



Fourth Session - Thirty-Seventh Legislature
of the
Legislative Assembly of Manitoba
Standing Committee
on
Law Amendments

Chairperson
Mr. Doug Martindale
Constituency of Burrows



MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Seventh Legislature

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ASPER, Linda	Riel	N.D.P.
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GERRARD, Jon, Hon.	River Heights	Lib.
GILLESHAMMER, Harold	Minnedosa	P.C.
HAWRANIK, Gerald	Lac du Bonnet	P.C.
HELWER, Edward	Gimli	P.C.
HICKES, George, Hon.	Point Douglas	N.D.P.
JENNISSON, Gerard	Flin Flon	N.D.P.
KORZENIOWSKI, Bonnie	St. James	N.D.P.
LATHLIN, Oscar, Hon.	The Pas	N.D.P.
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LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON LAW AMENDMENTS

Monday, December 9, 2002

TIME – 10 a.m.

LOCATION – Winnipeg, Manitoba

**CHAIRPERSON – Mr. Doug Martindale
(Burrows)**

**VICE-CHAIRPERSON – Mr. Gerard
Jennissen (Flin Flon)**

ATTENDANCE - 11 – QUORUM - 6

Members of the Committee present:

Hon. Ms. Barrett, Hon. Mr. Mackintosh

Messrs. