



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

STANDING COMMITTEE
on
LAW AMENDMENTS

31 Elizabeth II

Chairman
Mr. Phil Eyler
Constituency of River East



MG-8048

VOL. XXX No. 4 - 8:00 p.m., THURSDAY, 17 JUNE, 1982.

MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Second Legislature

Members, Constituencies and Political Affiliation

Name	Constituency	Party
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ANSTETT, Andy	Springfield	NDP
ASHTON, Steve	Thompson	NDP
BANMAN, Robert (Bob)	La Verendrye	PC
BLAKE, David R. (Dave)	Minnedosa	PC
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**LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON LAW AMENDMENTS**

Thursday, 17 June, 1982

Time — 8:00 p.m.

CHAIRMAN — Mr. P. Eyder.

MR. CHAIRMAN: Committee come to order. We are receiving public presentations on Bill No. 22.

**BILL NO. 22 - THE MANITOBA
LOTTERIES FOUNDATION ACT**

MR. CHAIRMAN: Mr. Sidney Green. Do you have copies of your brief for the committee, Mr. Green?

MR. S. GREEN: Mr. Chairman and members of the committee, I appear here with respect to Bill No. 22. I'm here as counsel for Bingo Enterprises Limited and I have a presentation to make with respect to this bill.

In doing so, Mr. Chairman, I think I can best commence my presentation by playing a tape recording which comes from a news broadcast which occurred sometime in January or perhaps earlier, December of 1981 or January of 1982. That particular broadcast, in my submission, is the genesis of the major part, a reason for the legislation that is being considered by the members of the Legislature, so I would like to play that tape for you.

(Tape recording)

Bingo has traditionally been in community clubs and church basements, but lately in order to, you have to have a large rentable bingo hall in Winnipeg; smaller operations complain . . . unfair competition . . .

Every evening of every week of the year, a bingo game is held in Winnipeg. Usually, several halls hold games each night with hundreds of people trying for the jackpot. The prize money may be little more than pocket money or it can run into the thousands of dollars, but it's part of the bingo craze that keeps the regulars coming back night after night.

Now, there's a new kid on the block called Buffalo Bingo with a new concept for the game the established operators don't like one bit . . . Roland Senez, general manager of . . .

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

Could you turn off the tape recorder for a moment, Mr. Green?

Mr. Penner.

HON. R. PENNER: Not only do I think there is no precedent for - we came to hear Mr. Green, not Lawrence Wall and other people. Mr. Green can make his point. He can quote, but not only is there no precedent for the playing of a tape recorder before a committee as far as I'm aware, but I think this is analogous to an exhibit and in Citation 333 in Beausheue, Speakers have consistently ruled that it is improper to produce exhibits of any sort in the Chamber. This is not a Chamber; this is committee, I agree. Thus, during the Flag Debate of 1964, the display of competing designs was prohibited and other examples are given. I don't

know how long this particular tape recording goes on, I'm not particularly interested, I am just wondering if you would rule so that we can have some guidance for this committee in the future as to whether or not someone can come in and play a tape recording of somebody else speaking. Presumably that could go on, because there is no time limitation, ad infinitum and I think it's wrong.

MR. CHAIRMAN: Mr. Green on the same point of order.

MR. S. GREEN: Mr. Chairman, I don't think I can speak to a point of order. I will explain, out of courtesy to the committee, what I am doing and . . .

MR. CHAIRMAN: Order, order please.

MR. H. ENNS: Mr. Chairman, on the matter raised by the Attorney-General, certainly his remarks are correct with respect to exhibits and/or other extraneous matters being presented in the Chamber. But in the less formal atmosphere of the committee, it has been practised, not always, but we accept exhibits either when we're examining Crown corporations, etc., as I say, in the less formal settings of the committee hearings.

I take it, and I assume that's what Mr. Green is going to explain, the recording that we're going to hear is very germane to the subject matter under discussion. Certainly, the Opposition has no opposition to its being heard. It may be helpful.

MR. CHAIRMAN: Mr. Green.

MR. S. GREEN: Mr. Chairman, I cannot speak to the point of order, but I would like to explain to the committee what I'm doing to allay any of the members' fears. The tape recording is of a news broadcast capsule on bingos. It probably lasts three to four minutes and I hope that I'm not largely out in that connection.

As to the other remarks that were made, I can't speak to them. I'm not a member of the committee, but I do disagree with them.

MR. CHAIRMAN: Mr. Penner has asked for a ruling and we have had exhibits in committee before. We had them in the Hydro hearings. I rule that the exhibit is in order. Proceed.

MR. S. GREEN: Thank you, Mr. Chairman.

(Tape recording cont'd)

. . . Buffalo Bingo would find themselves to be in dire straits. Perhaps because of the game's proximity, of the Buffalo Bingo to their . . .

MR. S. GREEN: I have to send it back a few words.

(Tape recording cont'd)

. . . the big leagues, they opened a large rentable bingo hall in Winnipeg and smaller operations com-

plained that this all caused unfair competition. Lawrence Wall has prepared this report.

Every evening of every week of the year, a bingo game is held in Winnipeg. Usually, several halls hold games each night with hundreds of people trying for the jackpot. The prize money may be little more than pocket money or it can run into the thousands of dollars, but it's part of the bingo craze that keeps the regulars coming back night after night.

Now, there's a new kid on the block called Buffalo Bingo with a new concept for the game the established operators don't like one bit. Roland Senez is general manager of the La Verendrye Club in St. Boniface. (Inaudible) . . . Buffalo Bingo would find themselves to be in dire straits. Perhaps because of the game's proximity, of the Buffalo Bingo to their operation, people found it maybe more attractive to go to Buffalo Bingo. I would say that here in this area perhaps if another operation of the type was to be opened, I would say that perhaps it would affect us considerably, yes.

Buffalo Bingo is a new bingo hall that opened on McPhillips Street last June. Buffalo Bingo doesn't run a single game. It's not allowed to as a private operator; but it does rent the hall out to licensed nonprofit groups that are allowed to run games under Manitoba gaming laws. Buffalo Bingo is an enormous hall, nearly 17,000 square feet that can comfortably seat about 700 customers. There is so much demand from sports clubs, charities and other nonprofit groups that Buffalo Bingo can operate seven days a week. The other groups with their own facilities say the tremendous size gives the hall an unfair advantage.

Vic Vaseleniuk says it's just not so. He is co-owner of Buffalo Bingo, wears a gold bingo card pendant around his neck and is the driving force behind this venture. When any new business or any new building opens up in the same field, it does hurt everybody for a few days until it acquires its own clientele here as others spill over. Everyone has seemed to expand since we have arrived. We have not only an expansion of us being here; each one of the organizations that have presently been here in the past have since expanded.

The other bingo clubs see Buffalo Bingo as a threat to their livelihood. They were unable to stop that hall from opening, but they lobbied effectively to prevent a sister hall known as Bison Bingo from being licensed to operate. (end of recording)

MR. S. GREEN: The last remark, Mr. Chairman, is that they lobbied effectively to stop another hall known as Bison Bingo from being licensed to operate. The tape concludes with remarks by Mr. Manness and one of the sports clubs indicating that they had trouble. They were selling chocolate bars; they were collecting bottles; they were having tag days; they were going broke. They went to other existing clubs, tried to get a bingo game at their hall and were told, no, that buffalo bingo was a godsend, it took them out of the hole and enabled them to pay their expenses. The tape is available for those to hear. It seems to go longer than I had expected and, therefore, I have stopped it, but you have the gist of it.

In my respectful submission, members of the committee and Mr. Chairman, this Bill No. 22 which essen-

tially does two things, first of all, it gives the government, the public of Manitoba, the right to conduct bingos, put the money into public revenue and to conduct bingos for other people. As to the government being involved in conducting bingos and putting the money into public revenue, I am not here to speak to that issue. I have been here in another capacity speaking to that issue and members probably know what I think about it, but that is entirely irrelevant to my submission.

The other feature of it is that it gives the government additional powers to deal with people not who are conducting bingos, but who are facilitating bingos; people who rent halls; people who print, publish, distribute, make, manufacture, supply. Theoretically, Mr. Chairman, since much of the supplies are made in Toronto or other places throughout the country, this bill purports to try to regulate and make regulations with regard to firms who are printing material in another province. I suppose the ultimate is that they can prevent it coming into this province, which by the way could probably be contrary to the Charter of Rights or at least even the previous Constitution with respect to interprovincial trade.

Nevertheless, that's not a major point of concern here, because I rather think that this attempt on the basis of trying to protect existing bingo operators, whatever that means, existing charities, whatever that means, from other groups now having a facility available to them is the germ of a new piece of legislation and let there be no mistake about it. That's the basis for the legislation and I propose to prove that to you in the remarks that I am making here tonight.

I act for Bingo Enterprises Limited. Bingo Enterprises Limited is run by the shareholders. The major shareholders are two people; one named Victor Vaseleniuk, the other Joseph Marois. Joseph Marois is here tonight; Mr. Vaseleniuk is not. These are two Canadian citizens who have unblemished records of public and private service. I say that, Mr. Chairman, because as part of this campaign to undermine these people, suggestions have been made of the most horrendous variety which I will not repeat here.

Mr. Marois is a former customs officer, a former sheriff's officer. He is a husband and father. He has an unblemished record of public and private service in this community. Mr. Vaseleniuk is a man who has served in the Armed Forces for many years, was given the highest form of classification ratings, was a senior executive in the Ford Motor Company of Canada in Windsor and, again, has an unblemished record of public and private service. I tell you that with some degree of embarrassment, because people are not supposed to have to come and clear themselves before a committee, but these people have been maligned. I have heard it not only in rumour mills, but I have heard it from newspaper people who have got it from sources within this government that I am acting for unsavoury people, which is the filthiest kind of smear and has no justification whatsoever, but explains much of what is happening.

Mr. Victor Vaseleniuk has an expertise in promoting bingo-related activities and there is no misunderstanding there. He has successfully created programs in other parts of this country, notably Windsor, Hamilton and Halifax. What he has been able to do is to

provide a scenario, make it available to a charitable organization. He cannot conduct a single activity without being asked for his services, for his facilities, and for his expertise by a local organization who is entitled to get a licence from the Lotteries Commission. He has made that available and very successfully to the point that the charitable organizations are very desirous of having his services and have demanded same.

For approximately a year, you will note that the recording said June of 1981 is when it started, and I suggest to you that none of you here in this room found anything untoward in June of 1981 happening in the Province of Manitoba which you felt demanded some type of rectification. In any event, in June of 1980 - prior to that - Vaseleniuk was approached by charitable organizations within the Province of Manitoba who knew what he could do and said, why don't you come, set up your program in Manitoba so that we can rent it and we could look after our financial needs through the conduct of bingos. The establishment of such facilities requires a considerable investment, neighbouring \$400,000.00. The one on McPhillips is approximately \$400,000; the one on Nairn Avenue is slightly more. Vaseleniuk made numerous inquiries to satisfy himself that such an investment would be warranted.

Now, let's talk about somebody coming in and putting in \$400,000.00. He got legal advice; he got advice from the City Hall; he got advice from the Lotteries Commission, because he wanted to make sure that when he came here that there would be no difficulty. In every respect, he was assured that nothing that he was doing was constituting a problem. I repeat, the Lotteries Commission was fully aware of what was going to be done and the kind of activities that were going to be conducted.

Pursuant to these inquiries, Mr. Vaseleniuk and Mr. Marois incorporated a Manitoba company - their lawyer was a Deputy Mayor of the City of Winnipeg - leased and renovated premises on McPhillips Street in the City of Winnipeg to accommodate about 750 people. The Buffalo Bingo facilities became available for hire on June 1, 1981 and were totally successful and have been utilized on a nightly basis by the following charitable organizations and otherwise. They were entirely successful; they were utilized on a nightly basis.

