LEGISLATIVE ASSEMBLY OF MANITOBA

THE STANDING COMMITTEE ON

STATUTORY REGULATIONS AND ORDERS

Tuesday, 14 July, 1987

TIME — 8:00 p.m.

LOCATION — Winnipeg, Manitoba

CHAIRMAN — Mr. G. Roch (Springfield)

ATTENDANCE — QUORUM - 6

Members of the Committee present:

Hon. Messrs. Cowan, Desjardins, Harper, Hon. Ms. Hemphill, Hon. Mr. Penner, Hon. Mrs. Smith (Osborne), Hon. Mr. Storie

Mr. Mercier, Ms. Mitchelson, Mrs. Oleson and Mr. Roch

APPEARING: Bill 49

Mr. W. G. Burns, Manitoba Real Estate Association

Bill 70

Mr. Art Reimer, Manitoba Teachers' Society

Bill 72

Mr. Harry Peters, President, Manitoba Association for Rights and Liberties

Lee and Agnes St. Hilaire, Victims of Child Abuse Laws

Darlene Hogue, private citizen

Mary Dolman, private citizen

Bill 59

Mr. Tom Cohoe, private citizen

Ms. Shawn Greenberg, Legal Aid Manitoba

Mr. Tony Dalmyn, The Canadian Mental Health Association (Manitoba Division)

Henry Elias, private citizen

Mr. Harry Peters, Manitoba Association for Rights and Liberties (MARL)

Dr. Marilyn McKay, Manitoba Psychiatry Association

Dr. Jay Brolund, Psychological Association of Manitoba

Dr. Jim Brown, Group of General Hospital Heads of Psychiatry

Dr. Werner W. Hunzinger, Grace Hospital, Head of Psychiatry

Ms. Sharon Jorgenson, Association of Occupational Therapists of Manitoba

Ms. Denise Higgs, private citizen

ALSO PRESENT: Messrs. Brown and Orchard

STAFF MEMBERS PRESENT:

Gene Szach, Legislative Counsel Office

Dr. J. Toews, Department of Health

Greg Yost, Legislative Counsel Office

Tom Walters

MATTERS UNDER DISCUSSION:

Bill No. 24 An Act to amend The Corporations Act; Loi modifiant la Loi sur les corporations

Bill No. 35 An Act to amend The Child and Family Services Act; Loi modifiant la Loi sur les services à l'enfant et à la famille

Bill No. 37 An Act to amend The Liquor Control Act; Loi modifiant la Loi sur la réglementation des alcools

Bill No. 38 An Act to amend The Law Society Act; Loi modifiant la Loi sur la Société du Barreau

Bill No. 40 The Human Tissue Act; Loi sur les tissus humains

Bill No. 42 An Act to amend The Construction Industry Wages Act; Loi modifiant la Loi sur les salaires dans l'industrie de la construction

Bill No. 46 The Charter Compliance Statute Amendment Act, 1987; Loi de 1987 modifiant diverses dispositions législatives afin d'assurer le respect de la Charte

Bill No. 48 An Act to repeal Certain Unrepealed and Unconsolidated Public General Statutes and Parts of Statutes (1871-1969); Loi abrogeant certaines lois générales d'intérêt public non abrogées et non codifiées et certaines parties de loi (1871-1969)

Bill No. 49 An Act to amend The Real Estate Brokers Act; Loi modifiant la Loi sur les courtiers en immeubles

Bill No. 59 An Act to amend The Mental Health Act; Loi modifiant la Loi sur la santé mentale

Bill No. 60 An Act to amend The Anatomy Act; Loi modifiant la Loi sur l'Anatomie

Bill No. 62 An Act to amend The Insurance Act; Loi modifiant la Loi sur les assurance

Bill No. 69 The Statute Law Amendment Act (1987); Loi de 1987 modifiant le droit statutaire

Bill No. 70 An Act to amend The Public Schools Act; Loi modifiant la Loi sur les écoles publiques

Bill No. 72 An Act to amend The Child and Family Services Act (2); Loi modifiant la Loi sur les services à l'enfant et à la famille (2)

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CLERK OF COMMITTEES, Ms. S. Clive: May I have your attention, please? The first item of business of the committee meeting this evening is the election of a new chairperson. The floor is open for nominations.

Mr. Cowan.

HON. J. COWAN: Yes, I move the Member for Springfield.

MADAM CLERK: Mr. Roch has been nominated. Are there any further nominations?

Hearing none, Mr. Roch, would you take the Chair, please?

MR. CHAIRMAN: The Minister of Health.

HON. L. DESJARDINS: Mr. Chairman, if it meets with the approval of committee, I think we would be ready to agree to have the presentations first. The Mental Health Act would be the last one to accommodate the Health critic of the Official Opposition.

MR. CHAIRMAN: Is that the wish of the committee? (Agreed)

The Attorney-General.

HON. R. PENNER: Thank you very much.

May I indicate to those who appeared on bills for which the Minister of Consumer and Corporate Affairs is responsible, Insurance and The Corporations Act and so on, that as Acting Minister of Consumer and Corporate Affairs and as former Minister of Consumer and Corporate Affairs, I'm representing Mr. Mackling this evening and will certainly be prepared to listen with interest and, I hope, understanding to any submissions on these bills.

BILL NO. 49 - THE REAL ESTATE BROKERS ACT

MR. CHAIRMAN: First, we will hear the delegations on Bill No. 49, An Act to amend The Real Estate Brokers Act. We have on the list Mr. W. G. Burns of the Manitoba Real Estate Association. Is there anyone else here who wishes to make presentations tonight before I call Mr. Burns?

Okay, Mr. Burns, will you please come forward? Have you written briefs for distribution?

MR. W. BURNS: No, I haven't, Mr. Chairman.

MR. CHAIRMAN: Okay, that's fine.

MR. W. BURNS: Mr. Chairman, it is with some interest that I have watched the nightly newscasts over the past two or three nights, and I can tell you that nothing that I have to say tonight will likely create some of the news that made the late night television programs over the past two or three days.

My name is William Burns and I have the privilege of serving as the president of the Manitoba Real Estate Association for this year. Our association consists of some 2,700 members who are brokers and salespeople, scattered throughout the Province of Manitoba, but mostly concentrated in the City of Winnipeg. Our membership represents 87 percent of the 3,100 practitioners who serve the real estate needs of the people of Manitoba.

The activities of our association are many. The most prominent are the development and administration of the pre-licensing education courses for the entire province; the development and encouragement of post-licensing education for our members; the promotion and maintenance of a standard of business practice and a code of ethics for our members; the advocating and promotion of just and desirable legislation affecting real estate in the Province of Manitoba. It is this last activity, Mr. Chairman, that brings me to the podium this evening.

I would like to make a few comments and suggestions with regard to Bill 49. First of all, let me point out that the Real Estate Brokers Act has been amended on several occasions, and that these amendments have generally had the endorsement of the real estate industry. Representatives of the Manitoba Real Estate Association and/or the Winnipeg Real Estate Board have, on more than one occasion, appeared before this committee to support and comment on amendments being presented at the time.

Unfortunately, we find ourselves unable to support Bill 49, because we disagree with its principal objective which is to require, in the absence of contrary agreement, that all monies held in real estate brokers' trust accounts to bear interest, with such interest being used by the Manitoba Securities Commission for approved worthy undertakings or, in lieu of such undertakings, being paid into the Consolidated Revenue Fund of the Provincial Government on an annual basis.

The current act provides that, unless mutually agreed upon by all parties to a trade or transaction and unless a broker is instructed to do otherwise by the parties to a trade or transaction, all deposits and all other monies held by a broker on behalf of third parties must be placed in a non-interest-bearing trust account or invested in a trustee investment with the proceeds therefrom to be paid in accordance with the agreement of the parties.

At the present time, there is relatively little demand for the parties to a real estate transaction for interest to be paid on their money, held in trust by a real estate broker. Generally speaking, it is only sizable deposits being held for lengthy periods that are placed in interest-bearing accounts or trustee investments. Participants in this normal residential real estate transaction are not demanding interests on their deposits, as the amounts held in trust are relatively small and are being held for short periods of time. This is particularly the fact when the parties learn that the existing statute requires the broker to hold these monies in a non-interest-bearing account. In order to pay interest to the parties, separate accounts would have to be set up with the agreement of all parties as to who would be entitled to the interest on completion of the transaction.

It is our view, Mr. Chairman, that if monies held on deposit are to be placed in interest-bearing accounts with the beneficiary of such interest being the Provincial Government, it will then become incumbent upon the real estate industry to so advise their clients and customers. The corresponding result will undoubtedly be a substantial increase in the number of deposits that will be required to be held in separate interest-bearing trust accounts. The bookkeeping and the administration in setting up and discontinuing separate

accounts for these deposits will be monumental and must be borne by the broker. In addition, each account so opened will diminish the potential revenue accruing to the fund.

We fail to see any rational justification for the introduction of this legislation and view it as another form of hidden tax imposed only on those persons participating in real estate transactions. In the alternative, should the government be adamant on collecting the interest earned in brokers' trust accounts, then we would suggest that these funds not only be used for the general benefit of the public in matters real estate.

Bill No. 49 currently provides that all interest be paid to the Manitoba Securities Commission to be used by the commission to meet the costs of commissioning or undertaking educational programs relating to the real estate industry and the objectives of the act, as such other programs as the commission may authorize. The balance remaining in the account or perhaps the entire amount, should the commission not utilize any funds, is then paid into the Consolidated Revenue Fund on March 31 of each year. Bill No. 49 further allows for the possible creation of an advisory body, authorized to make recommendations to the commission on the disposition of the interest earnings received.

It is our view, Mr. Chairman, that Bill No. 49 does not go far enough in ensuring that the interest earned in brokers' trust accounts will be used for the benefit of the public in matters real estate. We strongly suggest the creation of a real estate foundation, comprised of ministerial appointees, industry representatives and members of the public, which would be charged with the responsibility of disbursing the interest monies earned from trust accounts to a broad range of worthy undertakings in the field of real estate. Such a foundation would ensure that the interest earned on monies on deposit by the public in brokers' trust accounts is generated back to the public in the field of real estate.

Funding could be made available for projects such as public and industry real estate education, urban studies, subsidization of some senior citizens, housing accommodation, low-cost housing developments and whatever other worthy undertakings the foundation deemed appropriate. Such a foundation would be similar in scope and purpose to the Manitoba Law Foundation and the British Columbia and New Brunswick Real Estate Councils. The creation of such a foundation would allow the interest earned on the public's money to flow back to the public in matters real estate, and not merely be absorbed by the Consolidated Revenue Fund of the Province of Manitoba.

Bill No. 49 currently only contemplates the creation of an advisory body with limited authority, which would make recommendations on the use of interest. The creation of a real estate foundation would charge this body with the full responsibility for disbursing funds.

In conclusion, Mr. Chairman, we would reiterate that, from a philosophical point of view, we do not believe that the province has any right to claim interest on monies held in trust by real estate brokers on behalf of their clients. Alternatively, should the government be insistent on claiming this interest, we would recommend the creation of a real estate foundation charged with the responsibility of disbursing accumulated funds to projects of real estate nature.

Mr. Chairman, that concludes my remarks tonight. I would be happy to answer any questions that members of your committee may have.

MR. CHAIRMAN: Thank you, Mr. Burns.

Do the members have any questions?

The Attorney-General.

HON. R. PENNER: Mr. Burns, no doubt of course, and it's clear from your submission, for which many thanks, that you've read the bill. It's my understanding from 26(1.7) that there is in effect a first charge on the money, that is the interest earned on the deposits. That is, after paying in fact the expenses of the commission to meet the costs of commissioning or undertaking educational programs related to the real estate industry, it's only, at least on an interim basis, that thereafter any surplus be paid into Consolidated. Do you read that clause in the same way?

MR. W. BURNS: We read that the money is to be paid to the commission and, if the commission desires, it may use it for those uses as you've enumerated there. But we don't see that there is any direction given to the commission on the use of those monies, and I think that's what we contemplate with the foundation.

HON. R. PENNER: Did you participate in any of the consultative meetings with the Minister?

MR. W. BURNS: Yes, we did meet with the Minister on two occasions.

HON. R. PENNER: It's my understanding from the Minister that he conveyed - and I wonder if that was your understanding, it may not have been - that in a sense this was an interim bill that the commission, once established, would begin to work out the objects of the trust, as it were. Is that your understanding?

MR. W. BURNS: No. My understanding, Mr. Chairman, was, as this act sets up here, the bill sets up, that this advisory committee would be just an advisory committee. If I remembered our conversation accurately with the Hon. Mr. Mackling, that was emphasized on at least two occasions that are indelibly impressed on my mind.

HON. R. PENNER: I simply thank you, Mr. Burns, and leave you with the assurance that it is not the intention of the bill to in fact appropriate that money to consolidate it, but to work with the industry in setting up appropriate objects for the use of the money.

MR. W. BURNS: Thank you, Sir. Those words are music to our ears.

MR. CHAIRMAN: The Member for St. Norbert.

MR. G. MERCIER: Mr. Chairman, to Mr. Burns, following along the questions of the Attorney-General and, I take it, the Attorney-General would be agreeable to deleting that clause for paying into the Consolidated Revenue Fund.

Mr. Burns, the members of the Opposition raised in debate on this bill your first concern, that of having to set up numerous small accounts. The Minister of Consumer Affairs, in concluding debate on Second Reading, indicated that a broker would only have to have one interest-bearing account in which to put all of his deposits. I wonder if that was your understanding or, if that is the case, whether that is satisfactory to meet your personal concern?

MR. W. BURNS: Mr. Chairman, we recognize that this Bill 49 calls for brokers to establish one interest-bearing trust account, and we have no dispute with that. Our contention is that the presence of this legislation which, in effect, calls for the interest to accrue to the benefit of the province as it were, that will create or, first of all, require members of our industry to disclose to the clients and customers that, if the deposit is placed in their trust account, the interest goes to the government or to the Securities Commission, to be precise.

They do have the option of directing the broker to place it in a trust account where the interest is for the benefit of one or the other of the parties to the agreement. Our contention is that this legislation will increase the number of those accounts, causing therefore more work for the broker and less money to accrue to the fund that is to be set up.

MR. G. MERCIER: Where is the interest going now?

MR. W. BURNS: The legislation of The Real Estate Brokers Act calls for the trust funds to be placed in a trust account, non-interest bearing, unless otherwise directed by the parties.

MR. G. MERCIER: So the banks have the use of the money and therefore the interest.

MR. W. BURNS: I suppose you can draw that conclusion.

MR. G. MERCIER: Do you think if you put it to your clients now that interest could either go to the banks or to the government or to themselves, if they made a separate agreement - you know, I'm trying to find out where the distinction is between having the money go to the banks and the money going to the government to set up an educational program for real estate.

MR. W. BURNS: Mr. Chairman, I think it's the considered opinion of the members of our industry that the consuming public is not as concerned that the money rest in the hands of the bank for whatever period of time is involved. Let me emphasize that it is, generally speaking, a very short period of time and frequently for amounts of money in the $1,000 range. The public seems to be less concerned with the fact that the money would go to the benefit of the bank, if that's the point that's to be made, and more concerned with the fact that it is accruing to the coffers of the government.

MR. G. MERCIER: Following along the Attorney-General's comment, would you be supportive and would that meet a lot of your concern if the section related to the balance of the money established by the Securities Commission could be paid to the Consolidated Revenue Fund, if that were deleted?

MR. W. BURNS: If that were deleted, Mr. Chairman, I think our group would be very pleased.

MR. G. MERCIER: Thank you.

MR. CHAIRMAN: Are there any further questions?

There being no further questions, I thank you for your presentation, Mr. Burns.

MR. BURNS: Thank you, Sir.

MR. CHAIRMAN: Is there anyone else wishing to make a presentation on this particular bill?

BILL NO. 70 - THE PUBLIC SCHOOLS ACT

MR. CHAIRMAN: If not, we'll move on to Bill No. 70, An Act to amend The Public Schools Act.

The persons wishing to appear are Diane Kelen from the Manitoba Teachers' Society.

I would call on Ms. Kelen to come forward now.

MR. A. REIMER: I'm obviously not Ms. Kelen.

MR. CHAIRMAN: Your name, sir.

MR. A. REIMER: My name is Art Reimer. I'm here on behalf of the Manitoba Teachers' Society.

MR. CHAIRMAN: Okay, Mr. Reimer. Go ahead, please.

MR. A. REIMER: I have copies of my brief.

Mr. Chairman, members of the committee, we are pleased to be able to have the opportunity to appear before you this evening in representation on Bill 70.

The Teachers' Society supports the proposed legislation, as we see the existing legislation in sections 36 to 38 as inadequate. The principle of the amendments to The Public Schools Act is to define direct or indirect pecuniary interest and to require a trustee who has such an interest in a matter before the school board to disclose that interest and to withdraw from participating in the decisions affecting that matter.

The society, however, urges that the bill be amended by including the following as section 36(2)(v)(d): "no trustee shall be presumed to have a direct or indirect pecuniary interest in any matter, by reason only of the marital status of the trustee."

The society requests this amendment to the proposed legislation because of the recent case, Cape v. St. Vital, in which the school board attempted to argue that, because a candidate for a trustee was married to a school teacher, this prima facie constituted a conflict of interest which disqualified the candidate from being eligible to hold office as a trustee. Mr. Justice Smith rejected this argument and concluded that section 36 applied to an economic relationship and had nothing to do with the marital relationship between a trustee and a spouse who was employed as a teacher in that school division.

The proposed legislation in Bill 70 does not clarify this issue and, in the future, some trustee in office or a person seeking office as a trustee may be embarrassed in a similar fashion. The amendments suggested by the society will clarify the issue and thus prevent future attempts to politically embarrass trustees or potential trustees.

I might just add a few additional comments. Section 227, I believe it is, of The Public Schools Act makes it clear that teachers or employees of a school division or students in a school division cannot run for school trustee, but the current section that was ruled on in Cape v. St. Vital, section 36, has been removed and replaced with the new bill and, therefore, we believe leaves it open, while it may be implied, to someone attempting to what we would view as a frivolous attempt to embarrass somebody at election time for school trustee, to prevent that person or make it awkward for that person to run.

So we would like to see the amendment that's proposed in this brief added to the act simply for clarification to make it abundantly clear that someone could not carry on that attempt again in the future.

MR. CHAIRMAN: Are there any questions? Mr. Storie.

HON. J. STORIE: Thank you, Mr. Chairperson.

Perhaps Mr. Reimer is aware that I have discussed this with the president of MTS and given her assurances that the intention was to make this abundantly clear. Legal counsel have indicated that the purpose of your amendment is secure in the current wording. However, I'm certainly not opposed to making it abundantly clear by an amendment.

I would ask whether, given the intention of your amendment is to protect, I assume, not only a spouse but a dependant who might be employed by a school division, would it not be possible to broaden that and perhaps - and I have some suggested wording which I would propose along the lines of: "a trustee shall be deemed not to have direct or indirect pecuniary interests by a virtue of a dependant being employed by the school division or school district." Does the broadening of that from marital status to a dependant cause you concern?

I should indicate that dependant, as it's defined in the bill, includes spouse.

MR. A. REIMER: No, we don't have any concerns with broadening the definition. I'm not sure at what age a person no longer remains a dependant. If it's only spouse, is a person who is over 18 still a dependant? No, we have no concern with that.

HON. J. STORIE: So just to be clear then, the intention is not to ensure that only a spouse of a trustee may be an employee but that anyone, in fact, in that family may . . .

MR. A. REIMER: That's right.

HON. J. STORIE: Fair enough.

MR. CHAIRMAN: Are there any other questions? Hearing none, I thank you, Mr. Reimer, for your presentation.

MR. A. REIMER: Thank you very much.

MR. CHAIRMAN: Is there anyone else wishing to make a presentation to this bill?

BILL NO. 72 - THE CHILD AND FAMILY SERVICES ACT (2)

MR. CHAIRMAN: If not, we will move on to Bill 72, An Act to amend the Child and Family Services Act (2). The first person to make a presentation will be Mr. Abe Arnold from the Manitoba Association for Rights and Liberties.

MR. H. PETERS: Yes, Mr. Chairperson, Mr. Arnold is not able to attend at this time. I have a brief however for distribution.

MR. CHAIRMAN: The name, please?

MR. H. PETERS: The name is Peters, Harry Peters.

MR. CHAIRMAN: You have briefs you wish to distribute to the committee?

MR. H. PETERS: Yes, that is correct.

Mr. Chairperson, ladies and gentlemen of the committee, I'll read from the brief.

MARL has been concerned about the question of the Child Abuse Registry since the matter first came to our attention in the 1985 Child and Family Services Act. In July 1985, we expressed reservations about the sections dealing with the establishment of the abuse registry and the wide provision for making available the information contained therein. In May of 1986, we again raised our concerns with the Minister, Hon. Muriel Smith, after receiving several complaints from persons who felt that their names were wrongfully placed on the child abuse suspect list. At that time, they had no way of clearing their names.

In January 1987, we met with the Minister and presented her with a brief in response to the report of the child abuse review team. We stated therein that, as a civil liberties organization, MARL was opposed in principle to maintaining a suspect list. We added however that, if the government felt such a list was required to ensure better protection of children, a whole series of safeguards should be introduced. We presented a series of proposals which we now find have been largely included in Bill 72.

It should also be mentioned that we were called in for a further consultation with members of the Community Services Department last May when new regulations for the Child Abuse Registry were already under consideration. The MARL delegation repeated our views in regard to accessibility to the list of verified abusers, the listing of suspected abusers, and the appeal process for listed suspected abusers.

While we were aware that changes were in the works, it is noteworthy that these changes were not brought forward via the bill now under consideration until a

citizen challenged the abuse registry in the courts. We now know that this bill has been introduced in response to the court's judgment declaring the existing Child Abuse Registry unconstitutional.

The present suspect list - in any event, we welcome the proposals in Bill 72 but we wonder how justice will be done to the people whose names are on the current list. That list should actually be done away with. If the government wants some of those on the old suspect list moved to the new suspect list, every name must be dealt with de novo. In this way, every person being reconsidered for the suspect list will have the opportunity to take advantage of the appeal procedures provided for. This means that if there is a long list of names to be moved from the old list to the new list, the department will have to be prepared for a considerable number of appeals under the new system of panel hearing.

The definition of abuse causes us some concern. The new amendments failed to include a clear definition of what constitutes abuse. This question was raised when a MARL delegation met with the department representatives in May. We were promised copies of then-existing definitions, but have not yet received them. We have received information by phone today about the contents of the abuse definition guidelines but, until we see a copy of these guidelines, we must reserve judgment and we may wish to make further submissions.

The Registry Review Committee - the provisions for appointing a Registry Review Committee does not indicate how the members will be chosen, though the Minister has indicated that they will come from a broad range of community interests. This provision does not address MARL's earlier concern that the review committee should consist of individuals who are qualified but truly independent of the medical, child care, or police personnel who are generally involved in putting names forward for the suspect list. It is also necessary to make certain that members chosen for the panel for a particular appeal should not be in a conflict-of-interest position.

With respect to the qualifications of review committee members, when the MARL delegation met with department representatives in May, a question was raised by one of the officials about appointing laypersons who may lack expertise to judge appeal cases. It should be pointed out that there are existing government boards, for example, the Social Services Advisory Committee, whose members are mostly laypersons. Such individuals have demonstrated that they are qualified to make fair decisions in hearing appeals. The review committee for the abuse registry might require some orientation program at the outset, but there is no reason why a group of individuals competent to judge these appeals could not be found. They could include a mix of professionals and laypersons able to render independent decisions.

We also urge that the individuals who are qualified to sit on the Registry Review Committee should be appointed without regard to their political affiliation or background.

One final comment about the removal of the names, the Minister has been quoted in the press to the effect that the names of child abuse victims will be removed from the registry when they turn 18. She is also cited as suggesting that abusers' names will be removed 10 years after the last time an entry was made against them or when the victim turns 18. We cannot find any reference to this in the legislation however.

To conclude, we remain opposed in principle to a suspect list. It remains to be seen whether the registry will justly fulfill its function of better protection for children.

MR. CHAIRMAN: Thank you, Mr. Peters. Are there any questions?

Mrs. Smith.

HON. M. SMITH: Mr. Peters, the question of removal of names, we had indicated that we were intending to bring in amendments at committee stage, as you have described. Do you agree that's a fair approach to the removal?

MR. H. PETERS: I certainly think there has to be a mechanism to remove names and, given the context of removing them as time goes by and the length indicated, that seems to be a fair process, given that the list has to exist.

HON. M. SMITH: Would you agree a suspect list could be available to Child and Family Services agencies for purposes of adoption, foster placement and so on, but not to the broader group of employers, such as school divisions or day care centres?

MR. H. PETERS: I think that's a welcome consideration.

MR. CHAIRMAN: Any further questions?

Hearing none, I thank you, Mr. Peters, for your presentation.

MR. H. PETERS: Thank you for hearing it.

MR. CHAIRMAN: I would now call on Lee and Agnes St. Hilaire from the Victims of Child Abuse Laws. Have you briefs for distribution to the committee?

MS. A. ST. HILAIRE: No I don't.

MR. CHAIRMAN: Okay, that's fine. Please proceed.

MS. A. ST. HILAIRE: Good evening. I'm representing my group known as Victims of Child Abuse Laws. We are a group of 30 people in Manitoba who have been incorrectly identified as having abused children and, equally as bad, our children have been incorrectly diagnosed as having been abused. My group feels that they have been falsely listed on the Child Abuse Registry.

I would like to read to you an affidavit that is filed in the Court of Queen's Bench by a member of one of my group. The affidavit is by Elsbeth Ryz.

"I, Elsbeth Ryz, housewife, of the Town of Pilot Mound in the Province of Manitoba, make oath and say:

"THAT I reside with my husband, Robert Ryz, in the Town of Pilot Mound in the Province of Manitoba;

"THAT I have personal knowledge of the facts hereinafter deposed to me, except where I have stated that they are based on information and belief;

"THAT in or about the month of March 1985, I was visiting my parents with my four-year-old daughter

Tracey, when my daughter Tracey while playing, dressed up in her grandmother's clothes, tripped and fell and landed on a corner of the wall. As a result of her fall, Tracey received a black eye;

"THAT someone unknown to me reported to the Child and Family Services Department that I was abusing my daughter;

"THAT as a result of this complaint, a social worker from Brandon by the name of Marilyn Blanko conducted an investigation approximately one week after this incident;

"THAT as a result of the investigation, we were advised approximately one week later that my name and my husband's name would be placed on the Child Abuse Registry which upset us considerably since we had in no way abused our child;

"THAT at this time, we also wanted to adopt a child, and I am informed by my husband, Robert Ryz, and do verily believe that he telephoned the Department of Child and Family Services in Brandon, Manitoba and asked a representative of the Child and Family Services Department what effect the investigation and the subsequent placing of our names on the registry would have in our wanting to adopt a child. He was advised that, because of the placement of our names on the registry, we would have trouble adopting a child which upset us greatly;

"THAT we asked the social worker, Marilyn Blanko, to bring us adoption papers so that we could make an application on more than one occasion and we received no response from the Department of Child and Family Services, which to us verifies that, because of our name being placed on the registry, precluded us from ever adopting children."

I'm not your everyday speaker here, so bear with me.

The parents who are in my group wanted me to read a brief on their behalf. They wish that their names not be revealed.

On October 27, 1986, the mother was waiting for her daughter to come home for her lunch from school. The daughter's friend whom she had invited for lunch came home, but no Lynne. The mother waited and waited for her daughter to come home. The mother was worried, worried about what other parents worried about. Was she kidnapped? Sure enough her daughter was legally kidnapped by our Manitoba Government, Child and Family Services Department. Two-and-one-half hours after they apprehended the child, Child and Family Services called the mother to tell her they apprehended her child. The social worker gave the mother an appointment for 3:00 p.m. the next day, 29 hours after they apprehended their child. The mother was not given any reason for the apprehension. The same evening, the parents received a phone call from their seven-year-old daughter. She told the parents she wanted to come home and that she was going to walk home. The mother asked the daughter for the address. The mother said we'll go pick you up. When the parents went to pick up their daughter, an elderly lady told them to go home and cool off. When the parents met with the agency, counsel was refused entry. Six weeks later, police were called in. The father was charged with sexual abuse on December 23, 1986, for allegedly fondling his seven-year-old daughter's breasts over her pajamas and bedding. The parents claimed they in no way abused their daughter.

Because of this, the father was placed in a psychiatric ward at Health Sciences Centre for six weeks and is still on medication. The mother was given visiting privileges. The mother was treated as guilty, even when the allegations were not made against her.

Dr. Ellis, child abuse psychologist, made a request from the mother who has liver cancer. This request I would like to read to you.

"Part of this resolution must come from an independent medical opinion regarding mother's health status to allow you to make appropriate plans for the child. If mother wishes to resume the care of her child, she must give your agency permission to receive from her cancer specialist a medical report dealing with her current medical status. Her prognosis and reason for what appears to be no active treatment. If this report documents that mother is likely to remain in the picture for the next two years, it will be possible to develop a plan that could result in returning daughter to mother's care."

So imagine, two years, they've requested from the mother, can you guarantee us that you're going to be alive for the next two years, so we can give you back your daughter. I think that's terrible.

The daughter was not returned to the home until six months after apprehension. In order for the mother to get back her daughter, the father had to leave home. As a result of this, the father had taken two jobs to support himself and his family.

At the court hearing, the Crown deferred the charge. They asked the father to take a parenting course. The father said the first parenting course is available the latter part of September 1987.

In the meantime, the family is still separated and it looks like it will be at least another six months before the family can be reunited as a family. The mother says the daughter is asking for her daddy who was removed from the home since April 1987, and hasn't seen his daughter since October 27, 1986. The father is not allowed any visiting privileges over this period of time.

The parents have great concern that their daughter's name will be on the Child Abuse Registry and the effects that this will have on her life. The name would still remain on the list even if this charge is dropped.

I oppose to listing names of suspected abusers on the Child Abuse Registry without a conviction. I don't feel there is a need for an appeal process or a registry review committee because no person's name should go on a registry without a conviction.

I received a letter from the Minister, the Honourable Muriel Smith, saying the Manitoba Child and Family Services Act involve appropriate teams who get involved in assessing whether in fact a child has been abused.

If after a full investigation by properly trained social workers and a child abuse psychological assessment, using the aid of anatomically corrective dolls and a professional medical assessment, and a police investigation, and a professionally trained child abuse committee, who get involved to help in difficult investigations, cannot find any evidence that abuse occurred, in my opinion, should not place that person's name on a Child Abuse Registry. Or, if the Child and Family Services Department suspect a person is guilty, that person should be charged and tried in a court of law. If the court finds that person guilty, so be it; or if they cannot find that person guilty, let that person go

free. Our Canadian Constitution maintains that a person remain innocent until proven guilty.

You may claim that it is sometimes difficult to prove guilt in child abuse cases. It is also difficult to prove guilt in any other criminal cases. I do not know, perhaps it is your intention to create a perfect society; so was Hitler's claim.

According to section 19.3(3), it reads: "The director may, on application by a school division, day care centre or other employer whose employees will be responsible for the care of children, advise the applicant whether the name of a person has been entered in the registry pursuant to subsection 19.1(2) where the director is satisfied this information is reasonably required by the applicant; (a) to assess an applicant for employment; or (b) to assist in care of a child."

Now, from what I understand, as a mother, or say three of my neighbours decide to hire a babysitter to look after our children while we go to work, section 19.3(3) will allow us to get information from the Child Abuse Registry, or therefore anyone else hiring a person in trust of children, such as a babysitter, a maid, a homemaker, or a chauffeur, this highly confidential registry can be made available to the majority of the province.

Say, for another example, even if Mrs. Smith or Mrs. Brown, who want to hire Johnny next door to cut the grass, has two young children playing out in the backyard, according to section 19.3(3), can have access to information on that registry of a person whom they want to hire.

The Big Brothers Association, Boy Scouts, Girl Guides, and such youth organizations can have access to the registry according to section 19.3(3). There are a substantial amount of people who will have access to the registry.

Another example, how about young Smith going to school? He's 14 years old, gets the finger pointed at him for child abuse. An investigation takes place by the Child and Family Services Department; he is placed on the Child Abuse Registry based on suspicion only, as a suspected abuser. Young Smith, now 19 or 20, comes out of school, works a year or two, is offered a job opportunity in the United States. Immigration officials, through their investigation, find young Smith on the Child Abuse Registry. Young Smith is denied a residence visa to the United States. In my son's case, Lee, this is no problem for him because he is an American citizen. If I was in Lee's shoes, when I became the age of majority under the present government, it wouldn't take me long to decide which country to live in.

I would like to conclude by having my son, Lee, say a few quotes, when the social worker was investigating him.

MR. L. ST. HILAIRE: Good evening.

When I was investigated by a social worker, Harry Knott, (phonetic) there were some questions that were asked that were uncalled for. The questions he asked me were, if I had ever seen a naked woman before. I said, yes, at school. They teach us about sex; it was on giving birth to a child. Mr. Knott asked me if any of my friends are sexually active. I answered, no.

Harry Knott said, come on, Lee, I could tell you of at least half a dozen girls at your school who screw around, girls you know. Then he said get rid of your Mom and we'll have a talk in private.

The second question was: Lee, did you do those things to your sister? I answered, no. Then Harry Knott said to me: Does it make you feel bad what people are thinking of you? Aren't you ashamed? Aren't you embarrassed? Everybody knows about it, Lee.

For two-and-a-half years I felt that everyone was looking at me as if I was a child abuser. I don't think there could be anything worse than being accused of a child abuser. I'm happy my name is off the registry and now I feel I can get on with my own life. Thank you.

CHAIRMAN: Ms. Darlene Hague.

MS. DARLENE HOGUE: Hello. It's Darlene Hogue.

MR. CHAIRMAN: Do you have some written presentations for the committee?

MS. D. HOGUE: Yes, I do. Oh, I've got none to pass around. Sorry.

MR. CHAIRMAN: Oh, none to pass around. Okay, just proceed then.

MS. D. HOGUE: I've been trying to write a brief on the damages that are caused by listing innocent names on the registry. But how can you write down on a few pieces of paper showing how it destroys the family and the friends surrounding them? On Friday, February 20, 1987 in Gimli, Manitoba, our lives took a turn for the worse.

The day care that my children attended had made a report of an alleged child abuse to the local Community Services Department. The supervisor of the Interlake Area, Richard Panson, and a social worker, Randy Sawatsky from Gimli, met with us.

They first questioned me and then wanted to question my common-law husband, Gilbert Gauthier. When they had him in a different room, I had to take my 20-month-old son to the hospital without Gilbert knowing. So Randy accompanied me and Andre.

Dr. R. C. Patel had examined and verified that the bruises on my son's buttocks were caused by an open hand consistent to a spanking. He did not consider this child abuse but an over-zealous spanking. We then met in Richard Panson's office where Richard and Gilbert were waiting for us. At that time, they told us that we had been very cooperative and they believed this was not a case of child abuse and the matter would be dropped.

When we left the office we felt as if we had a horrible nightmare, but when we woke up we were taking our children home - but this was only starting.

On Saturday, February the 21st, Andre took sick and so I took him back to the hospital. Once again, we met with the physician who had examined him the day before. He then told me that there was a virus going around affecting a lot of children. The next thing I knew they were taking head X-rays. He said they wanted to keep Andre overnight for observation.

I asked him for the results of the X-rays. The doctor told me there were no abnormalities. For the following

week I got excuses why I couldn't take him home. On Tuesday, February the 25th, Constable Tom Boyle had called us down to the Police Department and questioned us for three hours. He showed us a statement given on Monday the 24th by Richard Panson saying Andre was in the hospital with a hairline skull fracture, leading the police to believe that it was caused by a blow to the head from parents' handling.

This was the first time we had heard of it. After we were through being questioned, I went to the Community Services Department. I spoke to Randy Sawatsky and asked him why I had been lied to about the X-rays. All he said was the police shouldn't have told us. He then got Richard Panson on the phone. His answer to all this was a lack of communication.

I asked where he got his information and he said "Dr. Patel."

I went to Dr. Patel and he said at no time had he given out any information about the X-ray because there wasn't anything to tell. There was no fracture of any kind. He also told me that Panson had gone to the day care the day before and had physically examined my older son, Joseph, who was four, for signs of abuse and sexual abuse.

If Community Services had wanted my son examined, why didn't a qualified physician do it? The following morning I contacted Panson again and wanted to know why he didn't tell me about Joseph. He replied, didn't I tell you? I guess I forgot.

I feel this case was handled by incompetent social workers who should be reprimanded. In the beginning, concerning the laws of the registry, they were made with good intentions but in the end has gone too far. According to provincial policy, it requires that anyone involved in an investigation be registered regardless of the results, and current policy prevents any names from being removed.

It makes a parent think twice of disciplining their children. You want to shelter them as if they were made out of glass for fear the situation will reoccur and only be treated worse because you're already on the list.

If my children were to fall and it caused bruising or broken bones I only hope to God I have a witness stating I didn't do it. Since February my children have had no physical discipline, and they have gotten totally out of control. If this is our only alternative, then I believe the government had better find financial funding for federal prisons because that's where the young people are going to end up.

Putting innocent names on the Child Abuse Registry along with the convicted is only painting us with the same brush. Where does the Charter of Rights come into this law? It's the child experts who say that social workers are insufficiently trained. Why should they be the judge, the jury, and the executioner on suspicion only? All I'm doing is fighting for the rights of a human being and fighting for the rights of my children. Who's taking that into consideration?

MR. CHAIRMAN: Thank you. Are there any questions?

Hearing none, I thank you, Ms. Hogue, for your presentation.

Next presenter is Ms. Shannon Courchene. Ms. Shannon Courchene. She's not here.

I'll move on to the next presenter, Ms. Sue Sinclair.

I will now call on Ms. Mary Dolman. Mary Dolman.

MS. M. DOLMAN: Good evening.

MR. CHAIRMAN: Have you any written briefs for the committee?

MS. M. DOLMAN: No, I don't.

MR. CHAIRMAN: Okay, that's fine. Proceed.

MS. M. DOLMAN: In September 1983 I was suspected of abusing my ten-and-a-half-month-old son. The shock and the horror of these accusations were devastating to me and my family. I had no idea after this investigation that there was a list of suspected abusers registered anywhere until I read Saturday's paper.

I could be on this list; I don't know yet. My son was very ill from birth with bowel problems so he was repeatedly in and out of hospital for this and bouts of respiratory problems. They said that because he was so sick all the time that they were right away saying I was taking my frustrations out on him, which wasn't true.

When he was three months old I fell down in the driveway with him and fractured both his legs and fractured my leg. Early in September he had fallen while playing off my daughter's bed and fractured his right leg. He had to have a cast put on so he could weight-bear.

Later in September my son was rushed by ambulance in what I believe was critical condition to Winnipeg Children's Hospital. He had a bowel obstruction due to adhesions from a previous surgery in June. They noticed his leg and that was when the questions started. They asked me how it happened and I explained how it had happened - that he had fallen off my daughter's bed.

They never said anything. Everything seemed fine until a few days later. The attending doctor, Dr. Postuma, told me I had to see another doctor, a Dr. McCrae. I asked why, but no one would tell me. I kept asking anyone who was on staff there, why did I have to see another doctor? Finally, a Dr. Benoit approached me and said she was Dr. McCrae's assistant.

All I kept saying to them was, you're wrong, you're wrong about me. The questions were mostly about when I fell down with my son, then about the incident when he fell off the bed. I had numerous sessions of counselling with a social worker named Brenda Grabners in Winnipeg. They kept my baby for a month while they interrogated me. It took a month for them to release my baby from there, and even then they were bucking about letting me take him. I walked in there at nine o'clock in the morning and I waited there till four o'clock till they finally released my child. I asked very, very nicely, but they were angry with me when I went out of the hospital with him, but they did release him, after a month.

They intimidate you until you're crazy. After all that, I was just left wondering, what's next? But nothing happened - I was just left hanging.

There were no "sorries" or "we made a mistake," nothing. Then I find out there was this Child Abuse Registry, so I went down to the Health and Social

Development in Selkirk to find out if my name was on this list. They said they had no list there. They sent me upstairs to talk to some guy, a Mr. Gow, (phonetic) and I told this gentleman briefly what happened to me with my son. He was puzzled at the fact that I'm from Selkirk and had never seen a social worker from Selkirk, only Winnipeg, at the time of this little investigation.

I told him who was involved in carrying out this investigation. He said usually your file would have been sent down here to Selkirk, and we would have handled it, not Winnipeg. The next day, I returned to find out if my name was on the list. He was not so talkative then, as he was the day before. Then he decided he'd better ask to see my I.D. after he'd questioned me the day before.

He checked to see if I was who I said I was. The only words he told me were: "No, there's no record of this investigation." That's pretty crazy, I think.

So what were they doing with me and my baby? Practising? I was not convicted or anything. I have phoned countless times to Winnipeg to find out if I'm on the list. Last time I called they told me to write for this info. Pretty smart, I said to the girl I spoke to. There's a mail strike going on out there, you know. I want to know what's going on. I still don't know if I'm on the registry. My reputation is all screwed up.

To our Honourable Minister, Muriel Smith - current policy states: Anyone suspected of child abuse, whether sexual or physical, your name automatically goes on the registry. After all I was put through, should my name be on this Child Abuse Registry?

Thank you.

MR. CHAIRMAN: Are there any questions?

Mrs. Smith.

HON. M. SMITH: Ms. Dolman, I can sympathize very much with the experience as you've outlined it.

The problem we're having from the other side is trying to identify and prevent child abuse. Do you believe if there is a registry and there is notification, if your name is on, and a right for you to appeal, to have your situation reviewed and clear guidelines for removal of your name, that the registry is still an important part of our protection of children?

MS. M. DOLMAN: I can understand the . . . of your registry for parents who are abusing their children, but people who are suspected of abusing children, I don't believe their name should be put on this list, just because they were suspected. I don't believe it. If my name is on the list, I would very much appreciate that it is removed. I did not abuse my son.

HON. M. SMITH: You do appreciate that under the law, as proposed, that if your name is on, you would be notified and have the right to a review and removal of your name, if there's no further concern.

MS. M. DOLMAN: Yes.

MR. CHAIRMAN: Are there any further questions? Hearing none, I thank you, Ms. Dolman, for your presentation.

I'll call again for Ms. Shannon Courchene. Miss Sue Sinclair. Is Miss Sue Sinclair here? Is there anyone else wishing to make a presentation to this committee?

Mr. Brown.

MR. A. BROWN: Mr. Chairman, there was a group of these people who wanted to come and speak. They had them put on the wrong bill, and I think that this is where the confusion has come in.

MR. CHAIRMAN: It's unfortunate this mixup happened. They can always send a written submission to the Legislature. Is there anyone else wishing to make a submission to the committee tonight on Bill No. 72? Not hearing anyone, we'll move on to the next bill.

Bill No. 62, An Act to amend The Insurance Act, I'd like to call Mr. Jim Weiss - I don't know if I'm pronouncing it right - from the Winnipeg Life Managers' Association of Canada, the Winnipeg Chapter. Is Mr. Weiss here? Mr. Weiss not being here, I'll ask if there's anyone else wishing to make a presentation before the committee? Hearing no one, we'll move on to the next bill.

Bill No. 40, The Human Tissue Act, I would call on Ms. Joan Roberts from the Lions Eye Bank to come forward now.- (Interjection)- No presentation from the Eye Bank? Okay, thank you. Is there anyone else wishing to make a presentation on Bill No. 40?

BILL NO. 59 - THE MENTAL HEALTH ACT

MR. CHAIRMAN: Hearing no one, we'll move on to Bill No. 59, An Act to amend The Mental Health Act. I'd like to call on Mr. Tom Cohoe to come forward at this time. Mr. Cohoe, do you have any written presentations to distribute to the committee?

MR. T. COHOE: I have only notes of my own. I would like to have made a written brief, but I didn't have time.

MR. CHAIRMAN: Okay, that's fine. Please proceed.

MR. T. COHOE: Could I have the permission of the committee to set this exhibit on the table?

MR. CHAIRMAN: Yes, you do.

MR. T. COHOE: I appreciate the opportunity to speak to this committee.

I'm a victim of The Mental Health Act. Perhaps some of you members of the Legislature have heard complaints from people who claim that they are victims of psychiatry before. I know of one former MLA, Sidney Green, who told me that a lot of people have made complaints to him. If you have managed to have been reached by a number of people that's large enough that it bothers you, perhaps you should think that you should start listening to some of us and what we're saying.

There maybe a lot of experts in this room who can tell you what their theory tells them, what they have learned in school, what they have learned because they're great philosophers or something like that. What I have to say starts with experience.

I experienced violence at the hands of psychiatry. I can tell you that no argument that somebody has constructed from theory or because they think that

they're great experts or something like this will convince me that my experience is wrong. I'm angry. I've been trying for six years to find one person in society who's willing to be responsible, in the sense of responsible that politicians mean. You have to answer for what you do. I haven't been able to find anybody who's responsible.

I'm going to give you here a core argument. I'll call it my core argument. I'm going to repeat it before I'm out, because it's of critical importance.

What I would like to know is that, if you take a person to be examined by a psychiatrist against his will, how is it possible that the psyciatrist can make a meaningful examination of that person. This person is obviously not cooperating. Perhaps psychiatrists are so brilliant, such great geniuses, that they have much greater ability to penetrate into the human mind than the rest of us do. But I would like you to consider that even a child can frustrate an adult trying to reason with him, the child having fun. I'm sure every adult has had the experience of trying to reason with a child who is enjoying frustrating an adult. It's impossible to reason with a child when he wants to frustrate you.

Okay, if you take me to see a psychiatrist against my will and I decide to frustrate that psychiatrist, which I have done by refusing to go - it's clear that I'm trying to frustrate that psychiatrist - then I believe that I'm intelligent enough to frustrate that psychiatrist. I'd like to say that every person who's taken before a psychiatrist against his will is doing that. They are trying to frustrate the psychiatrist. They are not cooperating. That's why the have to be taken against their will.

I'd like to say that to try and frustrate somebody who has you in jeopardy is a very difficult thing. What are you suppose to do? Are you suppose to tell them why you don't want to cooperate with them? They want you to start talking to them. If you answer the questions they ask you, that's exactly what they want. I don't know if any of you are familiar with the many kinds of protest that go on in this society, for example, people sitting down in front of a logging truck. That's a pretty crazy thing to do, isn't it? It's pretty hard to understand. It's a form of protest.

Well, I would suggest to you that, when you have a person in handcuffs who has said he won't cooperate with this examination and he's doing whatever he's doing, speaking in metaphors perhaps, using rhetoric perhaps, expecting the psychiatrist to make some mental leap to realize that she is doing wrong because, if you try to hold a conversation with a psychiatrist in the normal method, as I said before, you are cooperating. Whatever the person in that situation does can't be reasonably seen as anything more than a protest and, as I said, protests take many strange forms. So if the behaviour of a person in front of a psychiatrist who has him in jeopardy appears strange, it shouldn't be surprising.

I'd like to say something about my credentials. I can't give you a string of formal credentials. I don't really believe in credentials, but it is my experience that society responds to pressure and authority first and reason last. So I'll have to do what little I can to make you feel I have some ability to think usefully. It's kind of embarrassing to me to do this, but I don't know what else I'm supposed to do.

When I was in high school, the guidance counsellor, Eileen Drew (phonetic), my sister told me that she told her that I was the most intelligent person she had ever seen. Since she went to university, I suspect that what she meant by that was that, of the people she was giving the kind of tests that they give in schools, I was the best of all the ones who took those tests. I don't imagine that I'm supposed to be the most brilliant person who has ever been seen in the University of Manitoba, for example, where she went to school, but there's something meant by that anyway.

My high school marks, I received the award for having the highest average in the school division, notwithstanding the fact - and I'm not boasting - that at the time I abused alcohol a lot, skipped out of classes and went fishing and drinking with my friends instead of going to school. When I went to university, I got my come-uppance for that. I had a B average. I thought that I could get straight A's in university the same way, but I couldn't.

However, after 10 years of working, I went back to university and I took essentially the required courses for medicine, the pre-med courses. I got three A's in that and three A-pluses. I was told by George Dunn, the head of the Chemistry Department at the time, that in the first year chemistry course that was required I got the highest mark of all. In the biochemistry course, I noticed that my paper was picked up from the second position on the list.

When I got to enter a program as a Masters student, Lyonel Israels, my advisor - and I'm sure some of you in this committee have heard of him before - we were given a surprise test by the Department of Biochemistry to see how suitable we were to be students in that department. I was taken aside afterwards and told by Esther Yamada, one of the professors there, that I received the highest mark of all the students I was competing against. In the entire period in which they had given this test, the history of it, I was second by 1 percentage point, and that notwithstanding that I spent one year preparing to go into biochemistry and I was competing against four-year majors in the biological sciences. As I said, I am sorry if it appears I'm boasting. I really don't like doing this, but I am competing against experts, people who claim to have great credentials.

I've argued successfully against experts in their own fields before. The first example that I have of letters to show my success is against Jeremy Bernstein, who is one of the world's leading physicists. He printed an article in Scientific American, which I found a mistake in. I wrote him a letter telling him what the mistake was. He set himself up in this letter here by telling me where I was wrong. I sent him another letter in which I presented a detailed argument. In this second letter, he admits I am right. "Dear Mr. Cohoe: Thanks for your note of October 19. You are right. There is an error," etc. I would like to impress upon you that people who write in Scientific American are leaders in their fields.

Here's a proof that was sent to me by a Ph.D. student in mathematics in context with the same argument. He proved I was wrong. I had spoken to Jasper McKee, and he said he thought I was right. So I brought this to the student and the student said, oh, he'd look at his proof again. He looked at his proof, and here he sent this with an admission in it that he had dropped the minus sign in the proof, and that I was right after

all. And here is my letter from Scientific American acknowledging that I had found that mistake and thanked me for calling their attention to it. That's one expert that I have defeated in argument, and I have documents to show it.

I don't have documents to show the time that I embarrassed Jim Wright and Dr. Paraskevus (phonetic) in the Institute of Cell Biology. Being a student there and working amongst a lot of doctors made it very difficult for me, because I've been mistreated by doctors and none of them want to be responsible for it. I was deliberately trying to embarrass them at the time. The point that I made with them was that Jim Wright had suggested that ribonucleotide reductaes (phonetic) is an enzyme that possibly controls the reproduction of the cell, and he went on to give an idea that he thought showed it. Actually, it was one of his students who was talking. Dr. Paraskevus and Jim Wright began to discuss the consequences of this and built up a castle in the air. If I hadn't been mistreated by doctors, I would not have wanted to embarrass them, but I got particular delight in sawing off the limb they were on, to mix a metaphor, by pointing out that the experiment they were building up this wonderful picture with didn't have proper controls on it, and that was accepted. Jim Wright afterwards complimented me on making the point. Dr. Paraskevas, on the other hand, hated me for it and he suggested to me the next time I saw him, you're leaving, aren't you, Tom, which indicated to me that he was angry at me.

Now another expert that I have won over to my opinion is David Justice, the Editor of Etymology in Merriam Webster's dictionaries. I suggested to him that I had found the root for a word that we know in English, a very recent word, and he rejected that. I've got a whole file here of interchange of letters, but it ended up with my last letter to him was a seven-page letter in which I had to do research in two languages to find the facts I needed. I received this letter from - I'll just read part of it - Mr. Justice.

"Dear Mr. Cohoe: Thank you very much indeed for your richly informative and cogently argued letter. You have done much to flesh out the case for deriving scam from esquimode. It is the rare correspondent who is able to follow up the initial happy idea with such empirical buttressing. Please feel free to write again when the muse moves you." And he started off by telling me I was wrong on that, so there's another field.

The last exhibit I have here is my globe. This might not look like very much, but actually it represents a considerable technical problem. It's more than a single problem. It's actually a project that required a lot of coordination of a lot of mathematical ideas, as well as the ability to see that there was something possible.

This is a projection of the sphere of the earth on a geodesic globe. In order to make this projection, I first of all had to find out what a geodesic sphere is. I have to understand the principle of that geometric shape. I could have found that out from books. In fact, I had not decided I was trying to do anything. I'm interested in solid geometry, and I was making some models. After I'd made a few models, I discovered that I was one tiny step away from Buckminster Fuller's geodesic sphere.

So I made a model of it and then I thought it might be possible to make something that might be commercially useful, and I thought to make a globe that would have a projection of the earth's surface - well, I'll describe that later. But besides understanding the sphere, another problem is to determine the longitude and latitude of all the vertices. That's not a very easy problem, even once you understand how the sphere works. Then you have to determine what kind of projection is the right kind of projection to make. There are all kinds of projections. There's only one that's right. All the rest of them will either leave space out of the earth's surface and, in this gap here, there'll be an overlap, with the map reproduced on two faces. That particular projection, straight lines are great circles on that projection.

In order to make this, I had no funding of the type that university professors get. I worked with a little six-inch plastic mirror. I measured some 10,000 points on a Mercator's projection of the earth. I had to write a computer program to convert the projection from a Mercator's projection to this type of projection. There are actually 80 different projections there.

I thought the reason for doing this - this is a demonstration model, this isn't supposed to be a final model. It only has the ocean's coastlines, but I thought that the Department of Education could use something like this. It would be a model that would be in pieces, and kids in school would build the model of the globe and put decals on it, and it would give them an interest in geography. It would make geography more interesting than just a bunch of dry facts. They would be participating with their hands.

I took this around to the Department of Education at the University of Manitoba. I don't remember the names of the people I spoke to there, but I remember one teacher there being quite enthusiastic about it. I took it to Garry McEwen of the Provincial Department of Education, Curriculum Development and Implementation. He told me that, if I got this into a commercial form, they would probably list it on their recommended list for grades, something like, 5 through 12. I don't remember the exact details. I also took it to Linda McDowell, Social Studies Coordinator for the Winnipeg School Division. She also expressed enthusiasm for it. She suggested many ideas to me.

I wasn't able to do any more work on this project. This project has reached the point where it requires money to develop as a commercial project. To finish this map with the oceans, I mean, with the rivers, the lakes, the boundaries of the countries, shadings for the mountain ranges, etc., would require, in order to make it possible for a human being to do it, computer equipment, advertising. It's tremendously expensive. If it's going to be bought by schools, it would have to be put onto lists for various school boards.

I hope it sells throughout North America. Every state has its own list of text books. It would cost a lot of money to approach all these people. The cost of developing a package, the cost of setting up dyes and printing stamps and stuff like that, it had reached the point I achieved what I wanted to do. That was making it, a demonstration model.

So, those are my credentials and, as I said, they are nothing. I consider myself to be a member of that class of people about which it is written that we are a poor group of homeless people, unemployable. I'm talking about the problem or so-called problem of kicking

mentally ill people out of hospitals and they become homeless drifters.

Well, I am supposedly unemployable. I am not making any money right now, although I was kicked out of university basically for fighting for my rights in the Health Sciences Centre. But if it wasn't for my wife, who is a dentist, I might well be one of those drifters right now.

MR. CHAIRMAN: Was that the extent of your presentation, or . . .

MR. T. COHOE: I'm sorry, I can't hear you.

MR. CHAIRMAN: Was that the extent of your presentation?

MR. T. COHOE: No, it isn't.

MR. CHAIRMAN: Just before you proceed, I'd just like to ask, if anyone in this room has Hyundai Pony License No. 592DSW, the lights are on.

I would also like to, not to try to limit you but to urge you to expedite your presentation as fast as is possible, because we have a lengthy number of other people who wish to present.

MR. T. COHOE: I'm sure you do. I appreciate that you'd probably like it if I hadn't even come, right?

MR. CHAIRMAN: No, no, not at all, not at all.

MR. T. COHOE: I've been waiting a long time to say what I have to say. I'm sorry that it's not more well-organized, but I didn't have time. If you had given me this opportunity a few years ago, I would have made it shorter, but I've reached the point where I'm almost in despair. I can't get the energy up anymore to, on this subject, make a written brief of the kinds that I have made in the past.

I'm sorry also if I appear to be angry. I can't help it. I actually am angry. Maybe I'm rather daring to be angry, I don't know.

Okay, now I want to start to get into exactly what my complaint is. I wrote a letter to Gary Filmon on May 21, 1986, and it's fairly well summarized in this letter so I'll read to you out of it. "It is difficult for me to be brief. If it were a simple thing to convince society that The Mental Health Act is oppressive and is hurting hundreds of people every year, someone would have already done the job. I know that many have tried. In a brief letter, I must find a crack in a wall of institutionalised rationalization, a wall which no one else has managed to breach and which most people seem to want to buttress up. I will try to satisfy your request.

"I'm including with this letter part of a brief which I wrote in 1983, in which my complaint is expressed fully. I would not say everything today the same way I said it in my brief, and I hope you do not feel that it contains the argument I want to make in court. I'm also including with this letter the response I got . . . "- well, like I said, I didn't have time to . . .

"The subject of my case is neither trivial nor without ramifications. I lost three months of my life through incarceration and my whole year at university, was assaulted physically and with chemicals, was humiliated in the society in which I was living, and was subjected to a bombardment of psychological pressure designed to make me doubt myself.

"I'm also suffering many consequences of a loss in faith in the basic goodness of my Native society, which has allowed this abuse to occur to me and, as yet, shown no signs of allowing me even to make a grievance in court. Losing faith in your society is perhaps a greater burden then you can imagine, although justice would probably cure the problem.

"I also lost a promising opportunity for my future, because of conflicts I had with professors in the Faculty of Medicine at the U of M, where I was a Master's Degree student two years after my incarceration. The conflicts arose directly from my attempt to convince my professors that medicine, being a self-regulating discipline, they were ethically responsible for the conduct of their colleagues in psychiatry. They did not want to hear this, and I was eventually forced to leave as being a nuisance, although I can provide evidence that I was considered intellectually capable at the time.

"From my point of view, I was merely struggling for what I believed and still do to be my right as a human being and for a response from society which would allow me to have faith in it and to live with it.

"I was incarcerated and received all of the above-mentioned consequences, as a result of a psychiatric examination in which I made non-cooperation obvious. I and the hundreds of others this happens to every year in Manitoba did not cooperate for a natural reason. It is the same reason that government Ministers, whether Conservative or New Democrat, do not cooperate and open their personal affairs to examination at every unsupportable or unsupported innuendo that they have done something wrong.

"All that I needed to be able to respond quite naturally, the way I did to the attempted psychiatric examination, was to have faith in myself and enough spirit to remain uncowed. The untenable premise is that my deliberate obstruction, notwithstanding that, psychiatrists could make a meaningful examination of my mental health. I want my opportunity to ask the psychiatric profession how it thinks it could have done this.

"I would at least justify my right to expect answers from them by charging them with what I think they have done wrong. That is more than they ever did for me. I think that you can appreciate that I have a substantial important question for them to answer.

"My grievance, however, is against society itself, which has given the psychiatrists extensive, unjust power through The Mental Health Act, and expects them to use it. I don't think that psychiatrists are evil people. I think that they're actually dupes in this process. I have already paid in advance for my right to make a case in court. I should not have to make a case against The Mental Health Act at all. That's because the people who support it are the ones who are taking action. I'm just recommending that action not be taken. If you want to take action against people, lock them up and things like that, then you should have to be the one to make the case.

"I should not have to make a case against The Mental Health Act at all, although the question of redress is another matter. It is society which should have to make the case for The Mental Health Act. It should have to

do this in the face of arguments that people like myself can raise against the act. Understanding that nothing is ideal, I want to make my case against the act. I accept the burden of proof because I have to.

"I tried to find out names of the people who treated me, as they would call it in the hospital. I don't have the right to find out anything. I wrote a letter to the hospital asking them for their files on me. This is what I received back.

"'Before we can consider your request, would you please advise us of the reason the request is being made, and the purpose for which information will be used. Following receipt of the same, your request will be duly considered.'"

Melvin Holley of Legal Aid, Arnie Peltz' division, affirmed to me that I don't have any rights at all, and that I can't sue anybody because they are protected by The Mental Health Act, even though the decisions they made were completed without my permission.

I have been embarrassed in front of my family. I expect that, whenever I go to meet relatives of my wife, for example, who don't know anything about me, they will consider me to be a bum because I am not working. My wife is supporting me. It's not a simple thing to try and fight The Mental Health Act or acts to do with psychiatry. I don't expect I can ever explain in a social meeting, a quick social meeting, anything about myself at all. In fact, I'm now resisting meeting members of my wife's family for that reason. I speak of her cousins and uncles and not her immediate family. I have no income, as I said before. These are effects that this thing has had on me.

Now I would like to make a bit of an argument that there is something wrong with psychiatry. The first thing that should be clear to anybody who thinks about it is that the mind is basically unobservable. The only mind that any human being can observe is his own mind, and all the experiments that psychiatry and psychology, both of which share the pretension to be able to understand mind, all the experiments that they have ever done require reporting by intermediates of what is going on in their mind. The direct observation is impossible, and the extrapolation from the lab to the complex world of human interactions is not justifiable.

Even sciences like physics, which study very simple things by comparison, find it very difficult to explain even relatively common-day phenomena. The few successes that they've had, for example, invention of radio and television and nuclear bombs, which may or may not be a success depending on whether you are considering the intellectual achievements a success or what it's done for the world, but these types of achievements are actually rather simple. The reason we've come to respect sciences like physics and biology is because there are some undeniable achievement whereas, with psychiatry, the only achievement is perhaps that people who are complaining about another person get satisfaction.

In the Soviet Union, psychiatrists hold that there is a type of schizophrenia, which the psychiatrists of the western world think is a bunch of bunk. That is political dissidents are suffering from what has been called in English, "creeping schizophrenia."

Now, I'd like to ask you, why it is that in the Soviet Union, psychiatrists have managed to find an illness that's convenient for the political order there, and this illness hasn't been found here. Well, because the political order in this part of the world does not tolerate political repression, but the words social, economic, and religious often appear in the same sentences with political.

Well, in this country, in fact perhaps in the Soviet Union, they would argue that while they have political repression, we have social repression here, and there are great stratifications socially here. Perhaps what psychiatry is serving here is a social order. Well, our social dissidents are being repressed here. I think that I am somewhat of a dissident, a rebel. That's because I'm a creative person, and creativity and rebelliousness go hand in hand.

The psychiatrists of the world, including the Soviet Union, their colleagues are not their political brethren or people high in the social stratus. Their colleagues are people of the medical community and of the psychiatric community, and they communicate in medical and psychiatric journals, not political journals. So there's immediately a problem understanding why it is that psychiatry in the Soviet Union is serving this political order. I'll just use that as evidence to show that psychiatry will serve whatever power there is, however it is. It really has nothing to do with science.

Chile, I have an advertisement for a book here - this is a list of books that are advertised by Scientific American - "The Breaking of Bodies and Minds - Torture and Psychiatric Abuse in the Health Professions." This goes on to give a little blurb on this particular book that describes abuse in other parts of the world by psychiatry. Has anybody in this room ever heard of Ewan Cameron, Lionel Orlikow? Well, Lionel Orlikow, you know about Lionel Orlikow. Ewan Cameron is not some person who went off the wall and was kind of a - he was the leading psychiatrist in the country actually, and considered one of the leading psychiatrists in North America, responsible for making Montreal a leading psychiatric centre. My wife studied some of his work when she was in dentistry, as she had to.

This particular abuse in this society by one of the leading members of the psychiatric profession didn't occur in 1923 or 1890. It's very recent. People who were abused are still alive. One of the reasons I feel quite sure that you're not making much progress is one of the people who is fighting for justice happens to be a psychiatrist. His father was one of the abused people, so he's not likely to represent the viewpoint that psychiatry is actually responsible for what happened to those people.

I was pleased to see the Conservative Party actually found there was no reason for them to believe other than that it was the psychiatric profession at the time that was responsible for this. There was a norm. Well I would suggest to you that was very recent and the norm, very recently, was of drastic abuse of people. Now apparently today we've come a long way. I don't believe so.

I think that the attempt to find the CIA as responsible - and I don't like what the CIA does, much of it. I think that's definitely not right. The people ethically responsible for what that profession does are psychiatrists.

I'm not completely without some professional backing. This book here is by Thomas Sauce (phonetic).

He's a professor of psychiatry at New York State University. He basically thinks that psychiatry is abusing people.

Some other abuses, Sigmund Freud, the great genius of the early part of the century, well, one of the things that Sigmund Freud taught and this person in this book who is not just sort of wild card who came out of nowhere. He managed the library of the Freudian papers and was in close communication with the family. He argues that Sigmund Freud used false evidence to show that women, when they claimed they have being raped, are fantasizing it. This is the great genius Freud, and obviously this particular person was kicked out of the profession because he was embarrassing the profession, and it was held that these arguments shouldn't be held before the public.

What about lobotomies? I'm actually kind of terrified. There's a psychiatrist in this room right now, that person right there. I accuse her of abusing me, because she was the one who did what she would call treating me. I would actually appreciate it if she would be willing to argue with me. I would like an argument. I'm not intellectually frightened of any psychiatrists, and I'm in a position where I'm not in jeopardy and there's a third party who will be judging.

I'd just like to repeat my core argument again. I said I was going to say it several times because it was very important. Psychiatrists don't seem to understand that, when they bring a person in who is determined to resist an examination, they can't make a meaningful examination. Any child can frustrate the attempts of an adult to reason or whatever it is - maybe the adult is being unreasonable. But children can frustrate adults is the point that I want to make. Surely, if a child can frustrate an adult, I can frustrate a psychiatrist. Even though psychiatrists are great geniuses, I can still frustrate them whether they like that or not.

Psychiatrists are supposed to know when people are dangerous. I recall, a few months after I had left the Cancer Treatment Centre, talking with Dr. Israels on the phone about this problem, and he said to me, well, psychiatrists, we need them because they can get dangerous people off the streets. Then he mentioned the case of the person who had shot 21 people at McDonald's. I said to him that particular person had been pounding on a psychiatrist's door the day before that happened, and that was not a very good example for him to give me. It illustrates very well that psychiatrists don't know what they're talking about when they think they can determine who's dangerous and who isn't, and he laughed at that because he had nothing to say - a rare occasion when he didn't have anything to say.

I did write a brief at one time. As I said, I had more energy for this a few years ago, and I wrote an analysis of the concept of what dangerousness is. I know that you're tired and I wish that I did have the time and the energy to make this more pleasing, but I'd like to read some out of this.

A rationalization for compulsory committal goes something like this. A person compelled to undergo a medical examination to determine his sanity may be dangerous to himself or the public. The physician can screen out the dangerous people. Since they are dangerous, it is just that they be committed for medical treatment. The fallacy in this syllogism lies locked up in the word "dangerous."

Before going on to expose this fallacy, I should state that I'm in agreement that there is a class of people brought in for medical examination for whom the description "dangerous" is appropriate. These are people who have committed violence or threatened someone. They are often brought in for medical examination. This class of people does not affect my position that The Mental Health Act is unjust because, firstly, in their case the act is redundant as the court system is available and appropriate charges can be laid and definite sentences given, as there is no obscurity in the wrong they have committed; and, secondly, there's no more justification for compelling them to undergo a medical examination than there is for compelling anyone else before they have been given a fair trial in which, as in all trials, they have knowledge of the charges against them in legal defence.

So what I'm saying there is that that particular class of people really are irrelevant to the argument of whether or not psychiatrists can determine dangerousness. I'm talking about people who have actually done something that there are witnesses for and that the facts could be determined in a court that this person did do something that was an act of violence or threatening.

Now I will show the fallacy of the use of implication of the word "danger" as to describe any other than those of whom I have just argued for whose alleged actions are as a clear-cut court route. In other words, what I'm saying is that one group of people, there's no problem in determining the facts in a court. So there's no excuse for the psychiatrist there to take a person who is resisting before a psychiatrist. The person about whom I speak is the person who commits acts that may not be illegal but that are highly unusual. An example would be one who claims to have received messages from God to speak in riddles and does so passionately enough that someone may be frightened by his behaviour.

This is a person who cannot be properly charged or convicted. Although to demonstrate there's a solution to any problem, if it is willingly sought for, a court order restraining his approaching the fearful person might be obtained if the legal apparatus was set up. This particular person's physician might want to decide he's dangerous. I must ask what the word dangerous in this context means. Since the person does not have a record of violence and has not threatened, there must be some other basis of meaning for the word. It must be assumed that the word means that the person is likely to commit violence in the future.

If a person is called dangerous, it does not automatically follow that he is dangerous. Just calling the person dangerous doesn't make him dangerous. It can only be said with certainty that the physician who calls him dangerous thinks that he is and, more serious, the consequences where the person is so labelled, the more credence the honest physician must give to his ability to know this person will commit violence. A physician who is going to call a person dangerous must believe very strongly that he knows what he's talking about.

Locking up the examinee and forcing drugs on him is such a serious action against him that the physician must believe it to be a veritable certainty. The punishment is as severe as it would be if the person had already committed a crime. Thus, we must be able

to conclude that the physician is essentially claiming to be able to predict the future. This is the heart of the fallacy.

It is not unreasonable to claim to be able to predict the future in certain cases. If I toss a stone in the air, I can usually predict with certainty, before it hits the ground, that it will do so. This is trivial.

A less trivial type of prediction is scientific prediction. In a type of prognostic test called "restriction linkage analysis," geneticists can predict with high reliability whether or not an unborn baby will have sickle cell anemia. With this type of prediction before it is available, someone hypothesizes that it's possible, gets some money, and in a series of carefully controlled experiments, tries to prove or disprove, in an objective way, the hypothesis. If he succeeds in proving it, a new type of limited prediction becomes available. The psychiatrist, on the other hand, has proved no such hypothesis.

The assertion of an hypothesis, proven or unproven, makes it a theory. That's the examination of people to determine whether or not they are dangerous, excluding the chargeable group that I mentioned, is grounded on an unproven theory, and that theory is that the psychiatrist can make such a determination.

There are several characteristics of this insidious theory that are relevant besides its unproven nature. They explain its current sway. These characteristics are that it is a popular theory and it has been around a long time. They guarantee that we are likely to have held this theory as fact during our development in education - that psychiatrists have some powers, that is, to determine facts - long before we realized that we held them and if we ever came to that realization alone.

Most people have never questioned this thing in their upbringing. They just take it for granted. Everybody sitting at this table here takes for granted that psychiatrists are capable of doing what they claim they can do. I don't think any of you here have ever seriously questioned it.

Another reason for the popularity of this theory is that it's subject to spectacular reinforcement such as the frequently held theory that flying is the more dangerous way to go from A to B than is driving. That's also subject to spectacular reinforcement. When a plane crashes, it's in the news headlines and everybody hears about it and they're horrified by it - the same thing with psychotic murders. Automobile accidents, on the other hand, and explainable murders, if there is such a thing, appear more frequently in the back pages. That flying is more dangerous is easily disproved and has been because of three conditions. Airlines are motivated to do so because they stand to lose by letting that theory grow. They are capable of doing it, having the resources to do so, and the measurements that must be taken are highly objective and easy to take.

That "crazies" are dangerous, on the other hand, is hard to disprove and has not been because of three analogous conditions. The people who would lose by this belief and be most motivated to disprove it are locked up and don't have the resources to disprove it, and the measurements that must be taken are difficult to take, being highly subjective.

So this theory that psychiatrists can find out certain things is spectacularly reinforced and there is no analogous condition that allows that theory to be overthrown - analogous, that is, to the theory that flying is dangerous.

The fallacy of the word "dangerous" in this rationalization - well, that's the part of the letter that refers to before - but the fallacy of the word "dangerous" is that it is a pejorative word, a prejudicial word, that biases everybody against the person to whom it is applied and makes it seem respectable to mistreat him.

The use of the word is made respectable in - (inaudible)- by the fact that it is used or implied, of course, by physicians. Hidden in this one word is an old unscientific and unfounded theory. The working hypothesis of the last branch of medicine has not accepted rigorous sciences as its backbone. This theory is the mainstay of that branch of medicine that keeps applying much rigorous science in its peripheral activities, such as measuring the parameters of people who are convicted by its theory and testing various cures such as the all too recent, chillingly frightening procedures such as frontal lobotomization.

It's not right to call people dangerous in this sense of scientific prediction in this context. Until it has been shown to be legitimate, no one can be justified in its application, let alone professionals. I do not think that it will ever be proven that psychiatrists can show dangerousness, because I don't think they can.

It's time for society to stop . . .

HON. L. DESJARDINS: Mr. Chairman, on a point of order.

MR. CHAIRMAN: Excuse me, Mr. Cohoe.

The Minister of Health, on a point of order.

HON. L. DESJARDINS: Mr. Chairman, on a point of order, and I hesitate to interrupt Mr. Cohoe. No doubt, he's very sincere, but I wonder if we could ask Mr. Cohoe approximately how long he has? We have quite a few people who wish to make presentations and, if they'd all take the same time, we'd be here till eleven o'clock tomorrow morning. I wonder if we could - I think we're more than reasonable. I wonder if Mr. Cohoe has very much longer to go?

MR. T. COHOE: Well, I think that I'm more than half-finished.

HON. L. DESJARDINS: Half-finished? Well, Mr. Chairman, then if that is the case, either we ask Mr. Cohoe to expedite and wind up because it's been an hour now, and I don't think that we can afford - in all fairness, I think you should realize that we can't spend two hours on every brief. That would be impossible.

MR. T. COHOE: The point that I would like to make is that I would like to be able to appear in a courtroom.

HON. L. DESJARDINS: This is not the jurisdiction here.

MR. T. COHOE: I know it's not. This is the only chance I've had to say what I've got to say at all.

HON. L. DESJARDINS: I understand that and I think we've been very patient and we'd like to be patient,

but we must be fair with everyone. I think that you know that, in here, there will be an appeal. I think you should welcome this change. At least it will give you an appeal to any treatment or involuntary treatment that we might give. If you want to discuss that with some people later on, some member of staff, but the court . . .

MR. T. COHOE: I tried. I spoke to a lot of people and part of what I intend to tell you here tonight is how many people I tried to get to listen to me. For example, I would have appreciated if I would have been asked to speak to the people who were drafting the bill at the time. There was a period when you sent out and asked for briefs from a bunch of groups of people. I let so many people know that I had something to say and nobody thought that what I had to say was important at all. I'm trying to do the best I can.

HON. L. DESJARDINS: Well, this is what we're doing tonight. This is the reason for this tonight. But can I ask you then - I promise that we'll listen to you on another occasion if you want to talk to us again, but I don't want to misinform you or tell you that we can do anything about the courts. We have no jurisdiction in the courts at all.

MR. T. COHOE: Well, I wasn't saying about jurisdiction in the courts, to ask you to influence the courts. I was just asking you to understand my position that I haven't been able to get into one, and this is my only time I've ever had a chance. But I will do my best to be as fast as I can.

HON. L. DESJARDINS: Well, I suggest, Mr. Chairman, then if it is the wish of the committee, that we give Mr. Cohoe another 10 minutes and maybe, after that, we can entertain a motion of having a set time on those making representations.

MR. CHAIRMAN: What is the wish of the committee? Mr. Cowan.

HON. J. COWAN: I concur with the Minister's recommendation that we request Mr. Cohoe to try to expedite matters, and also that Mr. Cohoe avail himself of the opportunity perhaps to meet with staff on another occasion to go over those points of his brief which he is not able to present here this evening.

There are a large number of other presenters whose presentations are equally important and, while one certainly appreciates the need for individuals and the desire for individuals to participate in the process, one should also appreciate the need for other participants who have been waiting quite patiently. If we are going to hear everyone here this evening and give them a fair hearing, then we are going to have to acknowledge time constraints.

So I would ask Mr. Cohoe if he could try to finish up in about 10 minutes and then avail himself of the opportunity for further presentations to staff at a later date.

MR. T. COHOE: What opportunity will you guarantee me then?

What I really want is an argument, actually. Like, I'd like to participate in a debate.

HON. L. DESJARDINS: This is out of order. This is no argument at all. You make your point, and we will consider it while we study the bill to see if there's any point that you might justify an amendment.

We're not here to discuss the value of the medical profession and so on at this time. We're looking at a bill, and you should address your remarks . . .

MR. T. COHOE: I'm sorry I that I can't know exactly what it is that you're trying to do here. I'm just trying to represent myself as best as possible.

HON. L. DESJARDINS: Have you read the bill, Mr. Cohoe?

MR. T. COHOE: No, I haven't read the bill. I have legitimate complaints. I don't have to have read the bill to be in a position to make some complaints.

HON. L. DESJARDINS: What if I guarantee to make an appointment for you to meet with staff and try to explain the bill?

MR. T. COHOE: Who?

HON. L. DESJARDINS: To meet the staff we have, Mr. Walters and others who we might have available to go through the bill with you.

MR. T. COHOE: Yes.

HON. L. DESJARDINS: All right.

MR. T. COHOE: Well, I have no choice about it, so I guess I have to agree to that.

HON. L. DESJARDINS: We'll make an appointment and try to explain the bill to you.

MR. T. COHOE: What's their professional qualifications? I'd like to know the professional qualifications of the staff member though, before . . .

HON. L. DESJARDINS: That'll explained to you when you discuss the - the staff is not on trial here.

MR. T. COHOE: You don't seem to understand that I've been seriously abused. I'm having a hard believing in my society because you've done this to me. I haven't had the slightest opportunity to question this in any way at all. I'm trying to cooperate with you.

HON. L. DESJARDINS: I am suggesting, Sir, that we will make this arrangement. That's the best I can do. I think it'll be more profitable. It'll be better for you. You'll have a better chance than here at this time. There are a lot of people waiting also. It's quite a while for a presentation.

So I will guarantee that we'll arrange a meeting with staff to go through the bill.

MR. T. COHOE: Yes. As I said, I have no choice.

HON. L. DESJARDINS: Well, thank you very much then.

MR. T. COHOE: May I go on?

HON. L. DESJARDINS: Can you finish up in about 10 minutes or so?

MR. T. COHOE: You don't want to hear from me.

MR. CHAIRMAN: Mr. Cohoe.

MR. T. COHOE: Yes?

MR. CHAIRMAN: I was just recognizing you.
Mr. Cowan.

HON. J. COWAN: Mr. Cohoe, we'd like to hear the summation of your comments, and would appreciate if you could take a few minutes to provide those to us.

Then we have staff here who will immediately arrange a meeting with you, so that you can go over in some detail the bill itself, which is the matter before the committee. We would appreciate hearing, at that time, further comments that you may have on the bill or comments that you may have on the general conditions.

But I'm afraid, in regard to tonight's meeting, there are a large number of others who have listened with interest to your presentation, but also have presentations themselves that they would like to make. Out of deference to them, if you could accommodate them, I think we can perhaps accommodate you for summing up for a few more minutes and then arrange for another meeting, if that's to your satisfaction.

MR. T. COHOE: All right, I'll finish this as quick as I can.

As I said here, I've seen MARL. I've asked them to speak to their committee. Bill Martin, Carolyn - a particular committee heard me at one time; Lea Girman, executive assistant for Roland Penner; Norm Larsen who, one week after he met me, left for Ottawa; and Melvin Holley. That's a short list of the people who I have spoken to and appealed in every way I could think of to have the opportunity to be considered myself as somebody who has something to say in this. Nobody has ever invited to me to make any kind of submission on anything.

I should have been invited to make submissions because I am an expert in that. The natural people involved with this bill, there are three natural parties involved in this bill: lawyers, psychiatrists and the people who are are treated under the act. I am a natural opponent of the psychiatrists. Also, I think I am in a position to make a good argument.

I would appreciate it if your legislation would reflect what I call my core argument. That is, if I don't want to be examined by a psychiatrist, it's impossible, and so you can't compel somebody to undergo a psychiatric examination and have a meaningful result from it. I would appreciate it if there would be some route to the court for me now.

I'd also like to say that I am rather afraid because, at any time, something could happen and somebody could say, well, look this guy has got a history. Send him out to see a psychiatrist. I doubt that I will ever cooperate with psychiatrists and I will be abused again. I'm really afraid of that. That's not just something that I'm just saying here. I am quite afraid of that. It might seem unreasonable to you but, from my point of view, what the psychiatric profession does is unreasonable.

I would add, as I said before, that I think it's really society and this legislation that is responsible, not psychiatrists. Psychiatrists are just dupes. In fact, I believe that most of them think that what they're doing is a good thing and that they are trying to do a good thing, but they are not really - well, as you said, we're not trying psychiatrists here; it's just the legislation. Well, it is the legislation that has allowed this, and actually it puts pressure on the psychiatrists to do this kind of thing. They feel that they're responsible to do it.

I talked to better psychiatrists who suggested that they were expected to do this role, and to expect them to be the prosecution and defense at the same time is to put them into an unreasonable position. So, in a sense, I really feel that it's the legislation that's responsible. Any legislation that would require me to go before a psychiatrist without having had some form of a trial first, in which I have been charged and in which I have all the accesses to the normal judicial process and all the securities that it implies, anything less than that is completely unsatisfactory from my point of view.

So that's, I guess, it then.

MR. CHAIRMAN: Thank you, Mr. Cohoe.

Are there any questions? Hearing none, then I thank you for your presentation.

Mr. Cowan.

HON. J. COWAN: Perhaps, given the large number of presentations that are to follow and the fact that we have some other business to take care of, hopefully on clause-by-clause consideration of a large number of bills, if it would be agreeable to the committee, we might recommend that presenters try to keep their briefs to 20 minutes or less and then there would be more time for asking of questions if that's required. Of course, if a presenter is summing up and needs to go over a bit, that would not be a problem, but we try to maintain that sort of a time constraint so that we can get through the rest of the presentations this evening, if that is acceptable.

MR. CHAIRMAN: Is that the will of the committee? (Agreed)

We'll now call on Legal Aid Manitoba, represented by either Mr. Mel Holley or Ms. Shawn Greenberg.

Ms. Greenberg.

MS. S. GREENBERG: Mr. Chairperson, my name is Greenberg and I am appearing for Legal Aid. There is a written brief which is being distributed right now.

MR. CHAIRMAN: Thank you.

MS. S. GREENBERG: I intend to be particularly brief and I have no exhibits.

First, let me indicate why Legal Aid is presenting a brief with respect to Bill 59. Legal Aid has been in

business now for 15 years and, for 15 years, we have been involved to a large extent with mentally ill, both representing them as counsel, as litigators, and involved in community-related activities and mentally ill people, involved in committees designed to promote legislative reform, and involved in giving drop-in advice to mentally ill patients, and have had and continue to have an on-call service to Selkirk, Brandon and all the psychiatric facilities in Winnipeg.

As a result of that, we've had extensive involvement with mentally ill patients. Most recently, we have been involved with taking a test case to the Manitoba Court of Queen's Bench regarding the existing Mental Health Act, challenging it on the basis that it contravenes the Canadian Charter of Rights and Freedoms.

We are particularly concerned with presenting on behalf of mentally ill people because we feel that they are in a peculiar position, being the primary target of legislation and not being capable, for the most part, to make any kind of representations or to articulate a position on behalf of themselves. For that reason, we feel it is incumbent upon us to speak on their behalf and to make submissions with respect to the legislation.

I have noted on the agenda that there is a list of a number of people who are going to be making representations to the committee, varying from psychiatrists, mental health associations, lawyers. I anticipate that the committee will be getting quite a broad perspective on the bill, but I would like to indicate what our perspective is.

We view the bill in a somewhat different matter than I assume psychiatrists will, and we view in the bill in a somewhat different matter than the Canadian Mental Health Association has. We see that the CMHA has received a fair amount of media coverage and we note that the Opposition critics have given a fair amount of attention to the attacks placed on the bill by the CMHA, primarily in regard to the lack of any kind of provision in the legislation regarding community mental health services.

Let me say, at the outset, that we do not intend to challenge the bill with respect to this matter. While we support the CMHA in their bid to try to encourage the government to do something about community health services, we do not feel that should impede the amendment of the existing legislation. We feel that there are tremendous flaws with the existing Mental Health Act which demand and have long demanded review, and it is incumbent upon the Legislature to proceed with amending that legislation without any kind of contingency plans, without any kind of contingent requirements that it be predicated on the advancement of community health services.

In reviewing Bill 59, we are looking at the bill primarily as lawyers would, with a view to looking at the legislation as it is designed to remedy the existing problems regarding patients' rights. We must say that we commend the Legislature for the draft of the bill. We feel that Bill 59 does represent a laudable attempt to cure some of the existing defects in the law. We commend, in particular, the removal of the director's power to order examination and treatment; the establishment of the criteria to justify both assessment and admission to hospitals; the provision regarding access to medical reports; the automatic review provisions for reviewing patient status at certain intervals; provisions for appeal to a review board and the establishment of a review board; and the requirement that patients be advised of their legal rights both upon examination and upon admission to hospital.

Unfortunately, we feel that the amendments do not go far enough. We have two main areas of concern. Our first main area of concern has to do with the patient's right to object to both examination and admission to a psychiatric facility.

While the amendments require that patients be advised of their rights to legal counsel, it is not quite clear of what use that right to counsel is. The patient is not entitled to be heard in any regard with respect to examination or admission until after the fact. The bill sets up quite a laudable review process, but the problem with the review process is that it is precisely that. It only provides the patient with an appeal remedy. It does not give the patient any right to be heard from the outset.

Now, we fully appreciate that there are many cases where it would be impractical to have a patient be given the opportunity to advocate his rights from the outset because very often that causes delay, but we see that the bill also provides remedies for emergency situations. We believe that it is absolutely impossible to support any legislation that does not allow a mentally ill person a right to vocalize his position from the outset.

