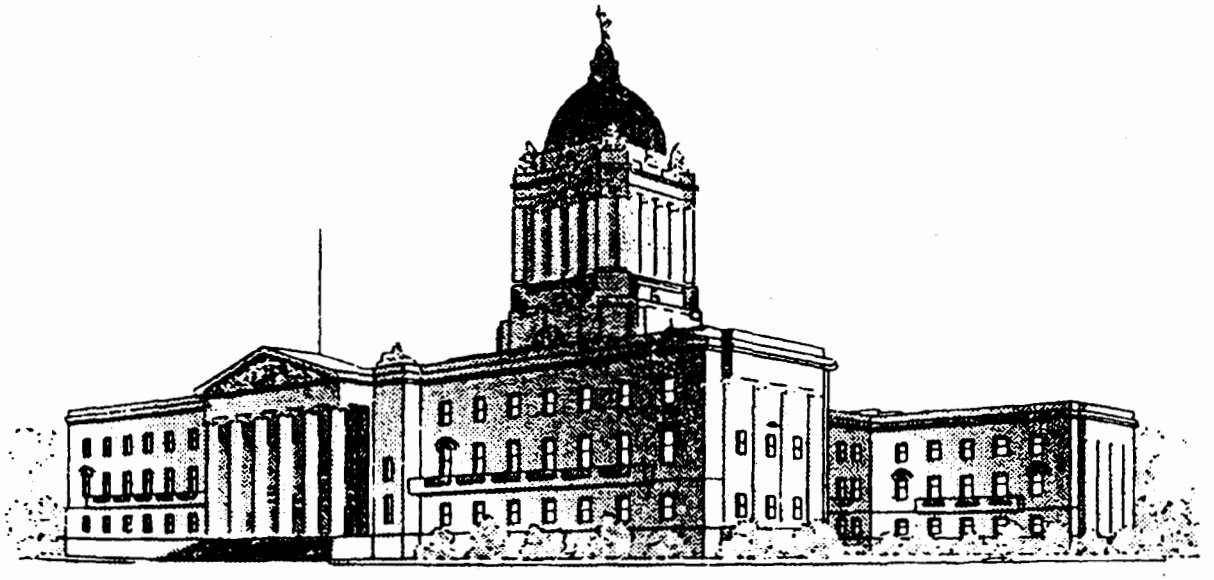
Fourth Session - Thirty-Sixth Legislature

of the

Legislative Assembly of Manitoba

Standing Committee on Law Amendments

Chairperson
Mr. Jack Penner
Constituency of Emerson



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MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Sixth Legislature

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LEGISLATIVE ASSEMBLY OF MANITOBA

THE STANDING COMMITTEE ON LAW AMENDMENTS

Thursday, June 18, 1998

TIME – 10 a.m.

LOCATION – Winnipeg, Manitoba

CHAIRPERSON – Mr. Jack Penner (Emerson)

VICE-CHAIRPERSON – Mr. Peter Dyck (Pembina)

ATTENDANCE - 10 – QUORUM - 6

Members of the Committee present:

Hon. Messrs. Derkach, Gilleshammer, Radcliffe, Toews

Mr. Ashton, Mrs. Driedger, Messrs. Dyck, Evans (Interlake), Penner, Reid

APPEARING:

Ms. Becky Barrett, MLA for Wellington
Mr. Gord Mackintosh, MLA for St. Johns
Hon. James McCrae, MLA for Brandon West
Ms. Diane McGifford, MLA for Osborne
Mr. Tim Sale, MLA for Crescentwood
Mr. Conrad Santos, MLA for Broadway

WITNESSES:

Bill 28–The Employment Standards Code and Consequential Amendments

Ms. Candace Bishoff, Winnipeg Chamber of Commerce

Bill 32–The Municipal Amendment and Consequential Amendments Act

Mr. John Nicol, Union of Manitoba Municipalities
Mr. David M. Sanders, Colliers Pratt McGarry

Bill 33–The Municipal Assessment Amendment and Consequential Amendments Act

Mr. John Angus, Councillor, St. Norbert Ward, City of Winnipeg
Mr. David M. Sanders, Colliers Pratt McGarry

Bill 38–The Planning Amendment and Consequential Amendments Act

Mr. Stewart Briese, Union of Manitoba Municipalities
Ms. Valinda Morris, Provincial Council of Women of Manitoba

Bill 40–The Domestic Violence and Stalking Prevention, Protection and Compensation and Consequential Amendments Act

Ms. Diane Peters, Private Citizen
Ms. Marilyn McGonigal, Private Citizen

Bill 45–The Manitoba Public Insurance Corporation Amendment Act

Ms. Kristine Cowley, Canadian Paraplegic Association
Mr. Garth Smorang, Manitoba Bar Association
Dr. Greg Stewart, Manitoba Chiropractors Association
Mr. Frank Bueti, Private Citizen
Mr. Jerry Kruk, Canadian Automobile Association

Bill 54–The Engineering and Geoscientific Professions and Consequential Amendments Act

Mr. Dave Ennis, Association of Professional Engineers

Bill 55–The Certified Applied Science Technologists Act

Mr. Ralph Caldwell, Certified Technicians and Technologists Association of Manitoba

WRITTEN SUBMISSIONS:

Bill 28–The Employment Standards Code and Consequential Amendments

John Doyle, Manitoba Federation of Labour

Bill 38–The Planning Amendment and Consequential Amendments Act

Carolyn Garlich, Council of Women of Winnipeg

Bill 40–The Domestic Violence and Stalking Prevention, Protection and Compensation and Consequential Amendments Act

Valerie Price, Manitoba Association for Rights and Liberties

Bill 45–The Manitoba Public Insurance Corporation Amendment Act

Steven Fletcher, Private Citizen

MATTERS UNDER DISCUSSION:

Bill 8–The Real Property Amendment Act
Bill 10–The Mining Tax Amendment Act
Bill 28–The Employment Standards Code and Consequential Amendments Act
Bill 32–The Municipal Amendment and Consequential Amendments Act
Bill 33–The Municipal Assessment Amendment and Consequential Amendments Act
Bill 38–The Planning Amendment and Consequential Amendments Act
Bill 39–The Highway Traffic Amendment Act
Bill 40–The Domestic Violence and Stalking Prevention, Protection and Compensation and Consequential Amendments Act
Bill 45–The Manitoba Public Insurance Corporation Amendment Act
Bill 54–The Engineering and Geoscientific Professions and Consequential Amendments Act
Bill 55–The Certified Applied Science Technologists Act

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Mr. Chairperson: Would the Standing Committee on Law Amendments please come to order. This morning the committee will be considering the following bills: Bill 8, The Real Property Amendment Act; Bill 10, The Mining Tax Amendment Act; Bill 28, The Employment Standards Code and Consequential Amendments Act; Bill 32, The Municipal Amendment and Consequential Amendments Act; Bill 33, The Municipal Assessment Amendment and Consequential Amendments Act; Bill 38, The Planning Amendment and Consequential Amendments Act; Bill 39, The Highway Traffic Amendment Act; Bill 40, Domestic Violence and Stalking Prevention, Protection and Compensation and Consequential Amendment Act; Bill 45, The Manitoba Public Insurance Corporation Amendment Act; Bill 54, The Engineering and Geoscientific Professions and Consequential Amendments Act; Bill 55, The Certified Applied Science Technologists Act.

We have presenters who have registered to make a public presentation on all bills, except for Bill 8, Bill 10 and Bill 39.

It is the custom to hear public presentations before consideration of the bill. Is it the will of the committee to hear the public presentations again first? Agreed? [agreed] I will read then the names of the persons who have registered to make presentations this morning.

For Bill 28, Candace Bishoff, Winnipeg Chamber of Commerce. For Bill 32, John Nicol, Union of Manitoba Municipalities, and David M. Sanders, Colliers Pratt McGarry. For Bill 33, John Angus, Councillor, St. Norbert Ward, City of Winnipeg, and David M. Sanders, Colliers Pratt McGarry. For Bill 38, Valinda Morris, Provincial Council of Women of Manitoba; Stewart Briese, Union of Manitoba Municipalities; and Ed Arnold, Selkirk & District Planning Area Board. For Bill 40, Brian O'Neill, Private Citizen, and Diane Peters, Private Citizen. For Bill 45, Steven Fletcher, Private Citizen; Garth Smorang, Q.C., or Doug Patterson, Q.C., Manitoba Bar Association; Kristine Cowley or Randy Komishon, Canadian Paraplegic Association; Dr. Greg Stewart, Manitoba Chiropractors Association; Frank Bueti, Private Citizen; and Jerry Kruk, CAA Manitoba. For Bill 54, Peter Washchyshyn or Dave Ennis, The Association of Professional Engineers. For Bill 55, Ralph Caldwell, Certified Technicians and Technologists Association of Manitoba Inc.

That is the list of the presenters so far. If there is anybody else in the audience that has not registered and would like to make a presentation, would you please

register with a Clerk at the back of the room or notify the Clerk that you have a presentation.

I understand that we have some out-of-town presenters that are registered to speak to Bill 32, Bill 38, and Bill 45. Is it the will of the committee to hear those first?

I also have one other request for a person that has a job interview later this morning. I wonder if we could hear that person first. Would it be agreed to that? [agreed]

The following are the out-of-town presenters. I am going to read first the person's name and ask her to come and speak first. The out-of-town presenter is Brian O'Neill. Diane Peters is the first presenter that I would ask the committee to hear, if that is possible. She is the private citizen that has a job interview this morning.

Before we proceed with the presentations, is it the will of the committee to set time limits on presentations? Can we set a 15-minute limit on presentations and 10 minutes for questioning? [agreed]

Now, before we start proceedings, can we determine also when committee should rise this morning? Is 12:30 an adequate time for hearings this morning? We will rise then and, if need be, reconvene this afternoon. [agreed]

Bill 40–The Domestic Violence and Stalking Prevention, Protection and Compensation and Consequential Amendments Act

Mr. Chairperson: Can we call then Diane Peters? Is Diane Peters here? She will be making a presentation, I understand, on Bill 40. Have you presentations for distribution?

* (1010)

Ms. Diane Peters (Private Citizen): Yes, I do.

Mr. Chairperson: The Clerk will distribute.

Ms. Peters, you may proceed.

Ms. Peters: I was wondering at this time if you could take a few moments to read the first four pages only, in the interest of time.

Mr. Chairperson: I would suggest that you proceed with your presentations, and the committee members can read the first four pages, if that is the will of your presentation. That will expedite the process. You may proceed.

Ms. Peters: My name is Diane Peters. I have experienced domestic violence. Seven years ago I left a very violent marriage. For the last seven years I have experienced stalking and what I would call criminal harassment with no end in sight. I feel that it is very important that the laws in Manitoba be strengthened, changed. Some of the issues that I have talked about in the paper that I have given to you need to be looked at.

As I looked through Bill 40 yesterday–I only got one day's notice, so I have only had one day to prepare for this–it seems rather weak to me, and it does not address many of the issues I have had to face in my life the last seven years nor issues my four children have had to address in their young lives. I have heard that this bill is weaker than other bills that have already been made in other provinces. I wonder why that would be, why we could not learn from other people's experience? In particular, on page 3 under examples of conduct, it talks about "engaging in threatening conduct directed at the other person or anyone known to the other person."

I have had my coat slashed, my car burnt down, my windows broken, my tires made flat, threats to have me fired from my teaching job. Nothing has been able to stop this man. He has been convicted. He has been arrested; four times convicted; charged twice; put on probation. While he was on probation, my car got burned. He continued to harass me but in a very clever way, ways that I could not prove that he had done those things.

The police refused to look at the pattern of harassment and stalking. They refuse to see there was a pattern. When I got engaged, my coat got slashed, when I got married my tires were flat. When I began living with this man that I am married to now, my windows were broken. There was a definite pattern.

The police also do not understand that just because he has not killed me already, that there is not a chance he might unravel one day. They have said things to me like: if he was going to do harm to you, he would have done it by now. That shows an absolute, utter ignorance of the dynamics of domestic violence. The protection orders I have had, I have had restraining orders; I have been supposedly protected under his probation; I have had the orders that you go and get for free when I ran out of money. Nothing has stopped this.

It has damaged me. I had a complete mental breakdown two years ago and was unable to teach. It has damaged my children beyond repair. I think page 3, "engaging in threatening conduct directed at the other person" would certainly include me, and yet the police constantly tell me that whatever restraining order I have is too vague. It seems very much like no one cares.

I have not been silent. I have questioned the police. I have gone to Child and Family Services and had Keith Cooper try to explain to me why someone like this can see their children and continue to stalk you and harass you through your children.

I need a moment to find the other page in here that I thought needed attention. Page 11 (j), a provision requiring the respondent to pay compensation to the subject for any monetary loss suffered by the subject as a result of the domestic violence or stalking, which may include loss of income, medication, counselling.

If anybody would have a case of criminal injuries, you would think it would be me. But no, there is a catch. If you do not have a police incident number for your assault, you are out of luck, and, if the police do not do their job and give you an incident number, sorry, too bad.

I stayed up really late last night and I am really tired. I think my paper explains it better than I can just standing up here. I have included my journal from a summer that I referred to in that paper. I reread it this morning as I photocopied it, and I was saddened to say a lot of my feelings are the same. I would have hoped I could have healed over these last seven years.

This is only a portion of the police incidents. I gave up reporting to the police a long time ago. I wear this personal alarm at work, and I have this phone, and I have a $2,500 German shepherd dog who is trained in personal protection that was donated to me by the Masons. My house is a prison. He has taken away my dignity, and you need to address this. Thank you.

Mr. Chairperson: Thank you very much for your presentation.

Mr. Gord Mackintosh (St. Johns): Well, I commend you, Ms. Peters. You are very brave in coming down here, speaking in front of the public and representatives in this Assembly. Circumstances that are made known by people like you are much stronger than anything anyone else can do. I commend you for your concern about how public policy has to improve to protect people like you.

I had a question. It was very important when you said that stalking often is not directed just at, in this case, it was you, or the woman. It sometimes is indirectly affecting yourself or a woman. Do you think it is important that the legislation do whatever it can to stop and prevent stalking directly or indirectly?

Ms. Peters: Yes, it is vital. This bill does not address people like me or my experience. It seems more to address a woman when she first leaves. But what about the stalkers who do not stop, who do not respect anything? It is just the nature of the beast that they do not respect laws. The laws have to be strengthened. There have to be consequences for every act they take against the subject. Otherwise, why would they stop? They are getting away with it. Why would they stop? I am also a crisis line worker at Osborne House, and I hear lots of stories about the inadequacies of the laws and the protection for women and children. If I was a millionaire, I would give every women who needs one a German shepherd dog because no one else is going to protect you.

Mr. Mackintosh: I do not know if you will be able to stay around to hear the proceedings, but the Law Reform Commission produced a report last year on stalking which led to part of the legislation in the bill that you have got there. I think you are aware of that. The Law Reform Commission said that, and I will just quote: a stalker may target a subject's family or friends as a means of harassing the subject. For example, a

stalker may repeatedly follow and threaten an ex-wife's new partner or her child.

That is what you were speaking to. The commission went on to say: our proposed act–that is the Law Reform Commission's proposed act–recognizes this by defining stalking to include situations where the subject fears for the safety of anyone known to them.

* (1020)

Ms. Peters: Yes, I have often feared for the safety of my new husband. My ex-husband made it clear, I wrote in my paper, he said he would blow away any man that stepped on my steps. I was often afraid for my new husband. My ex-husband had a pattern of getting anyone out of my life who came into my life, anyone who would love me, anyone who would help me. He would destroy the relationship somehow.

Imagine how my new husband felt; we get married and I have a nervous breakdown. It was a very difficult first few years of our marriage. It could have destroyed a weaker marriage.

Mr. Mackintosh: Despite that recommendation from the Law Reform Commission, the government took that out. In other words, this law only deals with stalking against the–how would you say it–main subject, the dominant subject of stalking. So we will be proposing an amendment to deal with that indirect and that stalking of people known to the subject.

I take it then you would support that and urge the minister to consider that.

Ms. Peters: I do–

Mr. Chairperson: I am sorry, Ms. Peters. If I do not recognize you, your mike does not switch on, and it is not recorded. What happens at committee is that the Chairman will recognize you, and then you may answer.

Ms. Peters: I forgot the question. Yes, I do urge the minister to make this a much stronger bill and to learn from the experience of Saskatchewan. Another shelter worker took this bill to her law professor. She is studying law, and her professor is from Saskatchewan. She felt it was very weak, and so do I.

Ms. Diane McGifford (Osborne): Thank you, Ms. Peters, for your very eloquent and moving address this morning. I am sure that you know, as well as people at this table, that in speaking out today you are speaking for many women who cannot come down here, or will not come down here, and so our congratulations on your courage in being with us this morning. We certainly appreciate it.

You were speaking about 14(1)(j), which is on page 11 of the bill, and it reads: "a provision requiring the respondent to pay compensation to the subject for any monetary loss suffered by the subject as a result of the domestic violence or stalking, which may include" and then it goes on to suggest certain things that it may include. One of the things I notice that is not included there is any expenses that may accrue because of children being affected. I think you said that your children had been very seriously affected.

I know that counselling services for children who are witnesses of domestic violence are not readily available. I know there are some services at Klinic but there is only one counsellor, and one counsellor certainly is not adequate to care for all the children in the province who may need this kind of counselling. Then there are children who do not live in Winnipeg who could not attend that program anyway. I wonder how you feel about this bill, or if you have had the opportunity to give thought to the way this bill does or does not include children either as victims of domestic violence or as witnesses of domestic violence.

Ms. Peters: The truth is I have been able to get free counselling for my children through EVOLVE. I have gone through Klinic. I took a parenting program to teach me how to help my children. It is called Parenting Children Who Have Witnessed Domestic Violence. I have learned, I have read, I have studied. I have had to also learn how to counsel my children because each situation is so unique and strange. I have also got free services through Manitoba Adolescent Treatment Centre, so I do feel, as I am a school counsellor, there are services for children out there, wonderful services. I note the lack of mention of children in here, too.

Ms. McGifford: Was there a waiting list for the services at EVOLVE?

Ms. Peters: I was very lucky, there was a short waiting list. I am counselling someone right now who has a long wait ahead of her before her children can get help.

Ms. McGifford: Ms. Peters, what about children outside the city of Winnipeg? You recognize those services that you were able to obtain as a person living in Winnipeg would not be available. So I wonder what you think about the wisdom of including children in this bill, so that, for example, the counselling fees that a mother may accrue as a result of her children witnessing domestic violence would be paid for by the perpetrator.

Ms. Peters: I think that would be almost too good to be true, if you could make the perpetrator pay. I have had a great deal of difficulty getting child support even though it is a court-ordered garnishment. I continue to have a terrible time trying to get my payments from his company. I think it should be that they have to pay. He should have to have paid for all the bars on my windows. He should have to pay for when I was on disability and I did not get my complete salary. Yet I was still having to go to court to fight his craziness and hire lawyers to stop him from getting a protection order against me, which I knew he would abuse. I think it would be wonderful if you could make them pay. I do not know how you could get blood from a stone.

Ms. McGifford: I suppose the first thing would be to include, in this case, children in the legislation, so that there would be some legislation covering children. I am gathering that you agree that it would be important to broaden this legislation to include children.

Ms. Peters: Yes, I do agree. It would be very, very crucial to include children and to think about the damage that is being done to young children.

Ms. McGifford: I just wanted to once again thank Ms. Peters for being with us this morning.

Hon. Vic Toews (Minister of Justice and Attorney General): Thank you very much for your presentation. I appreciate the fact that you came here and provided us with your input and certainly all the research that you have done.

Firstly, in respect of the issue of children, I know you received some legal advice on this matter from a law professor, you indicate. Is that correct?

Ms. Peters: No, I did not. I talked to some of the shelter workers about this bill very quickly yesterday to see what they thought, and one of them said she had talked to her law professor who thought it was not strong enough.

Mr. Toews: Just in respect of the issue–and I think your point is a very good one in respect of the responsibility that a parent has for a child, for example, that it may cause that parent some concern. Have you addressed your mind to Section 2 of the bill, specifically Section 2(4), which says that: where, but for mental incompetence or minority, a person would reasonably, in all the circumstances, fear for his or her safety owing to conduct referred to in subsection 2, the person is conclusively deemed to have the fear referred to in that subsection.

What I understand that means is that where a parent has that fear in respect of the children and the children are under age, then the parent can make the application under the section. So my understanding of the act is, in fact, what you are requesting, so that you can ask for this order. Where it is the safety of your children that you are concerned about, this is already provided in Section 2(4). Have you given any thought to that issue?

* (1030)

Ms. Peters: No, I did not notice. What page is it on?

Mr. Toews: It is on page 3, 2(4).

Ms. Peters: This sounds really good, but I have had the police come out to my house and say to me: we do not understand why you are afraid.

Mr. Chairperson: I am going to allow the continuation of this. We had questioning here of significant length by one or two of the committee members. I am going to continue this because we are going over the set time for questioning at 10 minutes. I am going to allow for that at the time.

Mr. Toews: I will wrap up very quickly. I note your concern about monetary losses. It was also raised by my colleagues here in respect of (j) on page 11. One of the things that my understanding of the act is, and this might address your concern, is that it is for

compensation for any monetary loss suffered by the subject, that is, the person applying. It is my understanding, given what I have already said, that a parent would have a right then to apply on behalf of somebody who might be mentally incompetent or under age, and also the fact that my understanding is if you are put to the expense of counselling for your children, which you indicate may or may not have happened in some situations, this would then give you a right, because it is an expense you have suffered because it is not your children who have paid for that, it is you. So the act in fact specifically addresses the situation that you have talked about.

I am just saying that maybe, sometimes, the meaning is obscured by some of the legal words that have to be there. I can assure you, Ms. Peters, that we want to address your concerns and are very mindful of your concerns. I want to thank you very much for your presentation.

Mr. Chairperson: Thank you, Ms. Peters, for your presentation.

Bill 32–The Municipal Amendment and Consequential Amendments Act

Mr. Chairperson: We will turn then to the next presenter which is an out-of-town presenter, on Bill 32, John Nicol, Union of Manitoba Municipalities. Mr. Nicol, would you come forward, please.

Might I ask the people who are sitting in this room whether it might be possible, if you have any conversations to be carried out, could you do them outside of the room, please? It makes it very difficult for committee to hear the presenters as well as the questioning. Maybe it is just my ears find it difficult to pick things up, but I detect this noise in the background. I would ask, if you have discussions, please hold them outside of the room in order to accommodate the procedure.

Mr. Nicol, do you have a presentation for distribution?

Mr. John Nicol (Union of Manitoba Municipalities): I do, Sir.

Mr. Chairperson: The Clerk is distributing. Mr. Nicol, you may proceed.

Mr. Nicol: Mr. Chairman, members of the committee, it gives me pleasure to talk on Bill 32, The Municipal Amendment Act. We are pleased to appear before the standing committee. We represent the 172 municipalities, including 118 rural municipalities and 54 urban municipalities, in Manitoba. The mandate of the UMM is to act on behalf of our members to bring about changes, whether through legislation or otherwise, that will enhance the strength and effectiveness of municipalities.

The current act has been in effect since January of 1997. The new act streamlined a number of procedures and provided municipalities with greater autonomy and discretion. Municipalities agree with the overall direction of the changes. However, in the last 18 months some problems with the act have arisen. We are pleased the Department of Rural Development has consulted with municipalities and are responding to some of the issues which were raised about the act by municipal administrators and elected officials.

Bill 32 continues the trend of streamlining certain administrative and financial procedures. We support the amendments which clarify areas of The Municipal Act dealing with the tax sale process and council proceedings. We also support the changes dealing with municipal finances. That is usually my taxpayers leaving, slamming the door. Under Bill 32, municipalities can approve expenditures not contained in the original financial plan, provided they borrow or have the funds in surplus or reserve. This amendment further enhances the ability of municipalities to administer their own financial affairs.

In addition, it simplifies the process for providing for special services or local improvement levies, allows municipalities to cancel taxes or levy supplementary taxes where there are property assessment changes. It also adds Indian bands and other local authorities to the list of parties with which municipalities can enter agreements.

In addition to these housekeeping changes, it also includes some more significant amendments on which we would like to comment, such as the change in term of office for elected officials from three to four years. We would first like to clear up the misconception that the UMM requested the changes for a longer term,

which is not at all the case. The four-year term was a recommendation in the Cuff report prepared for the City of Winnipeg. It was the city that asked the province to make the change. The province agreed and decided to extend the term for all municipal officials and school trustees. The Minister of Rural Development (Mr. Derkach) did discuss this issue with us prior to the legislation being introduced, but it was not initiated by municipal government in rural Manitoba.

We recognize a four-year term will provide greater continuity in municipal administrations. In addition, we also agree that if the term is to be changed, it should also apply to school trustees to ensure that local government elections are more consistent.

However, we are more concerned that a four-year term will require a greater time commitment which may discourage people from running for municipal office. Attracting individuals to run for municipal office is already difficult in some areas, particularly in smaller communities. In the City of Winnipeg, a councillor is a full-time position. In rural Manitoba, being an elected official is just one more of many commitments which are made by individuals over and above their employment or business. While four years may and probably is appropriate for the City of Winnipeg, we are concerned it will have a negative impact on municipalities.

One of the main concerns is that many municipalities feel there was insufficient time for them to consider this issue. Based on the discussions we have had with our membership to this point, we must conclude that there is a difference of opinion among municipalities as to whether the lengthier term will be a positive change.

The most significant amendments contained in Bill 32 are the changes being proposed in the area of drainage, which continues to be one of the primary water resource issues in rural Manitoba. Poorly managed drainage projects not only contribute to the flooding and erosion of land, they can also negatively affect municipal infrastructure, waterway banks, the recharge of aquifers and wetland habitat.

We have been working with the province's inter-departmental task force on drainage, and most recently we provided input into these Municipal Act amendments. We also asked the Department of Rural Development to clarify the type of drains for which the municipalities are responsible and to deal with the question of how drains should be maintained. The amendments do address these two issues, and we are particularly pleased municipalities will be able to maintain drains to a standard that the municipality deems appropriate for its intended use.

* (1040)

Unfortunately, the department did not agree to give municipalities the ability to intervene in unlicensed drainage activities which impact on municipal drains. We strongly believe municipalities should have the authority to clear an obstructed municipal drain, and more importantly to stop the discharge of water into a municipal drain when the drain has been constructed without a licence. However, while the province is willing to allow a drain to be cleared, they will not allow municipalities to close an unlicensed drain. This position was confirmed in a letter which we received last week from the ministers of Rural Development (Mr. Derkach) and Natural Resources (Mr. Cummings). The letter stated our proposal will be examined in the coming months as part of a larger review of water-related legislation, however the UMM still believes strongly municipalities need the ability to take action in those cases where unauthorized work impacts on municipal drainage systems. We are pleased to say that over 60 municipalities have passed resolutions supporting this.

It is important to discuss why we feel municipalities need the ability to close an unlicensed drain, currently a process in legislation for individuals to apply to the Department of Natural Resources for a licence for drainage activities. However, the response time for the application is very slow and the monitoring of drainage projects inconsistent and inadequate. In addition, the criteria which Natural Resources uses to approve drainage projects differs in eastern and western Manitoba.

As we all know, this lack of a coherent system has resulted in a large number of unauthorized drainage projects being constructed by rural landowners. If the drainage legislation is not going to be enforced or monitored by the province, municipalities must have the ability to take action where unlicensed activities are having a direct effect on municipal drains.

Municipal Act amendments are of course just one part of improving drainage and water policy in Manitoba. As we have stated, it is equally important that the Department of Natural Resources place a greater emphasis on licensing and enforcing drainage projects in a consistent manner. There is clearly a need for province-wide, long term strategy for drainage and for other water resources issues. We appreciate the province is committed to a process-developed and comprehensive water legislation. However, as stated in the province's letter, this process will take place over the next couple of years.

We believe municipalities will need the tools to deal with the issue within a shorter period of time. We would suggest that if it is going to take an 18 or two-year process to get this done at one meeting a month, we would appreciate having the opportunity to perhaps have three or four meetings in a month to speed up the process. We would not want to see something like this drag on for a long period of time and be placed perhaps on a shelf somewhere or something. We would like to see it done and done with and entered next year, if that is what is to happen.

The department stated, in the interim, municipalities could pass a by-law under the spheres of jurisdiction section of The Municipal Act giving themselves the authority to block unlicensed drains. According to legal opinion, which we have received, it is not really clear whether such a by-law would withstand a legal challenge.

Once again, Sir, there are differences of opinion, so it is not appropriate to ask municipalities to put themselves in a position where they could be found to have acted illegally and could be held liable for their actions. Ad hoc measures, such as this will not assist municipalities, further evidence the issue should be dealt with earlier when the amendments were first drafted.

With regard to the remainder of The Municipal Act, we hope the province will continue to monitor the legislation after this year's municipal elections. Municipalities remain concerned with other parts of the act. In particular, two issues which are consistently raised by our membership are councillors being allowed to abstain from voting and nonresidents being allowed to run as municipal candidates.

Currently, council members can abstain from voting on issues brought before council. Municipalities believe councillors should vote on all issues, unless they remove themselves from debate for conflict of interest. Municipal councils cannot be compared to provincial or federal assemblies where determining rules for voting by elected representatives. At five to seven members, municipal councils are small. Its members are not subject to the discipline of party voting. If there is no requirement for council members to vote, it is possible some decisions can be approved by a small minority of councillors.

Many municipalities have already expressed this very concern to the UMM. We urge the province to consider a resolution, passed at our last convention, asking The Municipal Act be amended to require councillors to vote on every matter other than those identified in the conflict of interest.

We also continue to oppose the lack of residency requirements for municipal candidates. We believe they should be residents within the municipality in which they are running. As elected officials, they will be available and accountable to rate payers. By their very nature, decisions by municipal officials need to be based on a sound knowledge of the conditions and characteristics of their local area. This knowledge is best gained by living in a community and experiencing first-hand the effects of council decisions.

We would recommend that residency requirements be included in The Municipal Act with the following exception: under the old legislation, a resident living in an urban municipality could run in a rural municipality for the position of reeve or councillor in a ward which shares a boundary with the urban municipality. We agree with this former provision, believe the opposite should also apply. A rural resident living in an area which has contiguous boundaries with an urban municipality should be allowed to run for the position of mayor or council in the urban centre.

As we stated, these issues have consistently been raised as concerns by municipalities since the new act was introduced. We therefore urge the province to

consider these changes in their next review of The Municipal Act.

Finally, we would like to state our support for any amendments which come forward to allow sitting councillors who are also municipal employees to run for re-election in the fall. We have discussed this issue with the province and with our minister, and we hope that before Bill 32 is passed, provisions will be included to allow these councillors to run without having to take an unpaid leave of absence from their job.

I thank you very much for the opportunity to express our views on Bill 32, Mr. Chairman.

Mr. Chairperson: Thank you very much, Mr. Nicol, for your presentation. I want to indicate to you, however, that you did exceed your time limit by about two minutes–oh, I am sorry, no, no–10 minutes. I am wrong, Mr. Nicol. I am sorry.

Mr. Nicol: I exceeded by 10 minutes?

Mr. Chairperson: No, no, you are fine. I looked at the wrong hand on my watch. It is the one that moved faster.

Any questions of Mr. Nicol?

Mr. Clif Evans (Interlake): Thank you, Mr. Chairman, and thank you, Mr. Nicol, for your presentation. When it comes to the term of office for elected officials, you state that UMM did not request changes to that. How is UMM addressing the fact that this has been introduced and it is going to be legislation? Has the government indicated at all that they would consider in any way listening to your proposal, your request, or opposition to this legislation? Are they going to be dealing with it? Have they indicated if they are dealing with it to you?

Mr. Nicol: Thank you for the question. As you probably know me, I speak my thing, and I must tell the truth. Quite honestly, we had a number of calls regarding this position. In the interim, we have had three June district meetings including about 110 people at each one. The vote quite honestly–in the one place the talk to change it back to three years was voted down. In the other two they felt municipal councils would get along with it. A number of the people who complained about it in the first place did not put their hand up and say, yes, we still believe firmly in that. So, in all honesty, I must admit that it appears like it may be a nonissue in rural Manitoba.

Mr. Chairperson: Thank you very much for your presentation, Mr. Nicol.

Mr. Nicol: That is it? Thank you very much.

Mr. Chairperson: That is it. We will let you off easy this time.

Bill 38–The Planning Amendment and Consequential Amendments Act

Mr. Chairperson: I call next, Bill 38, Mr. Stewart Briese, Union of Manitoba Municipalities. Mr. Briese, is he here? Would you come forward, please. Have you a presentation for distribution? The Clerk will distribute. Mr. Briese, you may proceed.

* (1050)

Mr. Stewart Briese (Union of Manitoba Municipalities): The Union of Manitoba Municipalities is pleased to appear before the standing committee considering Bill 38, The Planning Amendment Act. Over the past number of years, the UMM has continually discussed the need for amendments to be made to The Planning Act which would simplify and streamline certain aspects of the legislation. Along with proponents and other participants in the development application process, the municipalities have been unhappy with some of the cumbersome procedures contained in The Planning Act.

Because of these concerns, we were pleased to take part in an advisory committee which the province formed to examine changes to The Planning Act. We believe that the amendments in Bill 38 achieve the objectives of streamlining processes and procedures, and we therefore support the legislation.

Municipalities have often been frustrated with the time-consuming procedures which must be used under the current Planning Act for seeking ministerial

approvals for planning by-laws. Some of these steps cause unnecessary delays, and we are pleased that Bill 38 streamlines these procedures. We agree with the changes to the approval process which will mean that when the minister approves a development plan by-law after second reading, the by-law comes into effect after third reading by the local authority and does not have to be referred back to the minister. Bill 38 also allows the local authority rather than the minister to make minor alterations to zoning by-law and dispense with the requirements for public hearings if in their opinion the alteration does not change the intent of the by-law.

We recognize that there may be concerns about municipal councils having the discretion to define a minor alteration rather than the minister. However, it is important to note that these changes are part of a larger trend in amendments made to municipal legislation in the past few years. Municipalities have been given greater autonomy for making decisions on issues directly under their jurisdiction rather than depending on ministerial approval. While the definition of a minor alteration is not provided in the act, we understand that the Department of Rural Development will be including guidelines in the Municipal Procedure Manual to assist municipalities in determining what constitutes a minor alteration.

We believe this will be sufficient to ensure the proper use of this section. Another significant amendment is the elimination of the reference to basic planning statements and the recognition of existing basic planning statements as development plans. This removes an unnecessary distinction between two types of plans and thereby simplifies the development plan process. Other amendments include the standardization of notice provisions and the clarification of the six-month waiting period for making a subdivision application after it has been rejected. The amendments which we are discussing today are the initial steps in a much larger process to review development and planning policies through the consultation on sustain-able development implementation.

In addition, the Manitoba livestock management initiative is examining local and provincial planning policies. Planning is also central to the timely issue of peripheral development which is being examined by three different committees, including the Rural Development Institute, a panel announced by the Minister of Urban Affairs (Mr. Reimer) to study the Capital Region strategy and a group of urban municipalities seeking support to study development in rural areas.

It is no surprise that land use planning is part of these studies and initiatives. Ongoing changes in the economy and population of Manitoba have been significant and have resulted in competing pressures for the use of land. These trends demand a greater focus on planning and land use policies by both municipalities and the province. The UMM has consistently urged the province to make land use planning a higher priority. We were critical when the provincial land use policies were weakened a number of years ago, and we continue to believe that more attention must be given to the policies affecting the location of development in Manitoba.

The UMM is pleased that the Minister of Rural Development (Mr. Derkach) has announced that a template for development plans is being produced and will be provided to the municipalities to facilitate the adoption of development plans by more municipalities. A template should reduce the cost and time involved in drafting development plans. We hope that the template will be one part of a larger program of financial and administrative support from the province to assist municipalities with planning-related activities such as the formation of planning districts.

The UMM continues to encourage our member municipalities to pass planning by-laws, and with adequate assistance, we believe more municipalities will establish planning by-laws and enter into planning districts. There is no question that the province has an important role to play in providing assistance to municipalities, both through direct administrative and financial support, and through the development of stronger land use policies. If the province provides this planning framework, municipalities will be better equipped to make land use decisions at their local level, because while the province should play a leadership role, ultimately local government must remain the final decision maker on development land use decisions within their own municipalities.

The UMM is concerned that an appeal process for municipal decisions seems to be continually raised

as an option for dealing with controversial local land use issues. We believe that through the current consultations and discussions about land use planning, other options can be found which will not remove the right of municipalities to make the final decisions on land use issues. Thank you for the opportunity to provide our comments on Bill 38, and the issue of land use planning.

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

Ms. Becky Barrett (Wellington): Thank you for a very good brief that outlines a number of issues that we have been raising with the Minister of Rural Development (Mr. Derkach), and the Minister of Urban Affairs (Mr. Reimer), and I think you very well put them together in recognition that we all, whether we are in the Capital Region, or rural areas, or the city, have to work on these issues together.

In particular I just want to ask you one question, and that is when you are talking about the template that the minister is announcing will be developed for helping municipalities to prepare their own development plans, I am wondering if you would agree that this template should be put together using the provincial land use policies, weakened though they may be, as a major component, that nothing in the template should make it easy for municipalities not to follow the provincial land use policies? How should those two things go together, I guess?

Mr. Briese: I think most of our decisions are based off the provincial land use policies, and possibly there could be some review of the provincial land use policies, but the template should follow the provincial land use policies, definitely.

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

Bill 33–The Municipal Assessment Amendment and Consequential Amendments Act

Mr. Chairperson: I am going to ask the committee for an indulgence here. I have a request from Councillor John Angus who has to be at another function at 11:30, and he has asked whether it might be possible for him to make his presentation before that time. So what is the will of the committee? Are you agreed? [agreed] I am going ask Mr. Angus to come forward to make your presentation. Have you a presentation for distribution Mr. Angus? Mr. Angus, you may proceed.

Mr. John Angus (Councillor, St. Norbert Ward, City of Winnipeg): Thank you very much, Mr. Chairman, and thank you to the members of the committees for the indulgence, and I apologize to the people that I may have leapfrogged over.

I am accompanied by Ms. Denise Pambrun of the City of Winnipeg legal department and Mr. Brian Moore, the city assessor, to answer any technical questions on what can become a very complicated issue, and I have a very brief presentation.

* (1100)

Mr. Chairman, I am speaking in respect to Bill 33, The Municipal Assessment Act. I would like to thank the committee for the opportunity today, on behalf of the City of Winnipeg, with respect to the proposed amendments.

The city wishes to voice its support in principle for the bill. The bill in our view improves on legislation which is critical to the establishment and maintenance of a stable assessment and tax base for the City of Winnipeg. From the city's perspective, Mr. Chairman, the bill falls into three specific categories: one, the fee simple amendments; two, the effective year amendments; and, three, the technical amendments.

In regard to the fee simple amendments, the city supports the enactment of these amendments in principle as they address the problems which potentially arose out of a court decision in relation to the Dynasty Building. The amendment clarifies that all interest in properties are to be assessed in the name of the registered owner of the property in question. These amendments eliminate the possibility the assessor will be required to separately assess individual interest in properties in the names of the holders of various interests.

However there is one concern that we have, and it is in reference to owners. It is contained elsewhere in The

Municipal Assessment Act, and they are not consistent with the amended legislation intention. The unfortunate result may be that certain of the exemption sections will become ambiguous, and the assessor will have to be given clear direction to deal with it in the short-term leasehold interest, as an example, and it runs into potential court challenges and legal wrangling.

We believe that the intention of the act is to clarify that. We have attached a very simple amendment that will clarify that. It simply says that you either substitute "has as its registered owner," which you are intending to do anyway for "is owned by" where it appears in the sections, or add under the definition category as meaning "owned by a person who is a registered owner." So you declare that what "owned by" means or refers to. I think that it is simply a housekeeping type of amendment, because it makes it clear all the way through the bill what it is we are intending to try and accomplish. So I hope that is not too big a difficulty. I simply want to make sure that both our assessors and our law department have the opportunity to enact the legislation as the committee is intending.

Really effective, your amendments, Mr. Chairman. The city wholly supports the enactment of these amendments as they clarify wording and provisions which strengthens the assessor's ability to collect relevant and timely financial information. The technical amendments, we support them. These enactments, as they clarify and update aspects of day-to-day implementation of The Municipal Assessment Act, lead to greater stability and predictability in the assessment area.

As everybody understands the difficulties we have had, these amendments are going to go a long way to helping us get our house in order in that particular area. So we very much appreciate the fact the province has shown foresight in adopting a proactive approach to resolving difficulties of interpretation that can arise out of the court decisions, and we very much appreciate the support. We are here to support the general intention of the legislation, and with that one minor clarification which we think simply makes common sense to enact the intention of the amendments, I would very pleased to answer questions, if you have any, Mr. Chairman.

Mr. Chairperson: Thank you very much, Mr. Angus, for your presentation. Are there any questions or comments? If not, thank you again for your presentation.

Mr. Angus: Another scintillating presentation, Mr. Chairman. Thank you for your help.

Mr. Chairperson: I will call next Mr. Ed Arnold, Selkirk and District Planning Area Board, on Bill 38. Mr. Ed Arnold, is he here? I will call for a second time, Mr. Ed Arnold. Seeing him not, we will drop Mr. Arnold's name to the bottom of the list.

I will call then next on Bill 45, Doug Patterson, Q.C., Manitoba Bar Association. Is Mr. Patterson here? I will call for a second time, Mr. Doug Patterson, Q.C., Manitoba Bar Association. Seeing him not, Mr. Doug Patterson's name will be dropped to the bottom of the list.

Bill 40–The Domestic Violence and Stalking Prevention, Protection and Compensation and Consequential Amendments Act

Mr. Chairperson: I call next, Marilyn McGonigal on Bill 40, private citizen. Marilyn McGonigal. Have you a presentation for distribution?

Ms. Marilyn McGonigal (Private Citizen): No, I do not, Mr. Chair.

Mr. Chairperson: You may proceed then.

Ms. McGonigal: Thank you, Mr. Chairman and members of the committee. I have just received this legislation to review last night and I have a couple of points I would like to make that I think are very important in consideration of issues of domestic abuse and battered women.

Mr. Chairperson: Could I interject just a wee minute. Could those people that are standing in the back and having discussions, could they please move outside of the room? I am finding it very difficult to hear the presentation.

Can you hear in the back when I speak? No? I am asking that those people standing in the back and

discussing items, could you please move into the hallway to have your discussions? I am finding it very difficult to hear the presentations. Thank you very much. You may proceed, Ms. McGonigal.

Ms. McGonigal: Thank you. By way of my background I have practised law in Manitoba for about 20 years, having just recently retired, and most of my practice was in the area of family law. I have dealt with a number of abuse situations, a great many. I am also involved in the Coalition Opposing Violence Against Women, a group in the city that is interested in seeing legislative change to improve the situation for women who are abused in our community.

My brief review of this act leads me to say that I am very pleased that this act is coming forward and certainly support legislation that will improve the chances of women not being reabused and not being abused in the first place and putting a stop to such things as abuse and stalking. Stalking is a particularly difficult thing to deal with, as you heard from Ms. Peters. A great deal of what she has said is basically part of what I would say.

But the issue I want to raise with you is actually one specific one. The first one is Section 19.1, where you have introduced a section that says the court may vary or revoke an order. I am not familiar with any words in this draft that say that the applicant must be present or notified of any plan to revoke orders. It appears that there is available without notice revocation and that poses a problem for me, because the applicant should have notice of any plan to revoke an order or it should be served on the applicant.

This poses a further problem of locating the applicant, because the respondent ought not to be responsible for knowing where she is. You see, in circumstances like this, she is a victim–and I am using the gender female advisedly because most victims are women in these cases–is often in hiding or has certainly changed her last known address to the respondent. So the responsibility for letting her know what is happening to her case is going to have to fall into the administration area. That is extremely important, and perhaps we need to have a contact place or a way of these persons making sure the appropriate court office or office has knowledge of her address that is not available to a respondent. That is extremely important. Also, where the applicant is present and there is an application to revoke the order, of course the judge must be satisfied it is fit and just to do so, but I think that it may be necessary to have a law that says that the instructions to consent to revoke an order should be made in the absence of the respondent.

Now, in most court cases, when both parties are present, when judges are making rulings or receiving evidence, it was my practice during my practice never to take instructions to discontinue a case on behalf of a woman unless she was alone and in my office voluntarily and not coerced. If you have both the applicant and the respondent in court asking to have an order revoked, I think that is in the same category as police going to a home and interviewing a victim and an abuser together–alleged abuser–or any other process that involves having both parties present. In these cases, one must recognize that it is necessary to separate the parties and receive the information, the instructions in some manner that will allow the judge to be satisfied that it is not necessary to have this order in place anymore.

Moving on from there to the next point, and this will relate to the first, is that I have a great concern and have had over the years a great concern about mutual orders of protection. They are very frequently granted by consent as a means of settling cases. It is a settlement ploy. It saves face for the abuser if protection orders and so forth are issued against both parties mutually. It makes the order look less like there is a victim and an abuser in the case, which is the one thing they often do not want to, certainly do not want to have in a settlement situation.

* (1110)

There is a great deal of pressure on women to have these orders be mutual, and I think it is very important that legislators understand that this should not happen without evidence of fear and evidence of actual requirement for such a mutual order. What we have to understand about this is that we have to understand abusers and stalkers. They have sociopathic, psychotic behaviours and tendencies, and they do not see laws as protecting rights or restricting their behaviours. They see them as tools, and they use them frequently.

I have heard many stories about how the law is used to create a situation where a woman can be breached for making a phone call about the children and so forth, and the woman–there is no reason on earth for this person to be afraid of this woman, and I think the issue then is fear. So to be consistent with certain parts of this legislation, we must have proof of fear. So the mutual order should not be given in any case unless there is sworn evidence or viva voce evidence of fear and good reason for it in circumstances where very often mutual orders are requested without presence of the parties by simply submitting consent orders to the court.

I also want to tell you that in my experience as a Legal Aid lawyer, often on doing these cases on legal aid certificates, lawyers are grossly underpaid in situations like these, because the general attitude is that certain things are not important. I say this because I was recently, before my retirement, advised by a fairly senior Legal Aid administrative officer that Legal Aid certainly does not pay to fight against mutual orders, that one just does this as a matter of course, and when that person was in practice, it was just one of the things you do to conclude the matter. You have settled custody; you have settled property; you have settled a lot of things and now this protection business, we really do not need this or, if you insist, then he has to be protected too.

There are far too many stories out there of women who actually have criminal records as a result of this process. One, for instance, I just happened to hear about last night, a woman who left her partner, with only one change of clothing. After he had assaulted her, she defended herself. He went to the police first. There were charges laid both ways. The result of assault charges both ways, he got there first and laid an assault charge against her. She went and that was it. They ended up with a mutual order of nonmolestation. That is an order not to contact, no-contact orders. What happened was that he contacted her, but the police would not investigate her reports of telephone calls. He also contacted her mother–and I know this legislation addresses some of these issues–and said it is okay for her to phone me and come and get her belongings. She did not believe him for months, but, finally, she made the call and, of course, it was on an answering machine. He took it to the police and insisted on a charge.

Now, I think that this legislation being quite strong–and I know there are probably ways it can be strengthened, but–must be examined for protection against the abuse of these laws, which become tools in the hands of abusers. Basically, that is what I would like you to have in mind as you look at some of these sections again, and make sure that they cannot be used this way and that, sometimes, further evidence is required.

Mr. Vice-Chairperson in the Chair

I would caution without hesitation that where these orders are being sought against women who have children and are in situations where they are easily victimized and potentially abused, one should deal cautiously with issuing orders on behalf of people making such allegations. Thank you.

Mr. Vice-Chairperson: Thank you very much, Ms. McGonigal. Are there any questions?

Hon. Vic Toews (Minister of Justice and Attorney General): Thank you very much for your presentation. I know that you have expressed some concerns that the legislation not go too far in one direction. In order to protect victims, we also do not create another class of victims, and that balance needs to be maintained. I thank you for your caution. Are there any specific sections that you feel might go too far?

I would be interested in your opinion. I know that there has been many, many discussions with many groups on this particular legislation. We have tried to ensure that that does not occur. For example, in the area of the initial orders under the protection orders, where those are done ex parte, without the other person being there, there are certain safeguards, so that the reputation of perhaps an innocent person is not tainted. So that was tried to be put into the process, recognizing, though, that in many cases it is difficult to make these assessments, and the need for speedy access to orders is very, very important.

Ms. McGonigal: Yes, I understand, I think, your concern. I think that, no, I am one of those people who think that you cannot go too far very easily to protect women from the abuse and stalking incidents in the community. They are very, very underrated as a means

of coercion and intimidation. So it has to be allowed. But I think that something could be put into the legislation about mutual orders and what is required, as I have said, so that they are not just willy-nilly ordered.

I dare say, though, that if you are going to do telecommunication orders, it sounds like you are doing that with lawyers and/or court officers, right? I mean, one cannot just phone and get one, so I do not think that goes too far, if that is the case.

Mr. Toews: Just in that respect, I think your point is a good one, that when we are dealing with these ex parte orders, if it is not in person by the applicant, that the order itself be made with–I am just trying to find the section here–a peace officer or a lawyer, so that there is that kind of restriction, that there is an initial, I guess, assistance to the victim to ensure that this is not frivolous. I know that it is very, very important that we have speedy access, but I recognize your concern that we ensure the process is done in good faith and has integrity to it.

* (1120)

Ms. McGonigal: Yes, it could be other than that. When I think about it, there are many, many situations in which people do not have lawyers representing them because of the, well, I believe, legal aid structure and the fact that so many people who do not qualify for legal aid cannot have lawyers or they have exhausted their resources, like Ms. Peters, your earlier speaker, exhaust your resources on cases like this. Maybe it could include the people who are on the list for, for instance, witnessing passports or something. It is a much lengthier list of people who would be recognized.

I honestly do not know how, I do not right now know how you are going to protect with telephone applications, because recently I was conned on the phone by someone who claimed to be an official, in terms of in my professional capacity. Cons are going to take place. Obviously there are remedies if that is found out and so forth.

Mr. Toews: I guess, just to comment again, to thank you for your presentation and also indicate perhaps that is why and I believe that is why the drafters did limit it to a lawyer and, as they indicate, a peace officer, both at Section 4(2) and Section 5(1). So that goes to sort of create that balance.

Mr. Gord Mackintosh (St. Johns): I guess we are running out of time. I had two issues. First of all, just on that issue, we know in other jurisdictions where this legislation is in place, there are three other jurisdictions. I know particularly Saskatchewan, it is a lawyer, a peace officer, or a designated person. In order to accommodate the fact that in many small, perhaps remote communities, there may be a victims' services person or a volunteer who could be designated or given the background, given the skills to do this kind of work. We are proposing that and have given the minister that proposal as an amendment. You might want to just comment on that one. It is just to make sure that this act is flexible enough to apply even in remote communities, where of course there is a real need.

The second question is, if I would, Mr. Chair, your issue that you raise about the possibility of a revocation without notice to the applicant is a very important one. I just looked through the bill here, and indeed I do not see a provision in there with regards to either the emergency or the long-term orders that there is a requirement that the applicant be served before there is any further proceedings that lead to revocation. That was your conclusion, as well, was it? I mean, if that is the case there should be some provision built in there. I looked at the Saskatchewan bill, and indeed there is a requirement that the applicant be served with any notice of a rehearing, although she need not appear, obviously.

Ms. McGonigal: On the second point first. It is very important that that happen. It would be wrong if judges see that it is fit and just to remove these orders without knowing that the applicant knows, but it is equally important that that responsibility for service not be the respondents because that respondent is under an order not to contact, not to know, and she is hiding.

So that is the big point there, that you have a bureaucratic problem with that. You have to figure out how to do that, and it is fundamental, otherwise she thinks she is protected and she is not. She is in another province. She is having her orders processed, and she is now back in a tangle back in the first province because somebody has had a reason to get it removed.

She cannot start again. She has got to give notices, and when she does that people find out where she is. Very, very important.

As to the first point, the first question, I reiterate that I think a designated person is a good idea in certain situations where you do not have local options, but it could be expanded beyond the peace officer or lawyer idea, particularly since lawyers cost money and peace officers are not always available.

Mr. Vice-Chairperson: I want to thank you for your presentation. Thank you very much.

Bill 28–The Employment Standards Code and Consequential Amendments

Mr. Vice-Chairperson: Going to Bill 28, The Employment Standards Code and Consequential Amendments. The presenter, Candace Bishoff, please. Do you have copies? Just a moment, please. Okay, please proceed, Ms. Bishoff.

Ms. Candace Bishoff (Winnipeg Chamber of Commerce): Thank you, Mr. Chairman, and members of the committee. I thank you for allowing me the opportunity to make a submission on behalf of the Winnipeg Chamber of Commerce. By way of personal introduction, I am a senior lawyer with Manitoba Telecom Services, and in my capacity today I address you as the chair of the Labour and Employment Legislation Task Force of the Winnipeg Chamber of Commerce.

The submission that has been handed out contains the detail of the comments that I would like to make on behalf of the Chamber of Commerce. By way of introduction, the Chamber of Commerce was incorporated in March 1873 and is the largest business association in the Manitoba and Winnipeg community. Throughout its existence, the mission of the Chamber of Commerce has been to foster an environment in which Winnipeg business can prosper.

On behalf of the Winnipeg Chamber of Commerce, I am making representation of a membership which includes over 1,200 member companies representing 65,000 employees. The majority of the chamber's membership, two-thirds of that membership, consists of companies that have less than 10 employees. The legislation that you are looking at today, Bill 28, will affect many small businesses that employ employees who will be affected by minimum-standards type of legislation, which is what you are considering in Bill 28.

The Chamber has been actively involved in a review of Bill 28 from its inception as a draft code of employment standards. The involvement has been through our involvement in the Labour Management Review Committee.

The Chamber is strongly in support of Bill 28 in general and is very pleased to see the efforts of the Department of Labour in connection with the preparation of this code. It is very comprehensive. It deals with some very old and archaic legislation, most notably The Employment Standards Act, The Vacations With Pay Act and The Payment of Wages Act. Those three pieces of legislation have caused a great deal of difficulty in administration in the Department of Labour in connection with inconsistent definitions, inconsistent methods of administration and enforcement, difficulty in administering procedures and other provisions which are redundant, outdated or inconsistent with one another. So it is a very good thing, both for business and for employees affected, to have one piece of legislation that deals with these issues.

The Chamber is, however, concerned and opposed to some of the provisions in the code. Specifically, it is in Section 144(1)(ll),(mm) and (oo). Those provisions address the regulatory power that the governor in council, the government would have in terms of providing a very broad and sweeping power that could result in changes to the legislation through regulatory enactment as opposed to the democratic process that takes place when the legislation itself is changed.

The Chamber proposes that those subsections that I have identified be deleted. The concern is that–and I will read those subsections because I think it is important that you understand the context in which I am making this presentation. Those sections say that the governor in council would have the power to make regulations which–and (ll) reads: define words or phrases that are not specifically defined in the code; (mm) reads: enlarging or restricting the meaning of a

word or expression used in the code; and (oo) reads: respecting any matter the Lieutenant Governor in Council considers necessary or advisable to carry out the intent and purpose of the code. (oo) is not as offensive as (mm) and (ll). (mm) and (ll), my concern is–as a lawyer, I make this comment. There are some lawyers that–there is at least one around the table. There were some others.

* (1130)

The difficulty is this starts a slippery slope. If you provide in your legislation for a regulatory power that can in fact change the legislation, what you are doing is you are enabling the government of the day–now it does not matter what the government might be, what the composition of that government might be–to change the legislation depending upon the feeling of the day without going through the normal democratic process that takes place before legislation is changed.

The Department of Labour has proposed a provision that might deal with these concerns, and that provision is the introduction of a consultative process. The consultative process would result in–and that is in another section in the code. That would result in the government getting together so-called interested parties to consult with. The problem with that is it is a band-aid solution because, first of all, it presupposes that the appropriate parties that are affected are going to be consulted. There would be, I would envision, some form of invitation to participate in a process. It would not be the typical public process that takes place when there is change to legislation.

The second concern I have is that it also could leave one with a false sense of security that the appropriate parties are being consulted with. That, in effect, could be abused because if there is a perception that there is consultation taking place but there, in fact, is not consultation with the right groups, what do you have left? You have an even worse situation because there is not the public opportunity to participate in the amendment process.

In addition, even though the legislation says the consultative process must take place, it does not say that the minister must adhere to or abide by whatever the recommendations are from the group that is being consulted with.

Mr. Chairman, those are my comments, and I thank you for the opportunity of making this presentation.

Mr. Vice-Chairperson: Thank you, Ms. Bishoff, for your presentation.

Hon. Harold Gilleshammer (Minister of Labour): Thank you for your presentation. I have indicated to my critic and I will indicate to the committee that I am going to propose an amendment to delete (ll) and (mm) from the legislation, and I just wanted you to know that.

Mr. Vice-Chairperson: Thank you. Are there any further questions?

Mr. Daryl Reid (Transcona): Thank you, Ms. Bishoff, for your presentation here today. You indicated that by allowing (oo) section of the 144 to remain in the act, it would be, I think you said a slippery slope, if I recall your words correctly, in that it would allow the government to make changes without having too much by way of consultation.

In the act, you are perhaps aware that under Section 144(4), it allows for a consultation process to take place. We would hope that this would provide for the ability for the government to have a consensus take place between those employers of the province, those that you referenced that you represent and perhaps in addition to those that represent the working people of the province. Do you see that this particular Section 144(4) then would not address the issue with respect to the slippery slope that you referred to where the government, whichever government of the day, would incorporate changes without having some kind of a consensus take place with respect to the regulatory changes that the government is proposing or could propose, hypothetically, in the future?

Ms. Bishoff: Dealing with the first point you made, when I made the comment about the slippery slope, I was talking about the provisions that have been deleted, (mm) and (ll). Those provisions actually address the issue of changes to the definitions contained in the legislation. I said that (oo) was, in fact, the least offensive of the three provisions that we are asking be deleted. At least (oo) contemplates that the matter that the Lieutenant Governor in Council is considering must be within the intent and purpose of the code.

Dealing with the question you raised about the consultative process, what I said is that my concern about that process is that, No. 1, you have to consult with the appropriate groups, and, No. 2, when that consultation has taken place, you have to consider that there is no obligation on the government to take into consideration the recommendations of the group that has been consulted with.

One point I did not make which I will add is that one must consider that there really is no group in the province that represents the group that we are talking about here of employees that are affected by the employment standards legislation. For the most part, we have the labour side representing collectively organized or unionized employees. The employees that are affected by this legislation will be those people that are in need of protection in terms of the minimum standards that are contemplated under this legislation.

Mr. Gord Mackintosh (St. Johns): I appreciate the submission. It is good to see you again, and, by the way, it was 10 years ago today that we were called to the bar. I cannot believe it how time–

Ms. Bishoff: You have a better memory than I do.

Mr. Mackintosh: I commend the Chamber for noting the potential for real problems and unaccountable decision making by extending regulatory powers in the way that this bill was being planned to be extended. This is not a partisan statement at all, but there has been–I am sure you notice–a real trend by governments of all stripes to move more and more to greater regulatory power at the expense of legislative power in the certainty that legislation provides. I really commend you for looking at the legislation with that in mind, because we all can benefit better if legislation is clear and certain and detailed and we not leave everything to the government of the day. Often the regulations are dealing with the real nitty-gritty and the real close-to-home issues that is the subject of legislation. So I am glad to hear that the minister had responded to that concern appropriately.

I have another bill before the Legislature with a very similar provision to (mm). So hopefully my minister will be as generous.

Mr. Vice-Chairperson: Are there any further questions?

Mr. Gilleshammer: I would like to point out in subsection (oo) that these tend to deal with administrative matters and are governed by the intent and purpose of the code. It is a clause that tends to be in virtually all legislation. I would also like to thank Ms. Bishoff for the work that she did as part of the LMRC, as well as the chair, Wally Fox-Decent, and the labour representative, Rob Hilliard, who have put in countless numbers of hours to scrutinize legislation that I understand first was contemplated in 1984 and has taken a long, long time to evolve. I thank you for the dedication that you have shown to this task.

Mr. Vice-Chairperson: Seeing no further questions, thank you for your presentation. With the indulgence of the committee before we move on, there is not clarity as to whether the people who are not present should be dropped to the bottom of the list. Is there agreement by the committee that that take place? [agreed]. Okay, just add to that, if they are called twice and not present, they are dropped. [agreed]

Bill 32–The Municipal Amendment and Consequential Amendments Act

Mr. Chairperson: We will then move on to Bill 32, The Municipal Amendment and Consequential Amendments Act, and I call David M. Sanders, presenter, please. Mr. Sanders, do you have copies? Thank you. Okay, Mr. Sanders. If you would proceed, please.

Mr. David M. Sanders (Colliers Pratt McGarry): Thank you, Mr. Chairman. My name is David Sanders. I am director of Real Estate Advisory Services for the commercial property real estate firm, Colliers Pratt McGarry, one of the largest firms in Winnipeg.

I and my staff have been handling property tax and business assessment appeals on behalf of commercial clients for about three years now, and we have had considerable experience with well over a thousand appeals. We do appear in the Board of Revision and the Municipal Board almost daily, and we have been participants in some of the recent precedent-setting

court cases affecting assessment. My interest in speaking to Bill 32 is relating to assessment only.

On page 1 of my brief, there is a background discussion of our firm, and hopefully a reassurance for the members of the committee that our interest in this matter of assessment is that assessments be fair and just and taxation accordingly for our clients and, indeed, for all other taxpayers. It is in that light that I am appearing today and did appear previously in 1996 to make recommendations on assessment reform. We were certainly pleased that many of the recommendations that we made in 1996 were, in fact, received favourably and would hope that would be the case again today.

* (1140)

With respect to Bill 32, in my brief it is referred to on page 7, if you could turn to it–it is very brief–Bill 32, of course, is The Municipal Amendment and Consequential Amendments Act. My purpose in asking to appear on this particular bill was to comment only on Clause 33(2) of the bill which revises Section 326(3) of the act. This is the section dealing with the imposition of supplementary taxes after the tax roll has been completed. My intent was to draw the committee's attention to the discrepancy in the extent of retroactive taxation which is permitted by the provisions of The Municipal Act as opposed to The City of Winnipeg Act, and to make a request of you which is discussed above that, beginning at the bottom of page 6. So if you could turn to the bottom of page 6 of my brief, it is under the heading of Bill 36, The City of Winnipeg Act. I had asked to speak on that bill, but I was out of town on Monday. But I think I can still make the point I wanted to make because, in fact, I am still seeking and requesting a consequential amendment under Bill 32.

In dealing with the imposition of supplementary realty and business taxes, Bill 36 did not address that issue, although Bill 32 does, and I wish to point out that the relevant sections of The City of Winnipeg Act differ substantively from the provisions of the new Municipal Act, including the amendments which are contained in Bill 32 and which are before the committee this morning.

For your information, Section 183(2) of The City of Winnipeg Act authorizes the city to issue a licence in lieu of business taxes to "a person who occupies premises for the whole or any part of a year for the purposes of carrying on a business for which a business tax may be levied, and who is not levied for business tax in respect of the business premises for the period." There is no reference to prior years, and I believe this section should be interpreted to apply only to the current year. However, the city assessor apparently believes he has the authority to issue licences for prior years and regularly issues licences in lieu of business tax for the current year and up to two prior years demanding that the recipients pay up to three years business taxes within 30 days.

In fact, to my dismay, I now have a client who was given business tax bills for four years, from 1995 to 1998, on April 17 of this year, and I have to ask: is there to be no limit on such retroactive tax bills?

I also suspect the city assessor or staff may be relying in their minds on Section 208(2) of The City of Winnipeg Act, which does permit the city to issue supplementary realty tax bills but only for buildings which have been in existence but which were not assessed and only for the current year and up to two prior years.

Now, I ask the committee to note this morning that Section 326(3) of The Municipal Act, both the current section and with the amendment as proposed in Clause 33(2) of Bill 32, authorizes all other Manitoba municipalities to issue supplementary realty and business tax bills only for the current year and up to one prior year. It refers to no earlier than January 1 of the year preceding the amendment being made by the assessor.

So for consistency and fairness, I would respectfully request that Sections 183(2) and 208(2) of The City of Winnipeg Act be now amended to authorize licences in lieu of business tax and supplementary realty tax bills to be issued only for the current year and for up to one prior year, which would then be the same as for all taxpayers in the rest of the province.

If it is too late to amend Bill 36, which I gather has been reported by committee, perhaps you would be good enough to make the requested changes now by consequential amendments to The City of Winnipeg

Act, but within either Bill 32, where this issue is in fact being dealt with for other municipalities, or indeed Bill 33 later on in the agenda this morning.

That, Mr. Chairman, is the presentation I wanted to make on Bill 32.

Mr. Vice-Chairperson: Thank you very much, Mr. Sanders, for your presentation. Are there any questions? Seeing that there are no questions, I want to thank you for your presentation. Thank you very much.

Bill 33–The Municipal Assessment Amendment and Consequential Amendments Act

Mr. Vice-Chairperson: With that, I will ask you to proceed to Bill 33, please. Again, do you have a handout?

Mr. David M. Sanders (Colliers Pratt McGarry): It is all in there.

Mr. Vice-Chairperson: All right. Then I will ask you to proceed, please, Mr. Sanders.

Mr. Sanders: Mr. Chairman, if I could then have you turn to page 2 of the brief submitted dealing with Bill 33, The Municipal Assessment Amendment and Consequential Amendments Act. The first and the most important amendment I guess I have to ask of you deals with the effect of providing no information or penalty clauses which are found in the present legislation and which are to be amended by the bill before you.

Committee members will recall that amendments given Royal Assent on October 22, 1996, provided for a very severe penalty of a year's delay in obtaining otherwise justified reductions in assessment in cases where an appellant had failed to comply with the assessor's request for information on income and expenses of a property under the new Clause 16(1)(c) of The Municipal Assessment Act. The existing Sections 54(3.2) and 60(2.2) provided in such cases assessment reductions are not to take effect until "the year following the year in which the order is made."

As you may know, most 1998 realty assessment appeals were heard by the Board of Revision during 1997. Accordingly, in those very few cases where the Board of Revision decided that there had been noncompliance, the board still ordered that the reductions take effect in 1998, which of course was the year following the year in which they made their order and, indeed, was the year in which the assessment was to be effective anyway. The effect of course was, therefore, no penalty at all.

What you have before you in Clauses 14(2) and 16(3) of Bill 33, propose to amend the two sections to provide that, where applicable, the assessment reductions will not take effect "until the year following the year in which the order is made, or the year following the year to which the application relates, whichever is later."

(Mr. Chairperson in the Chair)

I submit that this proposed wording, which is no doubt intended to address the city's experience with the '98 appeals, would however result in extremely punitive and unfair penalties unless it is further amended now. Committee members must appreciate that it is still the case that final, Municipal Board orders may not be issued until many years after the "year to which the application relates."

I personally still have appeals for 1990, 1994, 1995, '96 and '97 which are not yet scheduled for hearing by the Municipal Board. It is also clear that the board will not be hearing all of the 1998 appeals until sometime in 1999 or later. I believe they have some 1,300 appeals. Under the wording proposed in Bill 33 before you, an appellant who is unable to have his 1998 assessment appeal heard by the Municipal Board until sometime in 1999 would then be subject to a penalty of two years delay in tax relief, having to wait until the year 2000, the year following the year in which the order will be made, or in fact possibly later, if the order was not made until 2000, and that is not outside the realm of possibility.

Turning to page 3, I would ask you to contrast that result for those unlucky appellants with the fact that the vast majority of appellants who obtained reductions during the Board of Revision hearings in 1997 were not penalized at all. I believe the true intent of the Legislature in this matter would be accomplished if the

two sections were amended to provide simply that in such cases assessment reductions will not take effect until "the year following the year to which the application relates."

In both Clauses 14(2) and 16(3) of Bill 33, I would ask that you please simply delete the words "the year following the year in which the order is made", and at the end, "whichever is later," and your end I believe will be accomplished.

I would like to say a little bit more on this point. I would also request that the bill be amended to provide that these two penalty clauses–indeed there are two companion Sections 54(3.6) and 60(2.1) that will be effective only for appeals of the new general assessment for 2002 and thereafter. Such clear direction from the Legislature would ensure consistency and fairness now and avoid the need for a great deal of unnecessary litigation over the city assessors' continuing efforts to seek invocation of those sections in a few highly selective and, for them, unfortunate cases.

* (1150)

In considering this last request, I think committee members should be aware that after passage of the amendments in October of 1996, the city assessor failed to issue any requests for information under the new Section 16(1)(c) or any information relevant to the preparation of the 1998 general assessment for any property. The fact is that there is no one to whom these sections should apply. The owners and tenants of properties which the city assessor has singled out for test cases on this matter would certainly appreciate it if the government would clarify things now and save them the substantial trouble and expense of the otherwise inevitable Municipal Board hearings and trials in the Court of Queen's Bench and the Court of Appeal. To the extent that my friend Councillor Angus expressed a desire to avoid such litigation, I would share that and ask that you help us both out by clarifying things.

The second issue I wish to deal with on the bottom of page 3 is the definition of "registered owner" in The Municipal Assessment Act, and in particular the insertion of the words "in fee simple." Clause 2(a) and 2(b) of Bill 33 propose to amend the definition of "registered owner" to mean, in respect of land, a person who is the owner of an estate in fee simple in land.

The present definition in the act is significantly different in that it includes any person who is registered under The Real Property Act as an owner of land or who is a grantee in a conveyance of land registered under The Registry Act. The significance of this definition is found in Section 11(1) of the act, which is actually being amended by Clause 5 of Bill 33 before you, which states that the assessor shall assess property in the name of the "registered owner" of the land.

Turn to page 4, for the committee's information in this particular act, "land" means real property other than an improvement, and "real property" means land and improvements on the land and includes (a) an interest held in land or an improvement, and (b) air, surface or subsurface rights and interests in respect of land.

I believe that the effect of the proposed amendment, which is to limit the assessor to assessing property in the name of the registered owner "in fee simple," would be in fact to exclude the possibility of assessing in the names of registered owners of leasehold estates in land, such as ground leases, and other related interests in air space parcels, surface or subsurface rights, life estates, which are going to be capable of registration pursuant to Bill 41 before this House, and so on.

This amendment would make it impossible to obtain separate assessments and tax bills for registered owners of these types of estates and interests in land and could greatly complicate both assessments and tax allocation problems for all such owners affected. For example, all the commercial properties and apartment buildings located on ground leases and in air space parcels on the North Portage Development Corporation's land would once again be assessed in the name of the corporation. It has taken us years of appeals and court cases to get the assessments of these entities sorted out in a way that makes some commercial sense, and this amendment would undo all that work.

I suspect that the city has requested this amendment having been frustrated in its unsuccessful court appeals attempting to exclude the downtown YMCA and certain community centres from the benefit of school

tax exemptions, because they are registered owners of leasehold interests in land or air space parcels and not land in fee simple. And yet you will see Clause 10 of Bill 33 before you is indeed intended to preserve the exemptions for precisely these two categories of taxpayer if the property is "held under leasehold title."

With respect, I fail to see what mischief the proposed amendment is supposed to correct. I do see that the amendment will create a great deal of mischief if it is approved as proposed. I would therefore request that the committee delete Clause 2 of Bill 33 and leave the definition of "registered owner" as it is now. All registered owners of estates or interests in land, as presently defined in the act, will then continue to be able to obtain assessments and tax bills in their own names.

Turn to page 5. There is a further amendment with respect to the assessor's power to correct errors and omissions, amendment to Section 14. Clause 6 of Bill 33 proposes to expand the assessor's powers to correct errors and omissions at any time, to include errors and omissions described in Section 13(1) of the act. That section provides for the assessors to make amendments to annual assessment rolls being prepared in years other than when a general assessment is required for a wide variety of reasons.

I can see no reason for the proposed amendment, unless the intent is to enable the assessors to make those type of corrections retroactively to assessment rolls for prior years. On the one hand, I have made requests for Section 13(1) corrections which the assessor has failed to make or acknowledge or reply to, and I have submitted Section 13(2) appeals of those matters to the Board of Revision. So far the board has refused even to hear them. So I ask, just perhaps to be enlightened, would this amendment now permit the assessor to make those corrections? On the other hand, I would be concerned if the intent of the amendment is to allow the assessors to make retroactive corrections without restrictions. I would appreciate very much if the minister or his officials could advise just what the incident intended to be accomplished is by this particular amendment.

A very short one, in the middle of page 5, the posting of a notice of appeal hearing, community committee offices. I believe clause 15 which amends Section 57(7) needs to be revised, which is discussed below on page 6. Essentially I believe that you have to decide what amendment you do want, whether this amendment in clause 15 or the amendment in Bill 36.

I would say, towards the bottom of page 6, and my preference would be that you amend both Sections 41(4)(a) and 57(7) of The Municipal Assessment Act, to provide that in the case of the City of Winnipeg, such notices of hearings shall be posted not only at City Hall, but also at the office of the Board of Revision, which is presently done, and perhaps in all public libraries if there are no other regional offices of the city anymore.

And finally, at the bottom of page 5, the question of coming into force, transitional clauses. I would respectfully request that very careful consideration be given to the insertion of quite specific clauses in this bill dealing with the coming into force of the various clauses, and especially clauses 2, 6, 14(2), and 16(3), because at any given point in time there are a wide variety of assessments, appeals, and procedural issues underway under existing legislation. The Legislature could again avoid a lot of grief and litigation by making the effort now to spell out just what its intentions really are with respect to the application of the new amendments through existing and ongoing matters, keeping in mind the importance of maintaining some equity as between matters which are already settled and those still in dispute.

I thank you very much for listening to me. I would be happy to try to answer your questions now or indeed later if I can be helpful.

Mr. Chairperson: Thank you very much, Mr. Sanders. Any questions? Thank you very much for your presentation.

Bill 38–The Planning Amendment and Consequential Amendments Act

Mr. Chairperson: I call next Valinda Morris, Bill 38. Valinda Morris. Would you come forward, please. Have you a presentation for distribution?

Ms. Valinda Morris (Provincial Council of Women of Manitoba): I do.

Mr. Chairperson: The Clerk will distribute. You may proceed with your presentation.

Ms. Morris: Good morning, Mr. Minister, members of the committee. I apologize if you have crooked copies and for the handwritten changes. I have had mechanical hostility all morning. Nothing is centred, and this was frozen in twice and had to be faxed over here, et cetera.

Anyway, it is a pleasure to present this report on behalf of the Provincial Council of Women of Manitoba. We are doing this because our council has already been mandated by its membership to advocate for improvements in integrated land use planning, enforcement of provincial land use policies, maintaining sustainable development principles, prevention of urban sprawl, and protection of the public interest.

As some of you will know, we have an active urban and rural issues committee that studies and tracks the applications for various development plans and zoning by-law amendments around the province. We have appended our open letter to the Premier and all MLAs regarding responsible land use in the Winnipeg region. This illustrates our policy and the background logs the active role the Councils of Women take in advocating for these improvements. It covers the period 1989 to 1995. We have done more than that, but I have not included that tabulation. This accumulated research puts us in a unique position to comment on Bill 38, Planning Act Amendments.

* (1200)

We are not legal experts, so we seek and receive voluntary legal advice on technical terms and meaning. We are not professional planners. We are not paid by anyone, nor beholden to anyone either, in spite of what was insinuated in the Free Press yesterday. Our work is part of the public service advocacy and education that the Councils of Women have been offering for over a hundred years.

We would like to acknowledge the co-operation received from the staff of the Corporate Planning and Business Development division of the Department of Rural Development. Their explanations and answers to our queries have been very helpful in cutting down the comments we are making today.

We agree with the four aims of Bill 38: streamlining, standardization, flexibility and improved public participation. There is also language clarification that we appreciate as well. Overall, we commend Bill 38 with a few restrictions.

Our serious concerns and criteria are as follows. One, do the proposed amendments weaken the wording and application of the provincial land use policies, the PLUP? Yes, and we will cite one example where we believe this tendency is evidenced. It is in subsection 25(3) saying "and may include," not "shall" but "may," which would allow municipalities or planning districts to undertake limited or extensive studies as may be appropriate. Thus a wide discretionary choice is given to municipalities or districts. Will they decide according to their interests in economic or environmental issues or according to the time or funding they have available? We believe that the best way to protect the public interest is to have provincial leadership and responsibility evident in a supportive manner. For example, in this subsection it could be more specific and refer to the availability of provincial data and staff.

Another permissive clause is 40(3) where the verb "may" is used.

Second concern, does Bill 38 enable municipalities to understand and enforce government policy and regulations? We believe that the legislation must protect those who, in the course of their civic duty, have to say no to their friends and relatives. We are thinking here of the municipal leaders who have a very difficult role to perform.

We would like to draw your attention to the attached excerpt from the Manitoba Water Commission Interim Report. It is at the back of your package there, dated March 19, 1998. We quote from its page 64: Not all municipalities have been enforcing their own zoning by-laws. Although the responsibility for passing the by-laws rest with the municipality, the province must approve the plan and ensure the necessary by-laws are passed. It appears that neither or these conditions have been met in the R.M. of Ritchot. Oh dear, there is a terrible mistake–that should be Ritchot. Sorry, missed that one.

This leads us to ask who or which level of government enforces the by-laws. It seems that the

responsibility stops with passing them and writing them down. After the '97 flood, the public purse had to underwrite the damage caused by this lassitude and failure to take responsibility. This was preventable and still is. Please read the recommendations on page 66 of this report and make sure that Bill 38 is as up to date and responsible as possible in the light of these findings.

Apparently, the computer also dodged me, because I had another sentence in there about the fact that there was a 63 percent noncompliance with the Water Resources Commission's permits. I find this very high and I feel that the municipality was remiss. They were unable to have proper inspectors. Some of the land owners who were second owners of properties did not know that their lovely houses were below the standard. So there is a problem all around. But if the inspections are not done when the buildings are first put in, I think it is just human nature that people think it is okay, and it was not okay. Any of you who have driven down Marchand Drive, say, last February and again after the flood, you can hardly recognize what has happened there. So it is a big problem.

Also, if this standing committee can manage it, we would request that this Bill 38 be harmonized with The Water Resources Administration Act to prevent further noncompliance with the stipulated regulations.

Third concern, should subsection 51(3)(b) be clarified as suggested in the Council of Women of Winnipeg's written submission to this hearing. Unfortunately, I have not appended it, but it will be available to you. If so, we suggest adding, and I quote, "except when the property or building"–I did not know whether there was right wording–"or parcel or structure is flooded due to being below the permitted level for flooding." It just seems wise to put in an extra phrase about the flooding conditions in this section.

The last one, how many people understand the difference between major and minor alterations to a development plan or zoning by-law. In subsections 28(7) and 42(9), the words "is of the opinion," that is, the local council is of the opinion, suggests a subjective decision that cannot be challenged.

Subsection 30(4) does offer a process of appeal if someone objects. Another alternative is to change the wording in the first two subsections to "where the alteration is of a minor nature, making it an objective decision, not a subjective one."

In conclusion, the Provincial Council of Women of Manitoba hopes that the above are constructive comments and suggestions. We look forward to seeing the recommendations of the committee on Sustainable Development implementation. We think it will further alter The Planning Act. Meanwhile, we believe Bill 38 is a decided improvement.

Mr. Chairperson: Ms. Morris, thank you very much for your presentation. Excuse me for being preoccupied with some other business matter. Any questions for Ms. Morris?

Ms. Becky Barrett (Wellington): Not so much a question as again congratulations on an excellent job. As I have stated before in other committees and other bills, the work of the Provincial Council of Women and the Council of Women of Winnipeg has always been of superlative quality, and I frankly do not know where we in the Legislature would be without the work that you have done. So congratulations again.

Ms. Morris: Thank you. I accept on behalf of the council.

Mr. Chairperson: Ms. Morris, sorry about that. Proceed. Go ahead, Ms. Barrett?

Ms. Barrett: No, that is fine.

Mr. Chairperson: No more questions. Thank you very much for your presentation.

Ms. Morris: Sorry I spoke out of turn.

Bill 45–The Manitoba Public Insurance Corporation Amendment Act

Mr. Chairperson: It has been brought to my attention that the person representing the Canadian Paraplegic Association is here. I am wondering whether we could get leave from the committee that we might hear her before we recess for lunch. Is that agreed? [agreed]

I will then call Ms. Kristine Cowley of the Canadian Paraplegic Association to come forward, please. Ms. Cowley, do you have a written presentation for distribution? The Clerk will distribute.

* (1210)

For the benefit of those people waiting to make presentations, I believe I have instructions, and if it is the will of the committee, that we will recess at 12:30 or thereabouts. We would then reconvene the committee at three o'clock to continue further hearings and presentations. Does the committee agree to that? [agreed] For the benefit of those that are here, you might want to go for lunch but be back here at three o'clock to continue the presentations. Thank you.

Ms. Cowley, would you want to proceed with your presentation.

Ms. Kristine Cowley (Canadian Paraplegic Association): Certainly. You can hear me?

Mr. Chairperson: Yes.

Ms. Cowley: My name is, as you have already heard, Kristine Cowley. I am the Executive Director of the Canadian Paraplegic Association. We are a member-based organization which provides rehabilitation, information and advocacy services for people who are spinal cord injured in Manitoba.

Just to give you a bit of background, there are about 800 people living in Manitoba with spinal cord injury. In the course of doing what we do, we often through delivering rehabilitation services or information services see things where there is a need within the membership of people who are spinal cord injured that we need to address. So this is as part of that that we are speaking to you today.

In particular, this is in regard to the recommendation to amend Bill 45. In particular, it is referring to the section relating to personal care or attendant assistance for people who are injured as a result of a motor vehicle accident. As it says here on page 1, under Section 11 of the current Bill 45, there is one recommendation to change Section 131 so that it reads "shall" rather than "may." We also recommend that Section 131 be amended, so that we strike out the section that says "of not more than $3,000 per month," and in essence what we are recommending is that the upper limit on attendant care be removed. We are suggesting that it be replaced instead with the recommendation that the level of attendant care be determined by an appropriate medical authority from time to time. That is detailed in bold as you can see here.

Secondly, we are recommending that it be retroactive. So that is where the 131 paragraph 1 comes in where we say: For greater certainty, the personal assistance expenses under this section are payable to qualified victims after March 1, 1999, whether the accident that results in the bodily injuries giving rise to the claim occurs before or after March 1, 1999.

The reason for this is–just to put into words that are understandable–people currently who are injured in the motor vehicle accident are eligible for home care assistance up to $3,000 a month, and that covers the vast majority of people who need assistance, there is no problem. But just so that you will see in here, since the implementation of PIPP, there has been 35 people who have been injured, sustained a spinal cord injury as a result of this accident. Now, of those 35 people, only 12 are in need of some form of attendant care. So this does not affect everybody. Secondly, of those 12 only seven would really need–there is a typo here. It is actually only four of these people who are injured would be needing more than the $3,000 per month limit.

So what this means in the terms of spinal cord injuries is that someone who has no use of their arms at all, who would need assistance in getting up, getting dressed, performing activities that are required for daily living. I spoke with MPI, and the number of people who this would affect since implementation of PIPP in total is nine people, which means in the last four years there has only been nine people who this would actually affect retroactively.

So what we are talking about is a very small number of people out of the total of people who are injured through motor vehicle accidents, who would need to have this increased attendant care level. That really is not very many, but we are talking about the most disabled of all of the people who are injured through

motor vehicle accidents. So this is brain injury in the case of head injury and spinal cord injury. So someone who is a high level quadriplegic, you know, you have probably seen them, they go around in a power wheelchair and they cannot move their arms or their legs.

Now, currently if you have an injury through Workers Compensation Board and you need 24-hour attendant care, this is covered, so this is not something that is not done. We know of, just as an example, two people who were injured from out of province who do need 24-hour-a-day care, and it is provided through their Workers Compensation insurance. This will not affect people who are currently needing less than $3,000 a month in attendant care, because their attendant care is based on need.

So, for example, if all a person needs is somebody to help them get out of bed in the morning, then the rest of the day they are on their own and they are fine, this change in legislation will not affect that at all. There will not be any increased costs because their need is there and it is already provided for. This is only going to affect the people who have a limit of $3,000 and they need more care.

Now currently there are several ways that people have been trying to get around this, and one of them as you can read on page 2, is there is just the example there, there is one C4-quadriplegic who requires access to attendant care 24 hours a day. They get $3,124 from MPI's first insurer, and they have to be supplemented by the province of Manitoba's Continuing Care to be over $7,000 per month.

Now, that is fine as long as there is an office of Continuing Care and there is a home care program within the province. But it is not fine if they try and move out of province. They cannot move to Alberta, they cannot move to B.C., because they are stuck with their $3,000 limit, and as soon as they move out of province, they are in trouble. In other cases, there is a fellow who is living on reserve, and the band supplements his care to the tune of $4,000 a month. So, this is at the whim of other programs that exist, even though the reason that they need the personal assistance is directly related to a motor vehicle accident.

In terms of need, it definitely can be defined that these people have a need for assistance. It is directly related to the motor vehicle accident. It is not something that they want. It is something that they just need in order to get up and to function from day to day. The way it is now, there is no transportability. They cannot move out of province, and in fact, some of them cannot move out of their home because their parents might be providing them with some assistance, if they are young and they cannot afford to supplement the $3,000 that they are currently getting.

So, those are the reasons why it will have a small impact on the vast majority of claimants through Autopac. Given their track record of only nine people in the last four years, it is a small proportion and it will only continue to be a small proportion of the population. Yet, it is arbitrary upper limit which really does not make much sense when you are thinking about insured need. When these people bought their insurance, they probably asked the insurer, will this take care of everything in the event of an accident? They probably said, sure, it will take care of all of your needs but yet, it is not.

So, that is the end of my submission, and I would be happy to answer any questions you might have.

Mr. Chairperson: Thank you very much for your presentation, Ms. Cowley. We have 10 minutes of questions that we need to deal with. Mr. McCrae?

Hon. James McCrae (Minister charged with the administration of The Manitoba Public Insurance Act): I am sorry, I did not mean to interrupt.

Mr. Chairperson: I am wondering whether we might want to do the questioning on this person, and then adjourn for lunch or recess until three o'clock, or whether you want to continue hearing–[interjection] We hear the questions here, and then deal with–okay, thank you.

Mr. Steve Ashton (Thompson): I want to thank the presenter, and I want to indicate that we certainly share the concern and would like to thank you for identifying the concern to us. I know my colleague, the member for Crescentwood (Mr. Sale), has been involved in getting an amendment drafted. I do want to acknowledge too that I know the minister is currently looking

at this. I think what is particularly important is that the fact that Workers Comp has worked out a system that does not end up with this same result. I certainly want to indicate that as the critic from the official opposition, if we can work with the government to come up with a satisfactory conclusion, we certainly would be pleased to do that. If not, we have an amendment ready. As you said, it is not going to be a significant impact on Autopac, but can have a significant impact on the people involved. So, it is more a comment than a question, but we certainly support the concern and will be doing what we can to make sure that the bill is corrected.

Mr. Chairperson: Ms. Cowley, do you want to respond?

Ms. Cowley: No. I mean, I think it is--well, here I am responding. I mean, it is clearly a need the people have, and it is very large for those individuals, but not large in the context of the whole MPI insurance issue.

* (1220)

Mr. McCrae: I join with the honourable member for Thompson (Mr. Ashton) and all the members of this committee in thanking you for coming today, for waiting around, and for making your presentation.