Here are the people who earn money - these are only some of them - through the facilities that were available for them to conduct bingos at the Buffalo Bison: the Volleyball Association, the Manitoba Table Tennis, Team Handball, Synchronized Swimming, Manitoba High School Athletic Association, Manitoba Amateur Football Association, Women's Athletic Association, Treble Teens Church Choir, Manitoba Track and Field, Winnipeg Gymnastic Center, Fort Rouge Soccer, Britannia Soccer, Manitoba Alpine Skiing, Manitoba Badminton Association, Tyndall Park Community Centre, Saint Basil's Parish, Canada Save the Children, Winnipeg South Monarch, Rugby - The Assassins, Bison Sports, X-Kal. Fencing, Manitoba Speed Skating, Post Office Association, DASCH Child Shelter, Manitoba Figure Skating, Kiwanis, Manitoba Roller Skating, Jaycee, Manitoba Rhythmic Sportive Gymnastics, Manitoba Bowling

Federation, Canadian Swimming Association, Water Poloing, Pan Am Diving, Winnipeg Rugby, Northend Flyers' Sport Club, Winnipeg School of Karate, Manitoba Weight Lifting Association, Fort Garry Community Club - Midget, Wasp - Men's Rugby, Canadian National Polish Church - yes, probably once a week you can find the Member for Burrows selling bingo cards at Buffalo Bingo, regularly - University of Manitoba School of Nursing, Kindercorner, MNS Stars, Polish Relief Fund, St. James Crusaders, St. Vital Major Hockey, B'nai B'rith, Schizophrenia Treatment & Research, St. Vital Victoria Bantam, Manitoba Field Hockey, Rotary Club, Lord Selkirk Boys Pipe Band, Kildonan Pop Concert, Indoor Handball, Winnipeg Male Choir, Dugald Costume, Insight, River East Ringette and numerous other organizations and they are still coming.

It is indisputable that charitable organizations in Manitoba have earned more money for activities through the availability of Buffalo Bingo than they could have earned from any of the preexisting premises available to them. That fact is not in dispute and, by the way, it needs no argument. My clients cannot operate unless somebody wants to rent their premises. The only people who want to rent their premises are people who will get an advantage from renting.

It is also true and there is no apology for this, that the owners of Buffalo bingo, if permitted to operate, would recover their investment and earn a rewarding profit for their initiative and uniqueness of operations. If not permitted to continue, they will suffer a substantial loss as a reward for their efforts. Now, I realize that there are some people here who regard profit as a horrendous thing. As a matter of fact, if my clients were not successful, they would be probably encouraged to continue to operate until they went broke. It is their success which is the problem. As a matter of fact, when they first opened up they were told that since it's not going to work anyway, you can continue, nobody's worried about it. If it was going bankrupt, it would be cheered.

You know, there are some people who regard success and profit as being filthy. I remember years ago, prior to 1966, there were members in the Chamber of the CCF at that time who complained that funeral parlour operators were making too much money. The Member for St. Boniface will remember that. They didn't like the idea of people profiting from people dying and it was a matter that was in great issue in this Legislature. In any event, if my clients are stopped from operating - and there was a serious attempt made to stop them, which I will underline to you - they will lose a lot of money because although their investment is warranted by what will happen if they're stopped, it won't come back; but that doesn't bother some people, despite the fact that they knew they were coming and there was no warning at all that there would be any problems.

Now, what does a person do, at least the average person? If he's got a business, he's operating at total capacity and he's got lineups, what does he do? He opens another one. So, when Buffalo Bingo became occupied 365 days a year, they again went to the Lotteries Commission indicating that they are going to open up a new hall. The finance company was

worried. They came, they checked and found out that everything was all right and on the basis of that, financing was arranged for a hall on Nairn Avenue. Vaseleniuk and Marois explored the possibility of providing additional premises on Nairn Avenue, they and their finance company again assured themselves that what they were doing was not objected to by the Lotteries Commission or any other authority. In the fall of 1981, they made arrangements to lease and renovate facilities on Nairn Avenue at a cost of \$400,000.00.

In the fall of 1981, complaints began to be made and that's why I played that tape for you. What was the complaint? The complaint was not that something unsavoury was going on. The complaint was that other bingo operators were losing business and if Buffalo was continued, their patronage were going some place else and they wanted somebody to protect their patronage by putting ropes on them, saying, you can't go elsewhere. Interestingly enough, and we'll get to it, a commission was set up and numerous people appeared before the commission with the exception of one, to my knowledge, all of them praised what they were getting from Buffalo Bingo. But one organization came and said that their bingo operation finances the parochial schools and that if they lose this revenue, the parochial schools are going to have to close. Therefore, Mr. Chairman, what is intended and that's what Mr. Manness said on the tape is that we would not expand because we don't want to hurt the existing people.

Mr. Chairman, it's interesting. When I spoke on the school question in this House, I said that if we were going to finance parochial schools, I was one who would insist that we finance all schools. I particularly referred to communist schools because I had an experience in the City of Winnipeg where I saw them excluded. I said the people who claim that they would give money on the basis of parental consent, will they finance communist schools? They said no. I said, well, then I will not agree that there be public aid to private schools. But now what they are saying is that certain charities are kosher; that's what this group came to the commission and said that they want these bingo halls closed so that the legitimate charities continue to get their money and the illegitimate charities not get it. When I was in the House, I used different words. I said there will be kosher charities or kosher schools and nonkosher schools. That's what is intended by the attempt to close my client's premises which this bill is put before the House for.

Complaints began to be made to the Lotteries Commission from among other bingo-related organizations, that's why I played the tape. As a result, the Lotteries Commission indicated an intention to restrict the Nairn Avenue premises. People come and invest \$400,000.00. They don't need a licence from the Lotteries Commission - because they don't get a licence. But if you went for a licence, if Mr. Mackling went for licences - "I want it for the barbershop quartette group." —(Interjection)— Right, do you know what they would say? Where are you going to hold it? You say, I'm going to the Convention Centre. They'd say, okay. You're going to Nairn Avenue? No. Right and that's acceptable. This is acceptable from people who believe in a Charter of Rights. It makes me

smile. That's acceptable.

The Nairn Avenue premises was available for rental on January 1st. Now, here are people who put in \$450,000.00. It's available for rental; there are groups who want to rent it at rents ranging from \$1,000 to \$1,500 a night and it stays open every night. Now, what businessman can sit watching an empty premises opened, closed, which is available? \$1,500 a night. He has to look at those empty chairs every night, knowing there's somebody who wants to rent them and the government says, no and there's no law against it, no law whatsoever. That happened. It happened and the circumstances which developed are more bizarre than what I have yet unveiled.

Well, I can tell you that between January and March, several approaches were made to the Minister by letter and by private meeting and the operators were assured another month, another month, we're reviewing our policy. On March 17th, the Minister announced the appointment of a judicial inquiry. They appointed His Honour Judge G. O. Jewers to deal with lotteries in a general way, and I've given you a copy of the Order-in-Council. We immediately went to the judge and wrote him and said would you investigate what's happening to us because we don't know?

Interestingly enough, Mr. Chairman, on the same day, on March 17th, when Mr. Vaseleniuk and Mr. Marois were both in Japan - that's how much control they had over what was happening in their place that night - six members of the Vice Squad attended at McPhillips Street, went into the back offices, took all of their records —(Interjection)— pardon me? Well, they came with boots anyway. It was a private office, Mr. Chairman. There is a private office; it exists at least 100 feet away from where any bingo is conducted. It is rather modest, but it is set up as an executive office. It has some soft furniture in there; it has a desk; it has cabinets. The police, in going through this private office, went into the cabinets. They had a Search Warrant giving them authority to seek records and they found their vice. The Vice Squad, the six of them, found three bottles of liquor. They took those bottles of liquor and they charged an employee, who told them it belonged to the executive, with having liquor at a place other than one's residence not purchased from the Commission. Would you believe it? I mean, can I go into your caucus room right now and get the police in there?

Mr. Chairman, I have no hesitation of saying that half the business offices in this town would close; that three-quarters of the lawyers' offices and 99 percent of the lawyers that I talk to, if that kind of —(Interjection)— but they charged them. They actually laid a charge. They are unaware of the existence of this charge, but there is a charge.

In any event, they took all the records of Buffalo Bingo Ltd., although the Buffalo Bingo people continually indicated that they would make available anything that was wanted and desired to make available. They came with a Search Warrant, they took it and they also went to my client, Mr. Marois' private residence. He was in Japan at the time. They took everything or looked around and alleged that they took four pieces of electronic equipment capable of intercepting messages, which had nothing to do with the Search Warrant and he is charged with that. He is

charged with that and that will have to be dealt with and that is before the courts.

Mr. Marois and Mr. Vaseleniuk, satisfied that the material obtained by the police would only confirm the legitimacy of their activities, did not challenge the warrant or the seizure, although they believed that they had legal grounds to do so and I believe that they had legal grounds to do so. But we were quite satisfied that they would look at the information because, hopefully, they would see that there is nothing there and that would at least be a method of clearing. I know it's not the presumption of innocence, but you take what you can get.

By the way, from June 1st to March 17th, there are 350 to 550 happy Manitobans going there every night, different people each night, some the same, some go five nights a week and they are playing bingo. It doesn't happen to be my cup of tea, but they like it and they are playing bingo.

On April 8th, after the issuance of a warrant, at approximately 5:00 o'clock in the afternoon on Thursday evening prior to Good Friday - mark that because it's important - a Vice Squad attended at Buffalo Bingo premises, informed Mr. Marois that a charge had been laid alleging the keeping of a common betting house, and then and there removed from the premises all equipment, all paper. You know, they went into the back and removed all the paper; they needed this evidence. This evidence is on display every night. They have a Polish National priest who will testify to it, will be happy that he testified. But they emptied the premises, allegedly to get evidence. Nobody knew that stuff was there; nobody knew that there was a bingo machine, but they removed it all. When did they remove it? 5:00 o'clock Thursday, the day before Good Friday. Why did they do it at 5:00 o'clock? I suggest to you that they did it at 5:00 o'clock on Thursday because it's after the courts are closed. Friday is Good Friday, the courts are closed; Saturday, the courts are closed; Sunday, the courts are closed; and Monday, the courts are closed. So they did it in such a way as to hopefully prevent anything judicially taking place and also in such a way that nobody could be told - because the bingo is advertised - so that the people would come, then be disappointed and told that they could not participate in the bingo game that night.

They didn't say anything whatsoever to my clients to say to them that you're operating a common betting house, we don't want you open tonight, either a week before or 10 days before or at any time before. Mr. Marois obtained other material by 7:00 o'clock that evening, took it back into the premises, and a bingo was conducted on that night. A bingo was conducted on the following night. On Saturday, at about 4:45 p.m., the police again came and took everything out of the place. After a conversation with the Crown Prosecutor, it was returned within, I would say, an hour-and-a-half and bingo went on normally that evening. A charge is laid, that is being defended and that is not before this committee.

On April 27th, Bingo Enterprises Limited and charitable organizations - this is the worst thing that happened - so you should know what you are dealing with when you are dealing with this bill, because somebody says I have not mentioned the bill. What I am

talking about is the bill. What's on this paper is a facade. I am talking about the bill. What do you do when you're having a problem? You say that you're entitled to open a place. The government, which is the law authority, says that you're not entitled to open it. There's a dispute. What do you do? You go to court.

So on April 27th, Buffalo Bingo and about 10 charities filed an application in court asking for a declaration as to whether they were entitled to open these premises that they have \$450,000 invested in. Is that a terrible thing to do? Is that an unusual thing to do? That's what they did. On the 28th, the Lotteries Commission was served with the papers. On the 29th, they held a meeting; that was a Thursday. On Friday morning - don't forget this is to see whether we can open Nairn Avenue - the Lotteries Commission tells all the charities that have licences on McPhillips Street, you can't conduct your bingo on McPhillips Street, we're closing McPhillips Street. They don't close anybody, but they refused to give licences.

Now, Mr. Chairman, here's what happened. There's a dispute. One of the parties takes it to court and the other says, because you took it to court, we'll fix you, we'll close your other building. Now, here is a government that says that if an employer interferes with the right of an employee . . .

MR. CHAIRMAN: Excuse me, Mr. Green. Could you relate your chronology a little bit closer to the objects of the Act that is before us?

MR. S. GREEN: That's as close as I can get, Mr. Chairman. If I am prohibited from talking, I can't get closer.

MR. CHAIRMAN: Well, we're not prohibiting you from talking. The committee is here to discuss the . . .

MR. S. GREEN: Mr. Chairman, I tell you . . .

MR. CHAIRMAN: Order please, the committee is here to discuss the contents of the bill rather than a chronology of events in the past. Unless you can relate the contents of the bill to this chronology, it would not be in order.

MR. S. GREEN: Mr. Chairman, I am as close as I can get. I can relate it exactly . . .

MR. CHAIRMAN: Mr. Enns, on a point of order. Order please.
Mr. Enns.

MR. H. ENNS: On the point of order, really that is the substance of these kinds of committee hearings is to have some appreciation of the impact of the legislation that we, as a committee, are being asked to pass, whether it's the impact that it has on labour organizations or on the business community or on the farm community. In this instance, I believe the witness is giving us his graphic indication of the impact of this bill.

MR. CHAIRMAN: Mr. Green.