It appears that most of the amendments have been designed with a view to accommodating the Canadian Charter of Rights and Freedoms and it appears to us that, in order to accommodate the patient's right to fundamental justice on detention, it is incumbent that the legislation provide him with an advocate from the outset.

The important thing to remember about this legislation is that this legislation deprives a person of his or her liberty, and the only other analogous situation in our law where there is a law that takes away a person's liberty is the criminal law. It is difficult to be able to logistically support any kind of legislation that does not give to mentally ill people at least the same kind of rights and protections as persons who are accused of criminal offences. These people are detained and their liberty taken away from them through no fault of their own, through no probably activity, strictly because they are ill. It is inconceivable to us that they should not be given the benefit of the same kinds of protections as those who are accused of criminal activity.

Our second concern with Bill 59 relates to consent to treatment. It is commendable that the bill does recognize this as an issue, and there is a fair amount in the legislation regarding consent to treatment, but we feel that it does not go far enough to protect patients' rights. We believe that it is a fundamental principle of our legal system and our social system that people should have control over their own bodies and their own destiny to as much an extent as possible. We feel that treatment should never be forced upon a competent person.

The bill, as presently drafted, allows a review board to override a decision or the views of a competent person and to force treatment even though that person is competent. We can see no reason whatsoever for supporting that kind of legislation.

Secondly, with respect to people who are not mentally competent, although a consent to treatment obviously

cannot be obtained from them, we believe that the Public Trustee is not the appropriate person to be looked for for that consent. Bill 59, as presently drafted, requires the consent or allows consent to be given to treatment by the Public Trustee in situations where consent cannot be obtained by the patient. We don't feel that the Public Trustee Department has the necessary medical expertise or is properly qualified in order to make a decision as to the suitability of treatment.

Now the two areas that I have indicated basically relate to an individual's right to control his own body, his own environment, and the issue really is how best to give a mentally ill patient the right to advocate his rights with respect to detention and his rights with respect to treatment.

We have some reluctance or hesitation in suggesting that lawyers should always be involved in the process or that the right of a person to counsel would necessarily mean legal counsel. Lawyers don't usually have the necessary expertise to deal in the area of mental health, and lawyers are primarily involved in a litigation process which is not necessarily the best solution for the mentally ill patient. We believe that the best way to accommodate providing patients with an advocate is by having an in-house advocate in the psychiatric facility who is available from the outset.

Now I understand that, at some point, the reports preceding the preparation of this bill had reviewed the possibility of setting up some kind of an in-house counsel service and had rejected that idea. We would point out that the concept comes from the Uniform Mental Health Code and is a concept that is also being lauded by other committees and other groups, and we feel that it is the only way to possibly provide patients with the availability of having someone who would have both the necessary type of expertise to deal with the situation and be available in a quick enough time to be able to facilitate the processing of the patient through the system.

We should also point out that, in terms of funding for that kind of facility, we appreciate that bringing in-house counsel into the system at the various facilities would create an expense, but we also cannot conceive of how the government can afford to supply continuous duty counsel service to criminal clients but not accommodate mentally ill people with the same kind of facility.

Now, as I indicated, our major concerns with the legislation are the two areas that I've outlined above, but we would also like to draw to the attention of the committee certain specific problems with the legislation, section by section.

The primary concern in terms of specifics of the legislation that we have noted has to do with section 26.4(1). We assume that the problem in this section is an oversight. The entire concept or the entire workings of this new bill is predicated on the establishment of a review board. We note that section 26.4(1) is permissive in its language in terms of requiring the establishment of a review board. We would assume that permissive language is an oversight, and that it was in fact intended that the language be mandatory. Otherwise, it is obvious that the legislation or the designed legislation cannot function.

We also draw the attention of the committee to the time limitation set out in section 7 and section 11. We believe the words such as "forthwith" are subject to abuse if specific time limitations are not placed upon the wording. We also believe that the time limitation of 72 hours as proposed in section 15(b) for examination by a psychiatrist should be shortened to 48 hours.

With respect to time limitations, generally, we believe that the act should stipulate that detention be allowed for the least amount of time possible in order to effectively utilize the process without unnecessarily infringing the patient's liberty.

We also believe that, with respect to the jurisdiction of the review board as set out in section 26.5, there should be some kind of a general catch-all phrase at the end of the section which indicates that basically the review board would have jurisdiction to deal with any type of issue involving patients' rights, patients' treatment, patients' admission to hospital, etc.

We also note that with respect to the hearings before the review board, the act presently provides that there should be 10 days notice of such hearings. We feel that that amount of time is an inordinately long time, and in view of the fact that we would propose that advocates be allowed to make representations on behalf of the patients from the outside, we would suggest that the time limit be reduced substantially. Lawyers often are in court on very complex matters, in a matter of a day or two, and we do not see any reason why patients shouldn't have access to the review board on very short notice.

In conclusion then, we commend the Minister for introducing the legislation and, as I said, we believe it is a laudable attempt to improve the patient's rights, and we feel that it is absolutely essential that some amendments go through. As said earlier, we do not feel that the problems with mental health service, with community facilities, should prevent the passage of legislation which is in bad need for the remedying of patients' rights. We feel that the problems that we have articulated in the bill are easily correctible and that the legislation can be easily remedied in order to cover the points that we've raised. Those are my comments.

MR. CHAIRMAN: Thank you, Ms. Greenberg. Are there any questions?

Mr. Orchard.

MR. D. ORCHARD: Just on that last point, if I may. Do you have a suggestion on the 10 days? As I read section 26.5(6), "The review board shall give 10 days' written notice of the application to every party and to every person who is entitled to be a party," etc., etc. You would suggest that can be considerably shortened to two days, three days?

MS. S. GREENBERG: I would suggest definitely it is. As I say, lawyers are often in court on far shorter notice than that and, in view of the fact that we anticipate this board being utilized by patients from the outset, if in fact the committee saw fit to go along with that kind of recommendation, it would be necessary obviously to be able to conduct a hearing on short notice in order to facilitate the process of having a patient committed, if necessary. We don't want to place obstacles for the admission of the patient and we appreciate the fact that, by taking the position that

patients must have rights right from the outset, must be able to advocate their position right from the outset, that advocating of that position must take place on short notice. Therefore, to accommodate that, the notice would have to substantially less.

MR. D. ORCHARD: Now you've made an assumption that I'm not sure - I'll have to clarify with the Minister later on that this review board process would be available prior to the involuntary commitment of a patient to a facility. I've made the opposite assumption that the review board would only be triggered after an involuntary patient is placed in a facility.

MS. S. GREENBERG: In that event also, then we would suggest that the time limit must be shortened because, as it stands now, the patient runs the possibility of being detained for approximately two weeks before having an opportunity to be heard with respect to his detention or any other matter.

MR. D. ORCHARD: Right, and in that period of time as well, presumably in the interests of the patient, you may well have a patient needing treatment, but not having it made available to him because of these time delays.

MS. S. GREENBERG: That's right.

MR. CHAIRMAN: Any further questions? Hearing none, I thank you for your presentation.

The next presenter is Mr. Bill Martin from the Canadian Mental Health Association (Manitoba Division).

MR. T. DALMYN: Mr. Chairman, I am not Bill Martin; he's not available. My name is Tony Dalmyn, D-a-l-m-y-n. I'm one of the directors.

MR. CHAIRMAN: Have you got any written briefs to distribute to the committee?

MR. T. DALMYN: The Canadian Mental Health Association provided a written brief to all members of the House on June 26. I don't know whether copies . . .

MR. CHAIRMAN: They must be with the Clerk here. That's fine. Just proceed.

MR. T. DALMYN: The brief is lengthy. I don't propose to read it to you; I'm going to touch the high points. I want to say at the start that Ms. Greenberg and Legal Aid Manitoba have covered a lot of the issues that I would cover. But there are other issues that I want to address.

I should start by telling you that the Canadian Mental Health Association, as you likely know, is a national organization founded in 1918. It operates in Manitoba on the basis of regions in Winnipeg, Westman, Parklands, Portage la Prairie, Northern Manitoba, that are federated in the Manitoba Division. To the extent of our resources, we try to do the best we can to promote mental health and to help the mentally ill.

Part of our function has been to act as a critic, we hope constructively and responsibly, of the mental health system and mental health law. We think that this Mental Health Act, proposed by Bill 59, is very good in some areas. What we have to suggest to the committee is that there are a number of amendments that would improve it significantly that you can make now, but we also want to bring to your attention that the mental health system needs serious reform. We're proposing, therefore, that the Legislature should not regard Bill 59 as anything but an interim solution.

At present, the uniformity commissioners are working on a uniform Mental Health Act. They've been working on it for some time and they may have a final report this summer. That would merit consideration in itself. As well, I would suggest to you that the issues raised by the Mental Health Act merit further consideration by the Legislature. This comes late in the day today and it comes late in the Session. I would hope that the matter can receive a more extensive airing than it's received.

I'll give you the Canadian Mental Health Association's perspective on mental health law. There are issues of care and there are legal issues involved. The Mental Health Act, the present act, and Bill 59, seem to address fundamental legal concepts. In law, if you detain someone for any reason without legal authority you stand to be sued. If you administer medical treatment to someone without legal authority, you stand to be sued. What the bill does is provide a code of the ways in which a person can be detained and treated. That's fine. Unfortunately, what the bill doesn't provide is access to care. It provides how you treat someone who's resisting treatment. It provides how you detain someone who ought to be detained. It doesn't deal with the issue of care very well.

The Canadian Mental Health Association agrees entirely that there should be an effective fast way of detaining people who present a danger to themselves or others. There can be no question about that. At the same time, there should be swift and effective appeal mechanisms to make sure there are no mistakes and that there is no abuse of the legislation. The more difficult problem is deciding when and how someone who doesn't want a particular treatment should be made to submit to treatment. It's in that area that I would suggest to you that this bill starts to fall down.

What this bill provides is that a person who is a danger to himself or others can be detained. That presents no problem. What the bill also provides is that someone who is in a state of deterioriation of mental or physical condition can be detained. You may feel, on compassionate grounds, this ought to be done. I would suggest to you that the proper method of dealing with this problem is to see that the treatment services are available in the community and locally before you bring someone into the mental health system.

The mental health system, as you know, is focused on Winnipeg. I know the Minister has had trouble. He's spoken publicly of the trouble there is in getting doctors of any specialty to practice rurally. As the committee knows, outside of the Winnipeg-Selkirk area and, to some extent, in Brandon and Winkler, there are no psychiatrists. If you're in Northern Manitoba and you develop a mental health problem, the solution is to fly you out of the community for examination. That, in our view, is not acceptable.

We don't know all of the Minister's problems of finance and administration to get community services

going. We know the Minister has said, again and again, they're coming. We're suggesting to this committee that the review of The Mental Health Act is an appropriate occasion to address that issue. In dealing with the act on a clause-by-clause basis, I would suggest that it take the human rights of mentally ill people seriously. That means that some of the clauses that presently provide for detention or treatment have to be deleted or watered down.

We are suggesting that the criterion of substantial deterioriation be removed as a ground for examining someone involuntarily or detaining someone involuntarily. If the person presents a danger to himself, herself, or others, fine, but not otherwise. We have to trust the good judgment of medical practitioners and psychiatrists to identify danger. The substantial deterioriation criterion is vague and it doesn't add anything.

We would suggest that a lot of the time limits have to be speeded up. As the previous speaker told you, The Mental Health Act operates - and I think I have to concede correctly - on a shoot first, ask questions later basis. If a person is acting out a mental health problem, they will be detained by a peace officer or taken in for examination and detained.

Now the person's recourse under the act is to appeal to a Board of Review. The previous speaker pointed out to you, correctly, that there are a series of small delays built into the act, and it will be two or three weeks before a person's appeal can be heard by the Board of Review. That is too long for someone who is there as a result of a mistake.

The committee has to understand that Mental Health Act situations arise in many contexts. They can arise out of apparently criminal conduct; they can arise out of domestic situations. Spouses make accusations against one another to gain an upper hand in a custody dispute. With all of these problems, it's not fair to have someone held potentially for two weeks before their appeal can be heard. The various waiting periods - two days for this, three days for that, ten days' notice to convene the Board of Review - build up to a very long time. We would suggest there has to be some measure of protection for people who are living in places where there are no psychiatrists to safeguard them against being taken out of their community and brought to Selkirk or Winnipeg unnecessarily.

Our most important concerns though relate to some fundamental principles. The Supreme Court of the United States, the Berger Court, which is no nest of radicals or idealists, brought down some decisions that said that a mentally ill person has a right to be treated in the least restrictive environment conducive to care. This principle has also been brought down by the tribunals of the European Economic Community on human rights. It's been enunciated in documents of the United Nations. It's a very important principle and we would suggest that it has to be incorporated into the act. There's absolutely no reason why that should not be there. It's hinted at here and there, but it shouldn't be just hinted at. It shouldn't appear interstitially in the act. It should be up front, it should be fundamental.

We have concerns about treating people. The act loads a lot of responsibility, I think unfairly, on the Public Trustee. There's a procedure spelled out in the act where a doctor makes a determination, with reasons, as to whether someone is incapable of understanding their treatment and incapable of consenting to treatment. Once that is filed, in the absence of any appeal from the patient, the Public Trustee gets to make treatment decisions. We would suggest that responsibility sit with the Board of Review rather than the Public Trustee, and we would suggest that the doctor's recommendation go to the Board of Review and they make a determination as to whether the patient is incapable of consenting and, after that, approve a plan of treatment.

There's a provision in this act that says - and this is good in our opinion - that even a mentally ill person should have the right to consent or not consent to treatment. That's good, in the Canadian Mental Health Association's view, because it recognizes that there are different kinds and degrees of mental illness. The fact that a person is mentally ill doesn't mean that he's unintelligent or stupid. He may have problems expressing himself; he may have specific delusions; she may have specific problems but, in general, as a living, breathing, thinking human being, they should be accorded fundamental human dignity.

In general, in medical practice, a doctor doesn't treat without consent. A doctor is obliged, at the risk of being held negligent in a court of law, to explain treatment options and treatment risks. These privileges are rightly extended in The Mental Health Act to the mentally ill, excepting that there are so many exceptions that it seems to get watered down. We would suggest very seriously that the powers of the Board of Review to order that a patient be treated against his will, that should only take place when the patient is incapable of understanding treatment and incapable of forming proper decisions.

As the act reads now, there is a showdown. The doctor says, the patient needs this; the patient says no. The Board of Review makes a decision as to what's in the patient's best interest. We would suggest that the Board of Review should not act unless it believes seriously, honestly and beyond all doubt that this patient doesn't know what she or he is talking about.

These are substantial issues. I don't know if you can effect all of the amendments that would be necessary to condense - and I'm speaking of sections 24 and 25 - to accommodate this. That's one of the reasons, going back to the beginning, why we suggested that this act does deserve much more scrutiny as the uniformity bill comes down, as community service plans are developed.

One of the main points in our brief is that, to make the legal rights in this act work properly, there have to be more mental health services and community services. This act is a crisis act. It deals with how you detain someone who is acutely and seriously mentally ill and how you treat someone involuntarily after they've been detained. It doesn't say anything about access to services, and that is one of the big problems. Let me put it this way. One of the big insults you hear children throw at each other on the street is that you belong in Selkirk. The mental hospital casts a very big shadow in our society. People are reluctant to admit to mental illness. They are reluctant to seek care. The care that's available is fragmented.

There are subspecialties and different schools of thought within psychiatry. We don't have likely enough

psychiatrists in Manitoba. We don't have paraprofessionals and community workers to deal with it. What I'm saying isn't news of course. Clarkson said it in 1972; the working group said it again in 1983. We know and we trust the Minister is working on it and we know that sometimes haste doesn't make quality, but we are hoping very seriously that this is dealt with.

One of the ways of dealing with it is to build it into The Mental Health Act, and one of the ways of raising that issue now is for the Legislature to put a time limit on this act and to bring this whole field forward for further study and review.

It's important it should be dealt with in public. One of the points that we made in our submission was that the process of drafting this act was internal to the Department of Health, and that's fine. The Minister can run his department, and we reserve the right to criticize and we may agree to disagree. We know there were public consultations. There were written submissions called for. In the end though, the act seems to deal with a list of concerns as to how to administer the existing mental hospitals more effectively.

That's fine, but that's not going to be good enough. The people of Manitoba deserve better. I haven't tried to read the brief to you. I think I've missed some of the points, but they were dealt with by the previous speaker. There's a question of advocacy in assisting people in the process with the Board of Review. There's the question of how fast the Board of Review acts. I recommend the brief for your reading, and certainly the Canadian Mental Health Association has made itself available to all of the caucuses, all the political parties, and we remain so. Any questions, we're happy to answer them.

MR. D. ORCHARD: Mr. Dalmyn, I did read your brief. You have mentioned tonight that there should be a number of amendments. I apologize. I've read the brief, but I don't know whether specific amendments were suggested. At least, I don't recall any in the brief.

Do you have any . . .

MR. T. DALMYN: Within the brief, perhaps unflatteringly, we start at page 13 referring to internal flaws, and the first point we make is to go back to the question of the right to the least restrictive alternative environment for care, which we deal with at pages 7 and 8. Then from pages 14 onward, we make a number of specific comments.

We don't suggest in all instances the specific wording for the act but, for example, on page 15 we would suggest that "substantial deterioration" as grounds for compulsory examination or detention be removed in sections 8, 9, 10 and 16, and we set out the reasons. As I said, it's vague and it's not capable of being applied objectively.

I point out to you that this act says that a peace officer is entitled to detain someone if they think they are at risk of substantial deterioration of mental condition. Now how is a police officer supposed to decide that? But more fundamentally, we don't think that's a good reason for depriving someone of their freedom. If they are a danger, that can be recognized and that can be dealt with and, if they're not a danger, then send a social worker to deal with it through the community.

MR. D. ORCHARD: That begs the question on that section 16(1) of the bill dealing with involuntary admission, it is my understanding from reading section 16(1) that both the criteria - and then you've offered comment on substantial mental or physical deterioration as being an unworthy qualification for an involuntary admission - but it's my understanding that both condition (a) and condition (b) have to be met before there would be an involuntary admission, according to the act.

MR. T. DALMYN: Well, according to the act, you have to, first of all, within (a) - and (a) is broken into two parts, (i) and (ii), and (i) again is broken into two parts - (a) says generally "a person suffering from a disorder," and (a)(i) "likely to cause serious harm, or to suffer substantial deterioration," and then you get into (a)(ii) and (b). I don't think that the combination of mental disorder, substantial deterioration and then going to (ii) and to (b) is good enough.

It should just say, if the person is likely to cause harm to himself, herself or others and is in need of continuing treatment that can only be provided in a hospital and the person is unwilling to agree to a voluntary admission.

The substantial deterioration comes up in other contexts if you go back a couple of pages in the act to page 14 - sorry.

If you look at 10 on pages 6 and 7, where a peace officer, at the top of page 7, is supposed to make a determination of whether a person is undergoing substantial mental deterioration. That's consistent with the rest of the act but, if you think about it, it's very difficult to see a police officer making that kind of professional determination.

MR. D. ORCHARD: Mr. Chairman, then would a reasonable amendment to 16(1), in addition to your suggestion of the substantial mental or physical deterioration, be the addition of a (c) which would require, for instance, that the person lacks the capacity to make an informed decision concerning treatment? Would that also assist in narrowing the group of people that would be involuntarily admitted?

MR. T. DALMYN: That would be a good amendment, but the substantial deterioration still doesn't add anything, not only in 16 but in 10 and in the others.

MR. D. ORCHARD: No. I see some merit in your suggestion of removal of the "substantial mental or physical deterioration," but I wanted to just get your opinion as to whether a (c) addition on involuntary admission to the effect that the person lacks the capacity to make an informed decision concerning treatment as well to further narrow the gap.

MR. T. DALMYN: That's a good protection of people's rights, although I'm curious as to whether you're suggesting that the peace officer should make that determination under 10, or if you carry that through to all stages, or whether that's only at the last stage in the process.

MR. D. ORCHARD: I had the same problem with the peace officer determining the "substantial mental or physical deterioration" as well.

MR. T. DALMYN: A peace officer or a doctor at the earlier stage shouldn't be deciding substantial deterioration and there should be - and I made the point in the brief and in my oral submission tonight - if this is a remote location away from Winnipeg, there should be some sober second thought before you put that person on an airplane to Winnipeg or to Selkirk.

MR. CHAIRMAN: Are there any further questions? Hearing none, I thank you, Mr. Dalmyn, for your presentation.

HON. L. DESJARDINS: Excuse me, I have one question, Mr. Dalmyn. You suggest that the Board of Review should decide if the consent should be given for treatment, and not the Public Trustee. Would a public guardian allay the concern of your organization?

MR. T. DALMYN: I'm sorry, Mr. Minister. I . . .

HON. L. DESJARDINS: A public guardian instead of a Public Trustee. Would that allay the concern of . . .

MR. T. DALMYN: It would be better than what the act provides. It would be an improvement. The path that we prefer, going along with Legal Aid, is to say that if you have a patient assistant involved in the system and take the Public Trustee out, that combination would be better.

We are reluctant to see the Public Trustee or anyone else under any name given long-term powers to substitute their decision for that of the patient. By bringing a patient advocate or a patient assistant into the system, by putting the responsibility on the Board of Review to lay down after a hearing, a treatment plan, we think the system would work better.

It's important enough to the patient and, with more community services and less patients in the institutions in this situation of involuntary treatment, we think it's manageable and viable and a good way of operating.

What the Public Trustee does now, I'm told, is that the Public Trustee calls himself under the act, the committee of the person, and says he has the jurisdiction to consent to treatment on behalf of patients. Now that means medical treatment, it means medication programs, it can mean ECT. The Public Trustee doesn't solicit medical opinions to any great degree for medication programs but, for anything invasive or extensive, the Public Trustee asks around and gets some additional medical opinions but generally goes with the flow of medical opinion. There isn't a serious mechanism for the patient or someone assisting a disabled or inarticulate patient to have a strong say in the process.

Now, the members of this committee will be aware of what the Supreme Court said, in reference to the mentally retarded, about hysterectomies in the Eve case. I think that came as a surprise to a lot of people, and I think perhaps of the Public Trustee's office as well, who participated on the losing side in that decision.

The Supreme Court said in the Eve case that the courts have no power, and that's the traditional courts of our country without any specific statutory provision. The courts have no inherent power. You'll know the legal principle, the courts claim to be the guardians of the public, the fathers of the people, parents patria, using the Latin expression. The Supreme Court said that power doesn't allow the courts to order non-therapeutic medical procedures.

Now it wasn't a constitutional case. The Supreme Court didn't get into the constitutional niceties, but I think any type of substituted consent procedure that doesn't involve a full and fair hearing is going to be contentious. Without worrying about whether it's going to withstand constitutional scrutiny, it's a matter of conscience and good public policy. You want to see this matter done fairly and effectively, and the patient's best interests looked after, and a hearing isn't too much of an inconvenience or an expense to the public to go through.

I don't know whether I've sufficiently answered the Minister's question.

HON. L. DESJARDINS: Yes, thank you.

MR. D. ORCHARD: Mr. Chairman, just one more question to Mr. Dalmyn, you have presented a number of concerns, as has Legal Aid, and no doubt we'll be hearing more concerns as the evening goes on. If the amendments that you propose are not brought forward to change the bill in the manner that you would see as appropriate, we're then in a dilemma because we've got ourselves a committee that can be finished tonight presumably and a bill that can be passed within the next several days. Should the bill pass if amendments aren't made and we revert back to the old act, or is any change in here worthy of passage?

MR. T. DALMYN: The old act isn't too good. The old act was challenged in court, and I think it was upheld by Mr. Justice Scollin and his decision is under review. The Canadian Mental Health Association got an extraordinary order from Mr. Justice Philp of the Court of Appeal. We're interveners in the appeal. That doesn't happen much in Manitoba, and we're on the side of the patient attacking that act. I don't know, that appeal may go forward even if you bring this bill in, in order to lay down some guidelines on what does and doesn't stand under the Constitution.

I wouldn't like to see the old act come back. We have some very serious concerns about the treatment provisions, about substantial deterioration, about not saying anywhere the patient has a right to be treated in the least restrictive environment. I suppose if you asked us, this act for a year or six months or nothing, we would have to say we'll take this act, but as short as possible. But the best alternative is to take this act with some amendments and then get into it more extensively, because the issues are important.

I note that you all, as members of this House, from time to time have mentally ill people bothering you, and that may be the extent of your involvement with the mental health system. It's not something that a lot of people know a lot about, and it requires that you educate yourselves to understand the issues in the system a lot better. You've had a long and busy Session, you've tackled some stuff that shows a degree of courage or stubbornness, as you might define it on the part of the government and the Opposition.

I would hope that this act can get as extensive and serious consideration as some of the other legislation.

You took a very crowded agenda this time, and we'd like to see this act come around again. We don't want to see the Legislature saying next year, well, we dealt with The Mental Health Act last year and it's fine, it's been reformed.

These reforms really don't satisfy us. They don't deal with the care issue and that's what really makes the system tick. It's not law, it's care, and community programs and support.

MR. CHAIRMAN: Are there any other questions? Hearing none, I thank you, Mr. Dalmyn.

The next presenter is Mr. Henry Elias.

MR. H. ELIAS: My name is Henry Elias. I live at 448 Sherbrook. I received very short notice; I came home at 8:30-8:45 and I have this specially delivered by courier. Now I want to make a complaint about that. People who want to present should be given proper notice. I don't take that as proper notice. I'm very appalled at that kind of notice.

I wrote Mr. Jay Cowan - I forget his title right now - although I have it somewhere over there, requesting proper notice. I just got a letter, like yesterday, stating that I would get four or five days notice probably. So I object to what has been happening here.

But anyway my time is very limited, and I don't know if I'll get through with what I have to say. I have a lot to say, very strong things to say. I've had quite a bit of experience with mental illness in our family and with Sister Theresa and with other people. It's scandalous what is happening now. I have not had time to prepare a brief, but I did present a brief to the Manitoba Association of Rights and Liberties Task Force on Affirmative Action some time ago. I'm just going to go through part of that, that will explain what I have to say. Then I'll go through the bill as proposed if I have enough time when stating what amendments I would recommend, except the whole bill should be scrapped. It's no good.

Now I want to make this committee aware of the reality faced by many post-psychiatric patients which is quite different from the public perception of the post-psychiatric patient. Most of these post-psychiatric patients have been subjected to further brain damage by one or both of the two major classes of psychiatric drugs. The major tranquilizers, that's a broad class which is used almost exclusively in psychiatric treatment - not exclusively, but for the most part - and the tricyclic anti-depressants; those two classes of drugs. Now I won't give you names. One drug has 10, 20 different names and that's how it is. There are 20 of each, so you got it there, 20 times 20 is 400 different names.

Anyway, virtually all the anti-psychotic psychiatric drugs belong to these two classes of drugs. All of these psychiatric drugs cause a similar type of brain damage in many psychiatric patients and this brain damage is permanent. This is a permanent type of damage. I'm not going to read you all of this. This is a pharmaceutical basis of therapeutics, that's more or less the bible of drugs. I'm just going to read you the heading, what is says here, "Neurological syndromes side effects" - they call them side effects - "common to all classes of anti-psychotic drugs." That includes both the anti-depressants and the major tranquilizers. If you want to read about them in detail you can read from that booklet. You can read the Compendium of Pharmaceuticals and Specialties, that's where the drug companies list what these drugs do, but it's much worse than that.

One of the damages that these psychiatric drugs causes is known as persistent dyskinesia, it's also known as tartive dyskinesia, although that's a misnomer. What this means in ordinary language is that these psychiatric drugs cause periodic, rythmic, involuntary, compulsive muscle movements. I'll read that again. They cause periodic (off and on), rythmic, rythmic, rythmic, involuntary (these people can't help it), compulsive (they have to do it) muscle movements in the post psychiatric patients, and it is these involuntary compulsive rythmic muscle movements that makes these post-psychiatric patients - and I was speaking to the task force - makes them a visible minority.

(Mr. Deputy Chairman, Hon. J. Cowan, in the Chair.)

In addition to this type of permanent brain damage, these psychiatric drugs do many other types of bodily injury and many other types of brain injury which are more subtle and not as visible to the ordinary person on the street as it were. For example, they cause an inability to sit still for very long in many patients. They also cause hostility and periodic compulsive aggression, that means particularly when they go off the drugs for a period of time. So they are in a Catch-22 situation. If they take the drugs they get more brain damage; if they go off the drugs they become violent. And you will have read in the papers - I don't need to tell you - will have seen in the papers what has happened recently here in Winnipeg.

Now, this periodic compulsive aggression, this is an extension of the tartive or persistent dyskinesia, this inability to sit still, that's just going further, it causes them to be compulsively aggressive. So what modern medical psychiatrists are actually doing is manufacturing many criminals, who become criminals through no fault of their own. That's what is happening in our society.

Now these drugs also cause a slowing of mental function, but I won't go too much into that, you have probably seen much of that. Now what I want to go into is that these psychiatric drugs are often administered by physical force, despite the objections of the patient. If not by physical force, then they are almost always administered by cohersion, under the great duress suffered by the psychiatric patient, who is also often forceably confined, despite having committed no crime or no offence.

Furthermore, the police and the courts are used as well as the psychiatric nurses as henchmen and henchwomen to do these dastardly deeds, because by their own, by the psychiatrics' own admission, these psychiatric drugs do not cure; they only treat mental illness, and they inflict torture and bodily injury on the mentally ill. All the fundamental human rights are denied to the mentally ill. The right of habeas corpus, that is the right to come before a judge; the right not to be arbitrarily imprisoned when having committed no criminal offence; the right of fully informed consent before any medical treatment or intervention, even if by a proper advocate which they don't have - they never have a proper advocate - and the right guaranteed

under the Charter of Rights, the right of the security of the person; and the right to a fair hearing which they almost never get. What is happening is that the courts are misled by the psychiatric profession. The reality of the adverse effects of their psychiatric drug treatment is covered up and the public is also misled by the psychiatric profession. You don't hear much about that type of brain damage; you don't hear much about the compulsive periodic aggression; you don't hear very much about that. It's not even published in the medical journals, that's something that I have observed in quite a few psychiatric patients.

What the psychiatrists in fact are doing is that they are committing atrocities on the mentally ill. Now that's a very strong statement to make. It is a very strong accusation but it is true nevertheless as you will see if you bear with me for a few more minutes. Now I've gone to a great deal of trouble to find out, to determine what are the common factors that make an act an atrocity. What are the common factors that make something an atrocity? What is this that is an atrocity? How is it defined? What are the factors? Let me list some of them. I did this by memory in two hours at a cafe when I was going to appear before this task force. It's not complete but I'll give to you what I've got. Now there's always government involvement in atrocities.

Okay. How is the government involved? Well, let me tell you, the Federal Government is responsible for the safety of medical drugs in a particular provision of The Food and Drugs Act. Now these psychiatric drugs have never been reviewed. I wrote them. They have never been reviewed; I've got the letter.

How is the Provincial Government involved? Well, the Provincial Government administers The Mental Health Act. The Minister of Health does it. He's conveniently left, as has the Attorney-General.

That's one - that's No. 1 - that's one factor that's always government involvement, and I've told you how the Federal and Provincial Governments are involved.

No. 2 - there are always professed good intentions. They're always put forth and you know how that is done in this case.

No. 3 - there's bodily injury. From what? From the forced administration of psychiatric drugs and from the injury to the brain and many other body organs from the psychiatric drugs.

No. 4 - what is the fourth common factor in the atrocities? Torture. I don't know if you've seen or if you've read the medical - there is only one real reference where a medical student was administered psychiatric drugs. You should read that. That's a short report. If I can, I'll supply it to the committee.

The fourth common factor is torture. And what kind of torture is this? This is the torture from the effects of these drugs and from the forceful administration of these psychiatric drugs. That how this torture - and it's a torture, let me tell you; I've seen this first-hand. It's a torture. If psychiatrists were required to take these drugs, they would not administer them, I guarantee you that.

What's the fifth common factor of atrocities? Attempts at legitimization. Here's the legitimization right here in The Mental Health Act. I have a copy of The Mental Health Act; I didn't have time to look for it. Monstrous. Monstrous is the only word. Attempts at legitimization by means of a mental health act of that kind of treatment? No way.

No. 6 - what's the sixth factor in atrocities? Secrecy and cover-up. I'm sure you haven't heard many people talk like me. Now I've researched this for many years and I know what I'm speaking of. I know what's going on; I've seen it first-hand. So there's secrecy and cover-up. It's even written into a provision of The Mental Health Act - nobody can find out anything about any patient. Ridiculous. That's how they've gotten away with it. These drugs came into being in 1952. That's 35 years ago. Within two years, it was known how much damage they did. Have you ever heard how much damage they do? I'm sure you haven't - not even as legislators. So it's written right into a provision, the secrecy and the cover-up - monstrous.

Okay, No. 7. The seventh factor of atrocity: lack of accountability. You want to tell me who psychiatrists are legally accountable for? They aren't. They make the rules in practice. That's what I'm saying. I won't go into the details of that. My time is running out and I have to be very fast in order to get through what I have to say.

No. 8 - arbitrary detention is another factor. I've already given you no right of habeas corpus nor real patients' advocates. These people cannot speak for themselves. Somebody else has to speak for them. But they don't have a real advocate. Look, I was the father of one these patients. I have nothing to say. Can you believe that? Who else would have a bigger interest than the parents or the brothers and sisters? The psychiatrists? No, they have a conflict of interest without a doubt. They make $180,000 a year doing these atrocities. One of our most respected professions is doing it right under our nose and we're not even aware of it.

No. 9 - no fully informed consent. Well, we know how much consent. A person who is not in his right mental - they don't even have the mental capacity to give the informed consent, and the effects of these drugs are never explained to them. I know that from first hand from a member of my family - I was there.

No. 10 - segregation - segregation into group homes, segregation in South Africa, segregation to reserves like the Natives are being done? No, segregation in group homes. We have segregation right here in Canada and I can prove it and you all know it.

This is the kind of monstrous load of intimidation and coercion - I don't know if I'm on the right page - yes, I guess I am. I'm a little disjointed. This is the kind of monstrous load of intimidation and coercion that the post-psychiatric patient must live under. They live under fear. There was a post-psychiatric patient on Peter Gzowski. Do you know what she said? Fear, constant fear of being picked up again, constant fear of being forced to take these drugs.

What else? The involuntary compulsive, rhythmic periodic muscle movement. Do you know what it means to go like this? To have your feet go like that? I could tell you much more; I haven't got time. And the periodic compulsive aggression that is so hidden, so covered up, and a threat of further confinement if he or she stops taking these drugs. And the further bodily injury if he or she continues to take them, and the forcible injection of these psychiatric drugs, the slowing mental processes from these drugs, the segregation into group homes, the forcible supervision.

This is where the post-psychiatric patient comes from, and most of these become street derelicts. They can't

hold a job. Most of them cannot hold a job even if they get one. This is the most discriminated group or class of people in our society, and they are confined by a chemical straitjacket in the words of some psychiatric authors in the psychiatric journals. That's what they call it, a chemical straitjacket. They give them a depot shot in their thigh which lasts for several weeks. That's even worse than the story in 1984 - I forget the author's name - George Orwell - where they had a camera watching every movement of Smith, and who was the other person? This is even worse. Finally, Smith and his girlfriend went in the bush where these cameras couldn't watch them, but in this case it's injected and it goes with the person - monstrous.

What else do these drugs do? There are many, many more subtle effects. They reduce personal incentive and initiative almost totally. A psychiatric patient cannot instruct their lawyer, no way. So how can the post-psychiatric patients be expected to find employment or to hold onto such employment with so many strikes against them; no voice of their own, no real advocates, no real incentive, all the other discrimination and intimidations which I have described.

I have a few other notes here. I should make maybe - my time is running out. Now these psychiatric atrocities are not only crimes against these people - there are thousands of them right here in Winnipeg - they are crimes against humanity and they know it. I have seen first-hand how these patients are lined up and forced to take these brain-damaging psychiatric drugs, very much like people in Hitler's death camps. I've seen it; they do it during the day. They have visiting hours only after 5:30 and you don't see it then.

The part of the brain that these drugs destroy is known as the substantia nigra, and it also causes symptoms of Parkinson's disease. Now there's one other thing which these drugs do and I'm not going to list all the things. There's a whole long list of them. These psychiatric drugs also cause some patients to be unable to swallow voluntarily. Let's say you want to give them a vitamin pill. There's no way they can swallow it. They can't swallow voluntarily; they can only swallow if they don't think of it. The thing that I haven't said anything about it is these people that are on these drugs, they are continually spaced out. Who are the real drug pushers in our society? They are medical doctors and the psychiatrists, and there's even a book written about it by a medical doctor.

Now I want to make another point before I go to the bill itself. All medical drugs are medications that do not properly fit as parts for the body. They don't properly fit the molecular structure or the chemical function. Now you would not think of taking your car to a garage to get parts put on that don't fit properly; nobody would do that.

I should make a point here. I'm talking about the acquired non-infectious illnesses. I passed over that because I didn't want to take too much time. There are different types of illnesses. There are physical injuries, infectious diseases, true hereditary diseases, there are in-born errors of metabolism and there are the acquired non-infectious chronic illnesses of which mental illness is one. There are many others.

MR. CHAIRMAN: Mr. Elias, you've been on 20 minutes. Could I ask you to sum up?

MR. H. ELIAS: I'll do the best I can. I want to go through the bill quickly, as fast as I can.

So what I'm saying is that the conventional psychiatric treatment is scientifically and intellectually dishonest. That's my point. It's scientifically and intellectually dishonest, and you ask any self-respecting biochemist, he'll tell you that. Biochemists know which parts fit the body, they know that, and I'm not going to go into that now because already the beginning of cutting me off is there. There are parts that fit the body, they can be used as medications, but drugs do not fit properly by definition. Drugs only treat; they never cure. They can't cure; that's why medical doctors are so shy of talking about cures.

Now I want to make one other point in this connection. Nothing at all is being done about the prevention of mental illness and other of these acquired non-infectious chronic illnesses; nothing to speak of is being done by the present health care system to prevent these kinds of illnesses.

Now The Public Health Act outlines the duties of the Minister of Health. There's a section that outlines the duties very clearly regarding prevention. But as far as these types of illnesses are concerned, very little prevention - I mean genuine prevention - is practised. There's a lot of lip service given to it, but it isn't done. The brain is no different from any other organ of the body. It requires all the essential nutrients, the same as any other organ of the body. I haven't said anything about chronic poisoning of what it does to the body. That's another long story which you don't want me to go into.

Another point I'd like to make is that the patients themselves are all so misled regarding the injuries and adverse effects of these psychiatric drugs. I want to make another point. Now there are many medical prescription drugs that actually cause mental illness. There are also many over-the-counter drugs that cause mental illness. I'm sure you haven't heard too much about that, that there are many medical drugs that cause mental illness. The Health Protection Branch of the Federal Government does nothing to prevent the prescribing or the use of these drugs which cause mental illness, these medical drugs, as required by the Food and Drugs Act. The Federal Government is not doing its duty.

I want to go quickly through some of the sections of the proposed bill. Section 8(1), and it's all through the bill, it's always one man's opinion, I don't know whether I have time to go through it, but I'll just give you a few of them. Application for involuntary psychiatric assessment, 8.(1), "Where a physician has examined a person and is of the opinion . . . "- now this is again one man's opinion.

Section 8(2)(d), the last part of that, ". . . observed by the physician and matters communicated to the physician by another person," which may, in fact, be falseholds.

Procedure, section 9(2), line 5, ". . . without notice to the person." There's no way that a person should be interred, as it were, or detained without notice, without a writ of habeas corpus.

I can just do it generally because I don't have enough time. What I want to say is the examining physician/psychiatrist is the very person who is inflicting bodily harm on the mental patient, irreversible brain damage.

So these are the people that are doing the judging. They are judge and jury and - what's the other word - warden?

Section 10(1)(a)(ii), "has behaved or is behaving" - and they're talking about the mental patient - "violently towards another person or has caused or is causing another person to fear bodily harm from him or her," let me tell you, in many cases this violence is caused by the psychiatrists themselves from the ill-effects, from what they call side effects of the drugs - the compulsive aggression.

Duty to inform, section 12, the last line of the introduction: ". . . under this Act shall promptly inform the person." What use is it informing the person if they don't have the mental capacity? They should inform the patients' advocate and their close relatives. This should be done immediately, particularly the patient's advocate. There's not good provision for a patient's advocate in this.

Section 13(c) - "that the person has the right to retain and instruct counsel." My goodness. They do not have the mental capacity to instruct counsel. This must be done for him or for her by the patient's advocate.

Oh, here's another thing. The examination should be recorded on video tape and retained by an independent non-medical authority for reference. There's nothing in this bill to state that. That is not that costly. It can very easily be done. All psychiatric examinations should be recorded on video tape and retained by an independent non-medical authority.

Section 16(4) - "A psychiatrist who completes an application for involuntary psychiatric assessment of a person shall not complete the certificate of involuntary admission in respect of the person." Well, these two people are cut out of the same cloth. What do you expect? That's totally wrong; there's no way that that should obtain.

HON. J. COWAN: A point of order, Mr. Chairperson.

We had indicated earlier that we'd try to confine the presentations to about 20 minutes with a bit of time extra if that was required and, of course, time for questions. I'd ask the presenter if he can sum up very, very quickly because there are a large number of others who have listened, with interest, to his comments and I'm certain he would want to listen to theirs as well.

MR. H. ELIAS: How many minutes have I used?

HON. J. COWAN: About one-half hour. If you could sum up very quickly, I think that would be appropriate.

MR. H. ELIAS: Thank you for your patience.

HON. J. COWAN: Thank you.

MR. H. ELIAS: What can I sum up? I'm going through the act, section by section, of what I would recommend.

What I recommend most strongly is a genuine patient's advocate, but not a psychiatrist, no way, not a medical doctor, because these people have a conflict of interest, whether they admit it or not, and we all know that. At $180,000 a year, don't kid yourself.

There are many other things I recommend. I guess I'll have to write a brief. I'd like to know, Mr. Chairman, how much time I have to deliver the brief to the committee because it's very late in the Session and everybody's anxious to get the bill passed.

HON. L. DESJARDINS: I think we should make it clear that this act is only to deal with the rights and then there will be a review and programs later on. If you present a brief, it will probably be too late for this act because that might be decided this evening, but you can still send it to us because we will be reviewing that for a while.

MR. H. ELIAS: Okay, I'll sum up briefly.

I know that the courts go along with it, the police are used as henchmen, the psychiatric nurses are used as henchmen. It's the same situation as it has been in many other countries whether we admit it or not, but somebody should start laying criminal charges against the people responsible in government.