As the honourable member for Thompson has said, we are attempting to deal with the main part of the issue that you are raising today. I have to say that unfortunately the amendment of the type that we are talking about does not solve the problem. The only way that this problem can be resolved is by looking at the policy between Manitoba Public Insurance and the Continuing Care division of Manitoba Health. As I understand the situation, we have the coverage set out in our schedule, which is comparable to coverage in provinces like Saskatchewan and B.C. However, there are those that you have referred to whose requirements go, in some cases, well beyond the coverage set out in the legislation.

It is indexed and it is up a little over $3,000 now. That amount combined with the amount that is ordinarily obtainable under Continuing Care would bring us to the levels that we need to be, except that the policy of Manitoba Health is to deduct the amount that MPI makes available, making the amount available to be about $5,200 tops. If they did not do that and they took the amount available from Manitoba Health, as well as the amount available from MPI, this problem would be wiped out for virtually all the people that you have been referring to.

So what we have been doing is doing some negotiations with Manitoba Health and with the government and with Manitoba Public Insurance to do exactly what the honourable member for Thompson (Mr. Ashton) is asking or suggesting that we do, and that is to fix the problem. I believe by this amendment, without change at Manitoba Health, will ultimately not make the difference unless you just wiped out the arrangement altogether that we have with Manitoba Health and give an unlimited amount, which would be unique in North America with respect to insurance policy. So we are committed to fixing this problem, the one that you have identified and working with you and keeping you informed as to how we are doing it, but we simply cannot fix it under the present regimen by the amendment that is being recommended here today.

You made reference to people who leave the province. I do not think we can accommodate everything that you are referring to here today in that area. The response that I can make in that regard is the coverage that we have in Manitoba under MPI is comprehensive and compares very well with other public insurance situations in places like Saskatchewan and B.C.

Ms. Cowley: Well, thank you, but I do think that it actually might be a change in terms of public insurance legislation. Workers Compensation Board currently allows people to receive the required assistance up to whatever they need, and it might even include 24-hour daycare, which you are not going to get any higher than that.

So the legislation, I think, exists in order to cover people based on insurance on a needs-based system. I think that you are currently, the way I understand it, if MPI is the first insurer for medical expenses, then they can continue to use the office of Continuing Care within Manitoba to subsidize some of the costs for the attendant care and the personal assistance that is required, but nonetheless, if you made it a needs-based

system, you would still be solving the problem. It would be a matter of negotiation with the office of Continuing Care as to how that is worked out while people are living in the province, and it would still allow them to go outside the province.

It might be more a matter of negotiation. There is just a different way of looking at it.

Mr. McCrae: I will indeed look at the way it is done at Workers Compensation. My concern is to address the issue that you are raising. I do not want to see people in catastrophically injured situations basically going begging for help that they need just to get through their normal daily lives. I look forward to working with you to make sure that this is resolved in a satisfactory way.

Mr. Tim Sale (Crescentwood): Just two questions to Ms. Cowley. First of all, I appreciate the chance to work with CPA often, and it has been a very rewarding relationship I have had for 30 years, I guess, working with various predecessors in the organization. CPA has achieved a marvellous record of advocacy and service and you have continued that tradition.

I understand the government is willing to try and solve this problem, but I want to ask Ms. Cowley two questions: one is whether she would agree, from her experience in the organization, that these very high-level, high-need cases are precisely the cases that used to go to tort law, to court, and they are also precisely the cases that resulted in the very large awards that would be sufficient to pay the kind of care that we are talking about. To a certain extent, do you see the problem we have here as a problem related to no-fault insurance where settlements and payments are capped without reference to the need of the person?

Ms. Cowley: In terms of being capped without reference to need, that is true. That is why we are recommending the change within Home Care. Yes, these probably would have been the people who would litigate and would have high costs of future care, because you would develop cost-of-future-care reports. So yes, they would have sued, and they would have had very high settlements if they were found according to fault. But it is limited right now in terms of cap and not limited by need, which is a shortcoming.

Mr. Sale: The second question, Mr. Chairperson, is that it seems to me there is a kind of prima facie injustice here, and that is that MPI claimants are people who have paid through the insurance process for coverage for hazards. It appears that in the current situation in Manitoba that coverage really has no effect, no effective help to the person receiving home care, because in effect, Manitobans are entitled to home care through Manitoba Health. They are entitled to home care through MPI, and Manitoba Health is treating MPI as a revenue source, rather than as an entitlement on the part of the person who is injured to add to the level that they would provide a Manitoban whether or not they had an insurance claim that would provide them with additional resources.

It seems to me that is kind of a strange situation for the province to want to be in where for some people in some situations their insurance is really of no benefit to them, because they would get the same care anyway up to $5,200 a month currently. Right now Manitoba Health says well, that is fine, we will still pay up to $5,200 a month; we will just take the $3,000 as revenue to our system.

That is the problem, but, I mean, that seems to me that is a kind of prima facie injustice, because people have paid for insurance, the proceeds of which are essentially confiscated.

Mr. McCrae: I think the honourable member for Crescentwood (Mr. Sale) has identified it along with the presenter today and ourselves. I think he is right, that there ought to be some benefit to being a policyholder, and that is what we are committed to addressing.

I do, though, want to add one thing. The honourable member's comments seemed to be made on the basis that under tort people did so much better, and, frankly, some people did, but some people did a lot worse. I think the honourable member forgot to mention that. Our presenter reminded him of that. That is why the no-fault was the right way to go, and I do not need to make a long speech about that.

I think that once in a while we should remind ourselves, though, of that point, that regardless of fault now, whatever levels of benefit are available are available to everybody.

* (1230)

Mr. Chairperson: Mr. Radcliffe has had his hand up for quite some time. I am going to ask the indulgence of the committee to continue this for a few minutes, but I would hope you will allow me the leeway to end the questioning when I see the debate starting to take place.

Point of Order

Mr. Ashton: Just on a point of order, Mr. Chairperson, I would heartily support you on that. Some of the comments the minister has put on the record for the last three or four minutes are certainly debatable and, I would suggest, inaccurate, but we are hear to listen to the presenters. We have plenty of opportunity to debate the bill later, so I suggest we deal strictly with questions and save the debate for a later time.

Mr. Chairperson: Thank you, and you do certainly have a point of order.

* * *

Ms. Cowley: Just in response, one of the advantages of moving toward no-fault is that people might receive the support that they need on the basis of need rather than cause, which, in keeping with that, you would want to change this, so that the attendant care is on the basis of need, not just an arbitrary cap.

Mr. Chairperson: Mr. Radcliffe, with a final question or comment.

Hon. Mike Radcliffe (Minister of Consumer and Corporate Affairs): I think I will withdraw in light of–and I think quite rightly made–the point of order by Mr. Ashton.

Mr. Chairperson: Thank you very much, Ms. Cowley, for your presentation. The committee will then recess until three o'clock, the time being 12:31. We will see you back here at three o'clock.

The committee recessed at 12:31 p.m.

After Recess

The committee resumed at 3:05 p.m.

Mr. Chairperson: Could the Committee on Law Amendments please come to order. As we are all aware, we were in the process of hearing presenters, and we will continue that process this afternoon.

The next presenter is on Bill 38, Mr. Ed Arnold, Selkirk & District Planning Area Board. Mr. Ed Arnold. Is he here this afternoon? I call Mr. Ed Arnold a second time. Is he here? Not seeing him, we will then drop Mr. Arnold off the list, or he will drop to the bottom of the list, I should say, and we will call his name later.

Bill 40, Brian O'Neill, private citizen. Is Mr. Brian O'Neill here? Private citizen. I call Mr. O'Neill a second time. Mr. Brian O'Neill. We will drop Mr. O'Neill to the bottom of the list and recall him later.

On Bill 45, Steven Fletcher, private citizen. Is Mr. Fletcher here? Mr. Steven Fletcher? Not seeing him, we will drop Mr. Fletcher to the bottom of the list.

Mr. Garth Smorang, Q.C., or Doug Patterson, Q.C., of the Manitoba Bar Association. Which one is it now, Mr. Garth–

Mr. Garth Smorang (Manitoba Bar Association): Mr. Smorang, thank you.

Mr. Chairperson: Mr. Smorang? Welcome, Mr. Smorang, to the committee. Have you a presentation for distribution?

Mr. Smorang: I have materials for distribution, yes.

Mr. Chairperson: The Clerk will distribute. Mr. Smorang, you may proceed.

Mr. Smorang: Thank you, Mr. Chairman, Members of the Committee. I speak to you this afternoon on Bill 45 on behalf of the Manitoba Branch of the Canadian Bar Association. The Canadian Bar Association represents in excess of 35,000 lawyers, judges, law teachers, and law students across Canada. Included in the Bar Association's mission statement is our dedication to enhancing the administration of justice by promoting access to justice and equality before the law. Integral to these concepts is the notion of fairness, and it is on that issue that I will focus my remarks this afternoon.

The Manitoba Bar Association opposed no-fault insurance when it was introduced in 1994. We understood that the existing system needed revision, but it was our view that Manitobans were better served by the tort system than they would be by the proposed personal injury protection plan or no-fault system which was proposed at that time.

The no-fault system, however, passed and did mandate a review of the scheme after three years, which the government complied with by appointing Commissioner Sam Uskiw to conduct hearings and make recommendations to the government. The Manitoba Bar Association appeared before Commissioner Uskiw during the hearing process with a written and oral presentation.

I will be urging you today, members of the committee, to recommend amendments to Bill 45 to encompass two recommendations which Commissioner Uskiw recommended that are not included in the present bill; firstly, Recommendation No. 1 and then Recommendations 38 to 41. I will deal with Recommendation No. 1 first.

* (1510)

I have placed before members of the committee excerpts from the recommendations, and on the first page you will see Recommendation No. 1. Commissioner Uskiw prefaced this recommendation by indicating the elimination of tort actions has had the unintended result of releasing negligent third parties not insured under the act and not contributing to the cost of the insurance program from their financial obligations. Commissioner Uskiw recommends that amendments be introduced to allow certain negligent third parties to be held accountable and bear the costs of their negligence themselves by allowing the victim and/or the corporation the right to bring tort action for compensation.

As lawyers in Manitoba, members of the committee, we understand the concept and the cost consequences of negligent third parties, and, as such, we believe that we are in a unique position to speak on behalf of all Manitobans in terms of this unintended result as stated by Commissioner Uskiw.

I will begin by discussing the phrase "negligent third party." Under the no-fault system, all injured parties in an accident are compensated to some degree for their medical and treatment costs, their medication therapy, lost earning capacity and future needs through MPIC. This works when an injury is caused by a motor vehicle accident involving two or more parties, all of whom are Manitobans and all of whom are insured by MPIC and, therefore, pay premiums to MPIC. This, of course, is because the money that is used to pay injured parties comes essentially out of that pot of money that is created through the collection of premiums from all of the Manitoba vehicle owners. This is what was intended. Everybody pays into the pot, and when injury occurs, everybody is compensated.

The problem arises when somebody causes the injury who does not pay into the pot. That is, they are a negligent third party, who for various reasons does not pay premiums to MPIC. I will give you a number of examples. The first example involves an actual situation which went as high as our Court of Appeal. A driver was proceeding down a highway in the Rural Municipality of Thompson, Manitoba, and was badly injured when his car fell into a large hole that had been created as a result of a bridge having collapsed as a result of disrepair. The Rural Municipality of Thompson was responsible not only for maintaining that bridge but also for warning drivers that the bridge had collapsed. The R.M. failed on both counts and would, at common law, have been responsible to pay the injured party for his injuries. The injured party in this case claimed under the no-fault system but also chose to sue the Rural Municipality of Thompson for aspects of his claim that no-fault did not cover.

The matter went to our Court of Appeal, which ruled that based on the existing no-fault legislation, bodily injury caused by an automobile or caused by the use of an automobile should be given a broad and liberal construction. The court concluded: Generally speaking, where an automobile or the use of an automobile in some manner contributes to or adds to the injury, the act applies. In other words, MPIC and Manitobans who pay premiums paid all of the injured party's damages, including his hospital stays, his medication, his therapy, his lost wages and his disability payment. The R.M. of Thompson and its insurance company got off scot-free.

I have personally spoken to Mr. Harvey Pollock, Q.C., who was the lawyer representing the claimant in that case. Mr. Pollock advises that the treatment and the loss of income portion of the claim alone, separate and apart from pain and suffering, was in the range of $250,000 to $375,000, for one claimant alone. Part of this money is what Manitobans paid to that injured party which should have been paid, in our view, by the R.M. of Thompson or the R.M. of Thompson's insurance company.

There are many other examples which do not involve a second motor vehicle. They include a car manufacturer who produces a vehicle with a defect. Not that long ago, there was a recall, you may remember, of certain Plymouth vans, where the rear door had a tendency to spring open, creating a risk that the passengers in the rear seat could be thrown out of the back of the van.

If in Manitoba two children sitting in the back of such a van were thrown out and badly injured, the no-fault system would be obliged to spend perhaps millions of dollars to adequately compensate these children for their current and future medical costs, equipment, loss of income, hospital, and nursing care, et cetera. The manufacturer of the vehicle and its insurance company would pay nothing.

Yet another example is car repair companies. If I take my car to the garage and the workmanship is faulty because, for example, they improperly attach one of my wheels and my wheel falls off while I am driving down the road, and, as a result, I am injured, Manitobans pay the bill, ratepayers pay the bill, not the repair shop, not the repair shop's insurance company.

Yet another example involves establishments which serve alcoholic beverages. At common law, there is a duty on these establishments not to serve individuals who are obviously intoxicated, especially where they have reason to believe that the individual will be driving after consuming alcohol. There are many cases in our law that go back many years where patrons of bars who are known to the bar owners have gone out after consuming liquor heavily and have injured themselves or others and the courts have found that the establishment that served them the liquor was completely or partially at fault. Under our no-fault system, these establishments are virtually immune from such liability. I am sure that the insurance companies that insure these establishments are very happy to realize that under the new no-fault system such claims are not being brought against them.

Another example involves out-of-province drivers. Recently the media has reported on a number of badly maintained semitrucks in southern Ontario where the wheels or tires have come off at high speeds and caused serious injury and death to other motorists or pedestrians. Under our no-fault system, if an Ontario-based truck is travelling to Alberta and it was to lose a tire just outside of Portage la Prairie causing injury or death to Manitobans in a car just behind that truck, Manitobans would pay for all of the compensation associated with the injuries to those people. Neither the Ontario trucking company nor its insurance company would have to pay towards the costs of compensating these Manitobans. Further, the injured Manitobans would have no ability to collect from the Ontario company or its insurance company over and above what they get from the no-fault system.

There are other examples that involve construction companies doing roadwork and not adequately warning drivers of dangers as a result of construction and owners of uninsured farm vehicles who drive on highways without proper lights or flags. All of these negligent third parties may be avoiding their share of the cost of their own negligence under the current system.

I have provided to you two pages out of the executive summary of Commissioner Uskiw's report, which is page 47 and 48, in which Commissioner Uskiw confirms this current situation. In the first paragraph on page 47 of his report, he highlights the following sentence: the burden of relieving negligent third parties who do not contribute toward the cost of Autopac is borne by all policyholders. In effect, the system allows a negligent third party to pass the tort liability onto the Autopac system as a whole and to those who support it, the general public.

What we are proposing, as did Commissioner Uskiw, is a system whereby the injured claimant would initially claim through the no-fault system and get all of its benefits. He or she would then have the right to sue

that negligent third party for all of his damages, including those not covered by no-fault, and pain and suffering, and would include in his claim all of the costs that were incurred by MPIC and by the Manitoba health care system in terms of hospital stays, doctors' fees, medication, treatment, et cetera.

If the injured individual was successful in his claim against the negligent third party, then all of the money that MPIC and Manitoba Health had spent on the injured individual could be paid back to them. Commissioner Uskiw recommends putting the right to sue in the hands of the victim rather than the corporation. We strongly agree with this. It makes good sense.

As Commissioner Uskiw states on page 48, the corporation's role–this is MPIC now–in administering no-fault claims should be confined to ensuring that compensation is determined and claims are adjudicated and administered in accordance with the act and the policies that flow from it. Although the corporation has a natural interest in the tort claim against the negligent, uninsured third party, putting the onus for pursuing such a claim would not necessarily divert the corporation from its main role.

He also states that putting the right to sue in the hands of the victim deals with these issues. The victim with competent advice can assess the likelihood of success against the cost of suing. Since the victim will bear the cost of the suit, he or she will be the one to decide whether the cost justifies the likely recovery.

It is recognized, members of the committee, that circumstances involving negligent third parties will not happen frequently. I would be surprised if there are five such cases in a year. However, each case may well save the Manitoba Public Insurance Corporation in excess of a million dollars. To the extent that this money is currently paid by the ratepayers of this province, compared to the result which would be that the negligent third parties themselves, or their insurance companies–often insurance companies from out of this province or out of this country–would pay, the recommendation made by the commissioner is worthy of being implemented in Manitoba. To do otherwise would be to deny Manitobans lower insurance premiums while providing complete immunity to those who do not contribute premiums into the MPIC pot.

* (1520)

Some would suggest the result of this recommendation creates a two-tier, or unequal, system of benefits in this province. To that we would respond that there are already, through the common law tort system, unequal benefits. For example, if an individual slips and falls in a grocery store, he is entitled to sue under the tort system for all of his losses. If, however, he walks out of that store and is hit by a car in the parking lot of the grocery store, then his claim is under no-fault. The injuries may be exactly the same. We encourage the government to seriously look at this amendment from a cost-saving point of view and also a fairness point of view. We believe that Manitoba ratepayers should not be relieving negligent third parties and their insurers who do not contribute from their legal responsibility to Manitobans who are injured as a result of the negligence of a noncontributing third party. That is the cost saving.

We also believe that those noncontributors ought to pay to the injured party that portion of his or her loss that is not covered under the no-fault plan, where the injured party wishes to pursue his or her rights against the negligent third party. That is fair.

We wish to make it very clear that under our proposal the injured claimant would still have every right to make a claim under the no-fault system and would in all likelihood do so in each case. It would only be once the no-fault system was underway and looking after the claimant that they would consider bringing this independent action on their own behalf and on behalf of the Manitoba Public Insurance Corporation and Manitoba Health.

I now turn to Commissioner Uskiw's recommendations 38 to 41. They are reproduced on the second page of the material I have filed. I will restrict my comments, however, to recommendation 38.

Mr. Chairperson: I would like to just remind the presenter that we have time limits of 15 minutes. You have two more minutes.

Mr. Smorang: Under the no-fault system, compared to the old tort system, claimants have no right to legal representation at the adjuster stage of their case now. This means that their entitlement to benefits, amount of benefits, past and future loss of income, current and future treatment costs, and permanent disability, are determined by an MPIC adjuster. Of course the adjuster as an employee of the corporation is generally looking out for the interests of the corporation and is infinitely more familiar with the benefits available to the claimant than the claimant himself. This imbalance of power did not previously exist when the claimant had legal counsel experienced in the laws of personal injury.

Under the current system, if a disgruntled claimant wishes to appeal the decision of the adjuster, that claimant has the right to go to a review committee known as the Automobile Injury Compensation Appeal Commission. At the appearance before this commission, MPIC is represented by one of its staff lawyers that are almost permanently assigned to conduct appeals. The MPIC staff lawyer is well experienced and trained in matters of interpreting legislation and is there to represent the interests of the corporation. Although the claimant has the right to appear with counsel, there are no current provisions for part of that lawyer's fees to be paid by the corporation if the appeal is granted. In other words, MPIC's lawyer is paid in all cases but the claimant, win or lose, must always pay for their own lawyer.

In courts of law there are tariffs of costs that set up and provide for the successful party to be partially compensated for its legal fees. This recognizes that matters which go to court involve, in some cases, a great deal of cost and effort and also to induce settlement of cases. Under the current circumstances, there is no inducement whatsoever on the corporation to settle even a meritorious appeal. There are no cost consequences if the adjuster was wrong.

Recommendation 38 provides that the claimant has the right to be represented by an advocate paid for by the corporation. We do not suggest the corporation pay for advocates. What we suggest is the legislation be amended to allow discretion in the Appeal Commission to award costs to a claimant who has brought a lawyer who is either successful in his appeal or his appeal has merit. We are certainly not suggesting that the injured party's lawyer in all cases be paid for by the corporation. In our view these recommendations would go a long way to levelling the current imbalance of power and the strong perception by members of the public of that imbalance that exists at the Appeal Commission.

On behalf of the Manitoba Bar Association, I would like to thank you for listening to my comments, and, of course, if you have questions I will be pleased to answer.

Mr. Chairperson: Thank you very much, Mr. Smorang.

Mr. Ashton: Mr. Chairperson, I would like to ask, first of all, in terms of following up on your presentation, and I would just like to point out, by the way, that in terms of an advocate, when this no-fault legislation was brought in, we brought in from the opposition I believe about 35 or 40 amendments. That was one of the amendments. The government voted against it.

Mr. Chairperson: Mr. Ashton, could I interrupt? Could you pull your mike just a wee bit closer?

Mr. Ashton: We also moved an amendment at a previous committee dealing with a previous bill involving MPI and the government voted against that or would not consider it.

I must admit that if there is one thing that is consistent with anyone that has had to deal with no-fault and the appeal process, every single one of the people I have talked to has said that they see absolutely no fairness in having a system that is similar to Workers Compensation, where you have an advocate, and that was brought in by actually the Pawley government in 1980s, whereas a similar system now is in place which replaces tort, you have on the one hand, as you have pointed out, as was indicated at committee, MPIC has its lawyers routinely involved in appeals while claimants go there, and, even if they want to hire lawyers, they cannot.

Many lawyers are advising them not to spend the money, since it is not a court process, and I must admit to some great deal of frustration that when the Uskiw

report I think has listened to what many of the presenters were saying, the government still seems to feel it is fair to have MPIC with lawyers routinely at hearings but have claimants having to basically go there, represent themselves. I can tell you, many of the claimants I have talked to have become experts on no-fault, but I do not think they should have to become experts.

I am wondering if you could elaborate a bit more on your proposal, because I still feel an advocate is the route to go, and I do think it should be a cross borne by Autopac in the same way that you have an advocate in place. I think it should be independent of Autopac, the same way we do with Workers Compensation, but I think, you know, the argument for no-fault was that it took out the legal costs, this huge legal cost that was imputed to the $190 million that was paid out per year in terms of bodily injury. Now claimants have nothing.