MR. S. GREEN: Mr. Chairman, I'm doing much better

than my friend, Mr. Enns, who is helping me out. I am talking directly to the contents of the bill. If you look at Section 14 . . .

HON. R. PENNER: On the same point of order.

MR. S. GREEN: Oh, I'm sorry.

MR. CHAIRMAN: Mr. Penner.

HON. R. PENNER: On the same point of order. Mr. Green, apparently as far as I can gather, is fighting his clients' court case before the Law Amendments Committee. While there are —(Interjection)—

MR. CHAIRMAN: Order please.

HON. R. PENNER: No, Mr. Enns. I thought you would have believed that there is a higher court yet. —(Interjections)—

MR. CHAIRMAN: Order please.
Mr. Penner.

HON. R. PENNER: May I continue, Mr. Chairman?

MR. CHAIRMAN: Proceed.

HON. R. PENNER: There are a number of delegates waiting to be heard; there are 30 people here to transact the business of government. The bill is before this committee for clause by clause consideration. What Mr. Green appears to be doing is fighting his clients' court case; this is not a court of law. I don't care what euphemism the Member for Lakeside uses to describe what is, in fact and clearly, the Law Amendments Committee; its functions are clear. I think that this is a desperate move. I think that it trenches on the function of the Legislature and, if allowed to go on in this way, there is simply no end to it. There has to be some degree of relevance. It's a committee. Let it go as broadly as it might with respect to the particular bill.

Now, the notion that the bill was created to deal with his clients' problem or somebody else's problem with his clients might be something suitable for Mr. Green to use on the political hustings or wherever he will, but it is not a subject for debate in this committee.

MR. CHAIRMAN: Mr. Green, do you have some more comments?

MR. S. GREEN: Mr. Chairman, first of all, I have indicated to you that my view, when you say that —(Interjection)— I was asked by the Chairman to speak. —(Interjection)— But Mr. Chairman has given me the floor.

MR. CHAIRMAN: Order please. The committee has shown a considerable amount of leeway already. Clearly, the possession of alcohol on the premises has nothing to do with the Lotteries Bill. I would ask you to please restrict yourself to comments related directly to the Act.

MR. S. GREEN: Mr. Chairman, I have felt that in every respect my comments are directed to the Act and I will

deal with a section of the Act which is specific. I told you the matter of the court cases will be fought, but I am not dealing with the court cases. The Act says, Section 14, that the Lieutenant-Governor-in-Council may make regulations respecting the locations and premises in which lottery schemes referred to in this Act may be conducted and managed. It will not be in the Act; there will be a regulation permitting the Minister to say which location the premises are being conducted at. I am trying to show you what that is intended to do. If I can't do that - my learned friend says I have to go on hustings - I am in the political arena right now. I am before committee and I'm supposed to be able to put a position to this committee.

MR. CHAIRMAN: Proceed, as long as you are relating your comments directly to the bill under consideration.

MR. S. GREEN: I will do exactly that and I have been doing that up until now. —(Interjection)— Well, you people wish to declare me out of order, that's up to you. I believe that I have been sticking to this bill.

Mr. Chairman, I have indicated to you that the Lotteries Commission said that you could not hold your lottery now on McPhillips because you've taken a court case against them. I say that the government has laws on the books which says that if an employer tries to intimidate an employee from exercising his rights under an Act he can go to jail. In your present rent control regulation, you say that if a landlord tries to intimidate a tenant from taking action, he can go to jail; but if my clients go to court to try to establish that they have a right to hold a bingo at a certain premises, they are told, we'll fix you. You are going to give power to a Minister to say at which location a person has to hold a bingo that it is entitled to hold as a charity and I'm saying that when you give that power to the Minister, you should be aware of the way in which that power can be used and if that's not under the Act, then there is nothing else under the Act.

As a result of this, there was a court case and as a result of the court case, it was held that the Commission and the authorities had no right to refuse licences on Nairn Avenue. So this bill is brought before you so that the judge, who made that decision, is overruled by the Legislature. I am not the one who's fighting the court case; it's my friend who is fighting the court case, because immediately after the judge made the decision, he then said, I can institute legislation. So, if we're not talking about this bill, what are we talking about?

Now, I can tell you, Mr. Chairman and members, another thing that has occurred is there is a Commission there, a judge, set up to deal with this question; but the Minister says it doesn't matter what the judge does, I'm going to pass this bill. That's what he says. So what is the judge? It's another window dressing. What is wanted in the last analysis is to give the Minister the power to say what Mr. Duplessis said. Mr. Duplessis said that I will give you a licence; but I won't give you a licence because you're a Jehovah's Witness. There's nothing in this bill that detracts in any way from that. That's what this bill is and that's what it's being used for. If you say that the members of the Legislative Committee are not entitled to know that, then I cease to know what has become relevant in

dealing with the bill —(Interjection)— well, maybe there are different laws being introduced in the Province of Manitoba.

In any event, Mr. Chairman, I want to indicate to you that we are talking about two citizens of Canada - that's what this bill is for - that these two citizens have come here, that they invested \$450,000, that they came knowing certain laws to exist, that they have hired approximately 20 full-time employees - they are one of the only groups that have increased employment; these are full-time people - that they have another seven other time people; that the charitable organizations who have been able to utilize their expertise are extraordinarily satisfied with what they are doing and that in response to their efforts, what has happened is that they have been subjected to indignities, abuse, and criminal prosecutions of which this bill is only one part.

That is my submission, Mr. Chairman.

MR. CHAIRMAN: Are there any questions for Mr. Green?

Mr. Malinowski.

MR. D. MALINOWSKI: Thank you, Mr. Chairman. I would like to just clarify one thing because Mr. Green was pointing out, I believe, or maybe . . .

MR. S. GREEN: I was pointing to you, Sir.

MR. D. MALINOWSKI: Oh, to me, that's even better; but I would like to clarify that I don't have anything to do with the Polish National Church on Burrows Avenue.

MR. S. GREEN: I should have said the Polish Relief Fund.

MR. D. MALINOWSKI: Then, I believe so. This is a big difference, so I would like to put it on the record.

MR. S. GREEN: I said, at the point that I came to the Polish National Church, it reminded me of you, Sir, and I said that every week or so, you can find the Member for Burrows behind the bingo counters at McPhillips Street. That, I take it, is not objected to by you. It's for the Polish Relief Fund, a very worthwhile charity which the Member for Burrows - Member for St. Johns - used to be the Member for . . .

MR. CHAIRMAN: Order please.

MR. D. MALINOWSKI: That was my clarification; but nevertheless, as Mr. Green mentioned, I am involved with the organization carrying the name, Relief Fund For Poland, and I am the chairman of it. I am proud to be a chairman and I am also proud to be in Buffalo Bingo and make this profit for our people in Poland.

MR. CHAIRMAN: Mr. Mackling.

HON. A. MACKLING: I have a couple of questions, Mr. Chairman, to Mr. Green.

The first one, Mr. Green, in respect to rental, what is the base of the rental? Is it a straight cash rent per month for these facilities?

MR. S. GREEN: It is a rent per night.

HON. A. MACKLING: Per night, based on what? Were all the square feet used?

MR. S. GREEN: Yes. By the way, all of these particulars were given to the Commission. If you consider them relevant, I have no objections to giving them to you here. I will answer the question.

It started off with a rent that varied with attendance. The Commission insisted that there be a flat rent, although I don't think they had any authority to do so. Nevertheless, my clients who I didn't represent at the time, who were very anxious to please the Commission, indicated that they would charge a flat rent, but if the charity didn't do well they would make a donation to the charity and have done that.

They also require as one of the features of rental of the premises, and there's no question about this because each tenant has to make it good for the next tenant, that there is a certain form to the evening, a certain number of games, a certain number of prizes. They buy their paper at Buffalo Bingo; they buy other supplies at buffalo bingo. The games are therefore conducted in accordance with a certain quality which has resulted to the benefit of everybody and if a person is not prepared to keep that quality up, they can rent your premises.

HON. A. MACKLING: Mr. Chairman, I will ask the question . . .

MR. CHAIRMAN: Order please. Would you please wait to be recognized? The Hansard recorder is having trouble.

Mr. Mackling.

HON. A. MACKLING: Mr. Chairman, I'd like to know in dollar figures what is the rent, what was the rent and how was it varied? What are the amounts?

MR. S. GREEN: The rental at various times - I think the last rental that I know about is \$1,800 a night. That's the last rental I know about. Are you going to ask how much our clients pay in rent or that's not relevant?

The rental to the charitable organization is \$1,800 a night. It has varied between \$1,000 and \$1,800.00. Nobody who finds this rental high is required to rent my clients' premises.

HON. A. MACKLING: What are the top prizes?

MR. S. GREEN: Top prizes? There is a prize of \$5,000 which can be won approximately one every 52 nights. That is a probability; that is not something that I can tell you about and that comes on a full card.

The way in which this started was that each charity agreed to put \$100 into the pot every night and then the charity that lost, that was accumulated for them. The Lotteries Commission banned this, as a result of which there is a \$5,000 prize and my client makes a donation to the charity that has to pay that prize. They don't like this. They prefer to do it the other way and it is not vital to their services, but the Lotteries Commission is and was at all material times aware that's what

they were doing. That information was given to Judge G.O. Jewers. Every charity has to send a copy of what they did that night to the Commission and has done so. They have been aware of it.

MR. CHAIRMAN: Mr. Penner.

HON. R. PENNER: Section 81 of The Liquor Control Act gives powers to a Commission, not the Lieutenant-Governor-in-Council, and I'll just read two of something like 35 powers: "to issue, refuse, cancel or suspend licences to sell liquor"; that's No. 5. No. 16 - "to control the conduct, management and equipment of any premises upon which liquor may be sold under this Act"; and that's done by a Commission and has been the law in this province for a long time. So what do you find so extraordinary about 14(a)? What leads you to suppose that this piece of legislation was passed just for your client?

MR. S. GREEN: Mr. Chairman, what leads me to believe that is the sequence of events that I have given you. With respect to your requirement, I can tell you that when I learned that was the case, I also said that should be repealed and made representations on that basis.

When the Liquor Control Board said that we could only in Hecla have a certain thickness of carpets on the floor and color television in every room and, therefore, the rooms went up to \$35 when they could have been rented at \$30, I complained. I said I had no idea that the Commission had such powers, that they should be removed and I would remove them today. And why do I say that this has been done for my clients? Because the Minister said so.

HON. L. DESJARDINS: That's not true.

MR. S. GREEN: The Minister told the press that he didn't agree with the Judge's decision. He . . .

MR. CHAIRMAN: Order please. Order please.
Mr. Desjardins.

HON. L. DESJARDINS: Mr. Chairman, there has been a lot of things said today. I want to wait until Judge Jewers makes his finding. I am tempted to get into this because there's a lot of things. The person making representation, I don't know if it's his ego tells him that everything is done because of him. He's absolutely wrong. This Lottery Act was proposed to Cabinet long before any of these events. He's talking about events that - most of them, we had nothing to do with it - it was the Winnipeg Police and he's tried to imply motives that aren't there at all. So I am not here to defend or to be cross-examined by him at all, but when he says that this bill was brought in just to get even with his client, he's absolutely wrong.

MR. CHAIRMAN: Mr. Green.

MR. S. GREEN: I'm very happy to hear that. I'm delighted to hear that because I saw the Minister quoted in the Press. I suppose that the Press is wrong again, that when the Judge made his decision saying about opening of Nairn Avenue, that the Minister said,

I can initiate legislation. So I presume that the words meant this bill and I am very happy to be wrong. I am glad that all of my remarks are as a result of misguided knowledge and that what I said won't happen. I am very happy to hear that.

MR. CHAIRMAN: Mr. Enns.

MR. H. ENNS: Mr. Green, at the outset of your comments, you indicated that prior to your client coming to Manitoba to begin operations, some effort was made on the part of the new business to satisfy themselves: (a) as to first of all its viability, but more important and the import of my question, that contact was made at that time with the government or . . .

MR. S. GREEN: The Lotteries Commission.

MR. H. ENNS: . . . the Lotteries Commission representing the . . .

MR. S. GREEN: Absolutely.

MR. H. ENNS: . . . of Manitoba.

MR. S. GREEN: They had to put in \$450,000.00.

MR. H. ENNS: Was the contact that was made with the Commission formal or informal? What I'm really after, is there anything in writing from the Commission that your client has that indicates his style of operation, the type of business that he was contemplating, was not causing the Lotteries Commission any difficulty at that time?