But you see there's another provision. There's a provision in the Criminal Code that the Attorney-General can stay any action at any time. Can you believe that? I mean, just look at it. If I laid a criminal charge against the responsible people, there's no way I'd get anywhere. I have gone to lawyers; let me tell you, I know how hard it is. Harry Peters will come next, the Association for Rights and Liberties. I am anxious to hear what he has to say.

But this whole thing, I don't even have a word to describe it. That's how monstrous it is. I have seen it first-hand; I could give you detailed case histories. I'm going to collect a bunch of them and write about it and publish it.

MR. CHAIRMAN: Thank you, Mr. Elias.

Are there any questions of the committee? Hearing none, we'll go on to the next presenter, Mr. Harry Peters, from the Manitoba Association for Rights and Liberties.

Mr. Peters.

MR. H. PETERS: Yes, Mr. Chairman. I believe a brief is being circulated among members.

Ladies and gentlemen, I'd like to preface my remarks by indicating that it's through the efforts and inspiration of gentlemen such as Henry Elias and Tom Cohoe that I've become involved personally in this area of law, and it is one of the sources of inspiration - complaints and concerns expressed by people such as them - that MARL itself has become heavily involved in this area.

We have a standing Patients' Rights Committee and we have had that committee for several years. It consists of not only lawyers such as myself, but former patients, health professionals and laypersons, and let me say that this legislation has been a long time coming. We've reviewed various suggestions since the Pascoe Report, and if I may start by saying I believe MARL would prefer that the act be amended as proposed in Bill 59.

In keeping with your time constraints, I will simply go over the brief and highlight certain points. I am sure the credentials of MARL are well-known.

With respect to subsection II, the Recommendations, I wish to dwell on No. 2. MARL believes that a person should be accorded a full hearing prior to a declaration of incompetence, or a decision for involuntary psychiatric assessment or admission. And No. 5, with

Mr. Elias and with Ms. Greenberg of Legal Aid, we believe that a patient's advocate, agency or body or person should be created, and that this person should be completely independent from any mental health agency and should receive prompt notice of any persons who are confined under the act. With respect to the third part of our brief, Structural Analysis, I hope you have time to consider the first three points, but No. 4, I think is important.

At each point throughout the act where it is mentioned that the patient has the right to retain and instruct counsel, the act should be amended to mirror section 10 of the Canadian Charter of Rights and Freedoms by being reworded to read that the patient has the right to "retain and instruct counsel without delay."

I'll now go on to a section-by-section analysis, following the order of the paper. First of all, we feel there should be a definition of "designated health professional." In rural and remote areas of Manitoba, access to psychiatrists and physicians may be extremely limited, and we feel such designated health professionals should be given a mandate by the act to recommend psychiatric assessment. Therefore, we propose the following clause: Designated health professional means a member of a class of health professionals, other than physicians, designated in the regulations. I note that this is a recommendation contained in the uniform mental health act discussion draft as referred to in a footnote in that page.

On page 3, I believe there should be a definition of restraint as the word "restraint" is used in the act. We believe that restraint should be given the meaning as follows: It means to keep the person under control to prevent harm to the person or to another person by the minimal use of such force, mechanical means or chemicals, as is reasonable, having regard to the physical and mental condition of the person. This definition is also from the uniform mental health act.

We also believe there's a problem with the word "review" used in the act. There's use of the word "review" in referring to the review board, and also review when referring to a medical officer doing a review. So we think the two terms should be preferable so there'll be no confusion. Therefore, review should mean a review by the review board, and reevaluation should be used to refer to a review by a medical officer.

The latter part of page 3 indicates several areas where the use of a designated health professional could be used, and as the brief is written, you can see our suggested amendments are underlined and I won't repeat the suggestions, as indicated in the brief, verbatim.

With respect to section 8(2), on page 4 of the brief, Contents of application, this section requires that applications for involuntary psychiatric assessment must conform to the forms prescribed by the regulations. These regulations may have a profound effect on such applications and therefore an opportunity should be granted for public input to the regulations.

With respect to section 14(1), "Duty to retain custody," we feel there are some problems with this, and we'd ask your committee to take into account our concerns about how long a person who brings someone for an assessment or examination has to wait around. How do you retain custody when the examination doesn't have to be completed for 72 hours?

We can understand the intent of the bill is to encourage the quick examination and, if the person is not found to require staying at the mental health facility, those persons who brought the person there should take him back or her back wherever they came from. But you've given a 72-hour period in which some person or police officers might have to stick around a mental health facility. So we're making a suggestion on the top of page 5 as to how to avoid that problem.

The "Duty to return person" is referred to in section 14(2). In order to ensure that a person is returned either to the place where taken into custody or another appropriate place, the act should be amended. We've simply suggested the use of the word "promptly," as indicated in the brief, so that transfer to another location is effective immediately.

With respect to section 16(4), where a "psychiatrist who applies cannot certify," MARL applauds this section as it ensures a second opinion for involuntary admissions. However, to ensure objectivity, we recommend that the section specify the second opinion must be of a physician not in practice with the first physician. The act should therefore be amended as indicated at the top of page 6.

Subsection 17(2), Psychiatric assessment, this section should also be amended in light of my earlier remarks with 16(4), the use of a second physician who is not in practice with the original physician who makes the request for change of status.

Subsection 18(1), I'm not sure if this is a serious problem but, as worded, it would seem to mean that a court could not order the release of a person in detention. We feel that the Lieutenant-Governor's powers should be qualified by the insertion of a few words at the top of page 7 - they're underlined there - or upon an appeal decision or order of the review board or court, just to ensure that someone can't get stuck in limbo by a strict interpretation of that section.

We feel that there should be an amendment to section 18(2), and that amendment, as indicated and underlined, would require two physicians not in practice with each other to have an opinion that a person confined in a jail be taken to a psychiatric facility.

We also urge the amendment at the very bottom of page 7, where a case where a person needs psychiatric assistance and is in a jail and consents to being taken to the jail, in other words, this is not a placement in a psychiatric facility against that person's will. You need two physicians, we suggest, if the people in charge of the jail feel the person is ill and needs to be transferred to a psychiatric institution and that is against his will. But if the person desires to go there, one opinion should be sufficient, and that's what we suggest at the bottom of page 7.

With respect to 19(1), "Certificate of renewal," we take issue with the use of the word "shortly" in reference to when the attending psychiatrist shall assess an involuntary patient's mental condition "before the expiry of a certificate of involuntary admission." The word, "shortly," does not provide a time frame for when this assessment shall take place, nor does it guarantee sufficient time between the patient's assessment and renewal of status for the patient to access and instruct counsel.

We feel at least two weeks is the time a physician should make up his or her mind about renewing the

involuntary admission. The way "shortly" could be interpreted, your certificate of involuntary admission lapses, tomorrow I'll decide between 4:30 p.m. and 5:00 p.m., before I go home, whether or not you should stay. That seems to rush the process. We want psychiatrists to seriously consider the issues when they're being asked, and we feel that the act should indicate a time limit.

Subsection 23(1), "Information as to patient's status," in order to ensure sufficient time for a patient to retain and instruct counsel or agent prior to submitting to involuntary status or actions, the patient should have the right to access counsel without delay. Furthermore, the act should require that the full meaning of changing one's status from voluntary to involuntary shall promptly be explained to the patient in a language the patient understands. The act should also require that a health professional ensure that the patient does understand, to the best of his or her ability, the information given. The section should be, therefore, amended and that amendment is suggested about one-third down the page, on page 9, which is underlined on the left-hand side of the page.

With respect to 23(2), "Patient incapable of understanding," this section does not ensure that patients ever receive explanation information as to status change, even when they become capable of understanding it. This section should ensure that the patient receive the information as soon as he or she is able to understand it, and that a health professional ensure that the patient does understand the information.

This section should be, therefore, amended. The problem we see here is that, if the patient can't understand it at the time the status is determined, there's no suggestion that, when that person's condition improves, the professional then go and explain to that person his status.

There's already been mention - pardon me. On page 10 of the brief, Section 25(1), "Application to review board re treatment," this section should require that specified treatment may not be administered to an involuntary patient where consent has been refused unless the specified treatment is authorized by the review board. This ensures that the specified treatment, where denied by the patient, family, or Public Trustee, must be reviewed as to its benefits prior to being implemented. Such a requirement for review increases a likelihood that such treatment will be the most beneficial treatment. It also ensures that the right to consent of the patient, family, or Public Trustee is not neglected. This section should be amended as follows, and it's changing basically the permissive word "may" in that section to "shall."

Section 25(2), "Material on application," MARL applauds the necessity of providing such material and application for specified treatment as indicated in this section. Again, this requirement increases the likelihood that a specified treatment will be the most beneficial treatment.

Section 26(1) Leave to live outside facility: A certificate of leave is demeaning to patients in the eyes of MARL. It affords limited independence and carries the constant threat of cancellation should one fail to comply with the physician's discretionary requirements. Furthermore, it does not adequately foster personal management skills nor community integration. Certificates of leave should be abolished and replaced by release as voluntary patients with specified community supports to assist in meeting income, housing, vocational, and social and emotional needs.

On this point we join with The Canadian Mental Health Act in asking the committee and the government, in specific, to consider that often the problems involved here are ones where the person wants out and should be out but there's no funding to place that person in an appropriate setting.

The money has to be spent to get these people out. We urge the government to consider that point as being one of the problems that could greatly alleviate the concerns of the community that are under the jurisdiction of this legislation.

As I said, certificates of leave should be abolished. At the bottom of page 10, however, if they continue to be authorized by the act, then during assessment on return from leave a patient should not be re-examined solely to determine whether the patient should be readmitted as an involuntary patient. After all, the patient might not be able to cut it, in let's say the real world, and want to come back. He might want his certificate of leave cancelled. So in any case the act should make the entire range of options for patient status as available for the patient who either wants to come back or has to come back. Our recommendations for the amendment to that section are at the top of page 11.

With respect to 26.3(1) MARL applauds the inclusion in the act of an automatic review process respecting patient status.

Section 26.3(2) Second opinion: The use of the permissive "may" rather than the mandatory "shall" jeopardizes the realization of the act's provisions and should be amended. I think the Minister of Health has already indicated that, or at least I've heard that there are plans to change this "may" to "shall" to set up the review board and we certainly welcome that amendment. That is also covered on page 12 at the top of the page.

With respect to 26.4(3) The Number of Members: In order to increase subjectivity by decreasing familiarity between those being reviewed and the review board members, the three members should be drawn on rotation from a standing board of 15 members, and in addition a review board should be established for each local region to increase accessibility and usefulness of the review board. The act should be amended accordingly, and we've indicated our suggestion at the top of page 13.

With respect to 26.5(2) Applicants: MARL applauds this section since it provides for appeals to be initiated by family, advocates and others.

26.5(5) Board may add parties: MARL once more applauds this section, since family, advocates, and significant others may be parties to review board hearings.

26.6(2) Counsel: MARL applauds the phrase "counsel or agent" which allows representation by knowledgeable others on a patient's behalf. I should say, although Mr. Elias didn't have much of an opportunity to display very much of his vast knowledge in this area, he is an example of an individual who has a vast knowledge. In certain proceedings before review boards I can see a person of his talents being useful.

I've learned a lot from him, I should indicate. I think there are other people out there that boards can learn a lot from.

With respect to Written reasons, 26.6(9), MARL believes that all parties to an appeal should automatically receive written reasons for the review board decisions.

With respect to Patient access to clinical records, MARL applauds the access to clinical records provided to patients through this section. I should indicate that has been a major area of concern among people coming to MARL. They want to know what their records say about them. There's never been any formal procedure to follow the act. We think it is commendable in this regard. It may prevent the release of the records but at least there's a process to go through and certain criteria to be met.

We also have a recommendation with respect to a statememt by the attending physician with respect to those medical records, and we recommend the insertion of the word "serious" instead of just using the word "harm" to a person. We think "serious harm to the mental condition of a third person" is the criteria that should be used and that's indicated in our amendment as suggested in the latter part of page 14.

We also think the use of the word "serious" should be inserted into 26.9(12) in Matters to be considered by court, as suggested on page 15, and once again we've indicated our recommended amendments to that section.

The last section on which MARL wishes to make a recommendation for amendment is section 97, Communication by patients. This section should be amended as follows, and on the very last page of the brief we've included the words that form the amendment: "The patient should be allowed unrestricted communication with any person through any available means except where such communication is likely to result in serious emotional harm to another person." The bill at present is simply confined to writing materials for communication.

Ladies and gentlemen, it may be news to you that I'm also a counsel with Legal Aid Manitoba and I wish to join with her in her perspective as presented in the brief on behalf of Legal Aid. Speaking simply as a lawyer with Legal Aid and a lawyer who works at the office which handles a good deal of the referrals from Selkirk, the comments made by Miss Greenberg in her brief are all too true.

The bill contemplating amendment of The Mental Health Act makes it a little bit easier for lawyers to get involved in an orderly fashion, but her remarks in that paper, speaking as a Legal Aid lawyer, have some considerable weight, at least in my mind, and I hope in yours. That completes my presentation, Mr. Chairperson.

MR. D. ORCHARD: Mr. Peters, I'll go backwards. I'll go front to back in your brief, if you don't mind. Page 13.- (Interjection)- What did I say? Did I say front to back? I meant back to front, in reverse of what you did. Page 13.

Do I detect from your recommendation, in terms of establishment of the review board, that two things should take place? Currently the act - first of all, you want "may" changed to "shall." But assuming the review boards are being established, I detect from your suggested amendment that you want two things to happen: First of all, that the review board be structured as a 15-person board, from which you select three on a rotating basis, first off; secondly, that this group of 15 potential review board members be established in all seven regions, so we'd have 105 people as a bank of expertise throughout the province to draw on. Is that correct?

MR. H. PETERS: Yes.

MR. D. ORCHARD: Okay. Now that may well be a very legitimate consideration, but given the structure of the board being particularly - the psychiatrist has mentioned and you've left it in - that might pose some serious difficulties in some of the regions, as has already been identified tonight.

MR. H. PETERS: I can appreciate that and I ask perhaps, as we've already included reference to designated health professional, that in areas where no psychiatrists are available other than the psychiatrists who make the decisions affecting the patient that perhaps the act could be further amended to, in that section, include a reference to a designated health professional. So you've convinced me that our recommendations for amendments need to be amended.

MR. D. ORCHARD: Well, it's a legitimate practical problem that we have when we get into the regions.

Now, on page 5, you suggested an amendment in 16(4), you want the second opinion to be a psychiatrist not in the same professional practice as the first. I don't have a knowledge of the make-up of the psychiatric practice as compared to say, for instance, the medical practice, where you do have groups of physicians within a medical group. My question to you is: Is that too restrictive, or how restrictive is that suggestion of yours? Would it make it impossible to obtain that second opinion?

MR. H. PETERS: Let me say I hope the committee is going to be hearing from psychiatrists who can advise what impact our suggestion might have, but this section will most frequently be used inside psychiatric facilities. In other words, where you might get three or four psychiatrists practising on the payroll of a psychiatric facility, and it's our view that this will help involve psychiatrists outside the psychiatric facility, that's where I believe most psychiatrists practise together is in psychiatric facilities. So our hope in implementing this suggestion is to involve persons outside the ordinary detention areas.

MR. D. ORCHARD: As you're probably well aware, that alone presents a problem, for instance, in Brandon where the facility has one psychiatrist on staff - at least it did have the last time I checked - to get that second opinion, and there it gets difficult.

Mr. Peters, you have suggested an extensive number of amendments. I have no idea whether the Minister is receptive to any or all of them. In absence of any

of your amendments being accepted, or a very minimal numb?er of them, like, for instance, I would assume that the Minister is going to accept the change from "may" to "shall" in 26.4(1), requiring the establishment of the review committee rather than simply enabling. But assuming that the other not be accepted, and that's an assumption that I may be incorrectly making, would MARL be satisfied that the act should still be passed without amendment, as you've suggested?

MR. H. PETERS: I think we'd be happier that the bill be passed than the bill not be passed - yes, definitely.

MR. CHAIRMAN: Are there any further questions?

MR. H. PETERS: If I may make one remark, I forgot to indicate that I think there should be a provision for indicating what's going to happen to the people who are under the old system. I've lost the word for it - a transmission provision. If this act comes into effect tomorrow, what about all the other patients? Something to that effect.

MR. CHAIRMAN: Thank you, Mr. Peters.

Before we continue, we will take a two-minute break so that the Hansard people can change the tape.

(RECESS)

MR. CHAIRMAN: Committee, come to order.

If it's the pleasure of the committee, there has been a request by Dr. McKay to change with Ms. Jorgenson and that's agreeable to her. Is that agreed with the committee members? (Agreed)

I will call now on Dr. Marilyn McKay, representing the Manitoba Psychiatric Association. Dr. McKay has written briefs to be distributed. Maybe they can be distributed while we are waiting for Mr. Desjardins to come back.

Dr. McKay, please proceed.

DR. M. McKAY: Thank you very much.

I will be very brief and I will not attempt a clause-by-clause analysis of the Manitoba Psychiatric Association's response to this. This is in part because I didn't realize until 4 o'clock today that I had been elected as one of the spokesmen for the association.

The problems that come up with mental health legislation are viewed by different groups, as Ms. Greenberg said, in a different perspective, and what I am hoping to reflect is the members of the Manitoba Psychiatric Association, and I've submitted to the committee a draft of a position paper which has been prepared by the Canadian Psychiatric Associaton. It has been prepared by the Standards of Practice Council of which I am a member. This draft is in its near final form, will be reviewed by the executive and, I am assured by the president, adoped in a form very close to this. It expresses some of the concerns and some of the points that practising psychiatrists and the professional association feel should be imbedded in mental health legislation.

One of the things that concerns us is that the present thrust to change mental health legislation is focusing its area of concern on individual rights of patients and we very much welcome this. We very much welcome some changes which will alleviate the responsibility that we have held traditionally over the years of making judgments for the patient in the situation where the patient has been deemed incompetent, unable to make their own decisions. We welcome some sharing of that responsibility. However, the process that is put in place to open up that decision making and that sharing of responsibility must not be so cumbersome that it is detrimental to the patient's care.

The other point about this is that we are forgetting sometimes in these rights of the patient is the rights of the patient to treatment, and that's not always clearly spelled out in legislation; the right to their well-being; the rights of families to acquire treatment for a member of their family who is psychiatrically ill, who requires treatment and is not able to appreciate the need for such; and completely neglects the rights of the treating facilities - the treating staff, the psychiatrists and the nurses - to remain treatment facilities and not become detention centres.

We've seen that happen in Ontario where, because of the kind of legislation, treatment facilities and psychiatrists are put in the position of being forced to detain the patient with no authority to treat. This is abhorrent to psychiatrists, we're not interested in being jailors, and it's actually something that we see inherent in this present legislation.

The concept of detention is written into this legislation. A person is to be detained until treatment can be authorized by some review panel. Now there is a clause, 24(8), which entitles psychiatric treatment pending consent but does not address psychiatric treatment. It addresses behavioural control for someone who is presenting danger, and that really has nothing at all to do with psychiatric treatment. That happens all the time in jails. So we are now put in this position with this act, and I agree with Ms. Greenberg who pointed out that this period of time can be very long before we have the authority to treat. We then have to look at who makes the decision that treatment will be given and what treatment will be given.

The position of the Canadian Psychiatric Association is that review panels and the review process should be distinguished to those matters of review which relate to procedure and competence, and that clearly should be dealt with by a review panel which has a broad representation from the community, from the legal profession, from the mental health professions. They can deal with issues of competence, the issues of has The Mental Health Act, as written, been adhered to, has the patient's right been respected?

However, when it comes to who makes the decision as to the appropriateness of medical treatment, the Canadian Psychiatric Association and the Manitoba Psychiatric Association feel that these are medical decisions and that this should be a separate process in which the expertise is medical.

This act specifies that specific treatments will be authorized by this review panel of which one is a psychiatrist and two are not. You're now having specific medical decisions made by people, the majority of whom we feel do not have the expertise to evaluate whether the decision is appropriate or not.

The third is the question of consent. Traditionally, when a patient has been considered incompetent due

to mental illness, the doctor has made those decisions. We welcome some sharing of this reponsibility, and is it really being relieved of that responsibility? However, we question, as some of the previous speakers did, as to whether the Public Trustee is the appropriate person for this.

How is it better to have a lawyer in a Public Trustee's Office make that decision than to have one psychiatrist make that decision? Is that indeed protecting the patient's rights; or should it be that a medical decision, a treatment plan is proposed, a way of treating is decided upon by the treatment team; that this is reviewed by a group who have collective expertise that is of some medical psychiatric origin? We feel that the latter is a much preferable method of deciding that in the absence of the patient being able to give consent, that a good decision has been made.

The other point that must be raised is that if society and the Legislatures decide that a segment of the population of the psychiatrically ill are not to be treated but are to be detained, this should be done so outside the health care system. They should not be held in hospitals. When that decision is made that this person is to be detained but not treated, a mental health act should specify clearly how the treating facility, the hospital, the treating staff are relieved of the responsibility immediately of this person; that immediately they cease to be held within this hospital, if it's not going to be part of treatment. When I talk about treatment, I am saying that treatment and care; I'm not just meaning some pharmacological treatment. I'm talking in the sense that was mentioned earlier of treatment and care.

The other point that I think comes out of this that really has to be emphasized is that this act again is addressing one specific problem which is patients' rights. I think there's a broad range of agreement that this has to be addressed. I don't think that this legislation is good legislation to do that and I've listed some of the concerns. There are many others, but I think that at this last date and at this late hour, it's rather difficult for us to amend this act in such a way that we're really going to get sort of first-rate legislation. I think really that is the spirit of the message that the members of the Manitoba Psychiatric Association would like to convey to the committee.

MR. CHAIRMAN: Thank you, Dr. McKay. Are there any questions?

Mr. Orchard.

MR. D. ORCHARD: Dr. McKay, I just want to follow up on a couple of the areas that you've mentioned in the brief. I take it, from the tenure of your comments, that the legislative amendments proposed here are similar to ones already enacted in Ontario?

DR. M. McKAY: There are some similarities, yes.

MR. D. ORCHARD: And it's those similarities in terms of the issue that you mentioned of turning the psychiatric facilities into detention facilities rather than treatment facilities that is of concern, is that correct?

DR. M. McKAY: I think it's important to note, when you consider the clauses for the criteria for involuntary admission, that the Ontario act is very restrictive. It really talks about imminent danger.

Now, for the psychiatrist, danger should not be the reason for a psychiatric involuntary admission. The psychiatrist sees that someone should come into a hospital for involuntary hospitalization when they have a mental illness, that's in need of in-patient treatment, and because of the illness, they're not able to appreciate the need for that.

Psychiatrists are not good at predicting dangerousness; that's been shown over and over again. Many people are dangerous who are not psychiatrically ill. That should not be the only issue here, and I think many psychiatrists wish it was never raised as an issue, but that is the Ontario act, that unless there's imminent danger, you cannot commit a person.

One of the consequences of the Ontario act has been an astronomical rise in people who are charged and held under Lieutenant-Governor's warrants, and that population of patients is growing at an alarming and unmanageable rate in Ontario because of the narrowness of the act on terms of the criteria for voluntary admission.

MR. D. ORCHARD: It has been suggested earlier this evening, I believe by MARL, that the review panel procedure be applicable prior to admission. Would that resolve some of the problems?

DR. M. McKAY: Well, I think that that's not always practical, and I think that both lawyers and psychiatrists who work within the system know that that's not always practical. I think that the time frame should really be shortened here before you have a clear decision on the case; that, indeed, a person should be held for involuntary treatment or should not be. I also think that there must be some better clause than 24(8), which allows treatment up until that point, because 24(8) merely allows for behavioural control. So there are those two problems.

How practical it is to really have a panel that you can pull together in an emergency room of a hospital all around the province on a 24-hour day basis, I'm not really sure, but certainly the time frame should be shortened so that the decision of the review panel should be very quick.

Also, we should have a distinction between the review panel that deals with the procedural matters and the question of competency and the medical review mechanism that decides what treatment is appropriate or is the treatment being proposed appropriate.

MR. D. ORCHARD: That, Mr. Chairman, stimulates my second last question.

Currently, if you are a psychiatrist recommending a treatment to a patient, do you routinely seek a second psychiatrist's opinion as to the treatment?

DR. M. McKAY: No.

MR. D. ORCHARD: Okay.

DR. M. McKAY: If the patient is a voluntary patient, as most patients in the province are, and they agree, and I don't have a question in my mind about what is

the best and most appropriate treatment, we would make an agreement to enter into that form of treatment.

If the patient is a committed patient and the family understands and are supportive, the patient is not wanting to call a lawyer, not asking for the Ombudsman, not asking for some review of this particular treatment, no.

If, however, I have some question as to what is appropriate or the patient or the family does, then that would be the usual procedure would be to ask someone else.

MR. D. ORCHARD: Then would it be a reasonable suggestion for amendment that the treatment decision where it's refused by an involuntary patient, as I understand the act, and that treatment decision is referred to the review board, your objection being that the review board may not have the necessary medical expertise to make the proper decision, would it be a reasonable amendment to seek a second opinion from another psychiatrist?

DR. M. McKAY: I think that certainly would be much more the medical model, but it certainly, I think, opens it to a less public kind of forum. I think it's a more easy and expedient way if it's done within the working of a hospital system, but it does have this other problem that it doesn't formalize a hearing, if you understand what I mean. It is merely another medical consultation.

MR. D. ORCHARD: One last question, Mr. Chairman.

In terms of the involuntary admission, I asked the question of another witness or another presenter tonight about whether addition of a "c" criteria might be appropriate in addition to the criterion of causing serious harm, etc., and then the person is unwilling to agree to a voluntary admission, if adding "c", that the person lacks the capacity to make an informed decision concerning treatment, should be part of the involuntary admission requirements?

DR. M. McKAY: Can I just read that section and then ask you to repeat what you said?

MR. D. ORCHARD: 16(1).

DR. M. McKAY: Oh, yes, okay. And "c" would be what?

MR. D. ORCHARD: "c" would be along the terms that the person lacks capacity to make an informed decision concerning treatment.

DR. M. McKAY: Yes, I think that's a good phrase. The CPA struggled with what kind of phrase they might use to cover that sort of issue, and I think that's a reasonable phrase.

There's great danger in making the criteria too narrow, and there's great danger in making the criteria too ambiguous, and the balance is exceedingly difficult to achieve.

MR. CHAIRMAN: Are there any further questions? Hearing none, I thank you, Dr. McKay, for your presentation.

The next presentation will be from the Psychological Association of Manitoba by Dr. J. Brolund and Dr. James H. Newton.

DR. J. BROLUND: I'll be presenting the brief. I believe they will be circulated.

MR. CHAIRMAN: Yes, it is being circulated.

You may proceed.

DR. J. BROLUND: My name is Jay Brolund, and I appreciate the opportunity to present this brief on behalf of not only the Psychological Association of Manitoba, but also the Manitoba Psychological Society.

I think I should say something by way of introduction as to who we are. The Psychological Association of Manitoba is incorporated under The Psychologists Registration Act as the regulatory and professional association for psychology in Manitoba. As such, it fulfills its legal responsibilities concerning the protection of the public and the advancement of professional psychology in the province and represents the views of over 150 professional psychologists.

The Manitoba Psychological Society is a fraternal and educational organization whose purpose is the furtherance of psychology as a science profession and a means of promoting human welfare. It represents the views of another 150 individuals, over two-thirds of which are not registered with the Psychological Association.

I should also add that we're representing the views of our national organization, the Canadian Psychological Association, and its membership of over 4,000 psychologists across Canada. Our views were also represented in their brief of February 7, 1987, to the Uniform Law Conference of Canada regarding the Uniform Mental Health Act. It is apparent that a great number of Manitoba and Canadian psychologists have an interest in mental health issues and legislation deriving from their direct involvement in the assessment and treatment of mentally disordered persons.

It is the expectation, at least of the Manitoba contingent, that we make a statment on Bill 59. Before doing so - I promised Tom I'd do this - I'd like to comment on all of those involved in developing and drafting the amended Mental Health Act to bring it much more in line with the Charter of Rights and Freedoms. We compliment you on drawing heavily from the Uniform Mental Health Act and taking advantage of all the expertise and representation reflected in that document.

We are especially heartened to see the Manitoba amendments to include increased access to legal counsel and rights advice, the review board safeguard, automatic reviews of admission or renewal, provision for involuntary outpatient status, reference to least restrictive intrusive treatments, and access to and disclosure of records, among others.

In spite of the fact that we feel the proposed amendments represent a vast improvement over the existing Mental Health Act, there are a number of remaining issues that concern us. It is our intent to focus this brief on the most prominent of these, one which reflects fundamentally upon the role of psychologists in the mental health care area and the welfare of the persons who are recipients of mental health services.

We take particular issue with the orientation of the act towards vesting one discipline with the bulk of the

responsibility and decision-making power over persons, thereby effectively excluding the contributions of other highly trained, competent and available mental health professions. Even the most cursory review of the act reveals the heavy emphasis on the roles of physicians to the virtual exclusion of other mental health practitioners. We consider this imbalance unreasonable, unrealistic, not in the best interest of our patients, and clearly in need of redress.

Our first point in this regard relates to our assertion that in its failure to specify the involvement of psychologists in such things as recommendations for assessments, assessments, admissions, treatment and management, the act is out of touch with the current realities in the mental health field in North America. It is also out of touch with the Uniform Mental Health Act which supported the position that psychologists, as designated health professionals, could be specified as able to at least refer for assessment regarding involuntary admission. Therefore, it is our contention that the enactment of this state of affairs into provincial law would represent a retrograde step.

We use the words "retrograde" and "realities" with confidence. As you are no doubt already aware, the reality is that psychologists are involved in a wide range of duties in a variety of clinical settings. Those duties include clinical assessment, management of the mentally disordered patient, and conducting a myriad of psychotherapeutic and behavioural interventions; and among others in Manitoba, the settings include the mental health centre, psychiatric programs and general hospitals, forensic service, rehabilitation services, community mental health services, psychogeriatric services, mental retardation corrections and so on.

It is apparent that the contributions of psychologists to the mental health field have been increasingly recognized over the last several decades by appointments of responsibility and influence in universities, government and health care facilities.

These facts relating to the expertise, qualifications and recognized abilities of psychologists in clinical work with the mentally disordered have so far been ignored in the proposed amendments to the act. There are, however, existing laws which reflect more realistically the roles of psychologists in the mental health field.

The responsibility and authority of psychologists in relation to the assessment and treatment of the mentally disordered has been defined in the common law of Canada and in statute law, respectively.

In the case of Haines vs. Bellissimo, et al.- this was the Ontario Supreme Court in 1977 - the court, in deciding there was no negligence on the part of the psychiatrist and the psychologist who assessed and treated the paintiff, was of the opinion that, and I quote:

"The duty and standard of care imposed by Dr. C. as psychiatrist is the same as that required of physicians in all fields of medicine and surgery. The same legal principles apply to Dr. B. as a clinical psychologist applying a healing art in a specialized capacity in a hospital environment. Having undertaken to treat H., the defendants owe to him a duty to exercise that degree of reasonable skill, care and knowledge possessed by the average of like professionals."

And I also quote: "There was no negligence on the part of Dr. C. in delegating the responsibility of assessing the suicidal risk to Dr. B. Dr. B." - this was the clinical psychologist - "had the qualifications, training and experience and was competent to make the assessment."

So in discussing questions of reasonable care and infallibility, the court made no distinctions between the practices of psychiatry and psychology. Thus the common law of Canada contains the view that these two professions owe an equal and independent duty of care to the patient. We contend that this responsibility should be reflected in the act to amend The Mental Health Act.

To further illustrate the practice of psychology as viewed in law, we quote the statue law of Manitoba, and this is The Psychologists Registration Act, By-Law No. 2, a definition of practice of psychology. The practice of psychology means the rendering to individuals, groups, organizations or the public any service involving the application of principles, methods, procedures of understanding, predicting or influencing behaviour and so on. I won't move you through it all.

I would point out, though, under section 6(a), that the application of the principles and methods includes: (a) diagnosis, prevention and amelioration of adjustment problems and emotional and mental disorders of individuals and groups. And then there are further sections for further involvement and things like hypnosis, educational, personnel selection and management and so on.

When one reviews the issues that are dealt with in the definition of mental disorder in the amended act, one finds that the issues are largely behavioural or psychological and not in fact medical issues. As exemplified above, they are well within the realm of the practice of psychology in Manitoba.

We've established then - I hope - that psychologists are, in actuality, making assessment and treatment and management decisions, they are making them appropriately and legally, and furthermore, they are being held accountable. Indeed, it seems clear that the proposed amendments to The Mental Health Act need to be revised to better reflect these existing laws and practices in the mental health field.

Of foremost importance, however, in the discussion, are the implications of the physician bias of the act upon the well-being of those who it purports to serve. From the point of view of the patient, it is clear that the ideal mental health act would allow a jurisdiction to have available the most competent and highly trained individuals to undertake the important responsibility of assessments, admissions, treatment and management. Instead, the proposed legislation effectively precludes the possibility of a variety of qualified and highly trained professionals being involved in the process.

We have already described the practices, expertise and legal responsibilities of psychologists and in so doing have emphasized their competence in the assessment, treatment and management of mental disorders. We are clearly of the opinion that it would best serve the interests of the individual in Manitoba if the act proposed a flexible system which made these services of a psychologist more easily accessible.

By the way of illustration, we offer a hypothetical case - and someone referred to this before - in a rural Manitoba community where the available physician or physicians may have a limited understanding of mental disorders, but where, on the other hand, there may be

a highly skilled psychologist and/or community mental health worker working for the local community mental health program.

Indeed, one cannot say that we are acting in the bests interests of the individual if the legislation effectively "outlaws" and limits the participation of the most competent professionals available and requires that the work be done by the less competent professional who may be overwhelmed by other duties more directly related to his or her specialty. Clearly, in view of the realities, especially of Manitoba's limited qualified mental health resource personnel, in both rural and urban Manitoba, the strict reliance on one profession could most drastically affect the welfare of the individual.

I would also add that that state of affairs is somewhat at variance with the freedom of choice legislation in many of the states in the U.S. That would allow a patient equal access to a range of services from equivalent professional groups. Again, the point is it would better serve the interests and welfare of the patient if competent, qualified and experienced psychologists were also empowered to take such responsibilities.

It is our contention that if such were the case, not only would the number of inappropriate referrals, admissions and/or unnecessary detentions in mental health centres be reduced, but also individuals would be much more effectivley redirected to less restrictive community-based mental health services. I think that, in turn, would be much more in keeping with the mental health working group, with the mental health directorates, plans which emphasize not only community-based services, among other things, but also a role for psychologists as a treatment resource for the mentally disordered. I think that's consistent with some of the other briefs as well.

So, to summarize our points, we propose, No. 1, that the Psychological Association of Manitoba and the Manitoba Psychological Society propose that the act to amend The Mental Health Act be changed to permit duly qualified and experienced psychologists to perform the same functions, duties and responsibilities as already outlined for physicians.

At minimum, we propose that The Mental Health Act be amended to reflect the Uniform Mental Health Act and permit duly qualified and experienced psychologists to examine a person and make application for involuntary psychiatric assessment.

No. 2, we propose that the composition of the review board be expanded to include representation of a duly qualified and experienced psychologist again to effectively broaden its perspective in depth.

Adoption, then, of that proposal would require a legal definition of those practitioners who could be considered qualified to carry out functions described in the act. One way of achieving that, as defined by the Uniform Mental Health Act, would be to establish a certification mechanism possibly under the authority of the Lieutenant-Governor-in-Council which would attest to the ability of a particular psychologist or other mental health practitioner, if they so wish to argue, to carry out the work. The definition could contain the requirements, possibly among others, that the professional, and in this case as I'm talking of psychologists, the professional be licensed or registered by the appropriate regulatory body. That's the Psychological Association of Manitoba.

The psychologists meet the health service-related training and experience requirements to be listed in the Canadian register of health service providers in psychology and/or that the psychologists be certified as competent to provide these services to the mentally disordered by the provincial government mechanism established for that purpose. Such changes then would serve to significantly enhance the available pool of competent individuals charged to undertake assessments in management functions for mentally disordered patients. At the same time, one would avoid the present dependence upon the judgment of one group whether qualified or not.

I have also appended to the brief a list of some other concerns and human rights issues which we feel need to be given further considerations. A number of these have already been touched on. There was a concern - patient's refusal for treatment can be overridden - that one was touched on. We felt there was need for more debate on that issue.

The period of detention for assessment, 72 hours. Again, we were feeling that something shorter or in the vicinity of 48 hours would be more reasonable.

The provision for patient advisor services as proposed by the Uniform Mental Health Act, we felt should be considered again.

Provision for patient's consent in hearings and cases of transfers, section 4(1), a time limit should be specified regarding the length of period of restraint for a patient who signed a request for discharge. It's not specified.

Information about patient's rights should be in writing as well as verbally.

We certainly endorse the establishment of review boards. However, our concern is that the meetings should be frequent and believe the review board should be given sufficient resources and staffing to exercise their enormous responsibility.

And, clearly, we're in support of a multidisciplinary kind of board with representation in various perspectives.

And again, many before me have disagreed that the Public Trustee be empowered with the authority to make treatment decisions. We also felt that was much more consistent with the role of the review board.

I thank you for your attention to the remarks. I'm confident that your committee would wish that the Manitoba Mental Health Act should be a contemporary and progressive model which reflects the current realities and requirements in the Manitoba mental health field. It's for that reason that we're confident that you'll give full and serious consideration to the views that we put forth.

I thank you.

HON. L. DESJARDINS: Dr. Brolund, first I'd like to ask you a question.

As far as you know, are there any provinces where the treatment assessment is done by the psychologist?

DR. J. BROLUND: The treatment and assessment in the mental health centre itself?

HON. L. DESJARDINS: Yes, under The Mental Health Act.

DR. J. BROLUND: Not to my knowledge in the mental health centre; although psychologists play a part in the

treatment and in many cases are in charge, are case managers of the specific treatment and the assessment, but that's in concert with a multidisciplinary team in most cases.

HON. L. DESJARDINS: Mr. Chairman, if I may, this period is usually reserved for questioning of clarification and so on, and if it's not abusing the time of the committee, I'd like to make a short statement of intent, I think, and then ask you a question.

I think it is clear enough - I've repeated that many times - especially with the difficulty that we've had in recruiting psychiatrists. We said that we're looking at psychologists in this field to increase their responsibility, but I should inform you that this act was to deal mostly, and that's why it was brought in this year, it wasn't the intent with the Charter of Rights. Others will follow, as I said before.

Now I think it would be a mistake to rush anything at this time and certainly we'd like to discuss this with the Professional Association and other groups, but as I say, we certainly have gone on record many times that we would want to see an increase of participation from the psychologists. So we certainly would look at that and be ready to maybe bring in an amendment next year.

Now I want to say, though, you mentioned participation of your group in the Board of Review and that is possible now because there is a psychiatrist and there is a lawyer and then the other person.

There is another clause that I would like to read that in certain emergencies - I'm sorry, this deals with something else. I'm sorry. But what I wanted to say is that we want to pursue what you're saying and we think it would be a mistake to rush it at this time. We also want to get the final report from the Uniform Law group also, but I can say that I'm committed to look at that for the coming year.

MR. CHAIRMAN: Mrs. Mitchelson.

MRS. B. MITCHELSON: Just a couple of questions.

I'm not really quite sure what the psychologist's role is in treatment of mental illness in our psychiatric institutions.

Under what authority would you see or assess a patient? Would you be consulted by a psychiatrist to come in and see a patient?

DR. J. BROLUND: I work in a mental health centre - in the Selkirk mental health centre - and what happens there is that someone is admitted to the centre. Now every discipline has a responsibility of meeting that person and doing an assessment. So I would automatically see that person, do my assessment and then meet with the treatment team and decisions would be made around questions of assessment, diagnostic questions, making it clear that the medical diagnosis - within The Hospital Act, it has to be a medical diagnosis - that has to be made by a physician. Although psychologists are certainly trained to do diagnostic work and aid the psychiatrist or physician in many cases to do that, it's still within The Hospital Act and has to be a medical diagnosis. So within the hospital, we don't do that, but we would certainly treat a person and in many, many cases I'm the one who's charged with a specific treatment and we'll pick that up.

MRS. B. MITCHELSON: Just clarification of treatment, does that mean then prescribing medication?

DR. J. BROLUND: No.

MRS. B. MITCHELSON: Okay. What do you mean exactly by treatment then?

DR. J. BROLUND: That would mean psychotherapy. That could be individual, it could be group, it could involve family, it could be marital, it could be some specific training or desensitization for things like anxiety disorders or anxiety treatment aspects or assertive training or behavioural interventions. There are just a number - treatment of depression, cognitive behavioural treatment and so on.

MRS. B. MITCHELSON: Okay.

Thank you.

MR. D. ORCHARD: Mr. Chairman, can I read to Dr. Brolund the definition of a psychiatrist in the act right now, and it hasn't changed?

It means a duly qualified medical practitioner who is duly certified as a specialist in psychiatry by the Royal College of Physicians and Surgeons of Canada, or - and here's where I want your opinion - who has practical experience and training in the diagnosis and treatment of mental disorders that, in the opinion of the Minister, is equivalent to such a certificate.

Would psychologists have the practical experience and the training in diagnosis to meet this criterion that the Minister would have to qualify you as psychiatrist?

DR. J. BROLUND: There would be an exception there. Yes, in terms of, I would say, diagnostic psychotherapy kinds of treatment modalities, not in terms of medications, no. We would wouldn't be able to prescribe medications.

MR. D. ORCHARD: I'm not sure that this refers to medications where it says "practical experience."

DR. J. BROLUND: No, but that's where it would certainly split off and that lies with the physicians.

MR. D. ORCHARD: I guess the last question would be: Have you ever approached the Minister in terms of having your profession included under the "or who has practical experience," etc.?

DR. J. BROLUND: I'm not quite sure of the question. Approached him to . . .

MR. D. ORCHARD: To see if your profession would meet the criterion of practical experience, training and diagnosis and treatment of mental disorders so that in the opinion of the Minister it's equivalent to the certificate of a psychiatrist?

DR. J. BROLUND: No, we haven't.

HON. L. DESJARDINS: Mr. Chairman, I'd like to answer.

That is exactly the clause that I was referring to that we would like to discuss this with the professional association with the possibility of bringing in an amendment, "including other groups," in there. That's what we'd want to look at, to start with, exactly that amendment.

MR. CHAIRMAN: Any further questions? Hearing none, I thank you for your presentation, Dr. Brolund.

DR. J. BROLUND: Thank you very much.

MR. CHAIRMAN: The next presenter is Dr. Jim Brown on behalf of Dr. M. L. Harvey.

DR. J. BROWN: Thank you, Mr. Chairman.