I wonder if you can elaborate on your suggestion, because you are I think suggesting something a little bit different from a direct advocate.

Mr. Smorang: It is important to remember that the one and only appeal from an adjuster's decision is to this Appeal Commission. That is the one shot a claimant has to make his or her case. They then show up in front of a commission that is picked or appointed by the government, which your average Manitoban equates to MPIC. They do not really see a distinction. So their first impression is: there is one strike against me, these people up there who are deciding my case are appointed by the government. Then they see a trained, experienced MPIC lawyer, who knows the regulations and the act like the back of their hand, who is trained in cross-examination techniques and expert witness techniques and arguing techniques and they attempt as best they can to fight that system to get their one and only crack at an appeal.

They have the right today to take a lawyer, but they must do so at their cost, and there are no provisions for their lawyer to be paid anything even if it is proven that the adjuster's decision was simply wrong. In our view, that is the kind of inequity Mr. Ashton speaks of, that even if you win, you lose, because sometimes people are not arguing about $50,000, sometimes they are arguing about $60 a month, which to them is a lot of money, but to win a case where you get $60 a month to be presented, with a lawyer's bill for preparing witnesses, coming to a full- or half-day argument of a thousand or $2,000 is not necessarily a victory at all.

It seems to us that, in fairness, the court system, which has a tariff of costs, it is a set tariff where the judge at the end of the case says: you win and you lose. Now, because you lost and you brought us here, you must pay to them a certain amount of money. Not all of their costs, not everything their lawyer charged them, but something. Something to compensate them for having to come here and argue a case that should have been decided correctly the first time. That is exactly our view.

* (1530)

Our view is that the commissioners ought to have some discretion to award costs in favour of either a successful claimant or even a meritorious appeal that is unsuccessful if, in the commissioner's decision, that claim needed to come before then. The only way law changes, ladies and gentlemen, is if people come and they test new scenarios that were not previously decided. Sometimes you lose on those tests, but sometimes the fight was worth having. It is our respectful submission to the committee that definitely improves the fairness of the appeal system.

Mr. Chairperson: I just want to remind committee members that the time expired and the first question was five minutes, and we only have 10 minutes for questions.

Mr. Ashton: It seems to me that, you know, one thing that has escaped consideration here, and this came out at a recent standing committee on MPIC, is the degree to which the no-fault system that the government brought in has dramatically reduced the number of claims, people who were successful in claims, by many cases eliminating certain kinds of claims, especially with soft tissue injuries, but also not only on the premium side but the benefit side. If I remember correctly, MPIC officials are saying the cost would have been $340 per policy. It is now down to $140. This bill, by the way, adds another $2-3 million into it, and it seems to me that part of the problem is that in going after tort, the previous tort system with all its

weaknesses which a lot of people, I think, agree to, we certainly did on our side, they went after it with a sledgehammer and have come up with a system now that is not fair to people that do not agree. It is just not just.

I wanted to ask a further question on the tort and the liability of third parties because this is something that I know has been raised before as well. Once again, moving away from tort you identified some of the difficulties you went up with, you know, if you are injured on the job, if you are injured in a car accident, or you are injured in a store. There are different categories of benefits you are eligible for because some cases you can sue, some cases you cannot. I am wondering if you can see any reason why the government has not excluded this, other than–the only answer I could come up with in the case of Crown agencies was protecting its own interests as a government, and quite frankly I do not consider that really acceptable.

There should be a public interest that should mean, to my mind, if you have a public agency that is at fault, it should be treated in the same way that a private agency or company is at fault. You cannot have a government that passes a law that says, well, you can sue someone under certain circumstances, but not us because we are the government. I am wondering if you can see any arguments on the other side because for what it seems to me in this case, once again, I think by jumping into this comprehensive no-fault, which is good in principle, they have gone too far and in this case taken away legal action which would not affect in any way, shape, or form the basic principle of no-fault, and in essence really protects people. I guess the question is: should they be protected?

Mr. Smorang: I can only say what Commissioner Uskiw said. I think it is an unintended result. I think that in an attempt to change the system, there was a result achieved that was not intended, that was not contemplated, and perhaps which needs to be changed.

If an injured party is able to collect from a Toronto insurance company, pain and suffering, wages over and above that provided by no-fault, and the person wishes to fund that, I see no reason. It certainly does not come out of the taxpayers or the ratepayers of Manitoba's pockets, and in fact, to the extent that that injured party takes the initiative to go and collect the money, both on behalf of MPIC and on behalf of Manitoba Health–and we always forget about Manitoba Health until we realize how much it costs every day to stay in a hospital–the Manitoba Health costs, and I have done these claims for years, are huge. We are asking for a system whereby that claimant could go back and claim against that Toronto insurance company and then give that money back to the government of Manitoba, both to MPIC and to Manitoba Health, to say I was in your hospital for a month, that costs $25,000. I have collected it from the Toronto company. Here it is back. That is the reason why it makes sense. You have to induce the injured party to do something. Therefore, you have to give him or her the incentive. Therefore, you have to give them the right to collect over and above no-fault, but it costs us nothing and it gives people the incentive to do it. It just makes common sense, with respect.

Mr. McCrae: Thank you, Mr. Chairman, and thank you, Mr. Smorang, for coming today and making your presentation. All of the items that you have made reference to are items we have discussed previously, and it is an important discussion to have, so that we all know the direction that we are going in.

I think one of the things the public is not generally aware of is that one of the responses to the Uskiw commission report being made by the auto insurance company is the introduction of a new function and that being that of a fair practices advocate, who, unlike the present internal review process we have which has an important function, the function of the fair practices advocate will be seen to be even more independent than the internal review process we have at this point. Now, this is before we ever get to the full-blown, so-called appeal process that we have. This fair practices advocate will not report to the corporation but will report to the board and be independent from the corporation. So we hope that that measure will head off a lot of the appeal activity that we might have seen had we not done so.

Mr. Chairman, we have also discussed the return to a partial tort system and the concerns the government has with respect to that, and we have discussed the unfair application that that might have. I know that you

can probably name unfairnesses on either side of that argument, and I respect that and I respect the argument. I guess I would not want to go to a system where, with regard to costs, we told the loser, well, you lost, you pay. On the other hand, I think those who advocate for lawyers paid for by the government or by the insurance corporation would not argue that someone coming forward and bringing forward an appeal and failing on that appeal ought to be asked to pay the costs of the corporation. I do not think anybody is arguing that, and I would not want to, but it is a natural extension of the suggestion that there ought to be publicly financed lawyers available for people to bring appeals to the Appeal Commission.

So I think–

Mr. Chairperson: Thank you, Mr. Minister, for your final comments.

Mr. McCrae: I do not think that Mr. Chairman wants me to go on very much longer, so I just say thank you for your presentation.

Mr. Chairperson: Thank you, Mr. Smorang, for your presentation. I call next Dr. Greg Stewart, Manitoba Chiropractors Association. Mr. Greg Stewart. Mr. Stewart, have you a presentation for distribution?

Dr. Greg Stewart (Manitoba Chiropractors Association): Just a verbal one, thank you.

Mr. Chairperson: Just a verbal one? You may proceed, Mr. Stewart.

Mr. Stewart: Thank you very much for this opportunity. I am appearing for the Manitoba Chiropractors Association. I am a past president, and I have been in private practice for the last 12 years.

We are appearing today to voice our concern regarding the legislation amendment, Bill 45. We are not concerned about the inclusions. They are all necessary, and the government should be acknowledged for their insight and for the maturity of the process review that was implemented when the PIPP program was initiated.

Our concern lies in what is not included in Bill 45. We are aware that our concerns may be put to rest simply by procedural changes and modifications at the managerial levels of MPI. Unfortunately, we were hoping for a stronger message to be sent to the board of MPI to implement a process which, in our opinion, is both fair and reasonable. Many of the recommendations in Mr. Uskiw's report had already been presented to MPI in both daily interaction and formal presentation. It is our belief that if MPI were interested in serving its policyholders to the level they deserve, procedures would be in place today.

Mr. Uskiw was clear in his analysis that there are many shortcomings in the process of claims management that clearly do not present justice nor fair and unbiased judgment. Our presentation to Mr. Uskiw was over 10 hours in length, and a lot of the recommendations that were made were the outcome of our lengthy discussions. Of course, I do not have time to go through the details of our discussion at that time, but they were very beneficial, and I believe a lot of insight was gained through the documents that were presented.

We believe that a message must be sent by this government to the board of MPI that the interests of the public must have a higher priority than the interests of MPI. All the principles of the PIPP program are sound and easily defendable. Certainly, the members of the Manitoba Chiropractors Association are satisfied with the legislation as it reads. The difficulty is in the interpretation. Just a rough example is the fact that costs are reimbursed that are termed to be medically necessary. Unfortunately, that is quite ambiguous and subject to misinterpretation, and it can be taken many different ways, whether we are talking about pain relief, analgesic care, long-term pain management or we are just talking about getting someone back to work and adequate daily functioning.

Our concerns are in the manner in which decisions of patient management are derived and the overloading of an appeal system with cases that are mishandled at the early stages of their management. That was addressed in a previous discussion, I understand, a new advocacy system which I am in favour of. For example, currently there are paper reviews by MPI consultants. In a paper review system, the case is just reviewed, the medical information from the practitioner, and cases are often shut down based solely on a paper review without any medical evidence to the contrary.

* (1540)

Just the review of the adjuster or the consultant is enough to terminate a case and trigger the whole appeal process, both internal and external. Independent examiners are over-reliant upon meeting the expectations of MPI without accountability for outcomes of the recommendations. In other words, they do an assessment and state if this and this and this is done, at this point in time the case can be closed. However, there is no follow-up and re-examination to see if their recommendations proved fruitful, and if you do not write your report this way, chances are you are not going to see many independents come to your office.

I once was sent two patients to give an independent examination of within the same month. I made recommendations that these patients should be re-examined at a six-month point following my recommendations to see if my recommendations would have any positive bearing on the outcome of the case. Not only did I not get the opportunity to follow up on my recommendations, but I also never saw another independent come my way. This was three years ago.

Also, MPI consultants should be term positions and rotated accordingly. This will, of course, have them maintain their professional objectivity. Right now, the treating practitioner is often forced, out of obligation, to advocate for their patient throughout the entire internal and external appeal process. This is not where our training lies, and the patient's case and outcome can often be dependent upon the verbal and/or written skills of his or her practitioner, not his or her clinical competence.

We have been handed a role which we do not want. It is also clearly evident to all that this is a secondary conflict of interest as we are appealing not only to the patient's insurance carrier but also to the body which pays us for our services. This undermines our credibility regardless of the integrity of the doctor and the soundness of the agreement presented.

When you go to these appeals–and I have had the fortune to go through one–you are asked when you start off whether you are an advocate of the patient or are you an expert witness. Even though I have been through the court process before, I was never put in this decision-making capacity. I have done expert testimony for both the Crown and for private citizens, and never have I had to ask for clarification of what is intended of me. Well, it is not hard to find out once you are in the process because, of course, an expert witness cannot cross-examine another expert witness, and that comes along later in the process.

When I am first asked that, I have said, well, I have some patient information to present. Of course, right from then on you are now an expert witness; you are no longer an advocate. So the process, without even waiting for the outcome–I contacted Mr. Uskiw right after my experience that I was quite outraged about, and he told me, well, basically, there should be two lawyers in the room or none. I said that is the way I could see it, because it was so one-sided it was hard not to get emotional. It is hard to keep your mouth shut in the situation where you are hearing an expert witness present some testimony that you think is erroneous and deserves to be challenged, and there is no one there to do it.

The flaws are further highlighted when the panel, the judges in the panel or former judges, turn to my patient this time and say: do you mind if I ask some questions, as if I am your lawyer? Well, then I stated quite loud: is it not obvious what we are missing here? So the shortcomings were quite evident without even waiting and the outcome of the appeal is not even at issue here.

The program can work, and everyone involved knows that fine tuning the process is purely a matter of will, and acceptance is such a major undertaking as PIPP will expose some unexpected weaknesses. This was obviously expected when the original legislation was drafted as it stipulated a review after three years. I do not believe this is purely lip service. We are committed to work with the government and MPI to ensure a fair and just system for those injured in Manitoba. Thank you for allowing me to make this submission.

Mr. Chairperson: Thank you very much, Mr. Stewart or Dr. Stewart, I am sorry.

Ms. Becky Barrett (Wellington): I make no pretense to being an expert on this legislation or the issues that you have raised, but it does–I think you have provided

us with a different perspective that is very helpful, will be helpful, as we debate the clause by clause of this bill. Perhaps we can look at ways to address some of the concerns that you are raising on behalf of not only either advocates or expert witnesses but also the people that you are either advocating or being an expert witness on behalf of, so thank you very much.

Mr. Chairperson: Thank you very much.

Mr. McCrae: Thank you, Dr. Stewart, for coming today. Bill 45 in front of us is meant to give us a legislative framework to carry through with some of the commitments we have made respecting improvements to benefits which flow from the Uskiw report. The Uskiw report has a number of recommendations, some of them administrative in nature and some that are still under review. In the context of our ongoing review and improvement of our system here, we will be pleased to take into account the matters that you have brought forward today. Thank you very much.

Mr. Stewart: Procedural things that cannot be added later, we are just concerned about the will. Thank you very much.

Mr. Chairperson: Thank you very much, Dr. Stewart. I call next Mr. Frank Bueti. Bueti, was that right?

Mr. Frank Bueti (Private Citizen): That is fine. I have had it mispronounced many times.

Mr. Chairperson: Give me the correct pronunciation.

Mr. Bueti: It is Mr. Bueti.

Mr. Chairperson: Bueti?

Mr. Bueti: Yes.

Mr. Chairperson: Right. I will try and remember that. Have you a presentation for distribution?

Mr. Bueti: Yes, I have provided the presentation to the Clerk. I understand he is distributing it.

Mr. Chairperson: Great.

Mr. Bueti: Just by way of background, Mr. Chairman–

Mr. Chairperson: We will wait till the distribution of the document. Thank you, Mr. Bueti, you may proceed.

Mr. Bueti: Yes, Mr. Chairman, by way of background, I am making this presentation as a private member of the bar. I have, I would say, a fair amount of experience in dealing with the Manitoba Public Insurance Corporation and its administration, both under the prior legislation where there was a combined tort and no-fault system, and now under the current system. As well, I have acted as counsel to the Manitoba Chiropractors Association, and in that capacity I have been provided with various situations where they have had concerns about the way in which appeals and reviews of their claims have been handled by the corporation.

My brief is somewhat lengthy, and in order to go over it, it would take probably a great deal longer than 15 minutes. So what I propose to do is to try to highlight as quickly as possible what I would consider to be the essential elements.

I guess the first point I would like to make is that it is clear from a review of the Uskiw report that many accident victims are dissatisfied with the operation of the Personal Injury Protection Plan, the current no-fault system. The Uskiw report summarizes the results of his review and, in particular, the criticisms of the system at page 18 of his report. I think it is important to recognize those criticisms because my understanding is that Bill 45 is the legislative response to some of the recommendations that have been made by the Uskiw report.

In the report, Mr. Uskiw states that the commission heard directly from over 700 individuals and groups. They expressed concerns over a wide range of issues, ranging from alleged inequitable sections of the legislation to specific provisions for various groups, such as students, seniors, and the self-employed. Many expressed regret over the absence of compensation for pain and suffering, while others criticized the failure of the legislation to cover adequately the needs of the severely injured.

However, the most repeated concern focused on the claims process and specifically the way the adjuster

treats the claimant. I think it is important to dwell on that point just for a moment, because what we are talking here is not about matters that will substantially add to the costs of the corporation in administering the system but rather in terms of improving the process so that claimants feel that not only are they being treated fairly, but they are perceived to be treated fairly. I think when you look at page 18 of the Uskiw report and the comments made by Mr. Uskiw, you can see in a nutshell the criticisms that are being made. Basically some of the issues raised are adjusters' failure to explain procedures, extent of coverage or benefits that the claimants was entitled, an adversarial approach by adjusters.

* (1550)

I do not want to read this all because of the time involved, but basically there is a fundamental problem in the current system and that fundamental problem is that there is an imbalance. The imbalance is that whereas the corporation has available to it the resources of lawyers, adjusters, medical rehab consultants, internal consultants, a claimant who is injured in an accident really has no resources available to him or her at all. That claimant, if he is dissatisfied with a decision that is made by an adjuster, is required to represent himself or herself and to try to figure out what his rights are without the benefit of having counsel available to them, without the benefit of having available medical expertise or reports, so that you have a system here on the one side you have MPIC standing with all of these forces arrayed in its favour and on the other side you have an individual claimant, often who has little or no English language skills, little or no understanding of the legal system or process, little or no understanding of their own claim, trying to just explain that they there are still having a problem and they need ongoing coverage and ongoing care.

Because this system currently does not provide for these resources to be made available to the claimant, it creates a real problem in terms of claimants being able to pursue their rights where they are injured. It is clear from the review of the Uskiw report and from the comments received from the general public that there are many concerns and difficulties with the present operation of the PIPP system, and unless changes are made to address the inadequacies with the system, public discontent will continue to mount. In this presentation, I will focus on a number of the recommendations made in the Uskiw report which, in my respectful submission, have not been incorporated within the bill. I acknowledge the minister's comment that some of these items may well be dealt with by regulatory changes and/or policy changes. I think it is important for this committee to impress upon the process that these things be done.

My focus is on several areas. The first is that the accident victim's ability to claim medical and rehabilitation benefits, including the ability to receive prompt reimbursement for expenses without arbitrary cut off; secondly, the appeals process itself; and thirdly, the impairment schedules.

With regard to the recommendations within the Uskiw report, I would deal with them in order as follows: Recommendation 23, which was that the corporation pay expenses for dental care, chiropractic treatment and physiotherapy for the victim in such amount as is medically necessary and prescribed by a practitioner. Now the importance of that is that reimbursement for expenses is very different than payment of an income replacement benefit. Here we are reimbursing an expense. Here the claimant is out of pocket. They are getting treatment prescribed by a duly qualified practitioner, whether it is a medical doctor or a dentist or a chiropractor. Therefore I think it is very important that the system be established that once the expense is incurred, that the victim has an entitlement to be paid as long as in the opinion of the claimant's attending health care provider it is necessary for the treatment of the injuries that are sustained in the motor vehicle accident.

Here what I am speaking to is the issue of cutoff of treatment expenses by the corporation on the basis of internal reviews or paper reviews of the file. What will occur is that the corporation will have a claim, and at a certain point in time they may refer it internally to one of their consultants who will read the file, or they may just have the adjuster read the file. Then that person will make a decision and just say, notwithstanding that the treating doctor has recommended ongoing care for the injury sustained in this accident, I have read the file and I have come to the conclusion that no further

treatment is required, and if you are dissatisfied with that decision, then appeal it.

I say to this committee, that is totally unjust. How can the corporation make those decisions contrary to the stated medical opinion of the treating doctor or chiropractor without at an absolute minimum the benefit of its own independent medical examination to provide contradictory medical evidence?

I can tell this committee that this type of event occurs all the time. It is a daily occurrence. It is this type of event that forces, unfortunately, doctors and chiropractors to, in effect, become advocates for their patients, which is a role they do not want. They simply want to treat their patient. They want to treat the injuries that that person has sustained and make that person better. The last thing they want to do is to be forced to go into an appeals process where in order to continue treating that particular claimant, they have to appear before a review officer and get on the phone and advocate and deal with the adjuster because the adjuster has come to a conclusion that based on their practice protocols within MPI the treatment allowed is enough.

So I think that this is something that should be dealt with, and it should be dealt with either legislatively or by regulatory change, that the corporation, if there is an opinion there from a treating health care provider that medical or chiropractic or physiotherapy treatment is needed, that those expenses will be reimbursed, and if the corporation is dissatisfied with that opinion, they have a right, and that is to get their own opinion from a truly independent practitioner of the same practice, so that there is then some balance. It is not arbitrary.

The second thing is, and this is Recommendation No. 31. This is a very important recommendation, I would suggest, to this committee, and that is that when the corporation requires a claimant to be examined by a practitioner, the claimant shall choose from a panel of practitioners submitted by the appropriate governing body of the particular discipline. That is critical because not only must there be a reality of no bias, there has to be a perception that there is no bias. The current system, whether the corporation likes to acknowledge it or not, has a complete perception of absolute bias.

Currently, MPIC uses a select number of practitioners, whether it is chiropractic, medical or otherwise, to do their independent examinations. Unfortunately, there is no real independence in the current system. The practitioners are selected by the corporation, and they are beholden to the corporation for a significant part of their livelihood. This is an area where a number of accident victims have repeatedly complained about abuse. The current system permits actual bias to exist in some cases and the perception of bias to exist in all cases. Adjusters appear to use independence on an adversarial basis with a preconceived result in mind. Experts who do not provide MPI-oriented reports do not get further referrals. This philosophy should not be tolerated within a public insurance system.

This recommendation is an excellent recommendation. It would remove any possibility of bias or perception of bias because the corporation is no longer involved in the selection of the independent examiner. Rather, the appropriate governing body of the professional discipline would select a panel of practitioners who would be qualified to provide independent examinations. The claimant would then be allowed to choose from that panel of practitioners in a particular case.

In this way there is no bias one way or the other. It is not a situation where the claimant controls who the independents are. It is not a situation where the corporation controls who the independents are. It is a situation where the professional body who is best qualified to determine who should be rendering independence does it, and the independent is not beholden at all to the corporation for his selection, and that is a critical factor.

So I would say to this committee that if there is one amendment that should be made, and it should be made either to the legislation or to the regulations, it is to change the process by which independent examiners are selected so they are truly independent from everybody. It would eliminate frankly a lot of the disputes, because if you have independent examinations for someone who is truly independent of both parties, then it gives more credibility to their decision and will reduce the number of appeals that are forthcoming.