MR. S. GREEN: Mr. Enns, first of all, the law as I understand it is that you can do anything that is not prohibited, but my clients were not satisfied with that, because it could be prohibited eventually. So they went to the Lotteries Commission, discussed what they intended, they are doing it by the way and I told you, three other cities in Canada - very similar operations. What they determined is that there was no objection to their activities and indeed from June until November, there was no objection.

The reason I played the tape is so that you'd know how the objection came, not for anything wrong, but because Sir Gutherhall said that these people are causing us a problem. Then Mr. Manness said, well, we're going to limit them. Then he says on the tape, we won't license this hall, and I have it in writing. By the way, we went to see the Minister. We weren't trying to fight. The Minister knows that I wasn't seeking a fight, if he's talking about ego. Is he crazy? I'm protecting clients who've got a \$450,000 investment. Why would I want to fight? We went to see them and we told them. They kept on saying we won't license this hall. We said we don't get licences, we don't need a licence, you can't license halls. Well, Mr. Chairman, I have it in writing that we will not license this hall —(Interjection)— Of course, but I have - do you want me to play Mr. Manness saying that we can't license more halls? Well, but that's what they thought. They're talking about licensing halls and what they did from June the 1st as long as until November until somebody else felt the pinch, there was no complaint.

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Then there was one charity in particular complained that they're losing money. They were the one charity, one group, appeared before Mr. Justice Jewers complaining. They were a group that says their bingo finances the parochial schools and that if we don't get shut up, we are going to have to close the parochial schools. That's what they said to Mr. Justice Jewers. It was reported in the paper; I wasn't there.

MR. H. ENNS: Mr. Chairman, the operation proceeded, as has been stated, from June to November. There followed then the complaint. Did, at that time, the government again through its agency, the Commission, contact again in any formal way by letter or by having your clients, operators of the businesses involved, come before the Commission for a discussion . . .

MR. S. GREEN: No.

MR. H. ENNS: . . . as to either the government's intention, the Minister's intention?

The Minister has stated here that the Minister has had this kind of legislation proposed well in advance of a lot the events that you have described, but my interest and my questioning is, at what time did this government show any common sense courtesy to business investments in the province that were going to be affected by this legislation?

MR. S. GREEN: They indicated that they would not license. They said that there was going to be a review of lotteries and they would not license new activities. That happened either late December - they never called my clients in - the reverse took place.

In January, and I've given you copies of correspondence, I wrote to the Lotteries Commission, not to the Minister. I wrote to the Lotteries Commission saying, look, we have a bit of a problem here. We've got \$450,000 invested, the place is closed, people want to use it and they won't issue a licence. So the fellow wrote me back saying we won't license this hall because there is a review. So I wrote back, you don't understand, we don't want a licence for the hall; other people want a licence to use this hall.

Then the Minister was alerted and they didn't call us; I think the Minister will agree. We called them and we went to the Minister's office. I can remember my client, who I felt rather sorry for because it's not my posture but it's his, they told their story, there were no complaints and then Mr. Marois said something that I felt was extraordinary. He said, Mr. Minister, we are at your mercy, you can ruin us. A month later, we got a letter; we're still under review. There will be no licences issued while this thing is under review. There's no law; there's no regulation; there's no stipulation, nothing. Just that we will not license anybody who wants to use your hall. That's what happened.

Now, why I say about this bill, maybe the general nature of the bill, but I can assure you and the Minister tells me that the power to control locations was thought of a long time ago?

HON. L. DESJARDINS: No, I didn't say that. I said the bill.

MR. S. GREEN: Ah! Mr. Chairman, I am glad. This is the key section, because this section to control locations gives you the right to say, I will let the Conservatives - no, I guess this government might not do that - I will let the New Democrats have a licence; I won't let the Conservatives have a licence, because I don't like your location. All you have to do is pin it to location. Now, that's a tremendous authority.

Well, Mr. Chairman, the Minister is shaking his head. I can tell him that what he is asking for. Maybe he doesn't know it and I don't say that out of any intention of insulting, but I'm telling you the effect of the law. This gives you what Duplessis didn't have and that's why Duplessis was smacked down in Rangterelli versus the Crown. Now you're saying, if Duplessis had this section, he could say I won't give it to the Jehovah's Witnesses because I don't like their location. He wouldn't have to refer to the Jehovah's Witnesses. So you're seeking to undo what the Supreme Court knocked Duplessis down for.

MR. CHAIRMAN: Mr. Lecuyer.

MR. G. LECUYER: Am I correct, Mr. Green, that you said that the Commission required \$450,000.00?

MR. S. GREEN: The Commission required?

MR. G. LECUYER: Yes, when your client originally . . .

MR. S. GREEN: No, I never said that. I said that my clients invested, in the first place, I think it's about \$400,000; in the second place, I think it's about \$450,000.00.

MR. G. LECUYER: This investment was used for what purpose?

MR. S. GREEN: Mr. Chairman, I urge all of the members here, I really do urge you, if you don't play bingo - I don't play bingo either and I have to like it - but if you want to see bingo in its most sophisticated form, see what these people are doing right in order for the charities to want them, go down any night to Buffalo Bingo. You will see a hall, nicely furnished in good taste, with electronic scoreboards with all the numbers on it so that you never miss a number by going by - they're all lit up - with television sets surrounding the place, so that when a bingo is called every patron can see the bingo that is called.

When we talk about paper, there is no such thing as I, in my naive way, thought that bingo is played with cards and little peas or beans; it's not. Bingo is played with a card and a grease pencil and when you use that card, it is destroyed. You cannot take the card out of the hall and bring it back; you cannot bring in your own card. You play on paper. That's why there is a paper chart and you fill it in with a grease pencil and that's finished. That card is ended. It cannot be reused; it cannot be snuck out; it cannot be snuck in.

Toilet facilities, which I say, are nicer than most toilet facilities in any of the halls, a very nice snack bar, a very pleasant evening, if you like bingo. I told you, I don't happen to be a fan, but I urge the members to go down there. Reverend Malinowski has indicated that

he is proud to be associated with Buffalo Bingo. — (Interjection)— That's right. That's what cost \$450,000.00. Do you know how much rental space is involved and my clients have to pay rent, by the way? Every night that they were refused rent by people who wanted to pay them, they were paying rent to a landlord and interest charges on the equipment and nobody seemed to care. They said, these guys, they're making money. They've got \$450,000 invested, an empty hall, people banging the door to get in - and nothing.

MR. G. LECUYER: Mr. Chairman, I have a few more questions I would like to ask. I wonder if Mr. Green would limit himself to answer the questions rather than debate his points again.

Am I correct in assuming, from what you've just given in partial answer, that much of that \$450,000 is in capital assets?

MR. S. GREEN: I think that the chairs and tables - by the way, you'll have to forgive me . . .

MR. G. LECUYER: And the TVs and the whatnots that's described . . .

MR. S. GREEN: You'll have to forgive me, Sir, but I have never been able to accept the fact that the person who asks me the question tells me how to answer it.

MR. CHAIRMAN: Order, order please. Mr. Lecuyer. Mr. Green, could you please wait to be recognized for Hansard?

MR. S. GREEN: Yes, Sir.

MR. G. LECUYER: Okay. So much of the expense of \$450,000 is in assets. Therefore, from your description of what you've just given to me, I will assume that, and therefore will also assume that if they were to discontinue or if they were to move, they would not be losing \$450,000.00.

MR. S. GREEN: I will be losing more, Mr. Lecuyer. You will have to permit me, I have not dictated your questions and you will not dictate my answers. I don't care who you are. If I cannot answer the question as I see fit, then I will not . . .

MR. G. LECUYER: Then I would also hope you would try to answer the questions.

MR. CHAIRMAN: Order please. Mr. Green, you have been connected with hearings of this sort long enough to know the procedures. I insist that you abide by them and wait to be recognized. Mr. Lecuyer.

MR. G. LECUYER: Mr. Green said awhile ago the only article that Mr. Green referred to in this bill that seemed objectionable was Article 14, but you also referred in your presentation to a clause which would enable the province to prevent printed or other materials from being brought in from another province. I would wonder if you would direct me to this particular clause, please.

MR. S. GREEN: First of all, I believe that it is not fair for me to be left on the record with an assumption that I have not made, nor should it be permitted that somebody says something that relates to my remarks and I'm not entitled to deal with it.

I never said that the major amount was for capital, I was trying to find out how much was for the tables and the chairs. I believe it's \$80,000 in one place. I don't think that you can sell that for that amount and, by the way, my clients have lost more because they have built up something that other people can't do. They have built up a patronage and nobody else has been able to do that. That has more value than all the tables and chairs, but the amount of outlay was \$400,000 and \$450,000 at the two locations.

With regard to the statements about the bill that I don't like, I have indicated that the bill attempts to deal with regulations for those who "sells, offers for sale, prints, publishes, distributes, makes, manufactures, supplies, leases or provides any lot, card, ticket, paper, slip, symbol, coin, device," etc., and I say, I don't see how you're going to be able to do that. Some of the stuff is made outside of the province or can be made outside of the province. If you try to regulate in the province, aren't you going to say that the person who says I don't want to be regulated - he moves out of the province and makes it? Then can you prevent it from coming in? Isn't it a restriction compounding a restriction?

MR. G. LECUYER: So, in effect, you are still referring to Clause 14, then?

MR. S. GREEN: I referred to Clause 14; I referred to Clause 1(2); I referred to the fact that it's going to be used for Consolidated Revenue on which I indicated that I made very little comment. I referred to the fact that the government will, under Clause 8(1), deal with the amount of profit that a person can make who rents a hall or who sells his services.

You know that there are casinos in the Province of Manitoba. A person who deals with the casino - this came out before the Commission - charges \$10,000 for a consulting fee for the three days. Now, after you have regulated all these things, supposing my clients say they want to charge any person renting their premises a consulting fee and the consulting fee is \$1,000 a night. You're going to have to regulate fees and wages. You think that's a lot of money. You know, there are a lot of people earning a lot of money. There are some football players who make \$100,000 for 16 games of football; it's a lot of money. People want it. I don't patronize my clients. I just receive money from them; I don't pay money to them. But there are people evidently who want it.

MR. G. LECUYER: Mr. Green, you stated awhile ago that when Bingo Enterprises came into Manitoba originally they went to the Commission to get assurances so that they could not at some later date be in trouble with some of the regulations or the Act as it existed. Was Bingo Enterprises at that time also given assurance that they would be allowed to expand?

MR. S. GREEN: No, Mr. Chairman, nor, for your information or for anybody else's who wants to come

to Manitoba or any other province, can you ever get an assurance that the law and the government won't change and that they will run you out of business, but they hoped that wouldn't happen.

MR. G. LECUYER: So would you say then that, if they followed such good practice in coming to Manitoba to open this operation on McPhillips, wouldn't it also have been in the estimation of good business practice to seek to have that same kind of assurance before they expended monies to prepare a second hall and so forth?

MR. S. GREEN: They did.

MR. CHAIRMAN: Order please. Please wait to be recognized.

Mr. Lecuyer.

MR. G. LECUYER: They were granted a licence to operate a bingo hall on Nairn Avenue?

MR. S. GREEN: They don't need a licence to operate a bingo hall on Nairn Avenue. That has been the entire fallacy of this entire discussion. You, Sir, can open up your premises, your place and you can't rent it out to anybody. If I want to run a bingo, I can go to the Licence Commission and say, "I'd like to run a bingo and I'm going to rent Mr. Lecuyer's premises." If I am entitled to conduct a bingo they should have no objection to the premises and never did; they've put that in now for the first time. So when you say that they were licensed or that they needed a licence, in our society, Mr. Lecuyer, the law presumes that you can do everything which is not prohibited. We do not obtain our rights from governments. The day that we do that, we're in big trouble. There was no law against it and, furthermore, the fact that there was no law against it doesn't guarantee that they'll continue. You can make a law against it, as somebody is now asking you to vote for. I'm sure that when you ran for office out there in Radisson, all kinds of people came to you and said, "When you get elected, would you close Buffalo Bingo?" I'm sure all of you were deluged by your constituents to close up these bingos and that was in June. I'll guarantee not a single person had an objection to what we were doing.

MR. G. LECUYER: Mr. Chairman, if they weren't seeking a licence, then why did they go to the Commission?

MR. S. GREEN: Because, in addition to wanting to know that there was no law against it, they wanted something else, Mr. Lecuyer. They wanted to know that they were not objected to, because if there is no law against something, but the people object to what you're doing, they can make a law. So they hoped that they could get a feeling from the Commission that they were not objected to and indeed they were not objected to. From June 1st until the middle of November, or approximately, they were conducting their activities, and charities were happy to come. The Member for St. Johns was there every week or so behind the counter selling bingo tickets and everybody was having fun.

MR. G. LECUYER: That was the purpose of my question awhile ago, when I asked about going back to the Commission before starting this second operation, you see, and they received the same assurance.

MR. S. GREEN: Yes, not only did they do it but the finance company started to worry. They came to the Province of Manitoba, they discussed it with the authorities, they found out that there was no objection to it and on that basis they advanced money.

MR. G. LECUYER: You referred to Radisson awhile ago and the reason for my question is that I, as a representative for Radisson, although you state that you had only one complaint, I have received numerous complaints by people who are running bingos in the constituency which I represent.

MR. CHAIRMAN: Order, order please. The purpose of this period is to ask questions for clarification not to debate the issue.

Mr. Lecuyer.

MR. G. LECUYER: Okay, I'm coming to it. My question isn't exactly in that regard. In defending the right of Bingo Enterprises to succeed, I presume you also defend the right for those who already are in existence to also continue and succeed.

MR. S. GREEN: They have a perfect right to show that they can do it better and that they will get people to come and use their facilities and their premises as against mine. They're not giving my clients the same right. No, they're saying we can't succeed if they're in business. We didn't say close them up so we can do better. If I came to you, Mr. Lecuyer, and I said, "My clients have invested a lot of money and they're doing very well, but they'll do a little better if we close down three bingo places in your constituency," you would look at me as if I were the devil himself. That's what they're asking.

MR. CHAIRMAN: Mr. Santos.

MR. C. SANTOS: Thank you, Mr. Chairman. Certainly the law presumes that anything can be done unless it is prohibited. It is only the prohibition that makes it unlawful. (Latin spoken) There is no crime unless there is a law prohibiting an activity.

MR. S. GREEN: I'm sorry.

MR. C. SANTOS: I'm making a Latin statement, Mr. Green. (Latin spoken) Unless there is a law which prohibits an activity, there can be no crime.

What I'm saying is that even assuming that some enterpriser in the gambling business is started when there was no prohibition, and if that gambling business becomes almost a monopoly that it threatens to gobble up all other small-time bingo operators, it is not only the right but the duty of the government to intervene to protect those who are less able to . . .

MR. CHAIRMAN: Order please, order please. Mr. Santos, do you have a question for clarification?

MR. C. SANTOS: I'm laying the foundation for my question, Mr. Chairman. Now to the question, Mr. Green. This is the question. Are you saying, Mr. Green, that the government cannot pass a law simply because some enterpriser in the gambling business stands to lose money?

MR. CHAIRMAN: Mr. Green.

MR. S. GREEN: I've never suggested that. I question the prudence as to whether they have a right to pass the law, absolutely. I question the prudence of outlawing my clients because they are more successful than the others. The others were here first; maybe they should be doing better than us.

MR. C. SANTOS: Thank you, Mr. Chairman.

MR. CHAIRMAN: Are there no further questions?
Mr. Lecuyer.

MR. G. LECUYER: Did I understand, Mr. Green, awhile ago you said that as well as a bingo operated in the hall there is a concession or restaurant?

MR. CHAIRMAN: Mr. Green.

MR. S. GREEN: A concession is operated by Bingo Enterprises Limited. They sell hot dogs, very good ones; that's what I go there for. I don't go for bingo. I presume that you will not stop us from selling hot dogs because some hot dog stand in Radisson is suffering by my client's . . .

MR. G. LECUYER: Did the charitable organizations who rent the facilities of Bingo Enterprises also benefit from the profit of the concession?

MR. S. GREEN: They benefit from the profit of the concession in that any profit that comes to my client gives elbow room, but my clients are in the business of trying to make money from their expertise. I wish it to go on the record, Mr. Chairman, that the Minister of Mines and Resources said to me, "You are sure benefiting your clients by the way in which you are behaving." I presume, Mr. Chairman, that if I'm to come to this committee and get consideration from the Minister, I'm to come on my hands and knees with my cap in my hand, I won't do that. My clients can fire me, I won't do that.

HON. A. MACKLING: A point of order, Mr. Chairman.

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

HON. A. MACKLING: I was making an observation to my former colleague that making snide remarks about hot dog stands and licensing of same was not germane. It wasn't helpful to this committee, wasn't doing any good for his client.

MR. CHAIRMAN: Mr. Green.

MR. S. GREEN: I have indicated what the Minister said, and what the Minister said is that if my brief was presented without having made the light observation

which Mr. Lecuyer didn't take particular badly - he smiled too - about the hot dogs, that if I spoke a little nicer, I'd get better consideration from you people.

MR. CHAIRMAN: If there are no further questions, I would like to thank you for your presentation, Mr. Green.

MR. S. GREEN: Thank you.

MR. CHAIRMAN: Are there any other people present who wish to make a presentation on Bill 22?
Would you please identify yourself? Order please.

MR. W. KUCHARCZYK: Mr. Chairman, my name is Walter Kucharczyk. For the record, I will spell my last name, since in the past I couldn't recognize my own name in Hansard, K-U-C-H-A-R-C-Z-Y-K.

I do speak on my own behalf. I'm sure I represent the opinion of many other people.

Bill 22, which is before you, of course, Page 3, I'd like to immediately refer to Paragraph 6. "The proceeds realized by the foundation from time to time from the conduct and management of lottery schemes under this Part, less the costs of conducting and managing the lottery schemes and less such amounts as the Minister deems requisite for the costs of administering this Act, shall be transferred to," and it says here, "to and held in trust in," I suggest to strike out "and held in trust" and should read "transfer to the Consolidated Fund." Strike out "to be used and applied in accordance with subsection (2) or (3), as the Lieutenant-Governor-in-Council may from time to time direct." I suggest strike out Paragraph 2.

My point is this. What you are going to do here, once you will pass this law, is this: You will contribute to more a parochial setup in this Province of Manitoba, and Canada as a whole, than we already have, because you will create further the most materialistic attitude or society than we have right now - something for nothing. Something for the cost of a little car as Mr. Green just argued with the point here, you're liable to get \$5,000 or so. Surely, each one of you ladies and gentlemen say every day that you will save yourself so much money, say, if you buy right now for \$99.99. Now that's the society we live in today. His Holiness the Pope stressed that on many occasions, the Church of England and many other well-recognized religious, spiritual bodies, not those that they buy the bishop's title for \$20.00. Real respectable people, you know.

I say to you that you will administer much better the money that you will receive from people whom you will not stop gambling. No way, that's already in the blood; that's the society here that already are used to it. But the distribution of the money that will come will be much better used for better causes than parochial attitudes created by more powerful organizations or less powerful organizations.

Now, I bluntly believe in a melting pot. I don't believe in creating artificial groups where they have no real future, short-term benefit perhaps politically. Just for instance, like the Department of Education, they have Ukrainian language as a second language or German, say, or Filipino. Well, from communication, international life, it has no value. It has a local value, but money has to come from somewhere, right?

Okay. Use this money and I will give you an example that perhaps it will make a mark on your mind. The logic - I'm not anti-Ukrainian, after all, I'm a Heinz 57 myself - of having Ukrainian language as a second language in the schools today for which you and I pay makes as much sense as having a cockney dialect in St. Boniface. There's no benefit; nevertheless, it's being demanded, so you have to use the means and ways to support the programs that some people demand. —(Interjection)— The gentleman here, Mr. Chairman, suggests that we will get it from ManOil. Well, you never know, it might be a reverse of the petroleum industry. You might start to smell the oil like Ukrainian garlic sausage from the surface. I don't know, time will show, maybe ManOil will be a revolution.

Now, one time somebody sent a quotation to me and, unfortunately, I didn't cut out - with the name - which I believe in very strongly.

MR. CHAIRMAN: Order please. Could you please give Mr. Kucharczyk a fair hearing of his presentation? Mr. Kucharczyk.

MR. W. KUCHARCZYK: Mr. Chairman, I'm not surprised, when I tell the truth, certain people don't want to hear it. That's obvious all over the world.

The obvious problem for immigrants who, by choice, settled in this country and then demand the right to practise their culture and language is that they are not and they never will be true Canadians. I respectfully submit in a very great percentage it has its weight, it has its value, it has its truth. Now, if you implement this law, giving permission to various groups to keep or be induced to use their names, what you are going to do, you are going to create a situation as had happened unfortunately with the precedent back in Italy - all of a sudden, compassionate grounds. It went to suffering of the people in an earthquake, flood, etc.; subsequently, the United Nations and local authorities had to have the investigation because there was a fraud of unbelievable size. You know, this money somehow goes to the wrong place.

MR. CHAIRMAN: Mr. Kucharczyk, could you confine yourself to comments regarding Bill 22?

MR. W. KUCHARCZYK: By all means. The whole point is this, I say to you that the money should go to general revenue but not to be held in trust and used subsequently, as I suggested - perhaps you didn't hear me, Mr. Chairman - that 6(2) Use for cultural or recreational purposes, kept in trust should not be in advance specified for that purpose. The money should go to general revenue.

Now, you give me a chance to prove my point, okay? Now, as you are all sitting here - I'm referring to the so-called charitable donations, relief funds - if I would have a right to weigh precisely a pound of fine flour without the box and pass it from hand to hand all the way around, I'd like to know how much will be left in the hands of the last receiver. Now, that's what happens with those relief funds, charitable donations, etc. - how advantage is being taken.

Let me be realistic about it and I'm sure the dean of this Legislative Assembly will confirm. Funerals at one

time cost less, next to nothing. Today, depending how long the Minister will pray and what kind of prayers he will say, so he's paid extra, eh? —(Interjection)— Mr. Chairman, I'm very glad that the Member for St. Johns confirmed, and I think it's a privilege to have somebody from the seat to confirm what I said in relation to the materialism that pertains also to gentlemen "of the cloth."

Now, Sir, your duty of course is not to put the law, as you well know, for today only. Your duty is to help this fine country of Canada to perpetuate and, particularly, to give the youth what they really need the most - good food and good education. —(Interjection)— Sorry, I missed the joke. It must have been good. So, Mr. Chairman, if you don't give the youth the two basic things, health and education, you have no country.

Now, how do you expect to have Canada - and I have seen Canadians during the Second World War and it used to say "Canadian" on the shoulder, eh, on the shoulder pad and they acted like Canadians; they acted like gentlemen representing the country - but here through this bill you are going to split in groups that I would need, Sir, to bring the telephone book to name all the whole ethnic groups that exist in this city and each one competes with another on how to get a dollar through gambling. And then gambling! Well, again, very hard to stop the gambling, but your duty is to regulate at least to the extent that the money will be spent for benefits of those that are in need.

Now, how can you regulate the spending of the money? Obviously, —(Interjection)— I won't vote for you any more. Obviously, —(Interjection)— Again the Member for St. Johns says give to charity. Well, I will refrain from commenting because I might insult him. Again, I say it has to go to the administration of the Province of Manitoba to the general fund. Obviously, from time to time the province needs also a checkup like know to whom they lend or give \$500,000; that's finally they discovered Manitoba Telephone System.

I will go further, Sir. Charitable attitude, which has to have a definite control and that's why I'm referring again, it has to be the Province of Manitoba . . .

MR. CHAIRMAN: Order please. There is a considerable amount of background noise, private conversations. Would you please keep the noise down so we can hear Mr. Kucharczyk?

MR. W. KUCHARCZYK: Mr. Chairman, I will make a remark. The noise that I hear reminds me way back of the honourable member, Mr. Howe, who said, what's a million? In other words, the gentlemen who ignore the submission probably will get the same, shall I say, piece of bread when the time will come to it. I hope I will be still alive.

Now, when we look back at CIDA, Canadian International Development Agency - beautiful organization, does lots of good - in the meantime not sufficient control, so what do we find? We find that washing machines, fridges delivered to the country point of destination and the power is within 400 miles and it stays there, Sir, for a year or two till the power line is built. Now that's why I'm saying, this man should go directly to the administration of the Government of the Day because we have very fine people that look at how the money is to be spent. Some might agree;

some might disagree. That's another thing. I won't go into detail, but on the principle I say to you again, if you really want to have and perpetuate the order and duty that is on the shoulders of the elected members, other than those of course who don't give a damn what is being said and I feel sorry for them . . .

MR. A. ANSTETT: A point of order, Mr. Chairman.

MR. CHAIRMAN: Mr. Anstett on a point of order.

MR. A. ANSTETT: Mr. Chairman, while I appreciate Mr. Kucharczyk's presence here and his willingness to make a submission on the bill, I have a concern that both he and some of the members are engaging in something which doesn't lend to the ability of this committee, both in terms of the private conversations that you referred to, Mr. Chairman, and Mr. Kucharczyk's reference to members of the committee, which I think have been somewhat disrespectful in terms of that attention.