I'm here to present the brief on behalf of the group of the General Hospital Heads of Psychiatry that's being circulated now, I believe. Is that correct?

MR. CHAIRMAN: Yes, we have the brief here. It will be circulated.

DR. J. BROWN: I will endeavour to direct your attention to the brief without actually reading it in detail.

In the preamble, we emphasize that we welcome this bill, and in particular, we welcome the provisions for criteria. This province has needed criteria. There has been a crying need for criteria for many, many years and there has been no criteria. This has made it very difficult to operate effectively and to operate with ease within The Mental Health Act.

We also emphasize that we feel that the individual rights should receive better protection when involuntary treatment is required. Now it's a weakness of this act, as we'll mention later, that this distinction is not adequately stressed. The voluntary patient is no different legally, and in terms of civil rights, the voluntary psychiatric patient is no different from a surgical or medical patient or any other type of patient. The voluntary psychiatric patient's civil rights are protected without a mental health act. If it were not necessary to have involuntary patients, if it were not necessary to lock some people up and make them have treatment against their wishes, there would be no need for a mental health act, and that point sometimes gets lost in a lot of circulating, boiling discussion that goes on. That's the basic bottom line of mental health acts. That is what they're there for, and that is what the whole content of the act deals with.

We emphasize that we think the improvements can be achieved without undermining the involuntary patient's right to adequate treatment. By adequate, we also include prompt treatment and uninterrupted treatment and without impairing the right of other patients in psychiatric facilities who have adequate treatment in a humane and therapeutic environment.

Dr. McKay and others have painted the picture of psychiatric units in which you have a certain number of patients who are compulsory because they're deemed by someone or other to be dangerous but who cannot be treated because they are waiting to have a review board decide whether they can be treated or a review board may have decided they should not be treated. That is a possibility under the act that nobody has mentioned. The review board may, at the end of its deliberations, decide that this compulsory patient has the right to refuse treatment and therefore he goes on being compulsory and is not treated.

Now the picture that has been painted for you has another dimension. In that ward, in that facility, there are other patients. There are voluntary patients. There are even other compulsory patients whose treatment is going to be interfered with, whose physical safety may be interfered with, because they have to share the facility with disturbed, out-of-control patients who are not having adequate treatment and for whom we can only use methods of intermittent control. So we think that we have to attend to these issues.

Section 16(1), Involuntary admission: We welcome the inclusion of specific criteria, but there is one important criteria that has been left out and that is the criterion that we have given here and it's lifted from another document - "the person lacks capacity to make an informed decision concerning treatment." We think it's unacceptable to incarcerate people who are not guilty of any crime and who are capable of making their own treatment decisions. In other words, if you're locking people up because of mental illness, you can't lock up people who know what they are doing. One of the essential criteria must be that the mental illness deprives them of the capacity to make their own treatment decisions.

We also feel strongly, and this has been mentioned before, that physicians should not have the authority to make decisions that are outside their expertise. Mr. Elias, in a sense, is quite right. Psychiatrists should not be making these decisions. We are not trained to do it. In this case, the decisions are of a judicial nature to incarcerate individuals. We believe that everyone is entitled, before being deprived of liberty, to appear in person before an independent and impartial judge.

The logistics of this are really quite straightforward. There are hospitals in which the emergency department has a room that is set aside and designated as a courtroom and judges are available on a 24-hour basis to come and hold hearings for the admission of involuntary patients. There the patient has a right to stand up and say, Your Honour, I'm being railroaded and here is the story. We think every patient, at the time of admission, should have that right. It's not given now. The magistrate or the judge usually looks at the documents and signs them without seeing the patient. We suggest that this should be changed.

There is a paragraph here about the wording of that subsection which, in effect, says that you cannot become an involuntary patient unless you are first of all a patient in a psychiatric facility. Do you follow that? We think that's unnecessarily cumbersome and that should be changed.

The psychiatrist who applies cannot certify. There is a logistical difficulty there. The 72 hours, if you have a long weekend, you may not have two psychiatrists around. You may be able to get around that by using other mental health professionals for the first part of the procedure. We don't know.

Patient rights and appeals - this whole section is vague because the word "patient" is used without distinguishing between voluntary and involuntary. We think it makes no sense to say that a voluntary patient

can be declared by a review board or by the psychiatrist the day after he is admitted to be lacking in capacity to consent and can be given treatment against their wishes. This is what is happening in Ontario and this is one of the ways in which they are getting into considerable difficulty.

In the matter of informed consent, voluntary patients are no different from medical and surgical patients. You must obtain informed consent one way or another.

The right to refuse treatment - this is again a very difficult issue. We say that for voluntary patients, we don't need to say that. They have the right to refuse treatment because they are ordinary patients. Involuntary patients - we believe that the right to refuse patients is inherently contradictory. We say that a competent person cannot in the first place be made compulsory. At the very beginning, a competent person cannot be made involuntary. Secondly, that if you have someone who is under detention, who is a detainee, who is not a free agent, who is beholden to the doctor who wants to ask for his consent, then his consent is not freely given and it's therefore not voluntary. Again, we don't accept the position of hospitals as detention centres. We think that if you're going to have detainees who can't be treated, they should be outside of hospitals. We don't wish to be jailers and we are very firm about that.

What we will do, if this act is put into operation, we find ourselves at the end of a review board procedure, and the review board says, yes, this is a compulsory patient but you can't treat him, we're not sure what we'll do in that situation. They're having to face it in Ontario. Some of the hospitals there are appealing through the Ontario Court of Appeal because the situation in the hospitals is then impossible for them. We think that such patients should be transferred somewhere else. Preventive detention is a bad word but that is what we would be creating in this situation.

Consent by others has been referred to - the Public Trustee - and I won't belabour this point. I put a rather amusing illustration here that if a separate consent is required from the Public Trustee for each treatment change for each compulsory patient, in the Health Sciences Centre, there would be upwards of 50 telephone calls in every 24 hours. These telephone calls would be between a psychiatrist at one end of the telephone, asking permission to change the treatment, and a lawyer or an accountant at the other end, trying to decide whether to give permission.

Capacity to consent and review, I won't belabour. I think what we're saying is self-evident.

Psychiatric treatment pending consent has been dealt with. We don't like this. We do not like the idea that while we're waiting for 10 days or two weeks or three weeks, depending on how much backup there is, for a review board to decide whether this compulsory patient can give consent or not, we don't like the idea that the patient is not being properly treated. We have, as you will see, given various alternatives here, none of which we like very much. Something has to be done about this.

Application to review board re treatment - this has also been dealt with, so I don't need to labour it very much. We think that this applies to major treatments and medical investigations for which it's not reasonable to expect a compulsory patient to be given this treatment without some sort of consultation. Examples are electroconvulsive therapy, surgical procedures, he may need an appendectomy, angiography, and thus could be a whole host of things that are major procedures and we have to have some procedure to give this treatment.

Now the review board, with its formal hearing and a minimum 10-day delay, this review board is like a trial. There is a hearing, there are parties with lawyers, there's an adversary situation. It's not well set up for making prompt decisions, and its membership does not have enough expertise to make medical judgments. These decisions are needed within a few days and sometimes within a few hours and would be more appropriately made through a more readily available and speedy mechanism for independent medical consultation. We don't specify what that should be, but there should be an external medical consultant as a minimum. We think that the review board's main function is not to make medical decisions but to make legal decisions to decide, on appeal, whether a patient should be compulsory or not.

I point out at this point that what these proposals and this bill are going to do is they're going to make the psychiatrist make the quasi-judicial decision whether to lock people up, so the psychiatrist is being turned into a judge; and we're going to ask a lawyer to make medical decisions as chairman of a review board, so we're turning the lawyer into a doctor. I think the committee might want to think about that.

Thank you, Mr. Chairman.

MR. CHAIRMAN: Thank you, Dr. Brown. Any questions?

Mr. Orchard.

MR. D. ORCHARD: Dr. Brown, can I just clarify this? This brief is a compilation of opinions from the various general hospitals in Winnipeg that have psychiatric wards?

DR. J. BROWN: Yes.

MR. D. ORCHARD: The point you made on page 2, a situation where you've got an involuntary patient, now the examination must be provided within the psychiatric facility, and in your hospitals that would be on the actual ward according to this act?

DR. J. BROWN: Yes.

MR. D. ORCHARD: And you make the point that under the present act or under the present methods, that examination is done in basically the emergency department without disruption to the patients?

DR. J. BROWN: Or on a surgical ward or in the patient's home in fact. There is no restriction of where that examination can be made.

MR. D. ORCHARD: But the point being that it's not made on the ward where with an involuntary patient who might be disorderly and refuse treatment and then you go through the appeal process which could be 10 to 14 days and meanwhile you've got a person there

that you can't treat, that's disrupting the other patients that are there receiving proper treatment and care?

DR. J. BROWN: That's right.

MR. D. ORCHARD: Okay, I think that's a - you say a significant difficulty.

DR. J. BROWN: It is even infringing on the patient's civil rights, because in order to become a voluntary patient, he first has to be compulsorily admitted and designated as a patient. Up until now, he is merely a person, and until he is certified, he is not a patient. Do you follow? In order for the psychiatrist to examine him, he has first to be compulsorily admitted and designated a patient. He is called a patient already before the psychiatrist has even examined him.

MR. D. ORCHARD: Okay.

MR. CHAIRMAN: Any further questions?

MR. D. ORCHARD: Well, I think the point being made about the review board and the medical opinion is once again being made by a professional group. In terms of the review panel, the lawyer making a medical decision and . . .

HON. R. PENNER: Well, except the review board may be headed by a lawyer or . . .- (inaudible)-.

MR. CHAIRMAN: Some order, please.

Are there any further questions from the committee to Dr. Brown? If not, I thank you, Dr. Brown, for your presentation.

DR. J. BROWN: I thank you, sir.

MR. CHAIRMAN: The next presenter is Dr. Werner W. Hunzinger from the Grace Hospital.

DR. W. HUNZINGER: Mr. Chairman, I have little to add. The brief presented by Dr. Brown . . .

MR. CHAIRMAN: Dr. Hunzinger, excuse me, have you any written briefs to circulate to the committee?

DR. W. HUNZINGER: No.

MR. CHAIRMAN: No. Okay, fine.

DR. W. HUNZINGER: . . . was presented with my cooperation. I only want to speak as a head of the department of the Grace Hospital, making a personal statement about the new act.

I've been practising psychiatry since 1951. During this time, I saw a successful movement in developing of patients being transferred from mental hospitals in this community and being reasonably successfully treated there. This process is not completed and has many deficiencies. However, we have achieved the movement, as well, of the majority of psychiatric and medical care of the mentally ill to go into the general hospital psychiatric wards. This made it very much more humane and easy for the patients because in the Winnipeg Psychiatric General Hospital or the General Hospital psychiatric wards, many more facilities are available for them.

I am under the impression that with the new legislation a certain number of patients may have to be detained in these psychiatric units which we have developed in the last 30 years. We have tried to run these psychiatric units very liberally and very openly. As a matter of fact, the Grace Hospital psychiatric ward is continuously open in spite of the fact that we deal with very disturbed patients. However, if we are forced to keep patients without treatment, we would have to lock the ward. We would have to make structural changes in our ward to be able to achieve that. That naturally leads us to the suggestion that patients who have to be detained but cannot be treated cannot stay with us. They would have to be transferred to a newly created facility.

I, as a psychiatrist, am a doctor and I feel very adverse to a situation in which I have to detain a patient without being able to treat the patient. In all these presentations, I heard the undertone that patients are arriving at a psychiatric unit or at an emergency department and then the process of detention starts. My argument against this is that when the patient arrives at our emergency department, treatment already starts with the doctor seeing the patient. At least that's the ideal situation. It is not only assessment but treatment what is suggested in the process and which should take place.

There's another concern I want to express here. If the act goes into force in its present reading, we have to face a considerable increase of expense. Our department, I'm sure, would have to employ a competent secretary to direct the movement of all the different papers which have to be signed and be moved from the medical director's office to the Public Trustee or to the review board and back and forth.

We have many distracting situations in which the psychiatrist, particularly the medical director of a psychiatric ward, is involved in non-treatment and non-medical activities.

(Mr. Deputy Chairman, Hon. J. Cowan, in the Chair.)

He has to appear at review boards; he has to write submissions to the Public Trustee; he has to do a lot of things for which there is no real remuneration. In other words, a new set of fee schedule changes have to take place in order to look after compensation for all the time spent on basic clerical and legal matters.

I, myself, was involved in making some recommendations in the last act, around seven or eight years ago, and I felt at that time very unhappy about the fact that the review board, in spite of it being recommended by our committee, was not instituted. I always felt, as a psychiatrist, that a review board was a very good thing for the psychiatrist, because we could use it, as well, for dealing with difficult patients' legal problems, by writing to the chairman of the review board and asking for a review because we, ourselves, needed advice in a very difficult situation.

It has to be emphasized that this is open in the present act and I am very happy about this, but we have to be aware of the fact that, in Ontario, it is not possible. This is, at the present time, very much debated in Ontario. Psychiatrists are not able to appeal to the review board; the review board is only available for the

patient. I hope that this will never happen in our legislation.

MR. DEPUTY CHAIRMAN: Thank you.
Are there any questions for Dr. Hunzinger?

HON. L. DESJARDINS: Yes, Mr. Deputy Chairman, I have a concern.

Both Dr. Hunzinger and Dr. Brown, mention the problem, and state it quite emphatically that they didn't feel that the hospital was a place to detain anybody aganst their will. I don't know where that is found in this bill.

On page 18, I don't read it that way at all. On 24(8) - "Psychiatric treatment may be given without consent to any patient of a psychiatric facility in order to keep the patient under control". We're talking about - I think we agree on that, that it should be treatment, not a jail. But I think that this seemed to give you the . . .

DR. W. HUNZINGER: Yes, but a lawyer challenging this might very well argue that treatment should have been only given to the patient to control him, but not to make him better, to only control him until the review board makes a decision.

This section, in our opinion, is somewhat ambiguous. Is that so?

DR. J. BROWN: May I answer, too, because the Minister argues with me as well?

MR. DEPUTY CHAIRMAN: Can you please identify yourself for the Hansard, please?

DR. J. BROWN: I'm Dr. Brown, again. The Minister is quite correct, that section 24(8) - is that right - . . .

HON. L. DESJARDINS: Right.

DR. J. BROWN: . . . does have this provision, but we feel that this provision is merely, as Dr. McKay said, a method of temporary and intermittent control. It is not treatment and, as in our brief, we have said that specific treatments, lithium, carbamazepine, deponeuroleptics, clearly cannot be give under this provision.

Also, as I pointed out, what happens when the review board has finished its deliberations and says, no, you cannot treat, you then have a compulsory patient in hospital and you can no longer treat pending consent because that section no longer applies. All we can do is give emergency treatment, which means, when he starts climbing the wall, you can inject a tranquilizer.

HON. L. DESJARDINS: In other words, you feel this is not quite clear enough then?

DR. J. BROWN: It's quite insufficient.

We feel that if you have the two different definitions, if you have a compulsory patient who's merely there because he's likely to cause harm, but he can refuse treatment, then you have the potential position and you will have the actual position as they have in some places in Ontario - they have to go to the Court of Appeal. You have the position where you have patients in hospital that you have to lock up and you can't treat.

DR. W. HUNZINGER: Thank you, Mr. Deputy Chairman.

MR. DEPUTY CHAIRMAN: Thank you. Any other questions? Thank you very much.
Miss Sharon Jorgenson, please.

MISS S. JORGENSON: I do not have a brief to circulate.

I'm speaking on behalf of the Association of Occupational Therapists of Manitoba, which is the registration body, and therefore the protection for the consumer, as well as the Manitoba Society of Occupational Therapists, which is our professional group.

Our comments are very brief. Positively, we feel that the amendments are positive in that the act is certainly much more readable. The language is more clear and understandable. Also the instructions with regard to non-voluntary admissions is certainly more explicit and more stringent.

Conversely, the patient rights and appeals appear to be jeopardized by the optional nature of the proposed review boards, therefore potential for inconsistency in application of many portions of the bill.

Lack of provision for facilitating informed consent, an assessment that the individuals are not able to provide this consent, may be too easily made; no requirement that opportunities be provided for individuals to understand this process of providing informed consent.

In general, our group felt that Bill No. 59 was an improvement over the existing Mental Health Act, but does not go far enough in protecting the rights of the individuals.

The clear language and explicit instructions as to procedure make for more universal interpretation and application of the bill. This will be of benefit to both patients and health professionals in urgent situations.

(Mr. Chairman in the Chair.)

However, this committee feels that the general emphasis of the bill is misplaced to provide better protection and assistance to health professionals, rather than to ensure the rights of the persons undergoing treatment.

As representatives of the Association of OT's of Manitoba and the Manitoba Society of Occupational Therapists, we would recommend that Bill No. 59 in its present form be defeated.

If in fact the amendments and the suggestions that people have been discussing tonight are implemented, we would certainly like a review date specified in the bill, so that the work that you've started continues.

We'd also suggest that the optional status of the review boards described be changed to compulsory and that provision be made within the act for an orderly and realistic implementation of this legislation.

We'd also like to suggest that closer attention be paid to the Uniform Mental Health Act so that recommendations pertaining to substitute decision maker, patient adviser service and the format for review of involuntary admissions could be adopted, along with other clauses that would protect the rights of the individual, and allow for opportunity for informed consent.

Thank you.

MR. CHAIRMAN: Thank you, Miss Jorgenson.

Before I go for questions, I'd like to once again inform the people here that car licence plate number 592 DSW, Hyundai Pony, your lights are still on since 7:30 p.m.

Are there any questions? Hearing none, I thank you for your presentation.

The next presenter is Miss Denise Higgs. Have you a written submission for the committee members?

MISS D. HIGGS: No, I haven't.

I'm not here on behalf of any group. I am here on behalf of my concern about what I have heard tonight. I have heard a lot of very intelligent, pertinent opinions and comments. I've heard a lot of what I refer to as professional poop. I am a psychiatric patient. I have a 25-year history of psychiatric problems.

I came back to Winnipeg two years ago - it's my home town. I did not expect my problems to be solved overnight. I hope that what I'm going to try and say here as briefly as possible will cause some people to stop and at least think about what this entire meeting is about. In other words, just who is The Mental Health Act, who is it for? Like I've heard people express comments, they're concerned, the doctors are going to have to act as lawyers. If we're going to talk brass tacks, let's talk about the people, let's talk about the human lives, let's talk about being a mental patient and hearing things like involuntary assessments, words like involuntary patients refusing treatment.

I was forced into an involuntary patient status in Ontario. Nothing was explained to me. I was expected to take medication to sedate me, and when I refused I was told (a) I did not have the right to refuse. When they realized that I did have the right to refuse, they made my life impossible. Five days after my certification, I realized that I could be certified ad nauseam. I could have spent the rest of my life there. At any rate, I would like people to be aware of what happened to me because I have to speak of it in terms of myself.

This is my story: I came back to my home town, and approximately 14 days after I arrived I was given 400 pills by a doctor who had a letter stating that I should not have been given these pills. I attempted to take my own life, spent two days in St. Boniface Hospital, was thrown out of St. Boniface Hospital, and my family and a social worker decided I should be sent to 105 Galt Avenue. I was dumped there at 5:30 in a taxicab. I had no idea why I was there. All I know is that I had been made to feel like I had committed a crime.

I have spent the past two years knocking on doors trying to get the help I needed, as I was entitled to as a human being who had come back to my home town to work and to be a useful member of society.

Today, I am a provincial welfare recipient. I have been told - and I can validate these statements although I have nothing, but I have the letters at home - I have been told that at the age of 46, due to the fact that I have a history of emotional problems, I can never work again in my home town.

I have been told that I have no credibility. I have also spent a week at the Health Sciences Centre in this city; and if we're going to talk about what goes on in psychiatric facilities, like I said, I've been on the other side of the fence.

I would like to know what good is accomplished when you have to fight to get into a facility and you get there, you sit around for seven days and when you start asking, when are things going to happen, you get no answers. You say, well, I may as well leave, and you say, does no one have any comments, and you're told, well, good luck. What I'm trying to say is, if you want a carpenter to repair his home, don't pretend there are tools available. Let's talk facts.

This act is supposed to be for people who have mental problems and mental illness. I don't really give a damn about concerns of agencies and psychiatrists worried about their rights. This is us, "human beings." Talk is cheap; human life is not.

All I am saying is if we are going to implement mental health acts that are really going to get down to gut level about what it's all about to be on the psychiatric ward - do you really think when we enter psychiatric wards that we give a damn about legislation?

We are there because we are sick. We are there because we expect to be cared for. But the way I see it, there's really not much going on, on psychiatric wards. Okay, psychiatrists - nobody can cure mental illness. I mean, that's a fallacy; psychiatrists are not Gods. But I really resent that a psychiatrist has the right to say to me, for instance - I saw a psychiatrist when I was attempting to get into a facility who said to me: If you'd like to tell me what your problems are and what you think we can do to help you, we'll be glad to listen, but frankly we really don't feel we can help you.

Well, if I knew what a psychiatrist could do to help me, I'd be making the $78,000 a year. So, what I am saying is that, here I am at the age of 46 fighting for my life and wondering, what have I survived for, for two years. You know, I've knocked on doors; I've approached doctors who've since left the province and also, all of these involuntary assessments, all these legislations we're talking about - we've lost 10 percent of our psychiatrists in the past six months.

Where are you going to get all these psychiatrists to do all these involuntary assessments, which leads me to my next point.

I am on provincial welfare, and I'm told, forget about it. Just stay where you are; you don't have a hope in hell. I want to go back to university in the fall. I myself am exploring the avenues that will allow me to do that. Okay? So what I am saying is that - I am very tired - what I am saying is that I think that a more realistic approach to the needs of people that you are trying to help is needed. If I am going to fight for my right to live, for my right to work again, for my right to get off welfare and be my own person, is it worth it? Because four years from now, do I know that if I have not finally secured a position, four years from now someone might walk into my place of employment because the act specifies that anyone can make an oath, etc., and this will be read by a person, and then this person has the right to come in to speak about the allegations.

The word "allegation" means something based upon something that is not true; and I could be removed from my place of employment, taken for an involuntary assessment and then, if they decide it's not necessary, they can take me back to my place of employment.

So my whole point is, what about people like us? Where are you going to pass legislation that it's going to motivate us to help ourselves? It's very well for psychiatrists to sit and legislate and medicate. You know, we want to help ourselves. But let's stop talking about us as if we were a dozen eggs that are going to rot if you don't do something within 72 hours.

In other words, don't pretend that things are going to be better unless things are going to be better. Don't allow medical doctors to tell psychiatric patients, your life is over.

Abortion is a dirty word, but the way I look at it, my life is being aborted now because I'm being told that I don't have a hope in hell. I'm not willing to settle for that. I'm not willing to settle for a doctor today who told me, you know, when I voiced a concern about being a burden to the taxpayers in the town I grew up in, who said, you have to accept it. And when I said, but I want to go back to work, said: Forget about it; you don't have a hope in hell of ever getting back to work.

So if we really want to get to the crux of the problem, if we want to make a difference, then let's be honest. You know, let's start being honest with us. In other words, false promises, hopes, sitting around in a psychiatric ward for two weeks, being sent home - I just don't understand because my life was taken out of my hands after I arrived here.

I guess what I'm trying to say is that I hope that the new acts which are being introduced will not allow a situation to happen to an intelligent woman who wants to do something with her life; and right now my hands are tied. I'm being told that I can do nothing with my life, and I don't intend to sit and rot and wait for, you know, somebody to decide that I am a human being and not a dozen eggs.

MR. CHAIRMAN: Thank you, Miss Higgs. Are there any questions from the committee? Hearing none, I thank you for your presentation.

I'd like to also inform the committee before I proceed to the bills that we've also received a written submission which will be distributed from the Manitoba Health Organizations.

If it is the will of the committee, we will proceed on a clause-by-clause basis with Bill 59 and then go on to the other bills.

Mr. Desjardins.

HON. L. DESJARDINS: Mr. Chairman, before starting, with the approval of the committee, I would like to distribute some of the amendments we've been ready to make. I don't know if you want to look at them now, or just as they come. I think that would be easier.

MR. CHAIRMAN: What is the will of the committee? We'll distribute the amendments and go through them clause by clause.

HON. L. DESJARDINS: There's two sets. We can distribute them and then go through them page by page.

Mr. Mercier.

MR. G. MERCIER: We usually go bill by bill, starting with the order of bills, which would be Bill 24.

MR. CHAIRMAN: There was a request to consider Bill 59 first, and I asked the committee if there were any objections and . . .

MR. G. MERCIER: I object.

MR. CHAIRMAN: What is the will of the committee? I need to . . .

MR. G. MERCIER: Well, you've got a lot of staff here and a lot of smaller bills.

MR. CHAIRMAN: Well, I'll ask again. What is the will of the committee?

HON. J. STORIE: Mr. Chairman, I think in fairness to the people that have been waiting several hours already, it would probably be most expeditious to deal with the smaller bills first.

MR. CHAIRMAN: Okay, then we'll start with the order in which they appear.

BILL NO. 24 - THE CORPORATIONS ACT

MR. CHAIRMAN: Bill No. 24, An Act to amend The Corporations Act; Loi modifiant la loi sur les corporations.

No amendments? Pass?

Bill No. 24—pass.

BILL NO. 35 - THE CHILD AND FAMILY SERVICES ACT

MR. CHAIRMAN: Bill No. 35, The Child and Family Services Act; Loi modifiant la loi sur les services à l'enfant et à la famille.

HON. J. COWAN: On Bill 35, Mr. Chairman.

MR. CHAIRMAN: Mr. Cowan.

HON. J. COWAN: I would move, seconded by the Minister of Education,

> THAT proposed subsections 69(2) and (3) of the Act as set out on page 3 of Bill 35 be amended in each case by striking out "by registered mail".

And I'd move the French, as printed:

> IL EST PROPOSÉ de modifier les paragraphes 69(2) et (3) de la Loi figurant à la page 3 du projet de loi 35 par la suppression, dans chaque cas, de "et par courrier recommandé".

MR. CHAIRMAN: The motion has been made and seconded. Any discussion?

MR. G. MERCIER: By registered mail?

HON. J. COWAN: Yes, by registered mail.

MR. CHAIRMAN: Any discussion? Pass?

Bill, as amended—pass; Preamble—pass; Title—pass.

Bill be reported.

BILL NO. 24 - THE CORPORATIONS ACT

MR. CHAIRMAN: Possibly we should go through the same process with Bill No. 24, An Act to amend The Corporations Act; Loi modifiant la Loi sur les corporations.

Preamble—pass; Title—pass.

Bill be reported.

BILL NO. 37 - THE LIQUOR CONTROL ACT.

MR. CHAIRMAN: The next bill to be considered is Bill No. 37, An Act to Amend the Liquor Control Act, Loi modifiant la Loi sur La réglementation des alcools.

Mr. Penner.

HON. R. PENNER: Yes, all stages of this at committee were gone through except bill be reported. There is the possibility that there might be one or another amendment, but I have none to introduce and therefore I would ask that bill be reported.

MR. G. MERCIER: Mr. Chairman, the Minister indicates the bill was passed through all stages, but it was held over pending consideration of an amendment, which was actually contained in the proposed amendments to the bill which the Minister had brought forward previously; one of which was to amend section 10 of the act dealing with regulations respecting advertising. I take it the Attorney-General is not prepared, or his party is not prepared to deal with that at this time, but I do wish to go on record as indicating that the Opposition is prepared to support such amendment.

In addition, the Attorney-General and myself have received representations from the Royal Canadian Legion with respect to the amendment dealing with Remembrance Day and I want to indicate to the Attorney-General that we were prepared to support their amendment, and I would ask him if he is prepared to make any change in the bill as it stands.

HON. R. PENNER: As I indicated, Mr. Chairperson, I have no amendments to propose. I did write to the Legion, pointing out that while they agreed, in principle, to the service of beer and wine with food on Remembrance Day, they wanted it to start at two o'clock. That is past the lunch hour.

I respectfully submitted to them that that made it virtually useless to the restaurant trade - their lunch hour would be over and I pointed out that I didn't think that the proposal to start at noon would, in any way, interfere with the ceremonial aspects of Remembrance Day which begin at 11 in the morning, but I appreciate the Member for St. Norbert's comments.

MR. CHAIRMAN: Any further discussion?

Bill be reported.

BILL NO. 38 - THE LAW SOCIETY ACT

MR. CHAIRMAN: The next bill is Bill No. 38, An Act to amend The Law Society Act; Loi modifiant la Loi sur la Société du Barreau.

Bill No. 38—pass; Preamble—Pass; Title—pass.

Bill be reported.

BILL NO. 40 - THE HUMAN TISSUE ACT

MR. CHAIRMAN: Bill No. 40, The Human Tissue Act; Loi sur les tissus humains.

Any amendments? Is it the will of the committee to go page by page?

Mr. Cowan.

HON. J. COWAN: Perhaps, Mr. Chairman, what we do is allow the Opposition some time to go over all the amendments, to go through them, and then if they have any questions, to treat them as a package if that's agreeable to the Opposition critic and his colleagues.

MR. G. MERCIER: There should be an explanation.

MR. CHAIRMAN: Is that agreeable?

Mr. Penner.

HON. R. PENNER: Or what we're doing is go page by page and wherever there's a page with an amendment, move the amendment.

HON. L. DESJARDINS: I'd suggest that most of the agreements are technical even if it doesn't look like that.

HON. R. PENNER: Since there are no amendments on page 1, page 1—pass.

Page 2, I move

THAT the definition of "tissue" in section 1 of Bill 40 be amended by striking out clause (c) thereof and substituting therefor the following clauses:

(c) blood or blood constituent; or

(d) a placenta; ("tissue").

(French version)

IL EST PROPOSÉ que la définition de "tissu" contenue à l'article 1 du projet de loi 40 soit modifiée par la suppression de l'alinéa c) et son remplacement par ce qui suit:

(c) du sang et de ses composés;

(d) du placenta. ("tissue")

MR. D. ORCHARD: Mr. Chairman, I wonder if the Minister can explain the use of placenta there.

HON. R. PENNER: Yes, we were advised by representatives from the medical profession that in fact there is a provision later on that has to do with the question of the use of human tissue, and the placenta has a number of uses. One of the primary medical uses for the placenta is the extraction of gamma globulin, so we felt it was necessary to make sure there was a specific reference to placenta.

MR. CHAIRMAN: Is the amendment passed? The clause, as amended—pass.

Mr. Penner.

HON. R. PENNER: I move

THAT the French version of subsection 2(1) of Bill 40 be amended by striking out the word

"instructions" in the second line thereof and substituting therefor the word "directives".

(French version)

IL EST PROPOSÉ que le paragraphe 2(1) du projet de loi 40 soit modifié, dans la version française seulement, par la suppression de "instructions" et son remplacement par "directives".

HON. R. PENNER: In each case I'm moving the French version as well, let the record show.

MR. CHAIRMAN: Clause, as amended—pass.

HON. R. PENNER: Page 2, as amended.

MR. CHAIRMAN: Page 2, as amended—pass. Mr. Penner.

HON. R. PENNER: I move

THAT subsection 2(3) of Bill 40 be struck out and the following subsection be substituted therefor:

Effect of direction.

2(3) Upon the death of a person who has given a direction under subsection (1) or (2), the direction is full authority for obtaining possession of the body, and the use of the body or the removal and use of any tissue or specified tissue from the body, as the case may be, for the purposes specified in the direction, but a person shall not act upon the direction where the person proposing to act has reason to believe

(a) that the person who gave the direction subsequently withdrew it; or

(b) that the person who gave the direction was not capable of understanding the nature and effect therof; or

(c) that an inquiry or investigation under The Fatality Inquiries Act may be required to be held respecting the cause and manner of death, unless a medical examiner or the chief medical examiner appointed under that Act consents to the use of the body or the removal and use of the tissue.

(French version)

Effet des directives.

2(3) Les directives données par une personne conformément au paragraphe (1) ou (2) constituent une autorisation suffisante, au décés de cette personne, à prendre possession de son corps et à en prélever et utiliser tout tissu ou un tissu particulier aux fins indiquées dans les directives. Toutefois une personne ne peut donner suite aux directives si elle a des raisons de croire:

a) que la personne qui les a données les a annulées;

b) que la personne qui les a données n'était pas capable d'en comprendre la nature et les effets;

c) que le corps du défunt peut faire l'objet d'une enquête ou d'une investigation en application de la Loi sur les enquêtes médico-légales relativement à la cause du décés et à la façon dont celui-ci est survenu, sauf si le médecin légiste ou le médecin légiste en chef nommé en vertu de cette loi consent à l'usage ou au prélévement des tissus.

MR. CHAIRMAN: Mr. Mackling? Mr. Penner?

HON. A. MACKLING: The Minister.

MR. CHAIRMAN: Mr. Desjardins?

HON. L. DESJARDINS: No, I'd ask . . .

MR. CHAIRMAN: Permission for the staff person to explain?

HON. L. DESJARDINS: No, I'd ask permission for the staff person to explain. This is technical and they'll explain the need for that.

Eugene Szach.

MR. CHAIRMAN: By Leave? Agreed? (Agreed)

Can we get the name of the staff person, please?

HON. L. DESJARDINS: Mr. Eugene Szach.

MR. CHAIRMAN: Same spelling in French?

MR. E. SZACH: In spite of appearances, this is strictly a technical amendment. The change appears in clause 2(3)(c). All that's being done is reversing the order of the two clauses in 2(3)(c). Once that's done, though, the preliminary words in each clause in the original bill, "where the person proposing to act has reason to believe" can be moved up into the preamble. It makes the whole thing read much more easily and makes it more comprehensible but, in point of fact, there's no substantive change to the provision whatsoever. I might also add there is a need to fix up the French version because of the repetition of clause (b) if you'll see on the right-hand side of the original bill, there's a printing error, and that's another reason why we re-enacted the whole subsection.

MR. CHAIRMAN: Amendment-pass; clause amended—pass; page, as amended—pass.

Page 4 - Mr. Penner.

HON. R. PENNER: Page 4, pass.

MR. CHAIRMAN: Page 4—pass.

Page 5.

HON. R. PENNER: I move

THAT subsection 3(5) of Bill 40 be struck out and the following subsection be substituted therefor:

Effect of direction.

3(5) Upon the death of a person in respect of whom a direction is given under this section, the direction is full authority for obtaining possession

of the body, and the use of the body or the removal and use of any tissue or specified tissue from the body, as the case may be, for the purposes specified in the direction, but a person shall not act upon the direction where the person proposing to act has reason to believe

(a) that the use of the body or the removal and use of tissue from the body after death would be contrary to the religious beliefs of the deceased person or that the deceased person, if living, would have objected thereto; or

(b) that an inquiry or investigation under The Fatality Inquiries Act may be required to be held respecting the cause and manner of death, unless a medical examiner or the chief medical examiner appointed under that Act consents to the use of the body or the removal and use of the tissue.

(French version)

IL EST PROPOSÉ de supprimer le paragraphe 3(5) du projest de loi 40 et de le remplacer par ce qui suit:

Effets des directives.

3(5) Les directives qui sont données à l'égard d'une personne conformément au présent article, autorisent pleinement, à son décés, à prendre possession du corps de cette personne et à en prélever et utiliser tout tissu ou un tissu particulier, aux fins indiquées dans les directives. Toutefois, une personne ne peut donner suite aux directives si elle a des raisons de croire:

(a) que l'utilisation du corps ou le prélévement et l'utilisation de tissues seraient contraires aux croyances religieuses du défunt ou que celui-ci, s'il avait été vivant, y aurait fait objection;

(b) qu'une enquête ou une investigation peut être requise en application de la Loi sur les enquêtes médico-légales relativement à la cause du décés et à la façon dont celui-ci est survenu, sauf si un médicin légiste ou le médicin legiste en chef nommé en vertu de cette loi consent à l'usage ou au prélévement du tissus.

I ask that it be taken as read and explanation from the Minister or staff.

MR. G. SZACH: It's the same explanation as for 2(3). We're simply reversing the order of clause (b) for easier comprehension.

MR. CHAIRMAN: Amendment—pass? Page 5, as amended—pass.

Page 6 - Mr. Penner.

HON. R. PENNER: I move

THAT subsection 4(2) of Bill 40 be amended by adding thereto, immediately after the word "permission" in the seventh line thereof, the words "or cause permission to be requested".

(French version)

IL EST PROPOSÉ de modifier le paragraphe 4(2) du projet de loi 40 par l'insertion, immédiatement aprés le mot "permission", de ", ou fait demander la permission,".

MR. CHAIRMAN: Amendment - Mr. Szach.

MR. E. SZACH: This amendment results from representations by the MMA and other interested groups, indicating that in fact where requests are made of surviving relatives for consent to use organs, that often it is not the physician, but another health professional who approaches. The object of the amendment is to provide that the physician makes the decision to approach the surviving relatives; but, in fact, can delegate the actual approach to another person, such as, someone from the Transplant unit who has, through repetition, become capable of dealing diplomatically and sensitively with that situation.

MR. CHAIRMAN: Any further questions?

HON. R. PENNER: Pass.

MR. CHAIRMAN: Amendment passed. Clause, as amended—pass.

Mr. Penner.

HON. R. PENNER: I move

THAT subsection 4(3) of Bill 40 be amended by striking out clause (b) thereof and substituting therefor the following clause:

(b) that an inquiry or investigation under The Fatality Inquiries Act may be required to be held respecting the cause and manner of death, unless a medical examiner or the chief medical examiner appointed under that Act consents to the request and the proposed use of the body or the proposed removal of tissue under subsection (2).

(French version)

IL EST PROPOSÉ que le paragraphe 4(3) du projet de loi 40 soit modifié par la suppression de l'alinéa b) et son remplacement par ce qui suit:

b) qu'une enquête ou une investigation peut être requise en application de la Loi sur les enquêtes médico-légales relativement à la cause du décés et à la façon dont celui-ci est survenu, sauf si un médicin légiste ou le médecin légiste en chef nommé en vertu de cette loi consent à la requête et à l'usage proposé du corps ou au prélévement proposé de tissus aux termes du paragraphe (2).

MR. G. SZACH: Same explanation as in 2(3) and 3(5), simply the reversal of clauses.

MR. CHAIRMAN: Page 6, as amended—pass.

Page 7 - Mr. Orchard.

MR. D. ORCHARD: Mr. Chairman, in reading the act, I found section 6(2)(a) to be rather an interesting section. It's virtually non-applicable because it has to presume that the person doing the post-mortem examination would have known that individual, and the likelihood of that I would submit is quite, indeed, rare.

I believe, although I haven't got my bill with my notations in it here - I am going from memory - but I believe I had a concern about a requirement to attempt to contact the nearest relative.

HON. L. DESJARDINS: I want to point out that this repeats what is in the act now and it could be that the pathologist could have discussion with the G.P. and so on, or the doctor of the patient. It doesn't mean that he would have to have known him personally. But in any case, that is what is in the act now.

MR. D. ORCHARD: But it says in here "where he has reason to believe", but there is no requirement for him to search out that "reason to believe."

HON. R. PENNER: So that it doesn't really interfere with the normal post-mortem process, but it may occur that, in fact, for whatever reason, and one has been mentioned, the person knows and if, in fact, the person knows then - it's perhaps a bit of optics in the old act and here that the general threat of, to some extent, respecting the wishes of the deceased.

MR. D. ORCHARD: Realizing it's in the old act, and let's go to the next page too where we talk about the removal of the eye tissue, where we've got the presumed consent aspect on the eye tissue, as well. I realize that's something new but, again, the presumption of prevention to remove the eye tissue is that the person doing the post-mortem, or whatever, presumes that the deceased, if living, would not have objected, or would have objected, thereto; and, furthermore, that the nearest relative of the deceased objects. But there is no onus to see whether the nearest relative objects, and should that not be there?

HON. L. DESJARDINS: Well, this is something new. It was felt that in a post-mortem that the body is mutilated anyway and it is felt that they can get an organ that is going to be quite helpful and it is not going to change much with the mutilation of the body. It is something new, now there exists the gland; that exists and we've added the cornea to the list.

MR. D. ORCHARD: The point I'm making, would it not be a reasonable amendment, whether you want to apply it to both sections, even though section 6(2) is as existing in the act whether applied to sections 7(2) 7(3) that there be some onus to make contact because it's not there. Yet you have the protection in there that if the nearest relative of the deceased objects, the removal won't take place. But yet there is no requirement for the physician to make that inquiry of the nearest relative. If you intend to comply on the wishes of the nearest relative, surviving relative, why would you not have some requirement in there that the physician make that contact or that attempt to contact the nearest relative, because it isn't in this act?

HON. L. DESJARDINS: It is a presumed consent. Now we have a proposed amendment or an amendment that we're ready to discuss with you, but then it is changing the situation quite a bit. Maybe we should read that without introducing it at first, and see if that meets the . . .

MR. D. ORCHARD: Let's discuss it.

MR. CHAIRMAN: Is the amendment passed?

MR. D. ORCHARD: The amendment that is here is in the eye tissue, which is the new added section with the presumed consent. I would favour 7(4); I would favour the inclusion of that amendment.

MR. G. SZACH: With the leave of the committee, I'll perhaps provide an explanation. It will, I hope, shed some light on the debate as to why this clause should or shouldn't be accepted as an amendment, and indeed why it's proposed only with respect to presumed consent in section 7 as opposed to section 6.

In a system of presumed consent, the onus is on the objecting party to notify the person who is in control of the operation that an objection is being raised. If you enact a reasonable requirement to seek out the surviving relatives, you're blurring the distinction between a presumed consent and sort of a contracting-in system where, in fact, the relatives have to provide approval.

In effect, the difference in practical terms, is minimal. It arises only when you can't locate the surviving relatives. In that situation, under presumed consent, the operation could go forward; under no presumption of consent, it could not.

In section 7, one of the practical problems with this sort of proposal is that the eye tissue must be removed within a very short period after death, approximately six hours is maximum. There is a perception, certainly among the eye bank people, that this kind of requirement might be interpreted to involve efforts that would, in effect, utilize all that time. It would eliminate the time and therefore the operation would be impossible. While they're making what someone might presume to be a reasonable effort to contact the nearest relative, there's a practical objection.

Now obviously, reasonable is read in the context of the situation and certainly Legislative Counsel has attempted to assure them that reasonable would have to mean only up to that six-hour period, or otherwise this section would be inoperative, but it still creates a problem.

HON. L. DESJARDINS: Mr. Chairman, I think that "absolutely reasonable" would have to be taken into that context, that it's no use after that. It would be a couple of phone calls or something, and if not, they'd go ahead. It would be that much more of an attempt to get permission, but with the understanding that you're not going to go six, seven, eight hours because then there's no point.