Recommendation No. 33, I just leave it there for the panel to consider. The only comment I would make here is that it is clear from certainly my dealings with clients who have been in contact with MPIC under the PIPP system that, notwithstanding MPI's efforts to explain to the claimant what their rights and benefits are, in general the claimant has a very poor understanding of what their rights are and what their abilities to appeal are, and that is problematic. It would be hoped that better information is provided by the corporation by way of plain language brochures right at the outset and on an ongoing basis so that claimants fully understand their rights.

The next part of my presentation deals with the claims appeals process, internal reviews, and appeals to the commission. This is dealt with by Mr. Uskiw in his report at Recommendations 34, 35, 36, 38, 39, and 40. Basically the heart of this is that the current system, in my respectful submission, is very flawed. There is a tremendous power imbalance that exists within the current system. In order for there to be an effective appeal remedy, the appeals must be to a truly independent body which is not controlled or perceived to be controlled by MPI, and here I am referencing the review officer, because the review officer is an MPI employee. Generally he is a lawyer employed by the corporation, and in my respectful view a person in that position has absolutely no independence from the corporation, no perception of independence from the corporation, and that creates an immediate problem in terms of any appeals that are put forward.

I would suggest that what should happen is that the review officers should be selected similarly by an independent panel of individuals, and the panel should be composed of individuals who are selected by their position, for example, the president of the Bar Association, the president of the Law Society, the president of the MMA. So that way, when you have review officers, those review officers are not selected by MPIC, they are not selected by claimants, but, rather, there is a group of review officers who are selected independently from the corporation. Those are the people who should do the initial review, because, as matters currently stand, many reviews take six months, nine months, a year, to get dealt with. So it is all fine and good to talk about there being a further right of appeal to the commission, but you are talking to get your initial review done right now. In many cases you are talking many, many months down the road. So it is important that that initial review be done more quickly than it is currently being done and that it also be done truly independently of the corporation.

* (1600)

The other point I make there is that there is no structure in place to require that reviews be heard within a specific period of time. I would submit that the legislative amendment that we have before us, which is Section 172(3), is not adequate to deal with this issue. If you look at the bill, Section 172(3) states that: "The corporation shall respond to the claimant within 30 days after receiving an application for review."

Well, what should happen in my respectful–

Mr. Chairperson: You have one minute left.

Mr. Bueti: All right. What should happen in my respectful view is that the corporation should within 20 or 30 days respond and provide the claimant with a copy of their file, and then within a further, say, 30 days, set the hearing the date. The date must be fixed. If the claimant consents, it can be set further down the road, but there should be a time limit within the legislation that hearings are going to be held within 60 days or 75 days unless the claimant consents in writing to a change of the hearing date. That way you are going to force the issue to be dealt with immediately. The current system does not allow that to happen.

Similarly, and I will just go to the appeals process itself, it is very flawed. I am just going to reference one case, and this will be my last point. I have a lot more that I would like to say, but unfortunately we are constrained by time here.

This is an illustration of the problems that arise under our current system. I had a case that arose in 1994, a fellow named Mr. Pansini, severely injured in a car accident. It is actually referenced. The decision is at tab No. 5 in my submission. The accident occurred April 7, 1994. There was over $7,000 damage to his vehicle. He was off work for eight days. He went back to work. His initial complaints were primarily neck

related and not low back related. However, within eight days he started to complain of some low back problems. As time progressed, his low back complaints became worse. By the summer of 1994, July of 1994, he had to miss three days because of acute low back pain. By the end of August, 1994, he was so disabled that his employer sent him home, and in fact we obtained a written statement from his employer confirming that fact. Unfortunately, even at home his condition got progressively worse. By the end of September, he was in acute pain. He was referred to an orthopaedic surgeon, Dr.–[interjection].

Mr. Chairperson: I am going to have to interrupt. I have been very lenient. I have let you go over significantly, so I would ask you to wind it up quickly.

Mr. Bueti: All right, Mr. Chairman. I guess in conclusion, I would just point out that in that case, Mr. Pansini, after a year and a half of being denied benefits, after an unsuccessful review, went to the commission and after a two-day hearing was successful. Now, in order to succeed in that hearing he had to call to testify two medical doctors, each of whom charged him $750 for their attendance. He had to obtain a full medical narrative report from Dr. Shariff at a cost of $700, and he had to pay legal fees. MPIC, because of the legislation, refused to reimburse him for the medical attendances so that he was out of pocket $1,500 for medical attendances. Furthermore, he was out of pocket about $500 on the medical report, and he was out of pocket $5,000 in legal fees, all on a successful appeal, and frankly, he would not even have been able to pursue the appeal but for the fact that our office carried all of the expenses right through to the hearing, because he had no money. He was–[interjection].

Mr. Chairperson: I am sorry, I am going to have to ask you to end it here. We can hear of specific cases at another forum than the panel here. I would ask all presenters and committee to keep the discussions relevant to the legislation and recommendations to the legislation. If we want to hear all of many of the cases that we can reference, then we will be here a long time, so I would thank you very much for your presentation, and if there are any questions, I would entertain a question.

Mr. McCrae: Thank you, Mr. Chairman, and thank you, Mr. Bueti, for coming today. You need to be reminded that all the things you said have been recorded, and they are available to ourselves and to the corporation policymakers. In addition, we have your presentation.

Thank you for making us aware of your concerns and issues. As I said to the last presenter, we are committed to continuous improvements to the way we do our business, and also to the way we provide benefits to Manitobans within our ability to do so, given our rate structure. Your recommendations and thoughts will be brought to the attention of the people in the corporation who can do something about these things as they go through their ongoing review. The PIPP report is before us. We have committed to certain changes in benefits and improvements in benefits, and certain administrative improvements as well. Others are still under review, and your ideas and thoughts will be taken into account as we go forward with that process. Thank you.

Mr. Chairperson: Thank you very much, Mr. Bueti, for your presentation. I call next Mr. Jerry Kruk, CAA Manitoba. The Clerk will distribute the presentation. Mr. Kruk, you may proceed with your presentation.

Mr. Jerry Kruk (Canadian Automobile Association): Mr. Chairman, ladies and gentlemen, my name is Jerry Kruk. I am the president of CAA Manitoba, and we have 150,000 members in this province.

We went before the Uskiw PIPP Review Commission, and they came forward, as we know, with 54 recommendations to the government. It is our understanding that except for five of these being rejected outright, all others were either accepted by government or are being legislatively and/or regulatory in some way being dealt with.

We, in our brief to the commission, wish to make five points: (1) No-fault was originally set up to keep Autopac rates down; (2) No-fault took away the right to be compensated for changes in lifestyle; (3) No-fault cost the same to seniors but their benefits are reduced, particularly once they are not in the workforce; (4) No-

fault equalizes the value of each person's body parts, i.e., the so-called meat chart approach, that a concert pianist's arm is no better or worse than that of anyone else; and (5) No-fault concentrates on minimizing the expense side of the equation for Autopac.

CAA Manitoba wishes to commend the commission on their views toward correcting some of the above. For example, their recommendations do correct the issue of seniors compensation. As well, they went a long way toward recommending a correction of the meat chart issue by some of the other suggestions. In a roundabout way, it also touched on our issue, although not directly, of working on changing driving habits even more than now and moving away from minimizing the expense side of the equation, in that they recommended that MPI spend more time and effort on customer service and communication issues.

So is CAA happy with the overall results of the review? Not by a long shot. Let us look at two things: No. 1, what has not been accepted by government, and No. 2, what was not even accepted by the commission.

First, the five recommendations of the commission that were not accepted by government were: Recommendation 1, that amendments be introduced to allow certain negligent third parties to be held accountable and bear the costs of their negligence themselves by allowing the victim and/or the corporation the right to bring tort action for compensation.

Recommendation 5, that the income replacement indemnity of a victim be equal to 100 percent of his or her net income.

Recommendation 6, that the seven-day exclusion period before the income replacement indemnity begins be eliminated.

Recommendation 20, that the expenses reimbursed by the corporation which are not covered under The Health Services Insurance Act or any other act be extended to include hospital care and qualified massage therapy if prescribed by a physician, chiropractor, physiotherapist or athletic therapist.

* (1610)

Recommendation 23, that the corporation pay expenses for dental care, chiropractic treatment and physiotherapy for the victim in such amount as is medically necessary and prescribed by a practitioner.

With the exception of Recommendation No. 1, the other four are really items of fairness and should be accepted as part of the need to properly look after victims of collisions in an appropriate and fair manner. CAA cannot understand why these recommendations would not be part of the accepted grouping, particularly given many of the others that were accepted.

The nonacceptance of Recommendation 1 is, however, an issue which CAA deeply disagrees with. CAA stated in its brief that it believed deeply that victims of collisions should be compensated for changes in lifestyle, and to avoid that issue, as we said, is morally wrong. Recommendation 1 went only part way and only dealt with third-party negligence which, ironically, we are all paying for by not having this recommendation accepted.

We believe that not only should Recommendation 1 be accepted because it is financially to our province's benefit, but we should go further and deal with the issue of compensating for lifestyle change by having the right to sue for same. The ground rules for this need to be corrected from those which may have existed prior to no-fault but could be readily done by setting in some sort of minimum deductible as presently done in Ontario. The principle of compensating for lifestyle change, however, is basic to the issue to CAA's views of not being morally correct.

So, in summary, where does CAA stand on our original five key points today? Point No. 1, where we said no-fault was to keep Autopac rates down, the record over the previous three years shows that this promise has not been totally met. The rates rose by an average of 6.1 percent in '96, and, by our calculations, unlike Autopac's, by 8.9 in '97. We suggest this is a promise that has not been kept.

Number two, no-fault takes away the right to be compensated for changes in lifestyle. We suggest this position is morally wrong. CAA believes that this should be corrected and has not been addressed by the commission or in this bill.

Number three, no-cost costs the same to seniors, but their benefits are reduced once they are not in a workplace. In other words, they pay more for less coverage. This issue appears to have been corrected.

Number four, no-fault equalizes the value of each person's body parts, the so-called meat chart. We suggest logic dictates otherwise. This issue may have been overcome by acceptance of other recommendations.

And No. 5, no-fault concentrates on minimizing the expense side of the equation for Autopac. We suggest this is after the fact and, instead, as in B.C., the focus should be on the issue of changing driving habits and minimizing the equation. The focus should be placed on minimizing collisions, not the payments for them. Many of MPI's programs have been geared towards this issue, for example the entire RoadWise program, and for that they are to be commended. We would advocate for a continuation of and even an increase in programs of that nature so that they will in fact bear fruit towards solving poor driving habits.

We strongly recommend that Manitoba look towards what is happening in other jurisdictions and pick the best from all worlds. In particular, in November of '96, Ontario made significant changes to its auto insurance system as their Bill 164 was replaced by Bill 59, which effectively restored motorists' right to sue for what is termed threshold claims. The terminology may be different from Manitoba's, but what the phrase "threshold claims" describe is exactly what CAA Manitoba was fighting for three years ago and continues to fight for, in other words the right to sue for full and fair compensation of injuries caused by others, including pain, suffering, and loss of lifestyle. We are not talking about abuse of the system here or the problems of lawsuits with excessive claims. That is a separate issue and needs to be dealt with separately.

However, it is worth noting that when Ontario brought back the right to sue for these exceptional cases, it also added a $15,000 deductible. The intent of this deductible is to deter unnecessary suing for claims that can be handled outside the courts. This high deductible concept was discussed in Manitoba as one of the ways to improve our Autopac system without bringing in a no-fault system.

In fact, if memory carries, it was the Manitoba Lawyers for Responsible Automobile Insurance who brought the suggestion forward at the time of the standing committee hearing on Bill 37, the very people who are being made to look like the culprits in our previous insurance system. We find it interesting to now see that Ontario, having tried no-fault, is coming back to this idea that Manitoba rejected three years ago. Ontario looked back at nearly two decades of no-fault and said: this is not working, we will have to give back the right to sue to motorists. CAA Manitoba looks at Ontario's decision, which is the same as our very position before the introduction of no-fault in Manitoba, and we say: let us learn from Ontario's experience. I am sure you have all heard this saying: those who do not learn from history are doomed to repeat it. Does Manitoba really need to live through two decades of no-fault before we come to the same conclusions that Ontario did, or can we learn something now from their experience?

Let us take a look now at recent developments in B.C. Early in '97, Premier Clark launched a $1.4-million study into possible product reform of its government-run auto insurance in an effort to hold off huge premium increases. One of the options seriously considered was no-fault. Officials at the insurance corporation of British Columbia, ICBC, felt so sure that no-fault was the answer that they went ahead and launched a major public education campaign promoting the benefits of no-fault, but the public thought differently and sent a clear message. They said, no-fault, no way.

The final result was a reversal of what many thought was an inevitable decision. B.C. chose not to change to a no-fault system. Instead of reducing auto insurance benefits, B.C. chose to focus on reducing the cause of higher premiums–bad drivers. That sound familiar? Again, I refer back to CAA Manitoba's three-year-old pre-no-fault position. Our original brief urged Autopac to focus on controlling costs, not by introducing no-fault but by placing better emphasis on collision prevention and driver education. Doing so would save motorists millions of dollars as well as untold pain and suffering.

We in Manitoba are on the right path, but we need to go further. B.C. is calling for tougher penalties and

enforcement particularly for driving while impaired and speeding offences. The introduction of graduated licensing for all new drivers is also recommended, along with tougher testing.

B.C. recommends more rewards for good driving behaviour, for example, incentives for new drivers who complete approved driver training courses. CAA Manitoba's position from three years ago and today is again very similar to B.C.'s decisions after its rejection of no-fault. We continue to believe that auto insurance costs will be reduced by addressing the cause of the problem and not its consequences, or in other words, by creating better drivers instead of by limiting the costs of collisions and injuries. Like B.C., we believe that the most effective way to change driver behaviour is through a combination of education and enforcement.

In summary, CAA applauds much of the work done by the PIPP Review Commission in the acceptance of most of the recommendations by the government through this new legislation. However, CAA does not believe that the commission went far enough with the right to compensation for the change in lifestyle, and that this government should properly correct this wrong.

I found it rather ironic, I guess is the word, as I sat here at the tag end of this morning, when Kristine Cowley was speaking, and she was effectively referring to the nine or four or five cases that we are talking about here, and effectively the minister was agreeing with her. So somewhere somehow I urge this committee to seriously take a look at where we are going, why we have gone there and whether or not it is time to really stop and take a look at this. I thank you.

Mr. Chairperson: Thank you very much, Mr. Kruk.

Mr. McCrae: Mr. Kruk, thank you for coming today and making that presentation. We will remain mindful of the points that you are making, but I wanted to use this opportunity to thank you and your organization for your role at the front end of this whole thing which is to be a partner with us and all the others with the Manitoba Road Safety Coordinating Committee, all part of the RoadWise efforts which is so very, very important not just to our insurance program but to the people of Manitoba. Safety is the best way to avoid all the hassles we get into when we get to the other end of the insurance chain, and we do appreciate that partnership very much.

Mr. Kruk: Mr. Minister, do not take it for granted that because we agree with that that we are going to agree with everything.

* (1620)

Mr. McCrae: That is part of the human condition, is it not?

Mr. Kruk: Yes.

Mr. McCrae: Thank you.

Mr. Chairperson: Mr. Kruk, thank you very much for your presentation.

Bill 54–The Engineering and Geoscientific Professions and Consequential Amendments Act

Mr. Chairperson: I call next the presenter on Bill 54, Peter Washchyshyn or Dave Ennis, the Association of Professional Engineers. Which one is it? Mr. Washchyshyn?

Mr. Dave Ennis (Association of Professional Engineers): No, Mr. Ennis.

Mr. Chairperson: Mr. Ennis? Have you a presentation for distribution?

Mr. Ennis: Yes.

Mr. Chairperson: The Clerk will distribute. Mr. Ennis, you may proceed.

Mr. Ennis: Mr. Chairman and members of the committee, my name is Dave Ennis, as you have heard. I am the executive director and registrar of the Association of Professional Engineers. As Mr. Gilleshammer previously informed the House, The Engineering and Geoscientific Professions Act is a replacement for the existing Engineering Profession Act.

The Manitoba public has had the advantage of an act regulating the practice of engineering since 1920. At that time a number of other provincial legislatures introduced a very similar legislation based on a national model. Today we are 3,100 professional engineers and trainees resident in Manitoba and another 1,000 living in other provinces and countries. The most recent wholesale change of The Engineering Profession Act took place in 1983, and there were some amendments in 1985.

Engineering, the economy of Manitoba and the world has changed much since 1983. The slide rule is seldom seen. Manitoba is moving to the knowledge-based economy with information technology and the Internet, and globalization of services is a reality. Additionally, the geoscientific professions are playing a greater part in the lives of Manitobans. There is a significant area of interface and some overlap in the activities of professional engineers and geoscientists. Those areas are not confined to the mining industry. A number of consulting engineering firms now employ geologists as part of their team. On the operational side it is more efficient, we believe, for both government and the association, given our aligned activities, if engineers and geoscientists are all in one organization rather than having the attendant problems through separate legislation of jurisdiction and enforcement issues. So, in short, it is time for a change.

The proposed act was first provided to the Department of Labour in December of 1996. Bill 54 has evolved from that proposal and through a proactive process of consultations and co-operative agreements with other professional groups and stakeholders. The most notable agreements are with the Manitoba Association of Architects and the Certified Technicians and Technologists Association of Manitoba. One of the consultations was the recent survey of geoscientists in Manitoba conducted in co-operation with the Manitoba Mining Association, which confirmed support for the legislation.

At its introduction in the second reading Minister Gilleshammer briefed the House on some of the major features of the bill. First, increased public protection through more structured disciplinary provisions and public accountability; two, a new nationally endorsed definition of the practice of professional engineering that says what we do and one which will readily accommodate technological changes, advances and industrial changes. There is also a provision for mandatory professional development for the members. There is the establishment of two joint boards, one with the Certified Technicians and Technologists of Manitoba and another with the Manitoba Association of Architects. Both provide a new forum to deal with interassociation issues in a proactive manner and seeking to avoid disputes. They will also be available to flag other industry-related issues. Fifth, there is a provision for a group or a corporate practice of engineering or geoscience and with the requirements for liability insurance in that case.

All the members of the Legislature have received a briefing memo from the APEM president dated May 14, 1998, which comments on other features of the bill. We have additional copies here if you require another.

Some of those other features are a long overdue recognition of the engineering team in Manitoba. That is one which opens up the opportunity for applied science technologists and professional engineers to work with increased effectiveness and focus the team efforts on competing in the Canadian and on the global economy.

Secondly, it provides an opportunity for the foreign-trained engineers and persons who do not hold recognized engineering degrees to practise a specified scope of professional engineering or geoscience and thereby contribute more fully to the Manitoba economy. It also provides for increased mobility between provinces.

Thirdly, there is a general improvement in the association's ability to respond to concerns more effectively, particularly through the monitoring of group work or practice.

Mr. Chairman, that was my presentation. If there are questions, I am happy to try.

Mr. Chairperson: Thank you very much, Mr. Ennis.

Mr. Conrad Santos (Broadway): For clarification, Mr. Chairman, I would like to ask a question. Is there a difference, if any, between the word "technician" versus "technologist"?

Mr. Ennis: There is, and I would defer to the next speaker on that one, because that person is with the Technicians and Technologists Association, if that is okay.

Hon. Harold Gilleshammer (Minister of Labour): Mr. Ennis, I would like to thank you for your patience in waiting here to make your presentation. I recognize the tremendous amount of consultation that has gone on since that meeting in December of 1996 and the partnerships that have developed over the ensuing months and years. So I thank you and look forward to the passage of this bill in the coming days.

Mr. Chairperson: Thank you, Mr. Minister, and thank you, Mr. Ennis, for your presentation.

Bill 55–The Certified Applied Science Technologists Act

Mr. Chairperson: I call next Ralph Caldwell, Certified Technicians and Technologists Association of Manitoba Inc. Mr. Caldwell, have you a presentation for distribution?

Mr. Ralph Caldwell (Certified Technicians and Technologists Association of Manitoba): Yes, I have.

Mr. Chairperson: The Clerk will distribute. Mr. Caldwell, you may proceed with your presentation.

Mr. Caldwell: Mr. Chairman, members of the legislative committee, and ladies and gentlemen, the Certified Technicians and Technologists Association of Manitoba Incorporated, that is, CTTAM, is a self-governing body of men and women who have been certified by their peers as having a recognized level of post-secondary academic and practical training in specialized engineering technology fields. Membership in CTTAM is voluntary and currently stands at over 2,000.

Certified engineering and applied science technicians and technologists are individuals who are capable of assuming responsibility and of exercising independent judgment in the field of engineering or applied science in which they are trained. Certified engineering and applied science technicians and technologists have post-secondary training in the principles of applied mathematics, applied engineering, and science. They must have a minimum of two years of relevant experience in the application of these principles to obtain certification.

CTTAM was founded under The Corporations Act here in Manitoba in 1965, following the introduction of formalized engineering technology programs into the post-secondary education system of Manitoba in the early 1960s. Similar developments were occurring in other provinces as a result of the National Vocational Training Act that provided federal financing to provinces prepared to meet minimum standards defined in the act.

CTTAM is affiliated with the Canadian Council of Technicians and Technologists and certifies members using nationally adopted standards which provide full transferability of membership across Canada and through reciprocal agreements with the United Kingdom and the United States of America. Membership in CCTT through the 10 provincial constituent organizations presently stands at over 38,000 members.

* (1630)

As a result of the rapid growth of employment in the technological sector, the need for legislation to protect the public was recognized. Subsequently, the provincial societies approached their respective Legislatures. Legislation was passed in New Brunswick, Quebec, Ontario, Alberta, and British Columbia to ensure that the members would conduct their affairs in a professional manner and to the high standards set forth.

In CTTAM we desire legislation to ensure the protection of the public in Manitoba with regard to the services by our members. That is our certified engineering and applied science technicians and technologists. In effect, this professional designation would advise members of the public that a formally legislated system of checks and measures be in place to assure the reputability of registered CTTAM members.