Mr. Chairman, I am concerned that the whole decorum of the committee and the purpose of this hearing is somehow demeaned by that and I would ask that with all due respect, Mr. Kucharczyk has representations to be made. We should not only hear them, but they should be very specific to the bill. I think for his benefit he should realize that he will command our attention a little more diligently if he refers specifically to the bill and does not make remarks which are disparaging of members, refer to other government expenditures or other government programs. If we can address the remarks strictly to the bill, we won't have a problem of lack of attention and Mr. Kucharczyk will be able to confine his remarks into a much shorter period of time. Mr. Chairman, I do want to hear those remarks, but I'd like them to be very relevant.

MR. CHAIRMAN: Thank you, Mr. Anstett. Mr. Kucharczyk, could you please confine your comments a little closer to the bill and not refer to the members present?

MR. W. KUCHARCZYK: Mr. Chairman, thank you.
The Consolidated Fund, as far as I'm concerned . . .

MR. CHAIRMAN: Mr. Kucharczyk. Order please. Mr. Uskiw. Maybe we should ban headphones in committee too.

Mr. Kucharczyk.

MR. W. KUCHARCZYK: Thank you, Sir.

The Consolidated Fund, as far as I'm concerned, is the fund that could be most justly distributed among the people of the Province of Manitoba. If you will give the privilege and I am not throwing any bad light on any group whatsoever, they don't have that much experience right off the bat; secondly, they're not that close to the Executive Council and I have faith in the Executive Council. I might disagree violently with certain policies, but as far as integrity is concerned, Sir, I'm with the Executive Council of the Government of the Day.

For that reason, I urge you again, strike out the whole 6(2). You don't need me to read it. It's printed, eh? So there'd be no specified use for cultural or

recreational purposes. That's an insult, Mr. Chairman. The Executive Council knows what people need through their demands.

MR. CHAIRMAN: Order please.

MR. W. KUCHARCZYK: So why not give them the tools that they could do the job? And on that note, Sir, I thank you for your patience and I here wish all of you good health, Sir, to fulfill your duties you took upon yourself. Thank you.

MR. CHAIRMAN: Are there any questions for Mr. Kucharczyk?

Mr. Filmon.

MR. G. FILMON: Thank you, Mr. Chairman. I wonder if Mr. Kucharczyk interprets Section 6(3) as giving the government that authority to be able to put the revenues into the Consolidated Fund and treat them as general revenue?

MR. CHAIRMAN: Mr. Kucharczyk.

MR. W. KUCHARCZYK: By all means, because those are the monies that the government will have to work with and here I will refer, to justify the point, with my own experience.

When Mr. Schreyer said the administration saw fit to take one-third of my gross income from oil and justifying that we made enough money till then, I said I guess he knows what he's talking about and much bigger people in the petroleum industry agreed with Mr. Schreyer. So again, I saw the program somewhere implemented with which I agree and so I say, I have more faith in a government administering the fund than a specified group that will look after administration of the money or their money to be held in trust.

MR. CHAIRMAN: Are there any further questions? Seeing none, I would like to thank you, Mr. Kucharczyk for your presentation.

MR. W. KUCHARCZYK: Thank you, Sir, ladies and gentlemen.

MR. CHAIRMAN: Are there any other members of the public present who would like to make a brief on Bill 22? Seeing none, Bill 26.

BILL NO. 26 - THE HUMAN RIGHTS ACT

MR. CHAIRMAN: Ms Tanis Cohen. There is a printed brief which is being circulated to members of the committee. You may proceed.

MS T. COHEN: Mr. Chairman and members of the committee, my name is Tanis Cohen and I'm speaking on behalf of the Manitoba Association for Rights and Liberties.

The Manitoba Association for Rights and Liberties welcomes the amendments to The Human Rights Act presented in Bill 26, which Attorney-General Penner has stated are interim measures. These amendments are in keeping with some of the recommendations made in the MARL Citizens Task Force Report on The

Human Rights Act, which was completed in 1979.

We have several specific comments to make regarding these amendments; firstly, Section 1(a), the definition of "blind person." We suggest that the definition of "blind person" in 1(a) should be widened, since not every blind person is registered with the CNIB or is in receipt of an allowance or pension for blindness. There are people with varying degrees of blindness which may not qualify for CNIB registration or blind persons allowance. These people may nevertheless encounter difficulties in their daily living for which they would require the protection for blind persons now being added to The Human Rights Act. We, therefore, suggest that the definition of blindness be broadened to include any person whose vision is significantly impaired.

Moving onto Section 3(3), with one exception, MARL agrees with the definition in Subsection 3(3) of Bill 26. However, we believe that the term "school district" is too narrow and suggest that it could be expanded to read as follows: "School division, school district, post secondary educational institution or any other educational facility financed in whole or in part by the Government of Manitoba."

We recognize that the words "board or commission" might be considered to include universities and other post secondary institutions and the term "any benefit" to include community colleges, but we believe that it would be safer to define these areas more precisely. Making the definitions more specific will also obviate some of the concerns raised in our reference to Subsection 7.1(2), which follow.

MARL notes with approval that in the proposed amendments the word "customarily" has been deleted from all sections of the present Human Rights Act, as recommended in the MARL Task Force Report. May we assume that the inclusion of "customarily" in Subsection 7.1(2) of Bill 26 is an oversight? If that is not the case, we should like to draw attention to the fact that the word "customarily" may be narrowly interpreted.

Indeed, it was so interpreted in a Saskatchewan case where the judge ruled that a hospital was not customarily available to the public. Moreover, a Nova Scotia court, and that's Beattie and governors of Acadia University, has ruled that facilities available at a university within that province are not available to the public, because they are limited to students who have to pay fees and meet other entrance requirements. In other words, the court's ruling allowed discrimination in the province's universities.

We believe that the definition in Section 3(3) and the changes we suggest to the section will remove some of the problems posed by these two interpretations of the word "customarily." We, therefore, recommend that the word "customarily" be deleted from Subsection 7.1(2) of Bill 26.

Finally, Section 23, which amends Section 13 on the function of the Commission. We note with satisfaction that Section 13(a) and (c) of The Human Rights Act have been expanded in this amendment to include other grounds and those are ethnic or national origin, family status, or source of income.

Several categories have been dropped, however, and one of these is "creed." We believe that "creed" should be restored. It has probably been assumed that

"creed" is included in religion. We would point out, however, that religion is normally taken to mean a recognized religious group or denomination. It should be noted in particular that the original spiritual beliefs practised by the Native Indians have never been formally recognized. In fact, we understand that there is a report circulating among probation officers in Western Canada which refers to the resurgence of traditional spiritual beliefs among Native Indians as "paganism." We would, therefore, suggest the term "creed" be reintroduced into Section 23 of Bill 26 as it amends Section 13(a) and (c).

Apart from these few concerns, the amendments which offer protection to the mentally handicapped and the extension of the right of a blind person to be accompanied by a dog guide will improve the protection offered in The Human Rights Act for disabled and handicapped persons.

We look forward to the opportunity of some consultation in regard to future amendments of The Human Rights Act. We urge in particular the need to consult with representative groups in the Native community to ensure that The Manitoba Human Rights Act will offer better protection for Native persons who suffer discrimination. The Commission should be enabled to offer more meaningful service to the members of the Native community, who experience infringements of their human rights resulting from discrimination in the everyday pursuit of housing, employment and services to which all citizens are equally entitled without discrimination.

It would also be important to consult with members of other ethnic minorities who are currently faced with an increased incidence of various kinds of discrimination.

MR. CHAIRMAN: Thank you, Ms Cohen. Are there any questions? Mr. Penner.

HON. R. PENNER: Just a couple of comments if I may, Mr. Chairman. I'd like to thank Ms Cohen and MARL for their brief. I've had an opportunity to see this brief earlier today, when a copy was delivered to me at committee, and consider the representations.

The difficulty of defining "blindness" any further than it is presently defined in The Blind Persons Act and now by incorporation in The Human Rights Act is, indeed, very great and the proposal, "any person whose vision is significantly impaired," perhaps may be too broad; but the proposal that is made with respect to 3(3) of Bill 26 having to do with school divisions, school districts, etc., is a very good one and I will be bringing in an amendment to deal with the point that was raised and I'm glad that it has been identified.

Similarly, the point that has been made with respect to "customarily," I think was exceptionally good and I'm glad that this has been pointed out. I will be bringing in an amendment to deal with "customarily," which ought not to have been there, and there will be one or two other minor amendments. I want to thank MARL for its brief and for being helpful in the formulation of this bill.

MR. CHAIRMAN: Ms Cohen.

MS T. COHEN: Yes, if I may make a comment about blindness. Apparently, the CNIB executive has informed us that there is a generally accepted definition of blindness that is utilized by both the CNIB and by the government in granting concessions such as income tax concessions and it's a fairly technical definition that's available if you wish. It's established by medical practitioners.

HON. R. PENNER: Thank you for bringing that to our attention. We would like to receive it. As you know, there is the possibility of a major revision of the Act later on and, certainly, we would be prepared to look at anything which might be legally effective of the kind that you're proposing with respect to the definition of blindness.

MR. CHAIRMAN: Are there any other questions? Seeing none, thank you, Ms Cohen.

Before we proceed to Bill 36, could I ask if there's anyone present who wants to make a presentation on Bill 37?

No, seeing none. Bill 36, Mr. Daniel Lemke. Mr. Lemke is not present.

We will go back then to the list of people who were not present this afternoon for Bill 15.

Ms Valerie Gilroy. Not present.

Mrs. Charlene Murphy. Not present.

BILL NO. 15 - AN ACT TO AMEND THE MARITAL PROPERTY ACT

MR. CHAIRMAN: Mr. Murray Smith. Proceed Mr. Smith.

MR. M. SMITH: There are copies of my brief, Mr. Chairperson.

Mr. Chairperson, members of the committee, my name is Murray Smith and I am appearing on my own behalf as an individual.

Let me state at the outset that I fully support the inclusion of pension rights, annuity rights and life insurance rights in shareable family assets. I would also include most other investments, such as stocks and bonds, even if they are not explicitly associated with the uses named in The Marital Property Act. In my opinion, the onus should be on the registered owner to share that the investment is of a commercial nature; otherwise, a Canada Savings Bond should be treated the same as cash or money in a domestic bank account. I have never understood in all our discussions of the marital property legislation why my pay cheque is a family asset but my savings may not be. In particular, Registered Retirement Savings Plans and Deferred Profit Sharing Plans should be shareable family assets because they are usually alternatives to a pension plan or supplements to one.

Mr. Chairperson, I am relying on the fact that these two types of plans are not identified in Bill 15. For instance, under Subsection 1(2) or 8.1(2) and it seems to me that there would be benefit in having them identified in the same way as life insurance policies, accident policies, annuities and pensions.

On pensions specifically, it is essential to see pension rights as deferred wages. This has not always been the view of pensions but I believe it is the con-

temporary view. If wages paid immediately are shared, so should pensions be shared. It is also essential to see pensions as a major asset for many couples; we are not discussing the living-room sofa or the TV. In listing their assets, people may think first of the house, if it is owned, but in many instances the pension rights have comparable value. In my own case, as one with a modest home and a reasonable pension plan, the present value of the pension already equals the value of the family home and it is growing far more rapidly. To deny that value or leave it out of the accounting is to negate the whole concept of marriage as a partnership of economic equals.

So despite the opinion of the learned judge, there is no question pension rights have value; just ask anyone who is losing them because of a change of employer. I think of all those whose rights are lost or reduced because we do not require adequate vesting and/or portability. Determining that value may sometimes be difficult, but far harder evaluations are achieved every day in the business world. For the money-purchase plans common in the private sector, contributions to date from both sides, plus the earnings on them, provide a reasonable basis. For formula plans it might be practical to double the member's contributions and add the investment earnings. Alternatively, we could use the present value of the anticipated formula pension. Perhaps which is appropriate in these cases may depend on how near the contributor is to retirement to collecting a pension. What I hope is that simple formulas may develop for use in the courts rather than having each case argued afresh with actuaries called in on both sides.

Dealing with pensions under The Marital Property Act reminds us that pension reform is an urgent necessity and that changes in The Pension Benefits Act should confirm and complement those presently before the committee. In addition to badly needed improvements in coverage, vesting, portability and inflation protection, there must be forceful provision for survivor's benefits. If both spouses have an interest in pension rights before the pension becomes payable, as is made clear by Bill 15, they should surely both have an interest in those rights during pension pay out. It is just as ridiculous that a married couple's pensions cease with the death of the pensioner as that the family home disappear in a puff of smoke on the death of one spouse.