MR. D. ORCHARD: Mr. Chairman, the Minister has made the point I was going to make, but you see, presumed consent - and I realize that ignorance of the law is no excuse - but there will be individuals who do not realize that we passed tonight, at two o'clock in the morning, a presumed consent on eye tissue. I would suspect if you polled Manitobans, they would not realize there is presumed consent on the pituitary gland in the existing act. So all I'm saying is that this is a reasonable amendment, to allow for some phone calls; the

reasonable time limit is the time limit within which that tissue usable for transplant purposes. And I think it provides a reasoned amendment to make the attempt to contact the nearest relative, the next of kin and if that attempt fails, then presumed consent follows, but at least you've made the effort. As I say, many people are ignorant of the provisions that we're passing here tonight and I don't suspect the government is going to undertake an advertising program to let people know that presumed consent, as proposed originally, is going . . .

HON. L. DESJARDINS: Most of the pathologists would know, maybe not the public.

MR. D. ORCHARD: But I mean, pathologists very seldom die and have a post-mortem. It's the general public that doesn't know.

HON. R. PENNER: I just wanted to clarify something. I have no problem with the proposed amendment to 7. It's not clear to me if the Member for Pembina is suggesting that this also be an amendment to 6?

MR. D. ORCHARD: No, I've already given up that situation as a lost . . .

HON. R. PENNER: We should pass page 6.

MR. CHAIRMAN: Page 6, as amended—pass?

HON. R. PENNER: Page 7 rather. Pass page 7.

MR. CHAIRMAN: Page 7—pass.

HON. R. PENNER: There will be amendments on the next page.

MRS. B. MITCHELSON: Just while we're on the subject of removing organs after the person is deceased, is there any way that you can detect - when you're removing tissue on someone that has died a few hours earlier, or whenever the post-mortem is being done - whether that person has been, in fact, infected with the AIDS virus, after they have died? Is there any way of testing that body for detection of AIDS, before we're removing eye tissue or pituitary glands or whatever, to know whether that tissue is in fact uninfected?

HON. L. DESJARDINS: It seems to me - well, Roland, you might remember.

HON. R. PENNER: I understood from the head of the kidney transplant unit, who was one of those who met with us when we were working on the bill, in fact, that now it is routine.

HON. L. DESJARDINS: To make sure that they not take organs that are contaminated.

MRS. B. MITCHELSON: The only problem I have with that is when you're removing eye tissue on somebody that has already died, before they die, you don't always know they're going to die. And after they have died, is there any way of testing them when they've been dead for six hours and you're removing eye tissue? Can you . . .

HON. L. DESJARDINS: If you look at 7(2) you might have your answer on the same page, on 7(2).

HON. R. PENNER: Is there a doctor in the House that could find out whether in fact the AIDS would be in the cornea?

HON. L. DESJARDINS: Section 7(2) on the same page - Bonnie, read 7(2) on the same page: ". . . is satisfied that eye tissue of deceased is suitable for therapeutic purposes."

MRS. B. MITCHELSON: Yes, it's saying that yes, if they're satisfied that the eye tissue is suitable, but is there in fact a way of testing that eye tissue after the patient has deceased?

I know when you're testing for a kidney transplant, that kidney is still alive, and that body is still alive, although it's brain dead and functioning, so there's still a transmission of blood through that body and throughout that system. But after they're dead, can you test the pituitary gland, can you test the eye tissue, to see whether that tissue is infected with the AIDS virus? I believe there's a bit of a problem with that.

HON. L. DESJARDINS: It seems to me - and I don't know if the Attorney-General remembers - we discussed that with the medical profession and it was made clear that with all that they would have to make sure that they're not going to take that as not suitable, and 7(2) would cover that.

MRS. B. MITCHELSON: Okay. I guess what I'm saying is what can they test, and if, in fact, they can test, are they testing the pituitary glands and the eye tissue at every post-mortem? That's something that I would like clarified.

HON. R. PENNER: Our understanding was that is a requirement of the transplant unit, certainly in the kidney case and I would imagine it would be in any other case where there is possibility of transmittal.

MRS. B. MITCHELSON: That's still not answering my question to my satisfaction.

HON. R. PENNER: I think the Minister can try and get the information, but it would not affect the drafting of the bill.

MRS. B. MITCHELSON: Okay.

HON. L. DESJARDINS: It would be covered under (a), but we can double-check to make sure.

MR. CHAIRMAN: Okay. Amendment—pass.

HON. R. PENNER: I move

THAT Bill 40 be amended by renumbering subsection 7(4) thereof as subsection 7(5) and by adding thereto, immediately after subsection 7(3) thereof the following subsection:

Locating nearest relative.
7(4) For the purpose of determining whether or not the nearest relative of a deceased person objects to the removal and use of eye tissue within the meaning of clause (3)(b), the representative of the eye bank shall make a reasonable effort to locate the nearest relative, but a failure to locate the nearest relative after such a reasonable effort does not prevent the exercise of the authority to cause the removal and use of the eye tissue under this section.

(French version)
IL EST PROPOSÉ de modifier le projet de loi 40 par la suppression de l'indice du paragraphe 7(4) et son remplacement par l'indice 7(5) et par l'adjonction, aprés le paragraphe 7(3), de ce qui suit:

Recherche du plus proche parent.
7(4) Aux fins de déterminer l'objection du plus proche parent du défunt au prélévement et à l'utilisation des tissus occulaires en application de l'alinéa (3)b), le représentant de la banque des yeux doit faire un effort raisonnable afin de trouver le plus proche parent. Cenpendant, le fait de n'avoir pas trouvé le plus proche parent aprés avoir fait un effort raisonnable n'a pas pour effet d'empêcher l'exercice du pouvoir conféré par le présent article à l'égard du prélèvement et de l'utilisation des tissus occulaires.

MR. CHAIRMAN: Amendment—pass; page 8, as amended—pass.

HON. R. PENNER: On page 9, Mr. Chairperson, I move
THAT subsection 8(3) of Bill 40 be struck out and the following subsection be substituted therefor:

Participation in transplant prohibited.
8(3) A physician who participates in the making of a determination of death under subsection (1) in respect of a proposed transplant of tissue shall not participate in the transplant operation.

(French version)
IL EST PROPOSÉ de supprimer le paragraphe 8(3) du projet de loi 40 et de le remplacer par ce qui suit:

Interdiction de participer à la transplantation.
8(3) Le médecin qui participe à la détermination du moment du décés en application du paragraphe (1) à l'égard d'une transplantation proposée ne peut participer à l'intervention elle-même.

HON. L. DESJARDINS: It's not the same, the physician.

MR. D. ORCHARD: Is the physician creating employment for himself; is that the problem?

HON. R. PENNER: If I could, Mr. Szach may correct me, but this is in fact what they do as a matter of practice to avoid any suggestion that they jumped the gun. It's already practised but they felt comfortable about it being spelled out in the act.

MR. D. ORCHARD: So, in other words, this is designed to prevent next of kin of the deceased saying that he was deceased because someone took the heart because they needed it?

HON. R. PENNER: Yes.

MR. CHAIRMAN: Amendment—pass; clause, as amended—pass.

HON. R. PENNER: Page 9, as amended.

MR. CHAIRMAN: Page 9, as amended—pass.

HON. R. PENNER: Page 10 has no amendments.

MR. CHAIRMAN: Page 10—pass.

HON. R. PENNER: On page 11, I move
THAT subsection 10(3) of Bill 40 be struck out and the following subsection be substituted therefor:

Participation in transplant prohibited.
10(3) A physician who under subsection (2) gives a certification in respect of a proposed transplant of tissue shall not participate in the transplant operation.

(French version)
IL EST PROPOSÉ de supprimer le paragraphe 10(3) du projet de loi 40 et de le remplacer par ce qui suit:

Interdiction de participer à la transplantation.
10(3) Le médecin qui donne un certificat conformément au parapgraphe (2) à l'égard d'une transplantation proposée ne peut participer à l'intervention elle-même.

MR. CHAIRMAN: Amendment—pass; page 11, as amended—pass.

HON. R. PENNER: I move
THAT subsection 11(2) of Bill 40 be struck out and the following subsection be substituted therefor:

Participation in transplant prohibited.
11(2) A physician who recommends a transplant of tissue under subsection (1) shall not participate in the transplant operation.

(French version)
IL EST PROPOSÉ de supprimer le paragraphe 11(2) du projet de loi 40 et de le remplacer par ce qui suit:

Interdiction de participer à la transplantation.
11(2) — Le médecin qui recommande une tranplantation en application du paragraphe (1) ne peut participer a l'intervention elle-même.

MR. CHAIRMAN: Amendment—pass.

HON. R. PENNER: I move, on the same page,
THAT section 12 of Bill 40 be amended
(a) be adding thereto, at the end of clause (c) of the English version thereof, the word "or"; and
(b) by adding thereto, immediately after clause
(c) thereof, the following clause:
(d) by telephone to at least two witnesses.

(French version)
IL EST PROPOSÉ que l'article 12 du projet de loi 40 soit modifié:
a) par l'adjonction, dans la version anglaise seulement, de "or" à la fin de l'alinéa c);
b) par l'adjonction, aprés l'alinéa c), de ce qui suit:
d) par téléphone à deux témoins au minimum.

MR. CHAIRMAN: Amendment—pass; page 12, as amended—pass.
Page 13.

HON. R. PENNER: I move, Mr. Chairman,
THAT section 14 of Bill 40 be amended by adding thereto, immediately after the word "liable" in the firt line thereof, the words "for damages".

(French version)
IL EST PROPOSÉ que l'article 14 du projet de loi 40 soit modifié par l'insertion, aprés "responsable" des mots "des dommages-intéréts en raison".

MR. CHAIRMAN: Amendment—pass.

HON. R. PENNER: I move
THAT section 15 of Bill 40 be struck out and the following sections be substituted therefor:

Prohibited disposal or acquisition.
15(1) Subject to subsection (2), no person shall, for any purpose, dispose of or acquire any dead human body, or any tissue from a human body whether living or dead, except in accordance with this Act or The Anatomy Act or as otherwise provided by law.

Sale, purchase, trafficking prohibited.
15(2) No person shall, for any purpose,
(a) sell or buy any dead human body, or any tissue from a human body whether living or dead; or
(b) traffic in dead human bodies or tissue from human bodies whether living or dead;
notwithstanding that the selling or buying or trafficking, as the case may be, is otherwise in accordance with this Act or The Anatomy Act or any other law.

Exception as to remuneration.
15(3) Nothing in this section prohibits the payment of reasonable remuneration to a physician or other health professional for services rendered for the purpose of carrying out a direction or complying with a consent under this Act.

Exception as to expenses.
15(4) Nothing in this section prohibits reimbursement, to the donor or recipient of a body or tissue from a body, or to the family or survivors of such a donor or recipient, or to any government or private medical or hospital plan, as the case may require, of reasonable expenses incurred in carrying out a direction or complying with a consent under this Act.

Offence and penalty.
15(5) Any person who contravenes or fails to observe a provision of this section is guilty of an offence and liable on summary conviction to a fine of not more than $5,000. or to imprisonment for a term of not more than six months or to both.

(French version)
IL EST PROPOSÉ de supprimer le paragraphe 15(1) du projet de loi 40 et de le remplacer par ce qui suit:

Interdiction relative à la disposition de tissus.
15(1) Sous réserve du paragraphe (2), nul ne peut, pour quelque fin que ce soit, aliéner ou acquérir un cadavre ou tout tissu provenant du corps d'une personne vivante ou décédée, sauf dans la mesure permise par la présente loi, par la Loi sur l'Anatomie ou par toute autre disposition législative.

Interdiction relative au commerce.
15(2) Nul ne peut, pour quelque fin que ce soit:
a) aliéner ou acquérir un cadavre ou tout tissu provenant du corps d'une personne vivante ou décédée;
b) faire le commerce des cadavres ou des tissus provenant du corps d'une personne vivante ou décédée,
malgré le fait que cette aliénation, cette acquisition ou ce commerce soit permis par la présente loi, par la Loi sur l'Anatomie ou par toute autre disposition législative.

Exception relative à la rémunération.
15(3) Le présent article n'a pas pour effet d'interdire le paiement d'une rémunération raisonnable à un médecin ou à tout autre professionnel de la santé en échange des services qu'il rend pour que soient respectées les directives ou qu'il soit tenu compte d'un consentement donné en application de la présente loi.

Exception relative aux depenses.
15(4) Le présent article n'a pas pour effet d'interdire le remboursement au donneur ou au bénéficiaire d'un corps ou de tissus en provenant, à la famille ou aux survivants d'une telle personne, à un gouvernement, ou à un régime d'assurance-maladie ou d'assurance-

hospitalisation, selon le cas, des dépenses raisonnables faites pour que soient respectées les directives ou qu'il soit tenu compte d'un consentement donne en application de la présente loi.

Infraction et peine.
15(5) La personne qui contrevient aux dispositons du présent article ou qui fait défaut de les observer commet une infraction et se rend passible, sur déclaration sommaire de culpabilité, d'une amende d'au plus 5 000 ou d'un emprisonnement d'au plus six mois, ou de ces deux peines concurremment.

HON. R. PENNER: I think it's technical and we could have an explanation from our counsel.

MR. G. SZACH: It is and it isn't technical. It's an attempt to describe more accurately the kind of exchanges and acquisitions in human tissue and human bodies that the Legislature is seeking to prohibit. This legislation is strictly enabling, apart from this secion, and the similar prohibition on invasion of privacy, section 13.

But anything earlier is strictly enabling and therefore it was felt important in the first subsection to indicate that while the legislation is enabling, it is to govern the kinds of directions and consents that are available under the law so that no one could purport to obtain tissue or donate tissue under a different means than was set forth in this act.

The most important prohibition within this section though is subsection (2) which is an absolute prohibition on selling, buying or trafficking in bodies or tissue, notwithstanding that the acquisition or the transfer may have been made in purported compliance with this law or any other law. In other words, it's not sufficient to file a proper direction and consent under The Human Tissue Act if you're buying or selling the tissue in question. It's absolutely prohibited. But having done that, there has to be reasonable exceptions and we've also redrafted those from the original bill.

They are fairly self-explanatory. There are simply situations where either a professional is receiving reasonable compensation for participating in the operation, or else there has been an exchange of funds involving medical or hospital plans, where we're paying reasonable expenses for the costs of the tissue donation. The key in that subsection is the expression "reasonable expenses" because there isn't a cost associated with these procedures; and if, in fact, the donor and the recipient, for example, are from different jurisdictions, there may be an exchange of money involving the respective medical plans. In no way should that be interpreted as trafficking and therefore it's been expressly accepted.

MR. CHAIRMAN: Amendment—pass.

HON. R. PENNER: Page 13 of the amendment.

MR. CHAIRMAN: Page 13 of the amendment—pass; page 14—pass; Preamble—pass; Title—pass.
Bill be reported.

HON. L. DESJARDINS: Mr. Chairman, I wonder if we could look at the companion, Bill No. 60, at this time. It's The Anatomy Act.

MR. CHAIRMAN: Is it agreed that Bill No. 40 be passed? What's the will of the committee, to keep on down the list?

HON. L. DESJARDINS: No, let's finish this. This is a companion thing.

MR. CHAIRMAN: Bill No. 60 then, is it agreed? (Agreed)

BILL NO. 60 - THE ANATOMY ACT

MR. CHAIRMAN: Bill No. 60, An Act to amend The Anatomy Act; Loi modifiant la Loi sur l'anatomie.
Mr. Penner.

HON. R. PENNER: I move
THAT section 4 of Bill 60 be struck out and the following section be substituted therefor:

Subsection 15(1) rep.
4 Subsection 15(1) of the Act is repealed.

(French version)
IL EST PROPOSÉ de supprimer l'article 4 du projet de loi 60 et de le remplacer par ce qui suit:

Abr. du par. 15(1)
4 Le paragraphe 15(1) de la même loi est abrogé.

MR. G. SZACH: There's currently a prohibition in The Anatomy Act on trafficking, buying and selling dead bodies. We have transferred from The Anatomy Act into The Human Tissue Act all the provisions respecting donation of dead bodies; and therefore we've also transferred the prohibitions on dealing with bodies contrary to the law.

MR. CHAIRMAN: Amendment—pass; Bill, as amended—pass; Preamble—pass; Title—pass.
Bill be reported.

BILL NO. 42 - THE CONSTRUCTION INDUSTRY WAGES ACT

MR. CHAIRMAN: Bill No. 42, An Act to amend The Construction Industry Wages Act; Loi modifiant la Loi sur les salaires dans l'industrie de la construction.
Are there any amendments? They are being distributed.
Mr. Penner.

HON. R. PENNER: Page 1 has no amendments.

MR. CHAIRMAN: Page 1—pass.

HON. R. PENNER: I move, Mr. Chairperson,
THAT the proposed definition, "sector," set out in subsection 1(2) of Bill 42 be amended by striking out the words following "house building sector" in the 5th line thereof and substituting the following: "and the heavy construction sector;".

(French version)
IL EST PROPOSÉ QUE la définition de "secteur" figurant au paragraphe 1(2) du projet de loi 42 soit modifiée par la suppression de la derniére phrase.

MR. CHAIRMAN: Amendment—pass.

MR. D. ORCHARD: Just a minute. Just hold tough for a minute, Mr. Chairman.

HON. R. PENNER: Explanation?

MR. D. ORCHARD: Yes, let's have an explanation.

HON. A. MACKLING: What this does is arrange the . . .- (inaudible)- . . . power in respect to sector.

MR. D. ORCHARD: Okay. Mr. Chairman, presumably, this section removes from the Cabinet their ability, by regulation, without debate in the Legislature, to deem what is necessarily "sector." But yet I note, with a great deal of interest, that we passed page 1 without making a similar amendment to "construction." Why would you want it removed in "sector" and not in "construction," if your concern is to remove the regulatory power of Cabinet in determining definition? Let's be consistent and remove it in both places; i.e., the similar amendment to the definition of construction on page 1.

HON. R. PENNER: Al, may I ask the question, and perhaps Mr. Orchard would know, I don't know the construction industry that well, which is a soft way of saying I don't know it at all. If you have the industrial, commercial, institutional and - what are the words being proposed here - "heavy construction sector," have you not covered, in fact, all of the sectors and don't need an additional power other than the Lieutenant-Governor?

HON. A. MACKLING: That's correct under "sector" . . .

HON. R. PENNER: Yes, that's what I'm talking about.

HON. A. MACKLING: But it's considered that the . . .

HON. R. PENNER: There's nothing further than the Lieutenant-Governor-in-Council can do.

HON. A. MACKLING: That's correct, but the concern is that under "construction," there is still that greater scope for regulation authority by Lieutenant-Governor-in-Council. The point that the Honourable Member for Pembina makes is why, given the concern - and I agreed with the concern - why not delete that. I'm given to understand that the department feels that that flexibility may still be needed there because of the broad scope of construction. I tend to agree with the concerns of the honourable member but I, quite frankly, don't feel that . . . I'd be prepared to take it out, although the department would prefer it to be there. I tend to agree that I don't like that kind of general delegation.

MR. D. ORCHARD: I think we can resolve this because the Minister is in agreement that the amendment that we proposed, and are about to pass for the definition "sector" could similarly be proposed for "construction," wherein we simply remove the "Lieutenant Governor in Council, by regulation,".

HON. A. MACKLING: No, let's just put a period after "site thereof," and delete the balance. Yes, we will affect the writing of it. I think we can just add it maybe to the . . .

HON. R. PENNER: Mr. Chairperson, may I suggest that we go on and then we'll come back to page 1.

HON. A. MACKLING: We'll come back to it.

MR. D. ORCHARD: Agreed.

HON. R. PENNER: So the amendment, as proposed, with respect to "sector" on page 2, is that passed?

MR. CHAIRMAN: Amendment—pass.

HON. R. PENNER: I move
THAT Bill 42 be amended by adding thereto immediately after section 1 thereof the following section:

Sec. 3 amended.
1.1 Clause 3(d) of the Act is amended
(a) by striking out the period at the end thereof and replacing it with a semi-colon and the word "or;"
(b) by adding thereto the following clause:
(e) persons employed in the on-site maintenance, repair, decoration or redecoration of
(i) an existing detached or semi-detached dwelling unit; or
(ii) any dwelling unit not referred to in subclause (i), including a condominium unit, where the unit is owned, in whole or in part, by the occupant of the unit;
unless such work involves the structural alteration or structural remodelling of the unit.

(French version)
IL EST PROPOSÉ QUE le projet de loi 42 soit modifié par l'adjonction, aprés l'article 1, de ce qui suit:

Modification de l'article 3.
1.1 L'alinéa 3d) de la Loi est modifié:
a) par la suppression du point à la fin et son remplacement par un point virgule;
b) par l'adjonction de ce qui suit:
e) aux personnes employées à l'entretien, à la réparation, à la décoration ou à la redécoration à pied d'oeuvre:
(i) d'un logement simple ou jumelé existant,
(ii) d'un logement qui n'est pas mentionné au sous-alinéa (i), y compris un immeuble en copropriété, si ce logement est possédé en tout ou en partie par son occupant,

à moins que le travail ne nécessite la modification ou la réfection des parties portantes du logement.

HON. A. MACKLING: Just to explain that, members will notice that it makes reference to an amendment to a section in the act that is not included in the bill; and the section of the act describes the application of the act and says: "This act does not apply to" and then it goes on from a) to d), "This is an additional clause," to make it clear that this does not cover maintenance repair, or decoration as it's described there, of a dwelling house, a dwelling unit, and it goes into the particulars, "unless such work involves the structural alteration or structural remodelling of the unit." That does deal with the concerns that were raised in the House, which I thought were legitimate concerns, because the regulation that we had, in effect, provided for just that.

MR. CHAIRMAN: Amendment—pass.
Page 3, as amended - Mr. Orchard.

MR. D. ORCHARD: Mr. Chairman, before we pass page 3, I would move
the deletion of section (c), page 3, 20(1)(c): "including within the definition 'sector' such other divisions of the construction industry as the Lieutenant Governor in Council deems necessary."
I'm sorry, that's the motion you're on?

HON. R. PENNER: That motion hasn't been made.

MR. D. ORCHARD: It hasn't been made. I'm sorry.

HON. R. PENNER: I move
THAT proposed subsection 20(1)be amended by deleting clause (c) thereof.

(French version)
IL EST PROPOSÉ QUE le paragraphe 20(1) soit modifié par la suppression de l'alinéa c).

MR. CHAIRMAN: Page 3, as amended—pass.
Mr. Orchard.

MR. D. ORCHARD: Because we are going to propose an amendment to "construction" on page 1 of the bill, then we could also eliminate clause (b) on page 3.

HON. R. PENNER: Right. I'll give you the right version in a moment, with leave to revert to consideration of page 3. Leave?

MR. D. ORCHARD: Yes.

HON. R. PENNER: I move
THAT the proposed subsection 20(1) be amended by deleting clauses (b) and (c) thereof.

(French version)
IL EST PROPOSÉ QUE le paragraphe 20(1) soit modifié par la suppression de l'alinéa b) et c).

MR. CHAIRMAN: Amendment—pass; Page 3, as amended—pass.
Mr. Penner.

HON. R. PENNER: Yes, I now have the amendment then for page 1.
I move
THAT the proposed definition "construction" as set out in subsection 1(1) of Bill 42 be amended by striking out the words following "thereof" in the seventh line, and the French.

(French version)
IL EST PROPOSÉ QUE la définition de "construction" figurant au paragraphe 1(1) du projet de loi 42 soit modifiée par la suppression de la derniére phrase "thereof".

MR. CHAIRMAN: Page 1, as amended—pass; Bill, as amended—pass; Preamble—pass; Title—pass.
Bill be reported.

BILL NO. 46 - THE CHARTER COMPLIANCE STATUTE AMENDMENT ACT, 1987

MR. CHAIRMAN: We move on to Bill No. 46, The Charter Compliance Statute Amendment Act, 1987; Loi de 1987 modifiant diverses dispositions législatives afin d'assurer le respect de la Charte.
Any amendments?

HON. R. PENNER: Perhaps I can flip right over to page 10 and indicate the amendment, and if it's the will of the committee, we can do the bill as a whole.

MR. CHAIRMAN: Is it the will of the committee to do the bill as a whole?

HON. R. PENNER: Well, I'll move the amendment, with your permission, Mr. Chairperson, on page 10.
I move
THAT subsection 28(2) of Bill 46 be struck out and the following subsection substituted therefor:

Cl. 478(1)(b) rep.
28(2) Clause 478(1)(b) of the Act is repealed.

(French version)
IL EST PROPOSÉ QUE la paragraphe 28(2) du projet de loi 46 soit supprimé et remplacé par ce qui suit:

Abr. de l'aninéa 478(1)b).
28(2) L'alinéa 478(1)b) de la Loi est abrogé.

Have I got the right one?

MR. CHAIRMAN: No, you've got the wrong one.

HON. R. PENNER: Yes, I'm sorry, I was misled by another reference that I'll make in a moment. I make that motion.- (Interjection)- Thanks very much.
Okay, this was at the request of the City of Winnipeg where they don't want the change and they don't want the clause because they have the authority elsewhere.

MR. CHAIRMAN: Amendment—pass?

HON. R. PENNER: Yes, if I can, with your permission, Mr. Chair, revert to page 10. This is matter that's been discussed with the Minister of Health. There was a proposed change to The Health Services Insurance Act which presently says between 19 and 21 - this is clause 11 on page 10 - and there are some technical difficulties with that. So I'm moving that clause 11, as a whole, be struck. That is, we're just going to leave the act as it presently is without any changes.

HON. L. DESJARDINS: And renumber it.

HON. R. PENNER: And renumber it.

MR. CHAIRMAN: Agreed?

HON. R. PENNER: Bill, as amended?

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

Bill be reported.

BILL NO. 48 - AN ACT TO REPEAL CERTAIN UNREPEALED AND UNCONSOLIDATED PUBLIC GENERAL STATUTES AND PARTS OF STATUTES (1871-1969)

MR. CHAIRMAN: Bill No. 48, An Act to repeal Certain Unrepealed and Unconsolidated Public General Statutes and Parts of Statutes (1871-1969); Loi abrogeant certaines lois générales d'intérêt public non abrogées et non codifiées et certaines parties de lois (1871-1969)—pass.

BILL NO. 49 THE REAL ESTATE BROKERS ACT

MR. CHAIRMAN: Bill No. 49, An Act to amend The Real Estate Brokers Act; Loi modifiant la Loi sur les courtiers en immeubles. No amendments?

Mr. Mercier.

MR. G. MERCIER: Mr. Chairman, there was a delegation appeared before the committee earlier this evening and Mr. Burns of the Real Estate Association expressed what I thought was a legitimate concern about the balance of the money which goes into the interest-bearing account by the Securities Commission would go to be paid into the Consolidated Revenue Fund on March 31 of each year. I think the Real Estate Association are saying they're quite prepared to support worthwhile projects dealing with real estate, prepared to act on the advisory committee, and I think he has a legitimate concern that all of the money should be used for those purposes and not go into the Consolidated Revenue Fund.

I would therefore ask the Minister if he would agree to delete that section 26(1.8)?

HON. A. MACKLING: Mr. Chairperson, I'd like to give members of the committee a little background. When I met with the Real Estate Board initially, I had under consideration the need to provide insurance funds to deal with the concern that where a real estate brokerage fails, there is security for the depositors. While these things are relatively rare, they have happened.

At the present time, they have a bonding arrangement which is relatively costly to them and they really, over the course of years, have not benefited that much in comparison with the very considerable amount of money they paid in for bonding. I had in mind that one half of the interest from this fund, interest from real estate deposits, could be utilized for an insurance fund and I've discussed that with the real estate brokers. They indicated no, that they wanted to pay their own way and they would support legislation which would provide for an assessment on all licensed real estate agents into a fund that would provide an insurance fund similar to lawyers pay into an insurance fund to protect against lawyers defalcations.

In light of that fact, I indicated then the monies that would come from the interest on real estate brokers' deposit accounts would go to Consolidated Revenue and, through the efforts of the advisory committee, there would be, from time to time, when I'd be prepared to recommend some expanded use of money for educational purposes, where that was warranted, particular courses, perhaps strengthening the role of the accounting or the inspections on real estate brokers' accounts, and so on.

But I wouldn't make any commitment that this money would be assigned to the Real Estate Association, because the Real Estate Association, while it's representative of the bulk or the majority of the real estate agents, it does not represent all real estate agents in the province. I've indicated that we did provide in the bill for an advisory committee and certainly, we will look to that committee, when it's appointed, to advise on the needs in the industry. As with the interest on lawyer's trust accounts, the monies will be paid to the Consolidated Fund.

Now at the present time, interest on lawyers' trust accounts is now being paid into a law foundation and there is a more sophisticated treatment of that. Initially at least, it's my intention that this money go into the Consolidated Fund and we will hear the views of real estate agents and brokers in respect to the needs of the industry; and it may well be that sometime in the future, we'll look at some specific allocations as developed with the Law Society.

At this stage, I've indicated I don't want any assignment of particular monies to another agency, therefore I have made it clear to them that the bill would going forward as it's drafted. I gave them the assurance that in a subsequent session I'd proceed with recommending legislation to my colleagues in respect to an assurance fund that would be based on an assessment of every licensed real estate agent. They were appreciative of that commitment.

MR. CHAIRMAN: Mr. Mercier.

MR. G. MERCIER: I've made my point; the Minister disagrees.

MR. CHAIRMAN: I'm sorry, I thought I saw your hand go up.

Bill—pass; Preamble—pass; Title—pass.

Bill be reported.

MR. G. MERCIER: Mr. Chairman, may I suggest that we have leave Bill 59 and complete the other bills before 59.

HON. L. DESJARDINS: You made us go in sequence and now you want to do this?

MR. G. MERCIER: We gave you 60 - you traded 60.

HON. L. DESJARDINS: We made a decision to follow. Is it the will of the committee to put it to a vote?

HON. J. COWAN: Is there reason for that?

MR. G. MERCIER: The reason is that it's going to take half an hour to three-quarters of an hour, and the people who are here on the other bills could leave.

HON. L. DESJARDINS: Who's here for the other bills?

MR. CHAIRMAN: Could you use your hands, please, so I can get it right?
Mr. Cowan.

HON. J. COWAN: Are there amendments on the other bills?

HON. R. PENNER: There are in The Statute Law Amendment Act.

HON. J. COWAN: Can we leave The Statute Law Amendment Act till after the mental health and continue with the others?

HON. A. MACKLING: Mr. Chairperson, I do have staff here on The Insurance Act, and they're very minor technical drafting amendments to that, but the act can be dealt with in a matter of a few moments and then staff can leave.

MR. CHAIRMAN: What's the rule of the committee? Do we proceed?
Is it the will of the committee to go onto Bill 62 and follow onto 72 and then go back to 59? (Agreed)

BILL NO. 62 - AN ACT TO AMEND THE INSURANCE ACT

MR. CHAIRMAN: Bill No. 62, An Act to amend The Insurance Act; Loi modifiant la Loi sur les assurance.

HON. A. MACKLING: I want to ask, Mr. Chairperson, the Attorney-General again to deal with the amendments. They've just been circulated.

HON. R. PENNER: I move
THAT clause 375(1)(f) of The Insurance Act as proposed in Section 11 at page 5 of Bill 62 be amended by striking out the word "place" and substituting the word "placed" therefor and the French.

(French version)
IL EST PROPOSÉ de modifier la version anglaise de l'alinéa 375(1)(f) de la Loi sur les assurances, édicté par l'article 11 du projet de loi 62 et figurant à la page 5 de ce dernier, par la suppression de "place" et son remplacement par "placed".

THAT subsection 395(1) of The Insurance Act as proposed by section 14 on page 10 of Bill 62 be amended by striking out the word "for" on the 13th line therein and by striking out the word "fees" on the 14th line therein and substituting the word "feels" therefore.

(French version)
IL EST PROPOSÉ de modifier la version anglaise du paragraphe 395(1) de la Loi sur les assurances, édicté par l'article 14 du projet de loi 62 et figurant à la page 10 de ce dernier, par la suppression, à la 13e ligne, de "for" ainsi que par la suppression, à la 14e ligne, de "fees" et son remplacement par "feels".

THAT subsection 395(3) of The Insurance Act as proposed by section 14 on page 11 of Bill 62 be amended by inserting the word "may" after the word "advisable" and before the word "revoke" on the third line thereof.

(French version)
IL EST PROPOSÉ de modifier la version anglaise du paragraphe 395(3) de la Loi sur les assurances, édicté par l'article 14 du projet de loi 62 et figurant à la page 11 de ce dernier, par l'insertion, aprés "advisable" et avant "revoke", de "may".

HON. A. MACKLING: Can we take them all as read?

HON. R. PENNER: All amendments as read, French and English.

MR. CHAIRMAN: All amendments as read?

HON. J. COWAN: No.

HON. R. PENNER: Printed as if read.

MR. CHAIRMAN: Amendments—pass; Bill, as amended—pass; Preamble—pass; Title—pass.
Bill be reported.

BILL NO. 69 - THE STATUTE LAW AMENDMENT ACT (1987)

MR. CHAIRMAN: Bill No. 69, The Statute Law Amendment Act, (1987); Loi de 1987 modifiant le droit statutaire.
Amendments, as printed?

HON. R. PENNER: They are being circulated.

MR. CHAIRMAN: They are being circulated right now.

HON. R. PENNER: If it's the will of the committee, Mr. Chairperson, the amendment is being circulated, I

suggest we simply take a couple of minutes to have the Opposition critic take a look at them. In fact, I'll put before him again an explanation provided by counsel.

MR. CHAIRMAN: Agreed.

HON. R. PENNER: I will table the explanation provided by counsel and we can proceed with the minutes on the basis of the tabled explanation, the amendments. If it's the will of the committee, Mr. Chairperson, I would move the amendments to The Statute Law Amendment Act as a whole, as distributed, French and English.

THAT Bill 69 be amended by renumbering section 1 thereof as section 1.1 and by adding thereto, as the first section thereof, the following section:

Subsec. 1(1) of Agricultural Credit Corporation Act am.

1 Subsection 1(1) of The Agricultural Credit Corporation Act, being chapter A10 of the Continuing Consolidation of the Statutes of Manitoba, is amended by striking out clause (f) thereof and substituting therefor the following clause:

(f) "farming" includes
- (i) the growing of cereal crops,
- (ii) the growing of vegetable or special crops other than cereal crops,
- (iii) stock raising or stock keeping,
- (iv) dairying,
- (v) poultry raising,
- (vi) apiculture,
- (vii) fur ranching, and
- (viii) aquaculture, where fish are raised for market purposes or for sale as breeding stock and fingerlings; ("exploitation agricole").

(French version)

IL EST PROPOSÉ de modifier le projet de loi 69 par la substitution, au numéro d'article 1, du numéro d'article 1.1 et par l'insertion de l'article l'suivant:

Mod. du par. 1(1) du chap. A10

1 Le paragraphe 1(1) de la Loi sur la Société du crédit agricole, chapitre A10 de la Codification permanente des lois du Manitoba, est modifié par le remplacement de la définition d'"exploitation agricole" par la suivante:

"exploitation agricole" S'entend notamment:
- (i) de la culture céréaliére,
- (ii) de la culture des légumes et d'espéces particuliéres autres que les céréals,
- (iii) de l'élevage ou de la garde de bétail,
- (iv) de la production de produits laitiers,
- (v) de L'aviculture,
- (vi) de l'apiculture,
- (vii) de l'élevage de bêtes à fourrure,
- (viii) de l'aquaculture, au cas d'élevage du poisson à des fins commerciales ou pour la vente de géniteurs ou d'alevins. ("farming")

THAT section 1.1 of Bill 69, as renumbered, be amended by striking out the figures "50(2)" in the fifth line of the English version thereof and by striking out the figures "52(1)" in the fifth line of the French version thereof and substituting therefor, in each case, the figures "52(2)".

(French version)

IL EST PROPOSÉ de modifier l'article 1.1 du projet de loi 69 par le remplacement de "52(1)" par "52(2)" et, dans la version anglaise, de "50(2)" par "52(2)".

THAT the French version of proposed new subsection 10(3) of The Provincial Court Act, as set out in section 5 of Bill 69, be amended by striking out the word "et" in the fifth line thereof and substituting therefor the word "ou".

(French version)

IL EST PROPOSÉ de modifier le paragraphe 10(3) de la Loi sur la Cour provinciale, édicté par l'article 5 du projet de loi 69 par le remplacement, à la 5e ligne, de "et" par "ou".

THAT subsection 6(1) of the French version of Bill 69 be amended by striking out the letter and figures "C300" in the fourth line thereof and substituting therefor the letter and figures "C301".

(French version)

IL EST PROPOSÉ de modifier le paragraphe 6(1) du projet de loi 69 par le remplacement de "C300" par "C301".

THAT the English version of proposed new subclause (ii) of the definition of "contaminant" in section 1 of The Dangerous Goods Handling and Transportation Act, as set out in section 7 of Bill 69, be amended by adding thereto, at the end thereof, the word "("contaminant")".

(French version)

IL EST PROPOSÉ de modifier la version anglaise de la définition de "contaminant" à l'article 1 de la Loi sur la manutention et le transport des marchandises dangereuses, édictée par l'article 7 du projet de loi 69, par l'insertion, à la fin de la définition, de "("contaminant")".

THAT the English version of proposed new clause 1(c.1) of The Fisheries Act, as set out in subsection 10(1) of Bill 69, be amended by adding thereto, at the end thereof, the word "("directeur")".

(French version)

IL EST PROPOSÉ de modifier la version anglaise de la définition de "Director" à l'article 1 de la Loi sur la pêche, édictée par le paragraphe 10(1) du projet de loi 69, par l'insertion, à la fin de la définition, de "("directeur")".

THAT the French version of proposed new subsection 10(2) of The Fisheries Act, as set out in subsection 10(5) of Bill 69, be struck out and the following subsection be substituted therefor:

Autorisation du directeur

10(2) Le directeur peut donner l'autorisation écrite prévue à l'alinéa (ii) de la définition de "producteur" figurant à l'article 1.

(French version)
IL EST PROPOSÉ de remplacer le paragraphe 10(2) de la Loi sur la pêche, édicté par le paragraphe 10(5) du projet de loi 69, par ce qui suit:

Autorisation du directeur
10(2) Le directeur peut donner l'autorisation écrite prévue à l'alinéa (ii) de la définition de "producteur" figurant à l'article 1.

THAT the French version of subsection 13(5) of Bill 69 be amended by striking out the word "les" where it appears in the third line thereof and again in the last line thereof and substituting therefor in each case, the word "des".

(French version)
IL EST PROPOSÉ de modifier le paragraphe 13(5) du projet de loi 69 par le remplacement, à chacune de ses occurrences, de "les" par "des".

THAT the French version of proposed new subsection 63(2.1) of The Legislative Assembly Act, as set out in subsection 17(1) of Bill 69, be struck out and the following subsection be substituted therefor:

Paiement direct à une autre personne
63(2.1) Le député qui fait une dépense qui comporte un paiement à une autre personne et pour laquelle des indemnités de circonscription et des frais de représentation sont payables, peut présenter un compte au greffier de la chambre. Sur approbation de l'orateur, le paiement peut être fait directement à la personne qui y a droit.

(French version)
IL EST PROPOSÉ de remplacer le paragraphe 63(2.1) de la Loi sur l'Assemblée législative, édicté par le paragraphe 17(1) du projet de loi 69, par ce qui suit:

Paiement direct à une autre personne
63(2.1) Le député qui fait une dépense qui comporte un paiement à une autre personne et pour laquelle des indemnités de circonscription et des frais de représentation sont payables, peut présenter un compte au greffier de la chambre. Sur approbation de l'orateur, le paiement peut être fait directement à la personne qui y a droit.

THAT the French version of proposed new subsection 66.4(3) of The Legislative Assembly Act, as set out in subsection 17(3) of Bill 69 and numbered as subsection 66(3), be amended
(a) by renumbering the subsection as subsection 66.4(3); and
(b) by striking out the word "an" in the fourth line thereof and substituting therefor the word "exercice".

(French version)
IL EST PROPOSÉ de modifier le paragraphe 66.4(3) de la Loi sur l'Assemblée législative, édicté comme paragraphe 66(3) par le paragraphe 17(3) du projet de loi 69:
(a) par la substitution, à son numéro, du numéro de paragraphe 66.4(3);
(b) par le remplacement, à la 4e ligne, de "an" par "exercice".

THAT section 17 of Bill 69 be amended by adding thereto, immediately after subsection (3) thereof, the following subsection:

Subsec. 66.7(1)am.
17(4) Subsection 66.7(1) of the Act is amended
(a) by adding thereto, immediately after the word "constituency" in the fifth line thereof, the words "and access"; and
(b) by striking out the words and figures "the maximum access allowance allowed and payable under subsection 63(2.1)" in the sixth, seventh and eighth lines thereof.

(French version)
IL EST PROPOSÉ de modifier l'article 17 du projet de loi 69 par l'adjonction, aprés le paragraphe (3), de ce qui suit:

Mod. du par. 66.7(1)
17(4) Le paragraphe 66.7(1) de la Loi est modifié:
(a) par le remplacement, aux 4e et 5e lignes, de "l'indemnité de circonscription maximale payable" par "les indemnités de circonscription et les frais de représentation maximaux payables";
(b) par la suppression, aux 6e, 7e et 8e lignes, de "les frais maximaux de représentation payables en vertu du paragraphe 63(2.1)".

THAT Bill 69 be further amended by adding thereto, immediately after section 17 thereof, the following section:

Sec. 19 of Medical Act am.
17.1 Section 19 of The Medical Act, being chapter M90 of the Continuing Consolidation of the Statutes of Manitoba, is amended by adding thereto, immediately after clause (e) thereof, the following clause:
(f) The standards of advertising to be observed by any member or by any facility in which a member is practising medicine.

(French version)
IL EST PROPOSÉ de modifier le projet de loi 69 par l'adjonction, aprés l'article 17, de ce qui suit:

Mod. de l'art. 19 du chap. M90
17.1 L'article 19 de la Loi médicale, chapitre M90 de la Codification permanente des loi du Manitoba, est modifié par l'insertion, aprés l'alinéa e), de ce qui suit:
f) prévoir les normes de publicité qui s'appliquent à un membre ou à un établissement dans lequel un membre exerce la médecine.

THAT Bill 69 be further amended by adding thereto, immediately after section 18 thereof, the following section:

Sec. 1 of Municipal Assessment Act am.
18.1 Section 1 of The Municipal Assessment Act, being chapter M226 of the Continuing Consolidation of the Statutes of Manitoba, is amended
(a) by striking out the word "and" at the end of sub-clause (d)(vii) thereof;
(b) by adding thereto, at the end of sub-clause (d)(viii) thereof, the word "and"; and
(c) by adding thereto, immediately after sub-clause (d)(viii) thereof, as amended, the following sub-clause:
(ix) fish raised artificially for market purposes or for sale as breeding stock and fingerlings;.

