2) of The Manitoba Act was referred by the Government of Canada to the Supreme Court of Canada and was ultimately dealt with by the Privy Council. The Judgment of the Privy Council provided in part (pages 226- 227)

"The sole question to be determined is whether a right or privilege which the Roman Catholic minority previously enjoyed has been affected by the legislation of 1890. Their Lordships are unable to see how this question can receive any but an affirmative answer. Contrast the position of the Roman Catholics prior and subsequent to the Acts from which they appeal. Before these passed into law, there existed denominational schools of which the control and management were in the hands of Roman Catholics who could select the books to be used and determine the character of the religious teaching. These schools received their proportionate share of the money contributed for school purposes out of the general taxation of the province, and the money raised for these purposes by local assessment was, so far as it fell upon Catholics, applied only towards the support of Catholic schools. What is the positon of the Roman Catholic minority under the Acts of 1890? Schools of their own denomination, conducted according to their views, will receive no aid from the state. They must depend entirely for their support upon the contributions of the Roman Catholic community, while the taxes out of which state aid is granted to the schools provided for by the statute fall alike on Catholics and Protestants. Moreover, while the Catholic inhabitants remain liable to local assessment for school purposes, the proceeds of that assessment are no longer destined to any extent for the support of Catholic schools, but afford the means of maintaining schools which they regard as no more suitable for the education of Catholic children than if they were distinctively Protestant in their character. In view of this comparison, it does not seem possible to say that the rights and privileges of the Roman Catholic minority in relation to education which existed prior to 1890 have not been affected."

REMEDIAL ORDER 1895

As a result of the Brophy decision, the Government of Canada granted a Remedial Order on March 21, 1895 that The Public Schools Act and Department of Education Act be supplemented to restore to the Catholic minority the rights and privileges of which they had been deprived.

This Order remains unanswered to this day.

SUBMISSION AS TO BILL 4, THE RE-ENACTED STATUTES OF MANITOBA, 1987, ACT

The Catholic minority in Manitoba does not question the authority of the province to legislate as to education as provided by section 22 of The Manitoba Act and to legislate respecting the public school system.

We note the clear limitations imposed by section 22(1) of the act insofar as denominational schools are concerned and note the legislation of 1890 gravely offended the rights and privileges of Catholics respecting our schools.

We note that prior to the flawed legislation of 1890 and onwards, the valid statute as to education in Manitoba was The Schools Act of Manitoba of 1871, as amended from time to time, and which provided for the publicly funded system of denominational schools that I have described earlier.

In considering the re-enactment of the flawed legislation, we submit the legislators should consider, among other things, the provisions of the law that is being changed and the propriety, adequacy and wisdom of the law that is proposed.

Such considerations will of necessity include the provisions of The Schools Act of Manitoba 1871, the provisions of section 22(1) of The Manitoba Act (which was disregarded by the legislation of 1890) and the requirements of the Manitoba community in 1987.

We submit it is not adequate or appropriate for the Legislature to re-enact, in bilingual form, these flawed statutes and continue the injustices that are so obvious.

I attach for your assistance:

1. The Manitoba Act, 1870;
2. The School Act of Manitoba, 1871;
3. Brophy vs. Attorney General of Manitoba, 1895;
4. Remedial Order 834, 1895

Respectfully submitted this 11th day of June, 1987.

Donald C. Brock
MANITOBA CATHOLIC SCHOOL
TRUSTEE ASSOCIATION INC.
Chairman, Steering Committee,
on behalf of
the Catholic Bishops of Manitoba,
the Manitoba Catholic School Trustees Association Inc.,
and the member schools of the Manitoba Catholic
School Trustees Association Inc.