In this respect, I urge you to consider the pattern Manitoba teachers are currently seeking within their pension plan. By that expression, I mean that this is policy of the Manitoba Teachers Society but not yet implemented. This plan would provide for married teachers a form of pay out which reduces by half on the death of either spouse - notice "either spouse." This reflects the concept that pension rights are a joint asset and treats the two spouses equally. This normal form could be changed by mutual agreement of the partners to any other standard form, for instance, one that paid a higher benefit to the surviving spouse or one that ceased upon the death of the pensioner, whatever suited their circumstances better, with an actuarial adjustment based on unisex tables. Should the Legislature complement Bill 15 by incorporating this thinking into The Pension Benefits Act, I hope you will set the reduction on first death at one-third rather

than one-half; this would better meet the needs of most surviving spouses. The only argument against it is that it reduces the initial pension by somewhat more than having a 50-percent survivor benefit clause.

Clearly, Mr. Chairperson, the present bill has been introduced to remedy a specific weakness in the Act. May I conclude, however, by expressing my satisfaction at the Attorney-General's correspondence that more extensive reforms will be presented next Session. In particular, changes should be made to reduce judicial discretion in splitting commercial assets, to remove conduct once and for all as a factor in maintenance proceedings and in property proceedings, and above all to establish the sharing of assets is a pattern within marriage as well as upon breakdown, that the sharing of assets is a positive, healthy and constructive component of an ongoing relationship and not merely an accounting procedure to be followed if the partnership ends. Thank you.

MR. CHAIRMAN: Are there any further questions for Mr. Smith?

Mr. Plozman.

MR. J. PLOZMAN: Yes, Mr. Chairman, I find the reference to the teachers pension plan as a very positive development in equality in pension benefits. I think it certainly is a move in the right direction, but I'd just like to ask Mr. Smith whether he is proposing in the third paragraph of his brief that pay out in those circumstances when a separation occurred and a settlement was made that the pension would be evaluated at that time and split in two or payments paid out at that time, half the value of that pension, regardless of the fact that the one spouse may never collect that if he doesn't live to a pensionable age, yet he would have to, or she would have to, pay out at the time of the settlement. Is that the way you would suggest that taking place or would you like to see that paid out when the spouse reaches a pensionable age?

MR. M. SMITH: This is a point that gives a lot of difficulty in my own thinking. I think that, ideally, I would like to follow the pattern adopted by the Canada Pension Plan, that is, actually splitting the rights to a future income. But I think that with the 15,000 private pension plans there are in operation in this country, which have probably 14,999 different clauses in them, that it would be extremely difficult to separate the future pay outs at the time of marriage breakdown, so I'm reconciled to doing it on the basis of accounting. I would see, for instance, that in many cases the present value of the pension would be split. The present value of the equity in the marital home would be split and these would enter into a trade-off so that one person might remain with an entire pension entitlement and the other partner might remain with the entire equity in the home. So I believe in doing it in terms of present value rather than future pay out.

MR. J. PLOZMAN: Mr. Chairman, you've suggested, Mr. Smith, several alternatives for that in that paragraph as well. Have you any suggestions as to a priority to arrive at a basis for splitting pension benefits at the time of separation?

MR. M. SMITH: I think the two that I would choose would vary with the two basic types of plan. With the money-purchase plan I think one can refer to the contributions from both sides plus the earnings upon them. In the case of a formula pension there may be no contribution from the other side at the time of service and contribution by the participant, that contribution coming only at the time that the pension is received. For those cases, as for instance the Civil Service Superannuation Plan in Manitoba, you would have to do it on the basis of the present value of the anticipated future annuity. I believe that's perfectly practical.

MR. CHAIRMAN: Are there any other questions? Seeing none, thank you, Mr. Smith.

MR. M. SMITH: Thank you.

MR. CHAIRMAN: Mr. Sam Malamud.

MR. S. MALAMUD: Mr. Chairman, honourable members, I am here this evening presenting what essentially are the resolutions of Family Law Subsection of the Canadian Bar Association in Manitoba.

We've considered Bill 15 and applaud the Attorney-General for its introduction into the House. Certainly, when the initial Marital Property Act came out, we felt that it was a long time coming and that at least it brought some clarity and definition into the realm of family law. Regretfully, where you attempt to provide a remedy, you also provide additional questions which our Court of Appeal ruled on recently in the Isbister decision which essentially this bill would hope to remedy. For those members not familiar with the Isbister decision, it essentially said that a pension can't be valued, therefore has no value and is not divisible.

That, to our way of thinking, runs contrary to the fundamental basis of The Marital Property Act which says that there should be an equal sharing of family and commercial assets if the marriage breaks down and it would appear to be very straightforward language, defining a commercial asset as a pension-scheme plan, superannuation-scheme plan or the like. Now one can understand why the court had done it under the circumstances, looking at the existing legislation and the problem of the definition of fair market value.

I am here primarily to speak to only one section of the bill and that's to Section 5 of the bill and Section 4 of the bill which make reference to amendments to 14(3) and to Section 8.

Firstly, it's our feeling the concerns to division and fairness can be dealt with by a simple amendment to the wording of the proposed Section 14(3) by deleting on the 3rd line from the word "determined" and substituting in its place the following - the entire section would be read as follows: "Where an asset is by its nature not a marketable item, Subsection (2) does not apply and the value of the asset for the purposes of Subsection (1) shall be determined on the basis of the cost of acquiring a similar or equivalent asset or on such other basis or by such other means as a court deems appropriate for assets of that nature."

Now to put this into perspective as to what was

originally done in the *Isbister* decision, when the matter proceeded at trial, actuarial evidence was led for the court to, at least, appreciate what the present value of the pension scheme was to the individual recipient who at that point was the owner of the asset. Parenthetically, much was expected by the legal profession and perhaps by the judiciary of that type of presentation because that is how we assume that pension valuations would occur. I can tell you with candour that the Family Law Subsection spent many meetings and many hours discussing how cases were to be presented; we had consultation with actuaries. Our group was lectured to by actuaries as to the rationale of valuations that had been part of the annual Pitblado lectures but ultimately, when the *Isbister* decision came about, it appeared that all of that was for naught. The preliminary comment that I have and that's the change to the wording essentially means that where an asset isn't divisible, where an asset isn't valuable, that's valuable in a very technical sense, looking at it today and saying it's worth X number of dollars, the court took the conclusion that if you can't make that simple determination today, where it would be unfair because of contingencies and that asset shouldn't be valued or has no value and therefore isn't subject to division or consideration by the court, that does a particular disservice to the concept of the Act which provides for equal sharing.

The amendment does what was essentially argued in the trial level of the *Isbister* decision which is, for example, if someone is a provincial civil servant and contributing to the Superannuation Fund, at retirement age they receive a specific pension and it has certain contingencies and exigencies that occur which may result in the person, for example, not having sufficient years of service and leaving the Civil Service, drawing out their pension, not surviving to collect pension. There are a whole number of variables; those can be actuarially calculated. At least, actuaries say they can and the court accepted it at the trial level and said that those contingencies could be valued and therefore to provide a benefit today, or the cost of a benefit today, it would provide something similar to what the Superannuation Fund would provide. It would cost X number of dollars. It's like buying the cost of an annuity now that would yield you income on retirement in the same manner as a superannuation fund would in that particular example. This variation of the definition gives the court some direction because that's basically the problem we've had.

Whenever something is unclear or that discretion is available to the court, the courts can often come up with decisions which were never anticipated when the legislation was drafted. This provides the court with a mechanism for valuations of pensions, annuities, life insurance policies and the like; it's just the present cost of a future benefit. That is the first recommendation we have to the legislation. It gives something for the judge to work with, but we've also come up with something that we would hope - these are motions voted on by the subsection. The particular meeting when these motions were voted on, there were at least 21 members in attendance when these were considered. These were lawyers who practise in the area of family law.

Now, the second recommendation is a very simplis-

tic way of looking at valuations of pensions or annuities. In our opinion it happens to do actual justice to the individuals involved and it's merely a formula, I'll read it to you and then explain what it does. On the one side of the formula you take the contributions to the fund that are made during cohabitation, that's at the top side; the bottom side you put the total contributions that are required for the pension scheme. You multiply that by half, which automatically considers a pension to be equally divided; then you multiply that times the pay-out figure, whether it be a lump sum or a periodic annuity type payment and you make that a judgment. The mechanism is in the Act, nothing else has to be changed, the formula has to be inserted. But under Section 16 the court can order payment of any division by a lump sum or by instalments and what you do is you make that the obligation of the recipient spouse of the pension. You make that a judgment against him, which is payable by instalment commencing on such and such a date or whatever, to pay to his wife or if it happens to be a man receiving the pension, that's generally the case, that is enforceable very simply through the court. It becomes a court order. Mechanisms in court at this particular time - there are mechanisms under The Garnishment Act to enforce maintenance by a one-shot garnishing order. It wouldn't be a very difficult amendment to that legislation to do it, although it's not even necessary, because you can have this made a judgment by instalment. If someone doesn't pay a judgment by instalment, there are steps that can be taken.

Now, this renders absolute equity in the pension plan by yielding the following results: If a pensioner retains in the ordinary course of events, retires at the age of 65 and starts receiving pension, the wife - I'm assuming an ordinary type situation - will receive the monthly sum when the pensioner is actually paid. There is a diversion from the pensioner when he receives it. Secondly, if the pensioner quits or is fired or receives a lesser monthly sum, then the fraction still exists, so it still continues to do the same justice between the parties. Thirdly, if the pensioner quits and receives a lump sum settlement at age 65 or earlier, again, the fraction or the formula is available to divide the pension at that point. If parties live together to pension age, then there's no real fraction, it's just you multiply it, make it a judgment by instalments and let the court enforce it, so that mechanism is there. The combination of the two sort of do justice to what the other submissions were mentioning to this committee by providing to the court a tool, in essence, to render justice between the parties. The previous submission said that, for example, someone could keep the equity in the marital home, someone could keep the pension scheme. The amendment that we suggested permits the court to do that. They value one asset and offset it against another and that may be the desire of the individuals at the time of the application to court. That's for the particular case and the particular counsel and judge to consider and advocate at that point, but it gives the judge and it gives the parties the right to ask for the relief that they want at the time that the matter is proceeding in court.

Conversely, if you can't do equity by moving around assets or it does undue hardship to move around assets, then the court has another tool that is available

to it which is merely to impose the formula which could be incorporated into the Act quite simply into its order.

It says that there shall be a division, the pension is valued as follows: The court looks at what the contributions are during the term of the marriage, looks at the bottom line and says that's to be determined when the pension is paid out, multiplies it by the two other fractions, and you have a finite figure that is available to the parties on pension diversion at any moment after the judge pronounces his order. It leads to certainty in dealing with pensions and it also provides to a degree some direction to the profession, because when lawyers generally try to resolve matters and resolve them expediently at least, and at least expense to the client, they look for easy tools to come up with fairness. When you're dividing assets, you either call in an accountant or you hope that there is a simple formula.

A formula such as this or the valuation as proposed such as this, a valuation of a similar plan, provides guidelines for settlements perhaps would alleviate the necessity of litigating certain points other than perhaps as to what figures plunk into the formula, but the formula is simple and so is the concept of valuation of an asset of similar nature. They provide the court something to work with and you won't end up with the absurdity of a court saying we know it's an asset, we know it has a future value, but because of the contingencies involved we're not going to deal with it. These two suggestions in our opinion would further promote the intent of the legislation of doing equality to parties when the time comes for dividing assets in the event of a marriage breakdown. Thank you.

MR. CHAIRMAN: Before we get into questions, Mr. Malamud, could you file a copy of your presentation with the Clerk?

MR. S. MALAMUD: There are some handwritten notes but actually the only ones I have.

MR. CHAIRMAN: Well, she'll make a photocopy. Are there any questions for Mr. Malamud?
Mr. Penner.

HON. R. PENNER: I just wanted to thank Mr. Malamud for his brief on behalf of the Family Law Subsection of the Manitoba Branch of the Canadian Bar and assure him that since he's taking the trouble to hand in his notes - he's tearing off the grocery list first - that we certainly will have a close look at the amendments, particularly the first one, and it may be possible to include it the proposed amendments to The Marital Property Act. But we want to have a close look at it first.

MR. CHAIRMAN: Mr. Corrin.