An act of the Manitoba Legislature will better protect the public by allowing CTTAM under this legislation to, first of all, ensure that our members conduct themselves and their affairs in a professional manner to

the high standards set forth by the act, our CTTAM by-laws and our Code of Ethics. Secondly, it would allow us to discipline our members whose conduct contravenes the standards set forth in the act and CTTAM by-laws and Code of Ethics. Thirdly, certify members and thereby establish a recognizable standard for certified engineering and applied science technicians and technologists of Manitoba. It will allow us to better liaise with our national body, CCTT, and the associations in other provinces in order to apply Canada-wide standards for certification of engineering and applied science technicians and technologists.

We do, and this will help us to further move in the area of accrediting the curricula for post-secondary education in engineering and applied science technology at Manitoba community colleges on an ongoing basis. It will provide a standard for measurement of a technician's or technologist's qualifications; and lastly, it will provide recognition of the engineering team in Manitoba through the establishment within this legislation of a joint board with the professional engineers of the province. This will provide a new forum to deal with interassociation issues in a proactive approach to avoid disputes. Applied science technicians and technologists and engineers in Manitoba will all be better able to focus our efforts on competing in this Canadian and global economy.

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

Mr. Conrad Santos (Broadway): Could I repeat my question, as I stated before, any distinction, if any, between technologists and technicians?

Mr. Caldwell: Mr. Chairman, the qualifications to be certified in CTTAM contain some academic component of post-secondary education and a related work-experience component, a minimum of two years. I guess the simplest way to describe the academic component is that the technologist tends to have, in Manitoba, a minimum of two years of post-secondary training, the technician tends to have one year.

Mr. Santos: Mr. Chairperson, usually self-governing professional and technical groups do so, and discipline their members. They also control entry into the profession and, of course, accredit their own members.

My question is: when does self-governing, which includes self-disciplining to control the professional behaviour of their members, when does that end? This is a philosophical question. When does that self-governing, self-controlling, self-disciplining power end and collective self-interest promotion begin?

Mr. Caldwell: I forgot the question.

Mr. Chairperson: Might I ask Mr. Santos to repeat the question, please.

Mr. Santos: Well, usually, individuals form themselves into groups, and when they are in groups, they have a collective interest to protect. Within a professional group of technological people, that is a common interest that they protect.

Now, in so protecting, they make sure that their members comply with a certain code of behaviour, code of ethics, approved by the majority or all of the members, common values in the community they represent. But sometimes, because they have control over the entry into the group and they have disciplinary power, they make sure that their members promote the collective interest of the member even if this collective interest may be opposed to what is perceived to be the general public interest.

I am just asking: when does this self-disciplinary, self-governing authority of organized profession end, and when does collective self-interest and self-promotion begin?

Mr. Caldwell: I am not sure, because it is a philosophical question, I can answer it in the context of anything other than what I know about CTTAM and our legislation. I guess the public interest ends when there is a breach of contract with the legislation that has been put in place, when there is a breach of contract with that public interest.

Mr. Santos: I do not understand what contract that is, and who entered into that contract, who are the parties to that contract?

Mr. Caldwell: Is not the contract the legislation set forth? Is not the contract the legislation that the organization enters into on behalf of the government at the time?

Mr. Santos: As I perceive it, Mr. Chairperson, and this is one man's opinion, the authority to govern and to regulate any group in society, including professional ones, is vested inherently in government, in the state. The state is a trustee to protect the interests of everyone who are members of that community.

When they license professional groups to be self-governing and independent, they delegate this power to the group. In the process of delegation, if there are no constraints other than very few ones that they themselves will interpret, there will practically be no constraint at all. It will be a self-interested, self-governing group that promotes the interest of their members and no other remedy, because they decide who gets into the profession. They are the guardians of the profession. If they want to exclude certain members of the community, they can. In a sense, if the government abdicates this regulatory power, the professional group that becomes self-governing becomes in itself a government of its own.

Mr. Caldwell: Mr. Chairman, I am sorry, I do not understand the question.

Hon. Harold Gilleshammer (Minister of Labour): Well, I want to thank you, Mr. Caldwell, for being here and making this presentation today. I know all of the hard work that has gone into this and the partnerships with the engineering community and other professional groups. Certainly community members can ask hypothetical questions and talk about professional groups that already exist within our society.

* (1640)

We are pleased that with the passage of this bill in the next few days that the certified technicians and technologists are going to join that group and the five other provinces that already have professional groups. I applaud you and your 2,000 members, and I am sure that Manitobans can take great comfort in the fact that your organization will continue to do some great work here in the province of Manitoba.

Mr. Chairperson: Thank you very much, Mr. Caldwell, for your presentation.

That brings to an end the presentations, except that we have two presenters who were not here this morning, and I will call those names again. Mr. Ed Arnold, Selkirk & District Planning Area Board. Is he here now?

Not seeing him, I will call then next for Bill 40, Brian O'Neill, Private Citizen. Is he here now? Not seeing him, that concludes the hearings on the bill. Oh, I am sorry, Steven Fletcher, Private Citizen, on Bill 45. Is he here? Not seeing Mr. Fletcher, that concludes then the presentations.

I have one further comment. Prior to the commencement of this meeting and one during this meeting, we had written presentations for submission, and I am going to ask for the permission of the committee to enter them into the record. One is Bill 28, a written submission. One is Bill 38, and one is Bill 40 and Bill 45. So if it is the agreement of this committee, they will then show in the record as presentations written. Agreed? [agreed] Thank you very kindly.

That concludes the hearings on all the bills that we have considered this morning. Is it the will of the committee to now proceed with clause-by-clause consideration? No? Then if there is no agreement for clause-by-clause consideration, there will be another sitting of this committee, determined by the House leader.

Committee rise.

COMMITTEE ROSE AT: 4:42 p.m.

WRITTEN SUBMISSIONS PRESENTED BUT NOT READ

Manitoba Federation of Labour Brief to the Legislature Committee on Bill 28, The Employment Standards Code and Consequential Amendments

Introduction. The Manitoba Federation of Labour is pleased to present its views to the committee on Bill 28, The Employment Standards Code and Consequential Amendments.

The MFL is the only central labour body in Manitoba with province-wide jurisdiction speaking on behalf of affiliated unions which collectively represent more than 90,000 working men and women.

Bill 28. The MFL has been following the provincial government's review of The Employment Standards At, The Payment of Wages Act and The Vacations With Pay Act, with great interest. These three acts have a profound impact on all workers in Manitoba, unionized or not. It is because these pieces of legislation have such a major impact on workers that the MFL has urged the government to proceed with their consolidation of these acts with a great deal of care.

Generally speaking, the MFL is supportive of the consolidation that Bill 28 will accomplish. We recognize that the government did not have as its objective important changes to these acts and that this was a consolidation exercise. However, there are some suggested amendments that we believe will improve Bill 28.

Section 88. Our reservations are not with Section 88 of Bill 28, rather they refer to Section 88 of the old Employment Standards Act which has not been changed in Bill 28. That is the unchanged practice of permitting the continued existence of a "grandfather" clause, Section 88(2)(a), one that has been part of the act for a period of 25 years. This clause permits some employers to follow a wages payment schedule that falls outside the schedule described by the act. "Grandfather" clauses are meant to address a particular situation to ease the transition between the provisions of an old act and a new act; not continue to be an integral part of the act for a quarter century.

We understand why this section is not being deleted at this time. There is no information available concerning the number of employers who may still be taking advantage of this clause and therefore the impact of addressing this issue now is unknown.

However if nothing is done to address this information gap, clearly the intent of this section will continue to be abused.

We have agreed not to call for an amendment at this time in exchange for a commitment from the Employment Standards Branch to collect information on employers who do utilize this section and to make it available to labour and business organizations.

We look forward to assessing this information in the not-to-distant future.

Regulatory powers of Lieutenant Governor in Council: The MFL understands the necessity of the provincial government having the power to make regulations in support of provisions contained in an act. However, those regulations must be made only to facilitate provisions of legislation that have been debated by the House and the public hearing process in the committee stage. Government should not reserve to itself the ability to enact regulations that, in effect, replace the legislative process. Substantial changes to all of our laws must remain to be part of the democratic process that allows for free and open debate and the amendment process this sometimes leads to. The provisions of Section 146 are much too loose and cover far too many topics. This very broad-brush regulatory power is far too extensive and the menu of items listed in Section 146 should be much smaller.

MFL policies. For more than 40 years, unionized workers who make up the Manitoba Federation of Labour have been sending delegates to MFL General Conventions in order to debate issues and resolutions in order to set the policies of the federation. We would like to share a number of those policies as they relate to the Employment Standards Code, so that they may be acted upon, if not on this occasion when the consolidation of acts is the prime objective, then as part of the review of the Employment Standards Code in the near future.

Employment legislation to apply to all workers: The Employment Standards legislation excludes certain workers from its protection, such as workers employed in agriculture, fishing, fur farming or in growing of horticultural and market garden produce for sale. When these exclusions were first written into the ESA, the Manitoba economy looked very different from its present day form. Many industries which used to be almost exclusively family-type operations have become much larger commercial operations with significant numbers of staff who should be protected by minimum standards employment legislation. The MFL urges that these workers be covered by all labour legislation.

Just cause: Unionized workers, for the most part, have easy access to a grievance-arbitration system to review and adjudicate firings and disputes involving layoff.

The MFL urges the provincial government to include similar provisions in the Employment Standards Code, so that all workers in Manitoba have access to justice and fairness.

Layoff compensation: The MFL urges the Manitoba government to amend the Employment Standards Code to provide that workers who are laid off will receive one day's pay for each month of employment.

Worker adjustment centre: The Manitoba Federation of Labour renews its call on the provincial government to establish a permanent worker adjustment centre to meet the needs of all Manitoba workers who experience the tragedy of job loss through plant closure or mass layoff. The need for such a facility has been persistent and is not likely to decline in the foreseeable future.

Further, the MFL urges that legislation be enacted to protect incomes of employees in the event of permanent job loss and that such legislation include provisions for retraining, relocation, protection of pension benefits, and for early retirement where such is practicable. We propose that a pool of money be created through an employer levy to support these provisions.

Plant closures: The MFL believes that existing regulations governing layoffs and plant closures would be more effective if the number of affected employees needed to trigger those provisions were reduced from 50 to 20 employees.

Forest industry: If a plant closure or temporary shutdown in excess of six months occurs in the forestry industry, the MFL recommends that the harvesting rights of the forestry companies involved be revoked until the workers affected by the closure or layoff are returned to work by the companies. This recommendation is the result of companies adopting these practices, but continuing to sell timber.

Closure as a result of merger: The MFL urges the enactment of legislation governing job loss through corporate merger. If a merger results in permanent job loss within five years of the merger's taking place, workers shall be paid severance pay amounting to four weeks of pay per year of service. To ensure sufficient funds are available, companies must be required to establish a fund that is guaranteed by a performance bond.

Personnel files: The MFL urges the provincial government to enact legislation to ensure access for employees to any personnel file kept on them by their employer.

Medical certificates: Some employers and government agencies require workers to produce a medical certificate for a variety of reasons. The cost of obtaining these certificates can cause financial difficulty for some workers. The MFL urges the provincial government to enact legislation requiring that the cost of providing medical certificates will be covered by the party requesting them.

Transportation home: The MFL urges the Manitoba government to enact legislation to make it mandatory for employers to provide transportation home for any employee whose shift ends between 11:30 p.m. and 6 a.m.

Heritage Day: The MFL urges the provincial government to establish Heritage Day as a general holiday.

August civic holiday, Boxing Day, Easter Sunday/ Monday: The August civic holiday, first Monday in August, and Boxing Day are not legally classed as general holidays, allowing employers to pay straight time for time worked on those days. The MFL urges that the appropriate legislation be amended to classify these days as general holiday days. The MFL also urges that provision be made to classify either Easter Sunday or Easter Monday as a general holiday, with the selection of the appropriate day being subject to mutual agreement between the employer and union or, in the absence of a union, a committee elected by employees.

General holiday pay calculation: The MFL urges that general holiday pay be calculated and prorated based on the average daily number of hours worked in the four weeks preceding the week of the general holiday. The requirement that an employee work at least 15 days in the prior 30 to be entitled to general holiday pay should be repealed.

Work on statutory holidays: Sections for the Employment Standards Code which exclude some workers from receiving premium pay when required to work on statutory holidays should be deleted in its entirety.

Overtime limitations: Unemployment and under-employment are serious challenges facing Manitoban workers and our economy. A facet of the so-called jobless recovery has been record high profits with no progress being made on job creation at a sufficient level to reduce the numbers of jobless our underemployed workers. The MFL urges the province to enact legislation restricting overtime working in order to encourage job creation.

Shorter work week: The MFL is committed to the goal of attaining a shorter general work week for all workers and recommends this strategy to government as an important facet of a policy leading to greater employment levels and lower unemployment rates. Further, employers have adopted a strategy of converting full-time jobs to part time and temporary jobs, at a time when corporations are enjoying record profits, in order to escape employment costs which improve the quality of life for many workers. The MFL urges government to establish a bipartite process of consultations with a view to legislating a shorter work week.

Vacation entitlement: The MFL calls on the provincial government to enact provisions that will provide for a minimum of three weeks vacation with full vacation pay after one year's service, four weeks after 10 years and five weeks after 20 years of service. This entitlement would apply equally to part-time employees on a prorated basis.

Full-time worker requirement: The MFL urges the enactment of legislation to restrict the number of part-time workers employed by an employer to no more than 20 percent of the total workers employed by the company unless the nature of the business specifically prohibits them from doing so.

Conversion of full-time work to part-time work: Employers have adopted a strategy of converting full-time positions in an attempt to deny workers benefits they are entitled to and to reduce their statutory employment costs.

Garment industry homework: The MFL urges the enactment of legislation making "homework" illegal in the garment industry.

Parental leave: The MFL urges the government to ensure that workers on parental leave continue to accrue seniority and benefits during the period they are absent from the workplace.

Average weekly earnings–regular adjustment: The MFL urges that the minimum wage be automatically increased on January 1 of each year, to an amount equal to 60 percent of the average weekly earnings in Manitoba, based on a 40-hour work week, as measured in the previous month of June.

Provincial security guard industry act–Construction Industry Wages Act: The MFL endorses the intent and spirit of The Construction Industry Wages Act and believes this approach should be extended to the security guard industry through the enactment of the provincial security guard industry act. This would shelter unionized security guard companies from fly-by-night operators taking unfair advantage of the marketplace. This act should set, as a minimum wage for security guards, the wages and benefits established by major unionized security company contracts.

Equal pay for work of equal value: The MFL urges the provincial government to take effective pay equity measures to benefit all Manitoba workers by amending The Employment Standards Code to state:

"No employer shall discriminate between the employees by paying the employees on a scale different from that on which wages are paid to other employees in the same establishment, if the work required of, and done by, employees is the same or substantially the same, and that no employee suffer financial losses to create equal pay for work of equal value."

The MFL urges the Manitoba government, under The Employment Standards Act, to appoint a special equal pay for equal value board, composed of an equal number of men and women, with a chairperson alternating between a man and a woman every three

months, and that an employee claiming equal pay for work of equal value, whether covered by a union agreement or not, be able to have this special board rule on the merits of their case and that that board's decisions be binding on all parties concerned and remain in effect as long as the job is in existence.

Mandatory breaks: The MFL urges the provincial government to amend The Employment Standards Code to require employers to give workers two 15-minute breaks in each seven- or eight-hour day.

In the case of part-time workers, they shall receive one 15-minute break after two hours of work in each morning and afternoon.

Heavy lifting clause: The MFL urges the government to amend The Employment Standards Code to protect the workers from injuries incurred by lifting heavy articles. These limits shall reflect current ergonomic standards, or as they may be amended from time to time in the future.

Family leave: The MFL urges the government to enact legislation that entitled workers to leave with pay for family related issues for up to 10 days per year.

Conclusion: These are a few of the Employment Standards Code revisions that we propose in order to make the lives of all workers more consistent with standards of fairness and equity that we expect for all workers, whether they belong to unions or not.

John Doyle
Manitoba Federation of Labour

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Council of Women of Winnipeg

Comment on Bill 38–Planning Act Amendment

The Council of Women of Winnipeg recognizes that most of the proposed changes to The Planning Act are of a housekeeping nature. We applaud the fact that at several points there are measures to make information about hearings more readily available to landowners in the immediate vicinity of a property affected by proposed changes. While we are concerned that subsection 25(3) may be more permissive in giving planning districts greater flexibility as to which studies they will undertake, we would like to reserve comment on these issues until the act goes through the second round of amendments that will be necessitated by The Sustainable Development Act. There will be other elements of The Planning Act involving the role of the Municipal Board, which we will also want to address at that time.

Subsection 51(3)

The one subsection we would like to comment upon at this time is 51(3), which grants discretionary power to local councils to allow, by variation order, the structural alteration of nonconforming buildings or structures, the increase in their size and the density of their use, and the rebuilding of structures more than 50 percent destroyed. We feel that this provision, unless further restricted, could defeat efforts to reduce public and private liability for flood damage. Property owners whose buildings on flood plains do not meet the latest elevation standards, should not be allowed to increase the size and, hence, the value of nonconforming structures at risk of flooding, should not be allowed to increase density by subdividing nonconforming houses, and should not be allowed to reconstruct buildings more than 50 percent destroyed without bringing them into compliance with the latest elevation standards. Although flood-prone properties may not have been the focus of this amendment, it should be made clear that they are exceptions.

Carolyn Garlich
Chair of the Civic Issues Committee
Council of Women of Winnipeg

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Manitoba Association for Rights and Liberties

Submission on

Bill 40–The Domestic Violence and Stalking Prevention, Protection and Compensation and Consequential Amendments Act

The Manitoba Association for Rights and Liberties (MARL) is a provincial nonprofit, nongovernment

volunteer advocacy group. MARL seeks to promote respect for and observance of fundamental human rights and civil liberties in Manitoba

June 17, 1998

The Manitoba Association of Rights and Liberties has a number of concerns regarding this proposed legislation. While we of course abhor domestic violence and stalking and applaud steps taken to protect victims from this abuse, this protection cannot come at any and all costs. We feel the bill in its current form may be overbroad in a number of respects and ought to be reconsidered and redrafted with an eye to minimizing the infringement of the civil liberties of a "respondent." We outline our major concerns below.

Section 2(1) defines "domestic violence" in very broad terms. As currently worded, a reckless act which causes damage to property or even which creates the fear that damage to property may result constitutes domestic violence. Further, the definition includes "psychological or emotional abuse." While we recognize these as damaging forms of abuse, we think, given the nature of the measures which can be taken against a respondent on a hearing without notice, these terms are simply too broad. A man or woman can be forcibly removed from his or her home for recklessly causing fear that they may damage property. Untested allegations of "psychological or emotional abuse" can have the same effect. With respect, "psychological or emotional abuse" may be difficult to establish or test objectively, especially on a without-notice basis. We feel that with the drastic options open to a magistrate and the relatively low burden of proof on a subject to establish domestic abuse, the definition should be restricted to instances where there has been physical violence done to a subject or there is reasonable fear that physical violence will be done. To define "domestic abuse" any more broadly in this scenario is not appropriate.

To get a protection order, a subject need only establish domestic violence on a balance of probabilities (s.6(1)). The respondent cannot test this evidence before he or she is potentially forcibly removed from their homes. To have an order set aside, it is the respondent who bears the onus (s.12(2)). He or she must show on a balance of probabilities that, presumably, there was no domestic violence or that there is no reason to fear its continuation. This establishes a "reverse-onus" which can be difficult to discharge, especially when one must effectively prove a negative. We think the legislation can mandate a review of the order after a set period and place the onus on the subject to prove the continuation of the order is warranted. As an alternative to mandating a review of the order, the onus can be placed on the subject to prove, on a respondent's application for review, that the order should stay in place.

Thank you for your consideration of this matter.

Valerie Price
Manitoba Association for Rights and Liberties

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Dear Mr. Radcliffe and Legislative Committee,

Re: Bill 45

The proposed amendment in Section 103(2) should not subtract other pension income from the 70% IRI after age 65. As it stands, this represents a significant disincentive for a young quadriplegic person such as myself to save for retirement.

A provision should be made to recognize the extremely catastrophically injured separately from the general claimant. A significant positive incentive would encourage these people to overcome the obstacles that make a return to work very difficult.

In January 1996, at the age of 23, I had an automobile accident which left me paralyzed from the neck down. I was a recent geological engineering graduate at the beginning of a promising and lucrative career. Since my accident I have had to pursue other career goals to replace my engineering prospects. I am currently taking my MBA in hopes of improving my financial situation. However, currently Section 112 of the Autopac act subtracts almost every dollar that I will earn from my IRI. This creates no incentive for me to return to work. One of the few incentives to return to work is to create a pension income. The dollar for dollar deduction outlined in section 103(2) removes this as an incentive for me to retrain.

Furthermore, the IRI does not consider income potential. Therefore, my retirement IRI will be based on my income at age 23, neglecting 40 years of career growth. Allowing a young person to retain at least a portion of earned pension income will create an incentive to return to the workforce and help compensate for loss of potential growth.

There are several points which are not clear in these amendments. Is income from an RRIF considered pension income? Is there a benefit for a young, high level quadriplegic to contribute to an RRSP? Will the new Seniors Benefit be included under pension income? What mechanisms will control what is defined as pension income as benefits change?

As a young quadriplegic under PIPP who would like to return to work shortly, it is important to me that these issues are resolved so that society benefits by encouraging people like myself to return to the workforce.

Sincerely,
Steven Fletcher

This is an attachment to my letter of June 18, 1998:

To the review committee:

Regarding Bill 45, in addition to my letter dated June 18, 1998, the issue of attendant care is not addressed appropriately in PIPP. The sum of $3,000 per month does not even come close to covering the costs that I incur for the 24-hour attendant care that I need. I do get attendant care funding from the government, but even with the government subsidy, I don't have nearly enough funding to cover the care I need.

The cap of $3,000 in The MPI Act should be removed and based on the need of the individual. Currently, the attendant care issue makes my life very, very difficult. Because the attendants are not paid appropriately, there is a high turnover of staff and they are poorly trained. It is soul destroying to have to go through daily care issues with so many people. Appropriate funding of attendant care from MPI will greatly improve my stated goal of "returning people, as much as possible, to the way they were before the accident."

Sincerely,
Steven Fletcher
Winnipeg