(French version)
IL EST PROPOSÉ de modifier le projet de loi 69 par l'adjonction, aprés l'article 18, de ce qui suit:

Mod. de l'art. 1 du chap. M226
18.1 L'article 1 de la Loi sur l'évaluation municipale, chapitre M226 de la Codification permanente des lois du Manitoba, est modifé:
(a) par la suppression, dans la version anglaise de la définition de "bétail", du mot "and" aprés le sous-alinéa (vii);
(b) par l'insertion, dans la version anglaise de cette définition, du mot "and" aprés le sous-alinéa (viii);
(c) par l'insertion, aprés le sous-alinéa (viii) de la méme définition, de ce qui suit:
(ix) les poissons élevés à des fins commerciales ou pour la vente de géniteurs ou d'alevins. ("farm stock")

THAT Bill 69 be further amended by adding thereto, immediately after section 22 thereof, the following section:

Sec. 2 of Social Allowances Act am.
22.1(1) Section 2 of The Social Allowances Act, being chapter S160 of the Continuing Consolidation of the Statutes of Manitoba (hereinafter in this section referred to as "the Act"), is amended by adding thereto, immediately after clause (f) thereof as so amended, the following clause:
(f.1) "crisis intervention facility" means a facility approved by the minister for providing shelter and protection to persons who have been abused by other persons; ("établissement d'intervention d'urgence")

Subsec. 5(1) am.
22.1(2) Subsection 5(1) of the Act is amended by adding thereto, at the end of clause (h) thereof, the word "or" and by adding thereto, immediately after clause (h) thereof as so amended, the following clause:
(i) who is a person requiring the protection of and residing in a crisis intervention facility.

(French version)
IL EST PROPOSÉ de modifier le projet de loi 69 par l'insertion, aprés l'article 22, de ce qui suit:

Mod. de l'art. 2 du chap. S160
22.1(1) L'article 2 de la Loi sur l'aide sociale, chapitre S160 de la Codification permanente des lois du Manitoba (ci-aprés appelée "la Loi"), est modifié par l'insertion, aprés la définition d'"enfant", de ce qui suit:
"établissement d'intervention d'urgence" Établissement approuvé par le ministre aux fins de l'hébergement et de la protection des personnes victimes d'abus par d'autres personnes. ("crisis intervention facility")

Mod. du par. 5(1)
22.1(2) Le paragraphe 5(1) de la Loi est modifié par l'insertion, aprés l'alinéa h), de ce qui suit:
i) requiert la protection d'un établissement d'intervention d'urgence et y réside.

THAT section 27 of Bill 69 be struck out and the following section be substituted therefor:

Commencement of Act.
27(1) This Act, except sections 22.1 and 26, comes into force on the day it receives the royal assent.

Commencement of sec. 17.
27(2) Section 17 is retroactive and shall be deemed to have been in force on, from and after April 1, 1987.

Commencement of sec. 22.1.
27(3) Section 22.1 comes into force on September 1, 1987 but, if this Act receives the royal assent after that date, the section is retroactive and shall be deemed to have been in force on, from and after September 1, 1987.

Commencement of sec. 26.
27(4) Section 26 comes into force on July 1, 1987 but, if this Act receives the royal assent after that date, the section is retroactive and shall be deemed to have been in force on, from and after July 1, 1987.

(French version)
IL EST PROPOSÉ de remplacer l'article 27 du projet de loi 69 par ce qui suit:

Entrée en vigueur
27(1) La présente loi, à l'exception des articles 23 et 27, entre envigueur le jour de sa sanction.

Entré en vigueur de l'art. 17
27(2) L'article 17 est rétroactif et est réputé étre entré en vigueur le ler avril 1987.

Entrée en vigueur de l'art. 23
27(3) L'article 23 entre en vigueur le ler septembre 1987. Toutefois, si la présente loi est sanctionnée aprés cette date, il est rétroactif et est réputé étre entré en vigueur le ler septembre 1987.

Entrée en vigueur de l'art. 27
27(4) L'article 27 entre en vigueur le ler juillet 1987. Toutefois, si la présente loi est sanctionnée

après cette date, il est rétroactif et est réputé être entré en vigueur le ler juillet 1987.

MR. CHAIRMAN: Is that the will of the committee that the amendments be passed, as printed, as a whole, as distributed then—pass.

Bill, as amended - Mr. Mercier.

MR. G. MERCIER: I want to make it clear, Mr. Chairman. I think we're being assured that there are no substantive amendments being proposed here.

HON. R. PENNER: In addition, at the suggestion of the Member for St. Norbert, I have tabled the explanation provided by Legislative Counsel as part of the committee record.

MR. CHAIRMAN: Bill as amended - pass?

Mr. Mercier?

MR. G. MERCIER: I asked that the Minister give us the projected cost of the amendments to The Workers Compensation Board Act, which is a substantive amendment.

HON. R. PENNER: I don't have that information, but it can be given, undertaken that the Minister responsible for The Workers Compensation Act will attempt to have that information by Third Reading.

HON. J. COWAN: I have to admit that I had indicated that we would have that information available here and we don't have that information available here, but we would have it to the Member for St. Norbert by tomorrow at the time of the sitting of the House.

MR. D. ORCHARD: Are we doing this as a complete package, so that I'm not out of order if I go to page 4?

MR. CHAIRMAN: Yes.

MR. D. ORCHARD: Can you explain the reason for section 19 of The Medical Act amendment, where you're now presumably enabling yourself to set the standards of advertising to be observed by any member or by any facility in which a member is practicing medicine?

HON. L. DESJARDINS: Yes, I can explain that. This is in dealing with the concern that everybody has on walk-in clinics. It was suggested by the College of Physicians and Surgeons and the MMA that this might be a way they can bring regulation and insist that there would be no advertising or control the advertising, and so on, in their regulation.

MR. D. ORCHARD: So allow me to offer an explanation which may not be correct; it will be corrected, if it isn't.

The MMA and the College of Physicians and Surgeons, through this amendment, will be able to presumably control the type of advertising for walk-in clinics, or the amount of advertising, or whether any advertising is allowed, period?

HON. L. DESJARDINS: That's right.

MR. D. ORCHARD: So it's their power, not government's power.

HON. L. DESJARDINS: It would have to be approved by the Cabinet. They would do it, but they would have to receive approval from Cabinet. It wouldn't be initiated in that Cabinet. It would be initiated by them.

MR. D. ORCHARD: This is not allowing the government to initiate.

HON. L. DESJARDINS: No.

MR. CHAIRMAN: Bill, as amended—pass; Preamble—pass; Title—pass.

Bill be reported.

BILL NO. 70 - THE PUBLIC SCHOOLS ACT

MR. CHAIRMAN: Bill No. 70, An Act to amend the Public Schools Act; Loi modifiant la Loi sur les écoles publiques.

Are there any amendments?

A MEMBER: I have one amendment.

MR. CHAIRMAN: There's one amendment being circulated.

HON. M. SMITH: I move

THAT proposed new sub-clause 1(13)(iii) of The Public Schools Act, as set out in Section 1 of Bill 70, be struck out and the following sub-clause be substituted therefor:

(iii) who, by reason of being dealt with under any provision of The Child and Family Services Act or The Young Offenders Act (Canada) becomes a resident of the school division or school district, but not including a Treaty Indian child unless the child qualifies as a resident pupil under sub-clause (i), (ii) or (iv), or.

(French Version)

IL EST PROPOSÉ que l'alinéa 1(13)(iii) de la Loi sur les écoles publiques figurant a l'article I du projet de loi 70 soit supprimé et remplacé par ce qui suit:

(iii) qui devient résident dans cette division ou ce district suite à une décision prise en vertu de la Loi sur les services à l'enfant et à la famille ou de la Loi sur les jeunes contrevenants (Canada), mais qui n'est pas un enfant indien inscrit sauf si l'enfant répond à la définition d' éléve résident aux termes des alinéas (i), (ii) ou (iv).

MR. CHAIRMAN: Mr. Storie.

HON. J. STORIE: The whole intent of the amendments of The Public Schools Act is to include the new definitions or the new title of The Child Welfare Act, the replacement of that by The Child and Family Services Act and a couple of other minor amendments. This amendment that was brought forth in committee

is technical in nature. It's clarifying the intent particularly with respect to treaty Indian children and their definition as permanent residents only when they are enrolled in a school as a result of their being wards under The Child and Family Services Act or The Young Offenders Act. So it's technical. There are no other major amendments.

MR. CHAIRMAN: Amendment—pass; Bill as amended—pass; Preamble—pass; Title—pass.

Bill be reported.

BILL NO. 72 - THE CHILD AND FAMILY SERVICES ACT (2)

MR. CHAIRMAN: Bill No. 72, An Act to amend The Child and Family Services Act (2), Loi Modifiant la Loi sur les Services à l'Enfant et à la Famille (2).

Amendments to be distributed.

HON. R. PENNER: Mr. Chairman, the first amendment is on page 3, so maybe we could move to page 3.

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

Mr. Brown.

MR. A. BROWN: On page 2, 19.4, the last clause, 19.4(c), may also report them to the person who provided the information respecting the abuse. Why don't we have any confidentiality in that particular clause? I think that this is one the major concerns and we've just received the amendments. I have not had an opportunity to look at this, at the amendments, but I believe that it is rather important that we do have a confidentiality.

HON. M. SMITH: Mr. Chair, I think the reason for providing some feedback to the person who made the complaint is to complete that portion of the investigation. There would be protection of any personal information subject to The Child and Family Services Act, as far as I understand it, but this is just to enable some termination in a sense to be made to the person who made the complaint. I think to keep the integrity of the process it's important that be done. They would not be given information that wouldn't normally be deemed confidential. They would be told whether the investigation had proceeded and I guess in a sense given some sign off report.

MR. CHAIRMAN: Page 2.

MR. A. BROWN: I also have a concern on 19.5(c). The agency has received an opinion of a duly qualified medical practitioner or a psychologist consistent with the child being a victim of abuse. Does this mean that we would have to use in this particular instance a medical practitioner who was working for Child and Family Services or a psychologist who was working for Child and Family Services, or can an independent medical practioner or an independent psychologist, for instance, the family doctor - will his word be taken into consideration or can the family doctor be used in these circumstances?

There is a great concern over here, Mr. Chairman, that the medical doctor working for the agency or the psychologist working for the agency can be biased in certain instances. We want to assure, in this particular instance, that any independent medical practitioner or independent psychologist could be used.

HON. M. SMITH: Child and Family Services doesn't employ doctors. There may be the occasional psychologist, but the child abuse review teams are usually made up of multidisciplinary persons drawn from the community at large. So certainly the family doctor would be - yes, it's any doctor. It's not an employee of.

So I think your concerns are met in 19(5)(c).

MR. CHAIRMAN: Page 2—pass.

Mr. Storie.

HON. J. STORIE: I move

THAT section 19(6) of The Child and Family Services Act as set out on page 3 of Bill 72 be amended by adding "or" at the end of clause (b); striking our clause (c); and relettering clause (d) as clause (c).

(French version)

IL EST PROPOSÉ de modifier le paragraphe 19(6) de la Loi sur les services à l'enfant et à la famille, tel qu'il figure au projet de loi 72, par l'insertion, dans le texte anglais, du mot "or" à la fin de l'alinéa b), par la suppression de l'alinéa c) et par substitution, à l'actuel numéro d'alinéa 19(6)d), du numéro 19(6)c).

MR. CHAIRMAN: Amendment - pass?

Mr. Brown.

MR. A. BROWN: We'd like an explanation of that.

HON. M. SMITH: Yes, the concern as you know we've had with this act is to have it stand up under Charter scrutiny - (a) and (b) are clearly, with our legal advice, likely to be found within the Charter; (d) we feel would cover (c), and since we are not going to have evidence from an admitted abuser, given a particular access, we feel that (d) would cover (c) and still give adequate protection.

MR. G. MERCIER: If the Minister feels that way, why does the decision in (d) have to be unanimous? I have some concerns that you could have a committee of six, seven or eight people involved and one person, for whatever reason, could render the opinion not unanimous. Why does it have to be unanimous, if they're of the opinion?

HON. M. SMITH: This was one issue that received a fair bit of discussion in the earlier report, as we believe that at this stage of the registry it's better to ensure the integrity of the registry, monitor it carefully and if we find it is not effective, then we would introduce an amendment next year. But we feel that this would get the registry off to a fairly strong and yet legal basis.

MR. G. MERCIER: Does the Minister have an opinion that the decision has to be unanimous?

HON. M. SMITH: It's a judgment call. I would prefer myself to have the two-thirds, but I guess looking at the whole spectrum in terms of the validity of the registry under the Charter, we felt that we could start this way.

In fact, people who are working with the child abuse area don't find that the unanimous finding is that difficult. The opinion of these groups does tend to go. But obviously it would give a little bit more leeway if it were not unanimous. It is a choice to move a little bit over to having a stronger requirement.

MR. G. MERCIER: I disagree with the fact that it has to be unanimous and I think people try to anticipate too much from the Charter and from the courts that will be negative. But if the Minister is insistent upon proceeding with this, would she undertake to provide us with a report on this aspect of the child registry during her Estimates at the next Session?

HON. R. PENNER: Well, I was going to suggest, I think that the Charter requirements, as reflected in the judgment of Judge Carr, are met in the appeal procedures.

I would respectfully suggest to the Minister that the unanimity is not required to meet Charter requirements. Two-thirds I think would be fine - the Minister's point is well taken - because you could have one hold out and it means that everybody but one person is of the opinion that there is enough there to constitute evidence and it should go into the register. There's an appeal procedure.

HON. M. SMITH: I would certainly be happy to have two-thirds.

HON. J. STORIE: . . . the committee is of the opinion.

HON. M. SMITH: That two-thirds would replace unanimous? Or the Abuse Committee is of the opinion?

HON. R. PENNER: Yes, you could do the two-thirds by a directive.

HON. M. SMITH: Okay, good.

MR. A. BROWN: I don't know exactly under which section this would come because we don't have a provision made for this concern, but it is absolutely necessary that all of these appeal cases must be heard in private because if they are not heard in private you're going to have a lot of people coming forward or not coming forward because they don't want their names to be made public.

HON. J. STORIE: I don't believe the member - that notice is somewhat later and there are a number of other amendments that I could introduce perhaps before the Member for Rhineland would discuss the appeals - expedited later.

Page 3—pass?

MR. CHAIRMAN: Page 3, as amended—pass.

HON. J. STORIE: Note being taken of the deletion of the word "unanimously" in section 19(6)(b) and the appropriate amendments made to the French section as well.

MR. CHAIRMAN: Page 3, as amended—pass.

Mr. Storie.

HON. J. STORIE: Page 4, I move

THAT proposed section 19.1(3) of the Act as set out on page 4 of Bill 72 be amended

(a) by striking out "or (d)";

(b) by striking out "send a notice in prescribed form by registered mail to" and substituting therefor "cause a notice of the report in prescribed form to be given to"; and

(c) by striking out "at their last known address".

(French version)

IL EST PROPOSÉ de modifier le paragraphe 19.1(3) de la Loi, tel qu'il figure au projet de loi 72:

a) par la suppression des mots et signes "ou d)";

b) par la suppression des mots "envoie un avis par courrier recommandé" et leur remplacement par les mots "fait remettre un avis du rapport";

c) par la suppression des mots et signes", à leur derniére adresse connue".

MR. CHAIRMAN: Amendment—pass?

HON. J. STORIE: Pass.

MR. CHAIRMAN: Page 4, as amended—pass.

HON. J. STORIE: No, Mr. Chairperson, there's a further amendment.

MR. CHAIRMAN: Oh, I'm sorry.

HON. J. STORIE: I move

THAT proposed subsection 19.1(4) of the Act as set out on page 4 of Bill 72 be amended

(a) by striking out "sent" and substituting therefor "given"; and

(b) by striking out "30 days of the date of mailing" in clause (c) and substituting therefor "60 days of the date of giving".

(French version)

IL EST PROPOSÉ de modifier le paragraphe 19.1(4) de la Loi, tel qu'il figure au projet de loi 72:

a) par la suppression du mot "envoyé" et son remplacement par le mot "donné";

b) par la suppression des mots et chiffres "dans les 30 jours suivant la date à laquelle l'avis est posté" et leur remplacement par les mots et chiffres "dans les 60 jours suivant la date à laquelle l'avis est donné".

MR. A. BROWN: Mr. Chairman, I still have a concern with the 60 days. Now, it certainly is an improvement over the 30 days, but you must remember that this registry is 10 years old at the present time. There are going to be a lot of people who would have moved

four or five times and you may not be able to contact those people within 60 days.

What they have in other jurisdictions - Ontario, for instance - it's open, at such a time as what a person has located, they can appeal the decision and certainly 60 days is an improvement over 30 days. But why can we not leave this open in a case where you have been unable to contact the person within 60 days?

A MEMBER: The 60 days doesn't run until you've been served with notice.

HON. J. STORIE: That's right, you've got to find them, track them down and give them - it's giving of notice now.

MR. A. BROWN: I'm still concerned about being served with the notice. You're going to find that you will not be able to contact these persons.

A MEMBER: The 60 days doesn't run.

HON. J. STORIE: It doesn't start running until you find them.

MR. A. BROWN: Oh, okay.

MR. CHAIRMAN: Amendment—pass.
Mr. Mercier.

MR. G. MERCIER: Are all of the existing names on the registry going to go through this process of being served with a notice?

HON. M. SMITH: First would be a sorting out on the basis of the amendment we are going to submit in terms of termination, so everything over 10 years would disappear, or where the abuse victim is over 18, then we would start sorting through the others and we would have to re-establish their validity by giving notice.

MR. G. MERCIER: Would you have to have a decision on the Child Abuse Committee of the agency?

HON. M. SMITH: Not on re-establishing the old registries, but on the new ones.

MR. CHAIRMAN: Amendment—pass; page 4, as amended—pass.

HON. J. STORIE: Page 5, Mr. Chairperson, I have an amendment.

I move
THAT proposed subsection 19.1(5) of the Act as set out on page 5 of Bill 72 be amended by striking out "30 days of the mailing" and substituting therefor "60 days of the giving".

(French version)
IL EST PROPOSÉ de modifier le paragraphe 19.1(5) de la Loi, tel qu'il figure au projet de loi 72, par la suppression des mots et chiffres "dans les 30 jours suivant l'envoi de l'avis par la poste" et leur remplacement par les mots et chiffres "dans les 60 jours qui suivent la date à laquelle l'avis est donné".

MR. CHAIRMAN: Amendment—pass.

HON. J. STORIE: A further motion:
THAT proposed subsection 19.1(6) of the Act as set out on page 5 of Bill 72 be amended by striking out "30" and substituting therefor "60".

(French version)
IL EST PROPOSÉ de modifier le paragraphe 19.1(6) de la Loi, tel qu'il figure au projet de loi 72, par la suppression des chiffres "30" et leur remplacement par les chiffres "60".

MR. CHAIRMAN: Amendment—pass.

HON. J. STORIE: A further motion:
THAT proposed subsection 19.2(3) of the Act as set out on page 5 of Bill 72 be amended
(a) by adding immediately after "notify" the words "by registered mail sent to their last known address"; and
(b) by adding at the end thereof "and the notice shall be deemed to have been received two days after it was mailed".

(French version)
IL EST PROPOSÉ de modifier le paragraphe 19.2(3) de la Loi, tel qu'il figure au projet de loi 72:
a) par l'insertion, aprés les mots "le jury", des mots et signes "avise, par courrier recommandé envoyé à leur derniére adresse connue,";
b) par l'insertion, à la fin du paragraphe, des mots "L'avis est réputée avoir été reçu deux jours aprés son envoi par la poste.".

MR. CHAIRMAN: Amendment—pass; page 5, as amended—pass.

HON. J. STORIE: Pass.

MR. CHAIRMAN: Page 6 - Mr. Storie.

HON. J. STORIE: I move
THAT proposed subsection 19 . . . .

MR. CHAIRMAN: Mr. Mercier.

MR. G. MERCIER: On page 5, the Member for Rhineland had a . . . .

MR. A. BROWN: Okay, 19.2(5), at a hearing the agency has the burden of proof on the balance of probabilities and all parties may represented by counsel or agent and shall be given a full opportunity to present evidence to examine and to cross-examine witnesses.

Now this means that at that particular time there is going to be considerable cost incurred by some people in order for them to prove their innocence. Mr. Chairman, it would be my opinion that if a person is proven innocent through this particular procedure that those costs shall be incurred by the government and should not be borne by the persons against whom the charges have been laid.

HON. M. SMITH: We're not of the opinion that should be done. We believe that the usual practice in these types of hearings would not follow that practice. There is legal aid for those who are in need and if the case should go to court of course the court can make a disposition as to costs if they choose. So we don't see the need for that special protection here.

MR. A. BROWN: That is in case that it is going to be going to court, but what about if during the appeal process and the panel, and if these persons have to get the assistance of a lawyer in order to represent their case and it is stated in here that they may do so, there still is going to be a cost which can be a considerable cost incurred by some of these people, and I would say that by and large you would possibly be dealing with people to whom this is going to be a financial difficulty. In order for themselves to prove themselves innocent, it seems to me, Mr. Chairman, that this is a cost which should incurred by the government.

HON. M. SMITH: With respect to a disagreement.

MR. A. BROWN: The other concern of course that I have over here is that all of these hearings have to be held in private, that they cannot be public, that the media, that the public will not be present wherever these hearings are occurred, and we must absolutely insist upon that.

HON. M. SMITH: The meetings will be held in camera - in private.

MR. CHAIRMAN: Page 5, as amended—pass.

HON. J. STORIE: Amendments for page 6.
I move
THAT proposed subsection 19.2(6) of the Act as set out on page 6 of Bill 72 be amended
(a) by adding immediately after "decision" in the 3rd line thereof the words "within 30 days of completing the hearing";
(b) by striking out the figures "30" in the 4th line thereof and substituting the figures "60".

(French version)
IL EST PROPOSÉ de modifier le paragraphe 19.2(6) de la Loi, tel qu'il figure au projet de loi 72:
a) par l'insertion, aprés le mot "parties", des mots et signes ", dans les 30 jours suivant l'audience,";
b) par la suppression des chiffres "30" et leur remplacement par les chiffres "60".

MR. CHAIRMAN: Amendment—pass.

HON. J. STORIE: A further motion:
THAT proposed subsection 19.2(8) of the Act as set out on page 6 of Bill 72 be struck out and the following subsection be sustituted therefor:

Pardon.
19.2(8) On application by a person who has obtained a pardon with respect to the conviction which led to the registration of that person's name, the director shall remove all identifying information relating to that person from the registry.

(French version)
IL EST PROPOSÉ de supprimer le paragraphe 19.2(8) de la Loi, tel qu'il figure au projet de loi 72 et de le remplacer par ce qui suit:

Pardon.
19.2(8) Sur demande d'une personne à qui un pardon a été accordé à l'égard de la condamnation qui a entraîné l'inscription du nom de cette personne, le directeur enléve du registre les renseignements signalétiques qui se rapportent à cette personne.

MR. CHAIRMAN: Amendment - pass?

HON. J. STORIE: Pass.

MR. CHAIRMAN: Page 6, as amended—pass.
Page 7 - Mr. Storie.

HON. J. STORIE: I move
THAT proposed subsection 19.3(3) of the Act as set out on page 7 of Bill 72 be amended by striking out everything after "pursuant" and substituting therefor "to a report under clause 19(6)(a) or (b) where the director is satisfied this information is reasonably required to assess an application for employment."

(French version)
IL EST PROPOSÉ de modifier le paragraphe 19.3(3) de la Loi, tel qu'il figure au projet de loi 72, par la suppression de tout ce qui suit le mot "registre" et par l'insertion des mots et signes "conformément aux alinéas 19(6) a) ou b) lorsque le directeur est convaincu que ce renseignement est véritablement nécessaire pour évaluer l'aptitude d'une personne qui présente une demande d'emploi.".

MR. A. BROWN: I have a particular concern about this particular section and I believe very strongly that the names should be used only by Child and Family Services. For school divisions, for day care centres or other employers, there is no reason why they cannot check other instances. For instance, if you have been convicted of a crime, you have a criminal record, and there are other ways of checking. I do not believe that this particular list - because you are going to have some people on this particular list who have not been convicted who are suspected of having been guilty of child abuse and I feel rather strongly that these names should be used by Child and Family Services only. This is what is done in Saskatchewan. This is done in Alberta. This is done in British Columbia and I do not see why Child and Family Services have to provide a service for all other agencies or persons who wish to check the registry. This ought to be there for Child and Family Services only.

HON. M. SMITH: With respect, the access for employment refers only to 19.6 (a) or (b) that is persons

convicted or found by a court in a proceeding under the act to have abused a child. There is not an inclusion of those suspected. We believe it is important to play a proactive role to protect children, rather than leaving it to the usual checks of an employer. It's partly because of the failure of that system to adequately detect abusers, that we think this is an important element of the registry.

MR. A. BROWN: Is the Minister then telling me that only the names of convicted persons are going to be made available to, let's say, school divisions, day care centres or employers who wish to seek this information?

HON. M. SMITH: If the member would look at page 3, 19.6, it's only the (a) and (b) that would be accessible to a potential employer - 19.6 (a) and (b). That is a person who has been convicted by a court of abusing a child or the person who's been found by a court in a preceding end of the act to have abused a child.

MR. G. MERCIER: I don't think that goes far enough. I think if you've had a decision by the child abuse committee who are of the opinion that the person or persons have abused a child and they have had the right to appeal and they have either refused to appeal or they have appealed and lost the appeal that that information should be available to a school division, a day care centre or other employers who are responsible for the care of children.

HON. M. SMITH: As you know, in developing this legislation, in the report we put out last December, and the consultation, the main area of concern was the inclusion of names and making them accessible to potential employers where there was suspicion without the stronger test of a court finding or a conviction. We've been trying to meekly balance as best as we could the needs of the children for protection and the civil rights of the adults involved. This was the one area that received the most concern. Again, I'm pleased to hear the Member for St. Norbert pushing for the stronger child protection line, although I hear the Member for Rhineland pulling rather strongly in the other direction. Again, the operation of the registry will be under very close review and we could again give a thorough reporting next year and consider whether to include (d). At this point in time though I think we're better to get the registry established and operating and just include (a) and (b).

HON. R. PENNER: On a point of information, going back and forth, where is the reference in the access to others to (a) and (b)? What am I missing?

MR. CHAIRMAN: On page 3 . . .

HON. R. PENNER: Yes, I know that, on page 3. It's not in this section at all.

HON. M. SMITH: The access paragraphs are on pages 6 and 7, 19.3(2).

HON. R. PENNER: And there's no reference to (a) and (b), and I agree with the Member for St. Norbert; I don't think there should be.

MR. CHAIRMAN: Amendment - pass?

HON. M. SMITH: What are we in agreement on? Just a minute. We have to be sure. You mean it should be (a), (b) and the new (c)?

HON. R. PENNER: No. Going back and forth, and saying it's late, I'm not reading this, everybody has been assuming that the access already contains a reference to the (a) and (b) list; it doesn't. The access is with respect to whatever you have under very carefully guarded situations. That's the way I think it should be because the schools particularly are the front line of our defence against child abuse, and that's why we went through the whole business of involving the teachers and the schools. The former Minister of Education . . .

HON. M. SMITH: Just for clarification, the Attorney-General - it's important because this is one of the most contentious pieces. On the Access for others, 19.3(3), are you saying that we should give that group access to 19.6(a), (b), and (c) and not to just (a) and (b)?

HON. R. PENNER: Yes.

HON. M. SMITH: In other words, strengthen it. It is the area where the Charter challenge could come but I would rather see this stronger rather than weaker. We've been trying to get legal advice so that we don't put the registry in undue jeopardy but, if there is agreement to make a stronger case, I certainly am not opposed to that.

MR. A. BROWN: 19.3(4) - I have a bit of a concern over there where it says, "other than information that may identify a person who made a report under subsection 18(1)." Now I can understand where somebody who is accusing somebody else of abusing their children, where this needs to be kept confidential. But, Mr. Chairman, you are going to be getting people who will be making public, frivolous charges, or who will be making frivolous and malicious charges against somebody else.

This is a concern of mine that, if that person's name then has to be kept confidential - this is a real concern - that person then possibly should be identified so that legal action can be taken by the accused against such a person who is making frivolous charges.

HON. M. SMITH: Responding to the Member for Rhineland, we think it is important that reservation about identifying the reporting individual be included. Should there be an appeal, of course, there probably would be a face-to-face encounter.

It's important for the integrity of the child abuse protection that we do encourage and not jeopardize people who make reports. We have, in The Child and Family Act, protected people who report suspected cases. The onus of proof is not on them. Again, the person is not presumed guilty. The onus of proof in a court case would still be on the agency, and the individual would be presumed innocent. We think it's appropriate to withhold the identity of the person who made the report.

MR. CHAIRMAN: Amendment—pass.
Page 7, as amended - Mr. Penner.

HON. R. PENNER: Yes, for a greater certainty with respect to the discussion we have had with respect to 19.3(3), I move, seconded by the Member for St. Norbert

THAT clause 19.3(3) of section 1 of Bill 72 be amended by striking out the words "pursuant" to subsection 19.1(2) in the 6th and 7th lines thereof.

MR. CHAIRMAN: Amendment—pass; page 7, as amended—pass; page 8—pass.
Mr. Storie.

HON. J. STORIE: Mr. Chairperson, I move

THAT section 1 of Bill 72 be amended by adding after proposed section 19.3 of The Child and Family Services Act set out therein the following proposed sections of the Act:

Removal of identifying information re abused.
19.4(1) The director shall delete from the registry all identifying information relating to a child who is listed as an abused child upon that child attaining 18 years of age.

Removal of identifying information re abuser.
19.4(2) Subject to subsection 19.2(8), the director shall remove from the registry all identifying information relating to a person who is listed as an abuser on the later of the day on which

(a) 10 years have elapsed since the last entry relating to the person; or
(b) the child who was abused attains 18 years of age.

Listing of names on old register.
19.5(1) The director may enter on the registry the names of persons who were on the child abuse registry that was maintained prior to June 19, 1987 if

(a) the provisions of clauses 19(5)(a) or (b) or clauses 19(6)(a) or (b) are satisfied; and
(b) the provisions for removal of the name in section 19.4 are not satisfied.

Date of listing.
19.5(2) For the purposes of clause 19.4(2)(a), where a person is entered on the registry pursuant to subsection (1), the date of the entry shall be deemed to be the date of the last entry on the registry prior to June 19, 1987.

(French version)
IL EST PROPOSÉ de modifier l'article I du projet de loi 72 par l'adjonction, aprés l'article 19.3, de ce qui suit:

Enfant maltraité et effacement de renseignements
19.4(1) Le directeur efface du registre les renseignements signalétiques concernant un enfant qui y est inscrit parce qu'il est maltraité, dés que cet enfant atteint l'age de 18 ans.

Personne infligeant des mauvais traitements et effacement de renseignements
19.4(2) Sous réserve du paragraphe 19.2(8), le directeur efface du registre les renseignements signalétiques concernant une personne qui y est inscrite parce qu'elle a infligé des mauvais traitements à un enfant, à la date du dernier des événements qui suivent à se produire:

a) un délai de 10 ans s'est écoulé depuis la derniére inscription concernant la personne;
b) l'enfant qui a été maltraité atteint l'âge de 18 ans.

Inscriptions des noms sur l'ancien registre
19.5(1) Le directeur peut inscrire sur le registre les noms des personnes inscrits sur le registre les noms des personnes inscrits sur le registre concernant les mauvais traitements qui était tenu avant le 19 juin 1987 lorsque les conditions suivantes sont remplies:

a) les disposition des alinéas 19(5)a) ou b) ou des alinéas 19(6)a) ou b) sont applicables;
b) les dispositions de l'article 19.4 concernant l'effacement de noms ne sont pas applicables.

Date d'inscription
19.5(2) Pour l'application de l'alinéa 19.4(2)a), si le nom d'une personne est inscrit sur le registre conformément au paragraphe (1), la date d'inscription est réputée être la date de la derniére inscription sur le registre avant le 19 juin 1987.

MR. CHAIRMAN: Amendment, as printed—pass.

HON. J. STORIE: And the French as well.

MR. CHAIRMAN: Page 7, as amended—pass; page 8, as amended—pass.

HON. J. STORIE: There's no amendment.

MR. CHAIRMAN: There's no amendment on page 8.
Bill, as amended—pass; Preamble—pass; Title—pass.
Bill be reported.

BILL NO. 59 - THE MENTAL HEALTH ACT

MR. CHAIRMAN: Bill No. 59, An Act to amend The Mental Health Act; Loi modifiant la Loi sur La Sante Mentale.
Mr. Orchard.

MR. D. ORCHARD: Mr. Chairman, before we move in, can I ask the Minister - I haven't had an opportunity to go through the amendments, but are these housekeeping amendments or are they substantive amendments, which would address a number of the issues that were brought up tonight?

HON. L. DESJARDINS: We've looked at the amendments. We believe that some are - it's not just amendments. We felt that they were substantive.

MR. D. ORCHARD: Mr. Chairman, I don't want to prolong any debate at this late hour, but I think all of the committee who were here and listened to the briefs foresaw some serious problems in the act, in the amendments that are being proposed, in terms of the operation of The Mental Health Act - not in necessarily the Brandon and Selkirk Mental Health Centres, but in terms of wards in hospitals, where they are deemed to be the psychiatric facility; the disruption that would be placed on them to have involuntary patients committed, who requested a review. They're there, there's serious problems in that regard, and that was given to us by representatives from the six general hospitals in Winnipeg that have psychiatric wards.

Other people have pointed out some serious concerns so that I hope the Minister can address some of these tonight. I intend to move a couple of them as I move through.

HON. L. DESJARDINS: If I may, Mr. Chairman, and maybe with the committee's permission, we could invite Dr. Toews to come in on this.

But our understanding that this wasn't understood, at no time did we feel that the people would have to be in the hospital to be examined. We felt that that could be - or on the ward I should say. We felt that it could be in the outpatients; it could be in any room. At no time did we feel that we might be proven wrong. If there's an amendment to make that clear, we wouldn't oppose that at all because we feel that that is correct. It was never the intention to say you have to be on the ward.

MR. D. ORCHARD: Agreed, but you know how draftsmen can sometimes not put something down.

HON. L. DESJARDINS: As I say, we would be ready and would consider it an amendment if it's going to be very clear.

MR. D. ORCHARD: Let us proceed then, Mr. Chairman.

MR. CHAIRMAN: Page 1—pass; page 2—pass.
Mr. Penner.

HON. R. PENNER: Mr. Chairman, I move
THAT subsection 7(1) of Bill No. 59 be amended by striking out "18(1), 18(2)" and substituting therefor "18(2), and 18(3)."

(French version)
IL EST PROPOSÉ que le paragraphe 7(1) du projet de loi 59 soit modifié par la supression de "18(1), 18(2)" et son remplacement par "18(2), 18(3)".

HON. L. DESJARDINS: That's just the renumbering; that was just an error.

MR. CHAIRMAN: Amendment—pass.

HON. R. PENNER: Page, as amended.

MR. CHAIRMAN: Page 3, as amended—pass.
Page 4.

MR. D. ORCHARD: Mr. Chairman, on page 4, I don't believe there's an amendment.

HON. R. PENNER: Yes, there is an amendment.
I would move
THAT proposed subsection 7(5) of the act, as set out on page 4 of Bill No. 59, be amended
(a) by striking out "forthwith"; and
(b) by adding at the end thereof "within 24 hours".

(French version)
IL EST PROPOSÉ que le paragraphe 7(5) de la Loi figurant à la page 4 du projet de loi 59 soit modifié:
a) par la suppression de "sans délai";
b) par l'insertion, aprés "l'examine", de "dans les 24 heures".

MR. CHAIRMAN: Amendment—pass; page 4, as amended—pass.
Page 5.

MR. D. ORCHARD: Mr. Chairman, I just had a question of the Minister.

On page 5, under Signing, 8(3): "An application under subsection (1) is not valid unless the physician signs it within two days of the date of the examination." What was magic about two days? What was the rationale behind two days, as compared to one day, as compared to three days?

HON. L. DESJARDINS: It's an arbitrary time, thinking that this approximately what be what was needed - no magic.

MR. D. ORCHARD: So, basically, is this fair to say that this is a section of convenience for the examining physician to give him time to get his paper work done?

DR. J. TOEWS: The current act allows seven days between the examination and the signing of the certificate. The usual practice is to sign the certificate at the time of the examination. It was felt in the drafting of the legislation that the time period of two days would provide a cushion, not for convenience but, should the person leave the office and immediately run into difficulty, the physician could draw on that examination that had just been completed, if necessary.

MR. D. ORCHARD: The two days replace the seven days in the current act?

DR. J. TOEWS: Yes.

MR. D. ORCHARD: Fine.

MR. CHAIRMAN: Page 5—pass; page 6—pass.
Page 7 - Mr. Penner.

HON. R. PENNER: I move
THAT proposed subsection 11(1) of the act as set out on page 7 of Bill No. 59 be amended by striking out "forthwith" and substituting therefor "within 24 hours" as consistent with the previous amendment and the French.

(French version)
IL EST PROPOSÉ que le paragraphe 11(1) de la Loi figurant à la page 7 du projet de loi 59 soit modifié par la suppression de "dés" et son remplacement par "dans les 24 heures de".

MR. D. ORCHARD: Mr. Chairman, substantial discussion was heard tonight from various presenters with briefs.

Regarding the section on page 7, the third requirement of the peace officer, of the opinion that the person is apparently suffering from, and (iii) substantial mental or physical deterioration of the person will result. Now that presumes a capacity probably in most peace officers that doesn't exist. Is that legitimate to leave that in, and not simply delete the (iii)?

HON. L. DESJARDINS: The peace officer would be on page 6, 10(1)? That's what you were reading?

MR. D. ORCHARD: Right. And you carry over to the top of page 7, and one of the things that (b) section of 10(1) says: "the peace officer is of the opinion that the person is apparently suffering from a mental disorder of a nature that likely will result in (iii) substantial mental or physical deterioration of the person." That's a judgment that I think very few peace officers would be able to make and I question the validity of keeping it in there.

HON. L. DESJARDINS: Well, then you would have to see, wouldn't you?

HON. R. PENNER: But that's an additional requirement.

MR. D. ORCHARD: But you see, it doesn't matter whether you read (c) or not, you're presuming that a peace officer has the ability to determine whether someone suffering from a mental disorder, and that mental disorder is of such a nature that it's going to cause substantial mental or physical deterioration of the person if they're not detained, I suggest that with all due respect to peace officers, they are simply not trained to do that.

HON. L. DESJARDINS: I want to make sure that we understand. This would then take them for an examination, to make it possible for them to have an examination. They wouldn't examine them themselves.

MR. D. ORCHARD: I absolutely understand the rationale, that this is the criterion under which the peace officer would be able to involuntarily commit a citizen of this province.

HON. L. DESJARDINS: They can't commit.

MR. D. ORCHARD: Not commit, but cause to be examined, which may result in commitment. That's neither here nor there. The first two are relatively easy. If the guy has got a gun and he's threatening to shoot himself, then No. 1 is fairly evident. If he's threatening to shoot somebody else with the same gun, No. 2 fairly evident. But I can't judge how a police officer is going to establish that this person is going to sustain substantial mental or physical deterioration if not brought for an examination.

HON. R. PENNER: If this was conjunctive I could see the point, and I agree it would be very difficult for a peace officer to make that kind of judgment. But it's disjunctive so that it's in addition to (1) and (2). He may not be in a situation to assess that there's going to be serious harm to the person, serious harm to another person, but might come across somebody who is apparently suffering from a mental disorder but there's just nothing doing, no action, no need to worry, but come across a person who he believes will suffer very quickly substantial mental or physical deterioration. I think that out of an abundance of time we should perhaps leave it in there. But I take the point of the Member for Pembina; it's a good point. Since they have to take him immediately for the assessment, the assessment has to be in two days.

A MEMBER: The assessment could be immediate.

MR. D. ORCHARD: I'm not going to belabour the point but you've got in (a)(3), has shown or is showing a lack of competence to care for himself or herself. Now I could follow the Attorney-General's argument, for instance, if you found somebody with a mental disorder in a downtown street in Winnipeg, who was prepared to sleep on a park bench at 30 below in January, that they would freeze to death if you didn't do something with them, but that's taken care of in (a)(3). Here we're saying the police officers have the ability to determine this person is going to suffer substantial mental or physical deterioration, and I'm not going to belabour it, it's not worth belabouring. I think it's extraneous and unnecessary.

HON. L. DESJARDINS: I think I see the point where the solicitor is looking at that.

I think the suggestion is that with (a) and (c), we wouldn't need (b).

HON. R. PENNER: No.

HON. L. DESJARDINS: No?

HON. R. PENNER: You should still have (b), but you don't need (b)(3).

HON. L. DESJARDINS: Well, that's what I mean. Excuse me, I meant (b)(3).

HON. R. PENNER: Yes, because (a) is much more specific.

MR. D. ORCHARD: I'm not hung up on this, but I just think it's an extremely . . .

HON. L. DESJARDINS: The advice that I'm getting, that to be consistent with the act, we should retain it. I don't think it's going to make that much difference.

HON. R. PENNER: Yes, just on that point.

A reference was made earlier on a number of the submissions to the Uniform Law Act, and we've attempted to follow that as much as possible in these amendments. The Uniform Commissioners are meeting in about four weeks time. It's expected they'll finally have a final draft. We think maybe we should wait for the final draft before changing from - we looked at the January draft of the Uniform Law Act in the picking up of some of the wording for this.

There may be some changes, but these are some of the points.

MR. CHAIRMAN: Amendment—pass; page 7, as amended—pass.

Page 8 - Mr. Orchard.

MR. D. ORCHARD: One point, that again was made in a brief tonight: Is it clear enough, or am I in the right section - I may not be - but in 14(2), Duty to return person, is that clear enough? That was a point that was made by a couple of presenters tonight.- (Interjection)- No, fine, I'm all right on that.

MR. CHAIRMAN: Page 8—pass.

Page 9.

HON. L. DESJARDINS: There's an amendment.

HON. R. PENNER: I move

THAT proposed subsection 16(1) of the Act as set out on page 9 of Bill 59 be amended by striking out "A psychiatrist who has examined a person in a psychiatric facility and who has assessed the person's mental condition" and substituting therefor "A psychiatrist in a psychiatric facility who has received an application for an involuntary psychiatric assessment of a person under subsection 8(1) and who has examined the person".

(French version)

IL EST PROPOSÉ que le paragraphe 16(1) de la Loi figurant à la page 9 du projet de loi 59 soit modifié par la suppression de "Le psychiatre qui a examiné une personne dans un centre psychiatrique et qui a évalué son état mental" et son remplacement par "Le psychiatre dans un centre psychiatrique qui a reçu une demande d'évaluation psychiatrque forcée d'une persone aux termes du paragraphe 8(1), et qui a examiné cette personne,".

HON. L. DESJARDINS: That was the intent, always to have two opinions for every involuntary admission.

MR. D. ORCHARD: Okay, now the way this rewording will be under the amendment, does that allow the circumstance we were discussing before we went page by page, where in the ward of the general hospital that the psychiatrist who is resident there could examine the person in the emergency room and still be in compliance with the act?

HON. L. DESJARDINS: I wonder if I could ask Mr. Yost. It's certainly our intention, I wonder if you could advise us on that.

MR. G. YOST: Mr. Chairman, if I understand the question, the requirements is that the psychiatrist must have received a referral under subsection 8(1). Now that's by a physician.

We're now making it clear that the psychiatrist must have that referral by a physician, that the person have an involuntary psychiatric assessment. So there must be some other physician who fills it out and then the psychiatrist does the assessment.

MR. D. ORCHARD: Mr. Yost, I appreciate that.

HON. L. DESJARDINS: Before Mr. Orchard, just the fact that Dr. Toews would like to say a word on the matter. Apparently it's in the act now and you can clarify it.

DR. J. TOEWS: We're really just trying to insist that at all points there is a two-certificate system. Now, if there is more than one psychiatrist, certainly the first application for an assessment might be by a psychiatrist, and another psychiatrist then completes the second certificate. So in all cases, it is a two-certificate system, with the first one is acting as a physician.

MR. D. ORCHARD: The point I wanted to make till we're clear here is that the physicians from the general hospitals pointed out the problem that their ward, exclusively, is the psychiatric facility and they would have to bring a person in and the example he used was an involuntary patient who appealed to the review board and would be held in detention, basically, as they described it, for up to 10 days.

Is it possible, with the wording of the amendment, that the psychiatrist at the psychiatric facility would be able to make that examination in a place in that hospital, other than the psychiatric ward?

DR. J. TOEWS: Yes, you could be examined in the emergency room and that could be the end of the examination. It could be determined that you need to be held for further examination, that could then be done up to 72 hours.

MR. D. ORCHARD: That's the next question. The amendment can pass then.

MR. CHAIRMAN: Amendment—pass.

MR. D. ORCHARD: Mr. Chairman, I've got another question and a proposal for this page, the 72 hours that was questioned.

HON. L. DESJARDINS: That's not here, is it?

MR. D. ORCHARD: Yes, it's under (b) at the top of the page.

HON. L. DESJARDINS: Oh yes.

MR. D. ORCHARD: Are the concerns sufficiently strong to have that moved down to 48 hours, as was suggested by a number of people tonight?

HON. L. DESJARDINS: That is the one we felt that we couldn't change and I think if you heard the psychiatrist also, it would be very difficult.

MR. D. ORCHARD: Given outside of Winnipeg.

HON. L. DESJARDINS: In any case, we'll do it as soon as possible.

MR. D. ORCHARD: Okay, then, Mr. Chairman, I would propose to move, as was suggested by several tonight and I believe the MHO brief contains it as well, even though it was not read into the record. As a matter of fact, I'm using it. No, I'm not. Can I propose that section 16(1) be amended by adding after section (b), section (c), which would read . . .

HON. L. DESJARDINS: Excuse me, the amendment section 16(1), we already proposed an amendment on that.

MR. D. ORCHARD: Yes, the amended section be further amended by adding after section (b), section (c). The person lacks capacity to make an informed decision concerning treatment, and then, presumably, we'd have to delete the period after admission and put "and" in there, to complete that.

HON. L. DESJARDINS: Do you mind repeating that, please, now?

MR. D. ORCHARD: I won't do it in all the technical terms that we need to comply with the law, but I would like to add after (b), we've got condition (a), which is amended now; and we've got condition (b). I would like to add condition (c), that being that the person lacks capacity to make an informed decision concerning treatment. I posed that question to a number of people tonight who presented briefs, and they thought that was a reasonable amendment, and it narrows further the scope of people who would be involuntarily committed.

HON. R. PENNER: . . .- (inaudible)- . . . if it's intended that the separate ground or an additional ground, because what you have at the moment, just looking at the structure of it, the conditions that (a) have to be met, and (b) has to be met.

MR. D. ORCHARD: And I would propose, Mr. Penner, that (b) would be amended by deleting the period, adding "and," and then section (c), so all three would be . . .

HON. L. DESJARDINS: Before we entertain this, would you mind turning on page 16, 24(3) to see if this would be dealing with your concern.

HON. R. PENNER: No, this is after admission and 16(1) deals with admitting. It just occurred to me, from the point of view of the intent of the Member for Pembina, that perhaps what he is proposing would be better contained as a sub (3) to (a).

MR. D. ORCHARD: As a sub (3) to (a)?

HON. R. PENNER: If a person who is suffering from a mental disorder as a result of which, (1), (2) and then (3) and (b).

MR. D. ORCHARD: Yes.

HON. L. DESJARDINS: But if you do that, the section that I pointed to in 16, you won't need it anymore.

HON. R. PENNER: Yes, you will, because that's post-admission.

HON. L. DESJARDINS: But all involuntary will be incompetent.

A MEMBER: If you follow these amendments.

HON. L. DESJARDINS: If you follow that amendment, all involuntary cases will be incompetent. You wouldn't need 24(3).

MR. D. ORCHARD: Well, section 24 would certainly have much less use, there's no question.

HON. L. DESJARDINS: Because all involuntary will be deemed incompetent.

MR. D. ORCHARD: Because the person lacks the capacity to make an informed decision concerning treatment. Essentially that's correct.

DR. J. TOEWS: We, in looking at these issues, struggled a lot with whether there was a global incompetence or there was specific incompetence to manage affairs, to agree to treatment, things like that. In looking at the literature that has arisen from mental health acts across North America, one of the trends we are noting, and it would be much easier for people to have global incompetence, but one of the things we are noting in the literature coming down from the American courts is the beginning of the splitting of incompetence for one thing and competence for another. It was that that led to recommendations that said, really, competency needs to be assessed as a separate issue. I think the concern is putting the competency determination right up front in the committal process and say that's a criteria by which you come in.

MR. D. ORCHARD: Okay. But then you see this is competency in terms of making an informed decision concerning treatment, not financial competency or any other area where it may be split. This is concerning treatment. I think it's a fairly narrow description of what type of competency we are singling out here and identifying with the proposed amendment I have made.

HON. L. DESJARDINS: If you left if like this on the 24(3) you'd have to assess it again, if the patient is still incompetent.

HON. R. PENNER: May I make a suggestion?

MR. CHAIRMAN: Mr. Penner.

HON. R. PENNER: It seems to me that there are a lot of suggestions made in the submissions on this. Clearly, I think there's some work to be done after we've received the uniform act for the next Session. I think everybody would agree with that, that if you look at

this I think you could reasonably be assured that under (a)(2), the notion of a person who is unable to care for themselves, in terms of competent with respect to medical treatment, is reasonably assumed that under (a)(1), he or she is likely to cause serious harm to himself. Leave it at that for the time being. We do have the safeguard that immediately thereafter, under the section that the Minister referred to, the question of his capacity to consent to treatment once he's in is then looked at and judged.

MR. D. ORCHARD: Well, I realize . . .

HON. L. DESJARDINS: We will be reviewing that act during the year. There's no doubt about that.

MR. D. ORCHARD: I realize that 24(3) goes through the judgment of capacity to accept or refuse treatment but, if it was put in on 16(1) in the involuntary admission, it much narrows the numbers of people who you would involuntarily commit. That further, I think, improves The Mental Health Act in terms of the powers of imposition that can be used on citizens. That's the only reason I propose it. It had made eminent sense to me when we heard different presenters react to it.

HON. R. PENNER: There are two difficulties. One is I know I'm finding it quite difficult to see how one might draft what is being proosed without distorting what we have here, and that's not easy because there are some complexities. Secondly, take the point of Dr. Toews that removing away from global incompetence to incompetence that might be in specific areas - and it might be that the person was in fact competent with respect to consenting to medical treatment but, on the less than global view of things, is sufficiently disordered under (a) and (b) that we have here to require involuntary admission.

HON. L. DESJARDINS: Mr. Walters has a point he'd like to make.

MR. CHAIRMAN: Mr. Walters.

MR. T. WALTERS: Mr. Orchard, I think with the intent of your amendment, in the narrowing of it, perhaps we'd restrict treatment to some people who really do require it, and I'd like to give you what I might consider an example and Dr. Toews might be able to embellish it somewhat.

Let's assume that we have an individual who has a fixed illusion against you. They think you are the enemy. They want to kill you. They qualify under the section (a)(1) which talks about serious physical harm but, in all other capacities, they're able to make a reasoned judgement except in that one area, and that is that they want to kill you. If your amendment was put it, according to that amendment, because a person still had the capacity to consent to treatment, they couldn't be put away involuntarily. That's the problem with your amendment the way it stands.

MR. D. ORCHARD: Actually, that's pretty persuasive. Fair enough, I'm not hung up on it. It sounded quite logical until you pointed out how it might be used.

MR. CHAIRMAN: Page 9, as amended—pass; page 10—pass.

Page 11.

MR. D. ORCHARD: Hang tough for just a minute. I want to dig up the MARL brief. I've got it marked in here on MARL amendment. Does that not make reasonable sense, the MARL amendment where they simply add in after "the Lieutenant Governor in Council" - "or upon an appeal decision or order of the review board or court"?

HON. L. DESJARDINS: What page have you got?

MR. D. ORCHARD: Page 11, clause 18(1)(c).

HON. R. PENNER: What's the question that's been raised?

MR. D. ORCHARD: Well, MARL made the suggestion that it's only the Lieutenant-Governor-in-Council who can make the exception to the discharge or allow the discharge. They say as well that, if an appeal decision or order of the review board or court says the release should take place, that should happen; in other words, if the Appeal Court or Queen's Bench says that the person should be released or the review board says they should be released. That sounded reasonable.

HON. L. DESJARDINS: I'm informed that this is from the actual act, that there could be some criminal amendment that would change this.

HON. R. PENNER: That's right. There are proposed amendments to The Criminal Code that deals with the Criminal Code Board of Review and its functions that will remove the Lieutenant-Governor-in-Council from the process, as indeed we're all praying for that day. We have to do these LGW warrants every week and we don't like doing it.

But I would agree though. I don't see any reason why, because this is a civil commitment, piece of legislation, why we couldn't put in the Board of Review, which is this Board of Review and the Appeal Court.

HON. L. DESJARDINS: In other words, add that to the Lieutenant-Governor.

HON. R. PENNER: I don't see a problem there.

A MEMBER: It would only be the Board of Review and not the review board.

HON. R. PENNER: Yes.

MR. D. ORCHARD: Well it would be as written by MARL.

HON. R. PENNER: You have to distinguish between the review and the review board.

MR. D. ORCHARD: Mr. Chairman, to expedite the proceedings tonight, I'd be prepared to have the concept of this amendment developed and brought in at Third Reading.

HON. L. DESJARDINS: But it would be Board of Review, not review board from that.

HON. R. PENNER: Yes.

HON. L. DESJARDINS: Okay.

HON. R. PENNER: Okay, to be brought in at Report Stage?

MR. CHAIRMAN: Pages 11 to 15, inclusive—pass. Page 16.

HON. R. PENNER: I move

THAT proposed subsection 24(2) of the Act as set out on page 16 of Bill 59 be struck out and the following subsection be substituted therefor:

Consent by others.

24(2) Consent to psychiatric treatment may be given on behalf of the patient by the Public Trustee in all cases where the Public Trustee is committee of the patient and, where the Public Trustee is not the committee, consent may be given in the case of a patient who is a minor,

(a) where the court has not appointed a guardian of the person of the patient, by the patient's parent,

(b) where the court has appointed a guardian of the person of the patient, by that guardian.

(French version)

IL EST PROPOSÉ de supprimer le paragraphe 24(2) de la Loi figurant à la page 16 du projet de loi 59 et de le remplacer par ce qui suit:

Consentement d'autrui

24(2) Le consentement à un traitement psychiatrique peut être donné au nom du malade par le curateur public dans tous les cas où celui-ci est le curateur du malade. Dans le cas contraire, lorsque le malade est mineur, le consentement peut être donné:

a) si le tribunal n'a pas nommé de tuteur au malade, par son pére ou sa mére;

b) si le tribunal a nommé un tuteur malade, par ce tuteur.

MR. CHAIRMAN: Amendment, as printed—pass.

HON. L. DESJARDINS: The intent would be change at the request of the Public Trustee to ensure the continuing practice of restricting the court's jurisdiction to appointment of committees of estate only. Once there is a vulnerable adult's act, this authority will be transferred to the Public Guardian.

MR. D. ORCHARD: Okay. Just a simple question, do the provisions of 24(1), 24(2), etc., apply to all patients, voluntary and involuntary?

HON. R. PENNER: Yes. There is no distinction made between voluntary and involuntary here.

MR. CHAIRMAN: Amendment—pass; page 16, as amended—pass; page 17—pass; page 18—pass. Page 19 - Mr. Orchard.

MR. D. ORCHARD: Can I go back to page 18, Mr. Chairman?

MR. CHAIRMAN: Reverting back to page 18 - Mr. Orchard.

MR. D. ORCHARD: The case was made again by the psychiatrist from the general hospitals on 24(8). Recall the discussion that you had, Mr. Minister, where basically this act has the possibility of turning them into detention centres rather than treatment centres.

HON. L. DESJARDINS: But there we're walking a fine line. You've heard the representation from the others also, and we feel that we shouldn't change that. We feel it might be holding them back a bit but we feel that in all fairness for the patient and so on, it permits treatment. They might not have all those treatments until it's proven. We feel that there were other representations also that would not agree with the psychiatrists.

MR. D. ORCHARD: Mr. Chairman, you know, the provision 24(8), with a good lawyer, a patient can put some of your hospital facilities where we're going to pay the legal costs of the psychiatrists employed by the hospital, going to put your budgets up because there's an argument of what minimal use of such force, mechanical means or medication as is reasonable. That's a very arguable case in court, I would think.

HON. L. DESJARDINS: But the minimal use of such force.

MR. D. ORCHARD: Or medication.

HON. L. DESJARDINS: Earlier, it talks about psychiatric treatment may be given without consent.

HON. R. PENNER: Again, I wouldn't want this to go outside of the four walls of this room. I must agree with the Member for Pembina. I think you don't need the word "minimal" if you have "reasonable." You've got the word "reasonable" and I think it's clear in the context. You can take out the word "minimal," which is a difficult word to be interpreted . . .

HON. L. DESJARDINS: Well, we have no trouble with that.

MR. D. ORCHARD: You're in trouble there if you leave it in.

So shall we propose an amendment to delete "minimal"?

HON. L. DESJARDINS: All right. "Minimal" delete.

MR. CHAIRMAN: Amendment—pass.

HON. R. PENNER: And the French as well. We get rid of "minimale."

MR. CHAIRMAN: Page 18, as amended—pass.

Page 19 - Mr. Orchard.

MR. D. ORCHARD: Is MARL's concern legitimate in that "may" should be "shall" in 25(1)?

HON. L. DESJARDINS: This is the one, if you remember either in the House or something, I said that certainly was the intent. I have no problem with that personally, and I think that the uniform law - isn't that the one? Am I on the wrong one?

HON. R. PENNER: No, there are several instances where you have made . . .

HON. L. DESJARDINS: I'll continue. Apparently, the wording that we have here would be with the uniform law - am I going wrong? Anyway, as I say, the intent was certainly to go with "shall" and I would ask - we've been advised again this evening that we shouldn't change that, that the wording was good as far as the uniform law. I would then ask Mr. Penner or somebody of his staff to give us the reason why, because I don't know more than you.

MR. D. ORCHARD: I will accept the reason unstated to save time.

Now, the second area in here is that they apply to the review board for an order authorizing the giving of specified psychiatric treatment or other medical treatment to an involuntary patient where consent has been refused; then the case they made was that you were appealing to a review board who was a psychiatrist, a barrister at law and some other individual.

What we're talking about is both medical interventions, whether it be psychiatric medical or physical medical - if that's the proper terminology - wherein is it not a reasonable proposal that that review board as struck shouldn't be used but rather a reference to a specific medical panel be used to give that second opinion and reference?

HON. L. DESJARDINS: But that board already has a psychiatrist and another person could be a psychologist or somebody.- (Interjection)- Yes, and the review board has access to a psychiatrist on the staff.

MR. D. ORCHARD: No, there's supposed to be one on the review board.

HON. L. DESJARDINS: Yes, but I mean besides that, they have access to one and it could be two here if you go along with the psychologist that they've asked for more recognition and we're certainly going to look at that very seriously. We feel then that you'd have two people qualified, not two doctors but two people can qualify to give that kind of service. And the lawyer would be there, as I say, one of the main things for this act is for the Bill of Rights.

MR. CHAIRMAN: I have to interrupt the committee, so we'll take a short two-minute break so Hansard can change the tape.

(RECESS)

MR. CHAIRMAN: Bring the committee back to order.

Mr. Orchard.

MR. D. ORCHARD: Mr. Chairman, the point that I think a couple of presenters made tonight is that after you've gone through the scenario that Dr. Fisher described, the specified psychiatric treatment or other related medical treatment must be approved as proposed by the treating psychiatrist by the review board. The point they were making is that is there sufficient medical expertise on the review board to give an enlightened opinion - I guess is what the word is - and that's all that I want to make sure that you have no concerns in that regard.

HON. L. DESJARDINS: Is it available? Well, the same information I was given before. There is a psychiatrist, then there is this other person who might be helpful. They are hearing a recommendation or treatment from a psychiatrist and they can ask for another one if need be.

MR. D. ORCHARD: Okay, let's pass it.

MR. CHAIRMAN: Page 19—pass; page 20—pass; page 21—pass.

Page 22 - Mr. Penner.

HON. R. PENNER: Yes, I move, on page 22

THAT proposed section 26.1 of the Act as set on page 22 of Bill 59 be struck out and the following section substituted therefor:

Absent without permission - Involuntary patient.

26.1(1) Where an involuntary patient is absent from a psychiatric facility without the permission of the attending physician, the medical officer in charge may issue an order to have the patient taken into custody and returned to the psychiatric facility by any peace officer and the order is sufficient authority for a peace officer to do so.

Absent without permission - voluntary patient.

26.1(2) Where a voluntary patient is absent from a psychiatric facility without the permission of the attending physician, the medical officer in charge may issue an order to have the patient located by any peace officer and interviewed and the peace officer may, where the prerequisites to act set out in subsection 10(1) are met, take the patient into custody and return him or her to the psychiatric facility.

Examination on return.

26.1(3) Where a patient has been taken into custody and returned under subsection (2), a psychiatrist shall examine the patient forthwith to determine whether the criteria for involuntary admission under subsection 16(1) are met.

(French version)

IL EST PROPOSÉ de supprimer l'article 26.1 de la Loi figurant à la page 22 du projet de loi 59 et de le remplacer par ce qui suit:

Absence sans permission d'un malade en cure obligatoire
26.1(1) Dans le cas où un malade en cure obligatoire d'un centre psychiatrique s'absente sans la permission du médecin traitant, l'administrateur médical responsable peut donner un ordre afin de faire mettre le malade sous garde et de le faire reconduire au centre psychiatrique par un agent de la paix. Cet ordre constitue, pour l'agent de la paix, une autorité suffisante pour agir.

Absence sans permission d'un malade en cure volontaire
26.1(2) Dans le cas où un malade en cure volontaire s'absente d'un centre psychiatrique sans la permission du médecin traitant, l'administrateur médical responsable peut donner un ordre afin qu'un agent de la paix puisse chercher et interroger le malade. L'agent de la paix peut alors, si les conditions préalables autorisant un agent de la paix à agir en application du paragraphe 10(1) sont satisfaites, mettre le malade sous garde et le reconduire au centre psychiatrique.

Examen du malade en cure volontaire
26.1(3) Lorsqu'un malade a été mis sous garde et ramené en application du paragraphe (2), un médecin examine le malade sans délai à son retour afin de déterminer si les conditions pour l'admission à titre de malade en cure obligatoire sont satisfaites.

HON. L. DESJARDINS: This section was changed to clarify that if the person was involuntary, then he or she would be returned to the psychiatric facility regardless whether they fulfilled the police requisite of subsection 10(1).

HON. R. PENNER: Yes, and that makes sense. Pass.

MR. CHAIRMAN: Amendment, as printed—pass; page 22, as amended—pass.
Page 23 - Mr. Penner.

HON. R. PENNER: I move
THAT proposed subsection 26.3(1) of the Act as set out on page 23 of Bill 59 be amended by striking out "second" and substituting therefor "third".

(French version)
IL EST PROPOSÉ que le paragraphe 26.3(1) de la Loi figurant à la page 23 du projet de loi 59 soit modifié par la suppression de "deuxiéme" et son remplacement par "troisiéme".

MR. CHAIRMAN: Amendment—pass; page 22, as amended—pass.
Page 24.

HON. R. PENNER: Pass.

MR. D. ORCHARD: This is the one where we discussed on 24, the "may" and the "shall."

HON. R. PENNER: I can simply say that the advice that was given to me by Mr. Pepper, not here, was that in his view that "may" is correct in this context. I explained it some time ago to the Member for Pembina, but the theory is that you don't issue commands to the Crown and, believe it or not, the Lieutenant-Governor-in-Council represents the Crown to some extent. The other problem would be you'd need the "may" because you've got two choices for psychiatric facilities or groups - psychiatric facilities. So I think the "may" is okay there.

MR. D. ORCHARD: But, clearly, the intent is to set these out.

HON. R. PENNER: Absolutely.

MR. D. ORCHARD: Now, the other - well, of course, we can deal with that other one later. Fine.

HON. R. PENNER: Page 24—pass.

HON. L. DESJARDINS: No, you've got an amendment.

HON. R. PENNER: Oh, I've got an amendment.

HON. L. DESJARDINS: 26.5(1).

HON. R. PENNER: I move
THAT proposed subsection 26.5(1) of the Act as set out on page 24 of Bill 59 be amended by adding immediately after "made" the words "regarding any aspect of the admission or treatment of a patient, including".

(French version)
IL EST PROPOSÉ que le paragraphe 26.5(1) de la Loi figurant à la page 24 du projet de loi 59 soit modifié par l'insertion, aprés "visant", de "tout aspect de l'admission ou du traitement d'un malade, y compris".

HON. L. DESJARDINS: That was recommended by Legal Aid, the general clause.

HON. R. PENNER: Yes.

MR. CHAIRMAN: Amendment—pass.

HON. R. PENNER: And page, as amended.

MR. CHAIRMAN: Page 24, as amended—pass.

HON. R. PENNER: Page 25.

MR. CHAIRMAN: Page 25—pass?

HON. R. PENNER: I move
THAT proposed subsection 26.5(6) of the Act as set out on page 25 of Bill 59 be amended by striking out "10" and substituting therefor "seven".

(French version)
IL EST PROPOSÉ que le paragraphe 26.5(6) de la Loi figurant à la page 25 du projet de loi 59 soit modifié par la suppression de "10" et son remplacement par "sept".

HON. L. DESJARDINS: That was recommended by a number of them and we feel that, no, we couldn't go to two.

HON. R. PENNER: No.

HON. L. DESJARDINS: Let's try seven, and if we could expedite that, we'll go as fast as possible, then we could make another amendment.

MR. D. ORCHARD: Mr. Chairman, unless I'm reading wrong, the original proposal you had to bring . . .

HON. L. DESJARDINS: No, that was a request and that was a mistake in the printing. That was the request that was made . . .

MR. D. ORCHARD: It was a typo.

HON. L. DESJARDINS: . . . that we had and when we noticed that instead of . . .

HON. R. PENNER: I've got it in both the English and the French, "seven" and "sept".

MR. CHAIRMAN: Amendment—pass.

HON. R. PENNER: Page 25, as amended.

MR. CHAIRMAN: Page 25, as amended—pass.
Page 26 - Mr. Orchard.

MR. D. ORCHARD: Page 26, under Written reasons, 26.6(9) - "At the request of any party to a hearing, the review board shall provide written reasons for its decision." - I think, if I recall, their basic position is why wouldn't you have written reasons for its decision regardless?

HON. L. DESJARDINS: It is felt now that we'd have people pretty well translating in most of the language, but that might not always be the case. It would be difficult to give somebody who might not speak English and so on.

MR. D. ORCHARD: No, but I mean that isn't going to change their ability to request it.

HON. R. PENNER: What clause are we looking at?

MR. D. ORCHARD: Written reasons, at the bottom of page 26 - 26.6(9).

HON. R. PENNER: And what was the point?

MR. D. ORCHARD: MARL basically made the point that why would you have to request as a party to the hearing. Why would you have to request the review board to provide the reasons? Why wouldn't you just automatically have those written out?

HON. L. DESJARDINS: But verbally or written, they would do it verbally to expedite the matter.

MR. D. ORCHARD: But we're offered a quasi-judicial body here, presumably.

HON. R. PENNER: This is fairly standard because quite often you sort of, in a sense, have a judgment from the bench, oral judgment, agreed. But subsequently the person wants to appeal and he says I want your written reasons. At that point, I'd have to provide the written reasons why they came to that conclusion. Nine times out of ten, we wouldn't really require the written reasons and the producing and paying for them when we're not using them.

MR. CHAIRMAN: Page 26—pass; page 27—pass.
Page 28.

HON. R. PENNER: The last amendment.
I move
THAT proposed subsection 26.9(3) be amended by adding "or" at the end of clause (h) and by adding after clause (h) the following clause:
(i) a board of review established under the Criminal Code (Canada).

(French version)
IL EST PROPOSÉ que le paragraphe 26.9(3) soit modifié par l'insertion, dans la version anglaise seulement, de "or" à la fin de l'alinéa h), et par l'insertion, aprés l'alinéa h), de ce qui suit:
i) à un conseil de révision établi en application du Code criminel (Canada).

MR. CHAIRMAN: Amendment—pass; page 28, as amended—pass; page 29—pass.
Page 30.

MR. D. ORCHARD: Pass everything except page 43.

MR. CHAIRMAN: Pages 30 to 42, inclusive—pass.
Page 43 - Mr. Orchard.

MR. D. ORCHARD: Mr. Chairman, I would propose an amemdment under section 15(1), Commencement. The amendment would read, the English and French versions:
THAT subsection 15(1) of the Bill be amended by adding at the end therof "but shall expire one year after it is proclaimed".

(French version)
IL EST PROPOSÉ que le paragraphe 15(1) du projet de loi soit modifié par l'adjonction, à la fin du paragraphe, de "mais cesse d'avoir effet un an aprés se proclamation".

HON. L. DESJARDINS: With all due respect, we couldn't support this. We said very clearly that there'll be - what's the act again - for the frail and elderly . . .

A MEMBER: Vulnerable.

HON. L. DESJARDINS: And vulnerable and elderly, or whatever it is. We hope to have our program of action and so on being brought in. We're not saying that wouldn't be done. We certainly would look at it, but we don't feel that it should automatically go.

MR. D. ORCHARD: Mr. Chairman, I don't propose that lightly and I'll discuss this further at Third Reading

because in discussion with a number of the professional groups, they found that there was substantive need for amendment to this act and some of them come in as housekeeping. A lot of the proposals weren't followed up on that MARL and others made, and there appeared to be several concerns.

Firstly, that this act had come upon the professional community quickly - June 10 it was introduced in the House - and some four weeks later we're at committee stage proposing amendments, and we're putting them through, quite frankly, very quickly. The position by the Manitoba division of the Canadian Mental Health Association is that this doesn't do anything with developing quality of care or community-based services. It's a housekeeping act for the purpose of the Charter of Rights. Other professionals that I have talked to indicated that they had originally been consulted but they didn't know what happened to their suggestions because none of them appeared to come into the act.

So there appears to be a lot of concerns in the professional community that is delivering or operating under The Mental Health Act. It's their proposal that predicated my amendment, and I presume the amendment will be defeated, but I think the Minister and the government are under some onus to assure that we come up with a new act, a better drafted act, which better meets a number of the concerns that were identified by a diverse group of professionals here this evening.

HON. L. DESJARDINS: The intent is to make sure that we have whatever amendment or, if need be, change the act after we get the final recommendation, the Uniform Act and so on, but I mean to commit ourselves to say, well, automatically, this thing will disappear I think it would be a mistake. The intent is there. We're on record as saying that we want to make sure they get the best possible thing, but there is no need to start all this all over again. They might not be needed.

HON. R. PENNER: I just want to point out that I share the concerns. I think everybody does. We know there's more work to be done in this act. It's inevitable that there shall be. But to commit ourselves to here is to do something very dangerous because, you know, many have slipped between the cup and the lip and you might not just meet the year for a whole variety of reasons.

HON. L. DESJARDINS: That's right, and then we have nothing.

HON. R. PENNER: You could get lucky and defeat us, Don, and you'd have to have an election, the year goes by and what the hell.

MR. D. ORCHARD: I wouldn't want the responsibility.

Well, Mr. Chairman, we do have a motion before the committee.

MR. CHAIRMAN: All those in favour of the amendment, please say aye; those opposed, say nay.

In my opinion, the nays have it.

A MEMBER: It depends on who is a member of this committee.

MR. CHAIRMAN: Yes, they are all members here.

I declare the amendment defeated.

HON. R. PENNER: One technical problem with the French.

MR. CHAIRMAN: Mr. Yost, by leave.

MR. G. YOST: Mr. Chairman, on subsections 15(1) and 15(2) in the French version, the references to "l'article 10," it should be to "11." So I would ask permission of the committee to make that change.

HON. R. PENNER: Agreed.

MR. CHAIRMAN: Agreed that the change be done.

Page 43—pass; Bill—pass; Preamble—pass; Title—pass.

Bill be reported.

HON. J. COWAN: Just before moving adjournment, Mr. Chairperson, I want to congratulate you on a very well-run but long meeting, and we certainly appreciate you taking the Chair. An excellent job.

MR. CHAIRMAN: Thank you.

Committee rise.

COMMITTEE ROSE AT: 4:20 a.m.

BRIEF PRESENTED BUT NOT READ:

MANITOBA HEALTH ORGANIZATIONS INC.

BRIEF TO THE STANDING COMMITTEE OF STATUTORY REGULATIONS AND ORDERS RESPECTING BILL 59 - "AN ACT TO AMEND THE MENTAL HEALTH ACT"

The Manitoba Health Organizations Inc. has concern regarding the provisions of Bill 59, "An Act to amend The Mental Health Act." It has been suggested that the rapidity which has marked the progress of this legislation to Second Reading in the Legislature has not allowed health professionals specializing in psychiatric care to review the provisions of Bill 59 and provide sufficient input to the formulation of new mental health legislation.

To address this concern, mental health care professsionals from a number of MHO's acute care member facilities met to discuss the strengths, weaknesses and implications of enacting Bill 59. The following brief represents a summary of major concerns respecting Bill 59 in its current form and specific recommendations for further improving Manitoba's Mental Health Act.

On Wednesday, June 10, 1987, the Minister of Health introduced Bill 59 with the following opening remark: "The major purpose of mental health legislation is to ensure that the individual's rights are protected so that treatment is not arbitrarily applied against a person's will, but then to ensure that treatment is available to those who by virtue of mental illness do not recognize the need for treatment."

This statement effectively describes the tone of Bill 59 as the act attempts to improve the position of a wrongfully committed person who is subjected to treatment which may at times appear dubious to a review board. In its current form, Bill 59 presupposes a considerable risk of civil rights abuse in spite of the absence of marked public or private outcry of abuse attributable to a deficiency in the former act, or abuse by practitioners.

It should be noted that mental health care professionals provided only token participation in drafting Bill 59. The psychiatric community has generally been omitted in the ongoing construction of the provisions of the act. Further, many of the practitioners that did forward specific recommendations report that, to date, they are not aware of the composition of the committee charged with the task of amending The Mental Health Act; the "committee" has not provided contributors to the policy formulation process sufficient opportunity to review the proposed legiislation prior to its introduction in the House.

The concerns of hospitals, psychiatrists and mental health professionals respecting Bill 59 may be viewed as:

1. Concern with respect to the manner in which Bill 59 has been drafted (insufficient input from mental health care practitioners).
2. Concern with respect to the resulting quality of patient care should this legislation pass.
3. Concern regarding those additional administrative and economic requirements and expectations of acute care facilities resulting from the provisions of Bill 59.

It is important to note that at present, there is consensus in the health care community that existing mental health legislation in Manitoba does not adequately meet the needs of individuals requiring such care. Therefore, the advent of long-awaited amendments to legislation in this area has been viewed by many mental health practitioners as a positive system reform. Perhaps the most valuable contribution Bill 59 affords in this regard is contained in section 2(o) of the act. The section reads:

> "'Mental disorder' means a substantial disorder of thought, mood, perception, orientation, of memory that grossly impairs judgment, behaviour, capacity to recognize reality or ability to meet the ordinary demands of life."

Section 2(o) provides a more realistic definition of mental illness that is broad enough to encompass the variety of ailments commonly understood to afflict individuals who are mentally ill. Similarly, section 7(5) of the act removes the considerable ambiguity found in existing legislation with respect to hospital staff responsibilities to detain, on reasonable grounds, those voluntary patients who are seeking premature discharge. Section 7(5) reads:

> "Where a member of the hospital treatment staff of a psychiatric facility has reasonable grounds to believe that a voluntary patient seeking to be discharged:
> (a) is suffering from a mental disorder,
> (b) is in need of an examination by a physician to determine whether an application under subsection 8(1) should be made, and
> (c) is likely to cause harm to himself or to another person or is likely to suffer substantial mental or physical deterioration if the person leaves the facility; the member may restrain the person and arrange forthwith for a physician to examine the person."

Unfortunately, many of the remaining provisions of the act are worded in such a way that presupposes a mental patient to be more normal, more victimized and more beseiged than is ever the case in real life. It is extremely difficult to find evidence that there has been any meaningful dialogue with practising clinical psychiatrists in formulating the act. As a consequence of this methodology, it is likely that Bill 59 will fail to meet the needs of many psychiatric patients.

Section 24(8) of the act reads:

> "Psychiatric treatment may be given without consent to any patient of a psychiatric facility in order to keep the patient under control, to prevent harm to the patient or to another person by the minimal use of such force, mechanical means or medication as is reasonable having regard to the physical and mental condition of the patient pending consent on behalf of the patient or an order of the review board."

It is essential that portions of section 24(8) remain a provision of Bill 59. This clause is fundamental to the ability of health professionals to provide treatment. Unnecessary delay and "minimal" care can exacerbate suffering, and increase the likelihood of preventable harm befalling a patient, other patients and treatment staff.

It is proposed that section 24(8) be amended to read, "Psychiatric treatment may be given without consent to any patient of a psychiatric facility in order to keep the patient under control, to prevent harm to the patient or to another person pending an order of the review board."

Section 9(2) of the act states that:

> "A justice who receives a statement under subsection (1) shall consider the statement and, where the justice considers it desirable to do so, hear and consider without notice to the person named in the statement the allegations of the person who made the statement and the evidence of any witness."

The purpose of section 9(2) is presumably to ensure that the civil rights of patients are not abused; however, it is possible that an individual will be institutionalized without seeing a magistrate or appearing in court. It is suggested that the positions of both a patient and psychiatrist would be far better protected if involuntary patients were required to appear before a magistrate prior to commital.

Section 16(1) currently states that:

> "A psychiatrist who has examined a person in a psychiatric facility and who has assessed a person's mental condition may admit the person as an involuntary patient of the psychiatric facility by completing and filing with the medical officer in charge, a certificate of involuntary admission in the form prescribed by the regulations if the psychiatrist is of the opinion that
> (a) the person is suffering from a mental disorder as a result of which
> (i) he/she is likely to cause serious harm to himself, herself or others or to suffer substantial mental or physical deterioriation if not detained in a psychiatric facility;

(ii) the person is in need of continuing treatment that can reasonably be provided only in a psychiatric facility; and

(b) the person is unwilling to agree to a voluntary admission."

The criteria established for involuntary admission are recognized as a significant improvement, however, this section would be of greater utility with the stipulation that section (a) must be considered in conjunction with section "b" as well as the following additional provisions:

"(c) the person lacks the capacity to make an informed decision concerning treatment."

It is proposed that the word "and" be included between the text of each of the provisions. Recommendation (c) is especially important as the entire process (with accompanying problems) relating to certificates of incapacity could be obviated. Further, the possibility of an involuntary patient refusing treatment and considered to have the capacity to refuse treatment could be avoided.

Section 16(4) provides that:

"A psychiatrist who completes an application for involuntary psychiatric assessment of a person shall not complete the certificate of involuntary admission in respect of the person."

This provision describes the ideal but may be extremely difficult to comply with given that a second psychiatrist is required for the certification process within 72 hours. Compliance would be difficult on smaller psychiatric units where a second psychiatrist may not be readily available. Section 16(4) would be a more plausible procedural routine if a clinical psychiatric resident were allowed to provide the required second signature for certification.

Section 19(1) states that:

"Shortly before the expiry of a certificate of involuntary admission, the attending psychiatrist shall examine the patient and assess the patient's mental condition and may renew the patient's status by completing and filing with the medical officer in charge a certificate of renewal, if the prerequisites for admission as an involuntary patient set out in subsection 16(1) are met and the patient shall be similarly examined before the expiry of the certificate of renewal."

This section of the act removes certain rights that were granted to patients in the old act as a judge/magistrate is no longer involved in the granting of extension orders. See comments related to section 9(2) on page 4 which recommends retention of the judge's involvement.

Section 26(2) states that:

"A certificate of leave is not effective without the patient's consent."

The clause appears to be somewhat redundant given that the patient in question has "involuntary" status in the first place. It is proposed that section 26(2) be deleted from the act. Comments on section 16(1), page 5 refers.

Section 25(6) states that:

"Where the review board decides not to authorize the giving of the specified psychiatric treatment and other related medical treatment and the attending physician is of the opinion that alternate specific psychiatric treatment are available and meet the criteria set out in clauses 2(a) to (d), the attending physician may propose the alternate treatment to the patient."

The problem associated with this course of action is that the review board is granted permission to practice "medicine." The power of review boards should be strictly limited to determining whether an involuntary patient is fit to refuse treatment. The review board lacks the necessary skills and knowledge to provide ongoing treatment to patients.

Section 24(3) currently states that:

"As soon as reasonably possible after admission of a patient, the attending physician shall determine whether a patient is mentally competent to consent to psychiatric or medical treatment, and in so doing, the attending physician shall consider . . . (b) whether the patient's ability to consent is affected by his or her condition."

This section does not currently offer an appropriate course of action should a patient's illness (and capacity to consent) fluctuate. As it is impractical to assess the duration of a patient's liability and consent during a particular lapse in the severity of their illness, section 24(3)(b) should be excluded from the act.

Section 26(9)(4) states that:

"Subject to subsection 5, a person who has attained 18 years of age and is mentally competent is entitled on application to the medical officer in charge to examine and to copy the clinical record or a copy of the clinical record of his or her examination, assessment, care and treatment in a psychiatric facility."

This provision treats the mental health patient in a manner different to other patients in the health system. This provision is not supported as it places the onus on a hospital to deny access to records, and is unnecessarily time consuming, and fraught with the risk of certain patients trying to "get even" with staff, other patients and collateral informants. Should this clause continue to be included in the act, it is likely to severely alter traditional recordkeeping practices and erode the quality of clinical descriptions of patient status/history.

It is proposed that the following stipulations be added to section 26(9)(4): (a) "A court order is obtained prior to the release of information"; and (b) "The psychiatrist providing care to the patient agrees to the release of the record." Including these provisions may reduce the occurrence of medical documentation/records being released inappropriately.

The committee is referred to widely accepted guidelines of the Canadian College of Health Record Administrators regarding patient access to their health record.

The various concerns identified in this brief suggest that enacting Bill 59 in its current form could seriously jeopardize the quality of mental health care available in Manitoba by reducing the ability of hospitals, psychiatrists and mental health care workers to provide a variety of standard treatments to the mentally ill. The mental health care practitioners who have contributed to this submission firmly believe that enacting Bill 59 will:

Increase the length of stay for many patients in an acute care facility (due to the provisions

regulating the review process). Bill 59 could effectively turn hospitals into detention centres providing little clinical intervention instead of treatment centres.

There are presently considerable concerns in the mental health care community that enacting Bill 59 will affect other less directly affected patients undergoing treatment. Those patients who are simply detained in the hospital and cannot be treated prior to the ruling of a review board will likely disturb other patients as their condition deteriorates.

It is anticipated that an increase of staff injuries will result due to involuntary patients who are being held and provided with minimal care.

Hospitals will likely experience an increase in the number of lawsuits brought against them by patients, staff, etc. This may lead to increased legal and insurance costs for many hospitals given the creation of new liability exposures.

Legal costs for hospitals as a consequence of the previous two points.

Hospital insurance costs will likely increase given the establishment of new liability exposures.

More "one-to-one" nursing may be required for disturbed involuntary patients who are assessed as fit to refuse treatment and/or must await the decision of a review board.

Enacting Bill 59 will automatically require hospitals to fulfill numerous operational/procedural requirements none of which have yet been discussed from a costing/financial perspective. Some of the responsibilities/functions of a hospital would include:

- Attending to and processing applications for psychiatric assessment.
- Examination of certificates of involuntary admission.
- Examination of certificates of renewal.
- Receiving, reviewing and filing certificates of change of status.
- Informing patients of change of status with implications.
- Processing of certificates of incapacity of consent.
- Reviewing certificates of cancellation of leave.
- Applying to a review board to stop patient access to records with accompanying submission.
- Community hospitals may have to hire a psychiatrist to manage the various procedural requirements of the new system, should Bill 59 be enacted.
- Searching for a second psychiatrist to examine and sign cerificate of involuntary admission.
- Court appearances, phone calls, increased workload and responsibilities.

In light of the many concerns which mental health practitioners continue to express regarding the provisions of Bill 59, the relative isolation in which this legislation has been formulated and the complete absence of discussion regarding the implications (financial and otherwise) of enacting Bill 59, it is proposed that:

the Standing Committee of Statutory Regulations and Orders move to reopen discussion with respect to enacting Bill 59 in its current form through a more extensive series of legislative committee hearings;

professional mental health care groups/associations be invited to review and comment on the recently introduced legislation;

the special committee charged with the task of drafting Bill 59 review mental health legislation in other provinces (e.g. Ontario Mental Health Act) which currently operates under mental health care provisions similar to those being prposed to determine the feasibility of enacting such legislation.

The Manitoba Health Organizations Inc. (MHO) is a voluntary, non-profit, non-government association of hospitals, long-term care facilities and health-related agencies in Manitoba.