MR. B. CORRIN: Thank you, Mr. Chairperson. Mr. Malamud, I was somewhat intrigued by your second suggestion, the idea that there be included in Section 14(3) of The Marital Property Act, or some adjunct section, a formula that would give the court a legislated guideline for determining a judgment which could be imposed against the recipient spouse when

the benefits of a pension were received. Are you aware as to whether or not any provinces currently have adopted such a formula in similar marital property legislation?

MR. S. MALAMUD: To the best of my knowledge, a similar formula isn't included in any of the particular legislation. However, we didn't come up with this out of the blue. This happens to be what the British Columbia courts have recently decided in valuations of pension. They have peculiar ways of dealing with things there that I don't necessarily agree with, but they've come up with a formula application and I don't have the cases with me, so I'd hate to misquote them. Suffice it to say, there were three recent ones within the last six months and what the court did is come up with a formula which is in essence what I've indicated to this committee, plug the figures in and render judgment on the formula. That's how the courts have been deciding it in British Columbia, although the legislation from province to province does very drastically. There's more discretion in other provinces, but this has been followed elsewhere and has worked appropriately elsewhere; although it isn't included in the statute, but could easily be included.

MR. B. CORRIN: Thank you very much.

MR. CHAIRMAN: Mr. Santos.

MR. C. SANTOS: Thank you, Mr. Chairman. My question is for Mr. Malamud.

Do you think it is actuarially or mathematically possible through the use of the discounting process of valuation to arrive at the present discounted value of some future inchoate or imperfect pension right, which has yet to mature into some fixed future value?

MR. S. MALAMUD: That was exactly what the Court of Appeal dealt with and they said that the law deals with tangible things. Pension rights are intangibles, but the law has in other areas evolved manners to deal with it.

Now, you ask if I agree if it can actuarially be done. I can't say that I know. I know that actuaries have told me that they are capable of making those calculations. That's how the pay-in figures into funds are calculated by them. That's how they consider when they prepare annuity contracts, when they prepare pension schemes, actuaries sit down and do it and they are capable or trained, or at least supposedly professionals, who are able to make those calculations; so I would imagine if they say they can be done - and these people have been for many many years acknowledged to be experts in that area - I understand it can be done.

The other point that I was trying to make at the same time is that where there has been uncertainty in the law with intangibles, the courts have always come up with methods of dealing with it. I remember in estate law, there's the concept of a trust having to vest within - it's the rule against perpetuities. It ends up with certain absurdities, but it's a rule that has existed for some four or five hundred years. Intangibles have always been dealt with in the law by essentially formulas. You consider if that particular one has a formula

attached to it and that has been our law all through the British system of justice, so all of these things are possible and it would be a great step if rather than hoping that a judge or a number of judges would arrive at the same conclusion and then follow each other's decision, that it be included in the legislation giving direction to the court and certainty to looking at ways of valuing pensions.

MR. CHAIRMAN: Are there any other questions? Seeing none, I would like to thank you, Mr. Malamud, for your presentation.

Mr. K. G. Houston.

MR. K. HOUSTON: Mr. Chairman, I am a practising lawyer and I do a fair amount of marital work and I have for a long time. I've had the privilege of acting on both sides of unhappy marriages and sometimes the unhappiness of having to perform that function.

There are 1,200 members, as I recall, of the Manitoba Bar Association. I say that because I wish to disassociate myself emphatically with the comments that have been made here on behalf of the Family Law Subsection of the Manitoba Bar Association. They have 21 members; that's about 2 percent of the practising Bar and they do seem to have a certain community of interest and philosophy. So far as I know, the resolutions that you were presented with were never presented to my association for its endorsement. So what you have is the opinion of 21 people and that's all you have; however, it is characterized. It has been suggested that the adoption of this formula that Mr. Malamud has preferred will add certainty. It will add certainty to the only other two I know, death and taxes, and they are equally oppressive.

About six years ago, on the basis of all the best actuarial evidence that was available, the Supreme Court of Canada in determining a damage award predicted with confidence that inflation in Canada would remain at 6 percent and that was the figure that was used. It's not possible; you can't do it.

I heard some of the comments that were made this morning. I could not understand in any way the objection made by Ms Oliver to the use of the word "court" in the proposed new Subsection 14(3). If the court is not to make the decision, who is? Is it being suggested that the evidence of some crystal ball gazer should be accepted by the court without criticism? To take court out of there is to misunderstand, as far as I'm concerned, the entire process.

Isbister is now being flogged around like Murdoch used to be and is being perpetually misstated. The problem in Isbister, which was a decision of the Manitoba Court of Appeal, had nothing to do with the classification of the asset. It did not depend upon whether you classified their pension as a commercial asset or as a family asset. It had simple specific regard for another one of your statutes that said this right was not assignable and because it was not assignable by provincial law, the judges of the Court of Appeal said it has no value because it can't be sold.

You had another definition within The Marital Property Act itself, which I do not have in front of me. It says that the value of the property for the purpose of accounting is that what you can get on a good market with a willing buyer and a willing seller, and the court

says this is not an asset you can dispose of and, therefore, by definition under your own words, it had no value.

Now, this House brought this thing in four years ago in the happy anticipation that you are going to solve all the problems of division of assets. The result of this bill is that the cost of a divorce is tripled, the courthouse across the street is plugged with marital proceedings and far from simplifying things, there has been fulfilled my prophecy that you have caused more mischief than you have cured.

I'm very apprehensive about this continuing notion that the judges' discretion should be further limited. You cannot make a single rule. It is beyond your comprehension, beyond the wisest men, to make a single rule that is going to apply in every circumstance. I'm also dismayed that there continues to be this notion that the judges are somehow contriving to do the ladies out - or the men, as the case may be - of their fair entitlement. I must tell you in my experience, acting on both sides, that does simply not happen and there is no basis whatsoever for imputing this improper motive to the judges of our courts.

By redefining a pension as a family asset, you are reducing the judge to the very limited discretion which is provided for in disposing of family assets and it is my experience, in terms of what we ordinarily understand as family assets, those things which are required for the immediate shelter and well-being of the family, are arbitrarily cut down the middle to the extent they can be valued and it doesn't matter what you say about conduct or anything else. Those things are cut right down the middle and it is only in the area of "commercial assets" that the judges are exercising any discretion whatsoever.

I have a man now who is living on his pension; that's his income. He is recently separated. He is entering into divorce proceedings. He's now in the midst of them. By your definition, if the court were to continue to exercise its discretion in terms of family assets as it has in the past, that man would be required to capitalize his entire future income and give half or credit half however, by instalments or otherwise, to the wife and that may put her in a better income position than him; but The Marital Property Act would be before the court alone because The Maintenance Act, The Companion Act, would not be part of it. By defining this, you make absolutely no reference to the fact that this may distort the respective maintenance positions, the income, the livelihood, what these people buy their bread with from a day-to-day basis.

It's nice to hear that teachers have pensions and you can come up with any formula you want and make sure that they'll be protected for life, but most people are not in that position. Most people don't have those kinds of pensions. Most people have to rely on pensions that are not publicly funded. Most people have to rely on pensions that depend upon the fund itself in order to pay themselves out.

If you adopt this proposal and if you accept the suggestion that has been made so forcefully here today, that there be immediate capitalization, what you are, in effect, doing is requiring the pension holder - whoever that may be - to warrant the solvency of that fund.

The Canada Pension Act has been lauded here and

this is a model because it allows for division of the benefits between the two spouses. I think that was a very shrewd move, because if you had to call actuarial evidence on the Canada Pension Plan, it would be bankrupt. If the Canada Pension Plan was a private scheme and the Federal Government were the trustees, they'd be subject to suit for having loaned all that money out at improvident rates. If the provinces who borrowed the money were called upon to pay it, they couldn't today.

So it's a very nice manoeuvre, we say. Well, you can get half. Half of what? Half of nothing. Unless you're prepared to warrant the solvency of those funds, I don't think you should gratuitously pass that obligation onto somebody else in pretended service to a particular constituency in this province.

I am more concerned, insofar as the Isbister case is concerned, with the other aspect of that case that nobody has touched upon. The Court of Appeal held in the same case that a jointly-held property was already shared property within the meaning of the parent Act. Therefore, it was not subject to this regime at all. There's nothing in this Act or in these amendments to redirect the court in that way; so you can come into the absurd position where the principle asset, which is a family home and normally held in joint tenancies - most people, most husbands and wives buy their homes that way - is not covered by this Act. I think you should put very special attention to that.

It's my notion in law that a joint tenancy is not an equal sharing. If Mr. Penner and I have property - I won't use Mr. Penner because he's about the same age - if a much younger man and I own property in joint tenancy, he's got a better expectancy because I'll probably die before he does, but according to the decision of the Manitoba Court of Appeal, this is already shared equally and, therefore, not subject to the Act.

If I look at the other things that you want to reclassify as family assets - rights under a life insurance policy - now, as I understand it, you've got to die to get rights under such a policy and so the application of this statute would penalize the man who lived longer. It would be in his interest to die sooner. I don't understand the logic of that.

Rights under an accident and sickness insurance policy - you only get those if there's something wrong with you, if you're physically ill or sick. Is this what you say should be a shared asset? This is a commercial asset that should be split right down the middle without regard to any other income that either party may have? I think that is irrational and improper. It seems to me somewhat illogical that people may exclude an inherited bounty from sharing with another spouse, as they may, but then put their hand in the spouse's pocket to take half of a disability pension that they might be receiving. Would this apply, for example, to somebody given an award by the Workmen's Compensation Board? Could either spouse claim half of that? Then, having the money and say, so long, Charlie, Suzy or whatever it is, I'm taking the money and I'm gone. They could, if you passed this the way it stands.

Lastly, the pension which, as I understand it, is the prime consideration. My suggestion is that obviously, accepting the philosophy, the whole notion of the

marital property regime, if there have been contributions to anything whatsoever during the marriage and there is to be a sharing of that, there should be an equal sharing, but the payment out should not arise until the event because no judge can tell you today what that thing is going to be worth in five years. You people can't tell me what inflation is going to be for the next five years and no auditor can tell a judge with any confidence that this is what it's going to be.

I say the sharing should be whatever it is. If it goes up, it goes up; if it goes down, it goes down; but there will be a sharing of what is actually realized. For that reason, I urgently urge you to rephrase these amendments so that it be taken into account but that it be a contingent liability, as unhappy as that may be for anybody to have to carry on life's balance sheet, but it's a hell of a lot worse to have to go to the bank and borrow money to buy out half the pension you may never live to receive.

The retroactivity of this bill is another matter which gives me anxious concern. When this law was first passed, it was made applicable to anybody who separated on or after May 2, 1977. You immediately created two classes of marriages in this province, those that had survived to May 1, 1977 and those that didn't, because that one day made an immense amount of difference in the entitlement of the parties. It is often urged in the courts to say well, look, if these people had lived together another month, she would have been able to claim half the assets. The court says well, the Act says it doesn't apply. People weren't given the option at that time whether they would opt into this regime or not and they're still not given that option, just that it applies, unless you can talk to the other person or persuade them in the blush of your romance to sign a commercial contract where you say the Act will not apply to us.

But under Section 7 in this thing, you say this Act is going to apply on these amendments on or after March 12, 1982, which I assume was the date of its first introduction, to any case proceeding before the court in which a final judgement had not been given. There are literally hundreds of cases going on across the street. Dealings have been done, positions have been taken in those proceedings, which are not yet completed, on the understanding that the law was what it used to be or what it still is and not what you are now suggesting. I say it's grossly unfair to change the law in the middle of the ball game, as it were. If you want to have these amendments, have them, but do not have them apply to proceedings which are already pending.

That's my submission.

MR. CHAIRMAN: Are there any questions for Mr. Houston?

HON. R. PENNER: I'd just like to thank Mr. Houston for his presentation, which as usual is eloquent, and particularly bear in mind the point that he made with respect to 14(3), which is somewhat troublesome. This is not to underrate the importance of the rest of his contribution.

MR. CHAIRMAN: Any other questions? Seeing none, thank you, Mr. Houston, for your presentation.

That completes my list of people who wish to make

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presentations. Are there any other people present?
Mr. Malamud.

MR. S. MALAMUD: I'm wondering if I could just respond because Mr. Houston has disassociated himself with our group.

MR. CHAIRMAN: Mr. Penner.

HON. R. PENNER: On a point of order, I think that I can understand Mr. Malamud's anxiety. He may find another forum in which to do it, but I really do believe that it would create a precedent in which you would have a debate going on. It was never intended that presentations take the form of a debate.

MR. CHAIRMAN: I'm sorry, Mr. Malamud.
Committee rise.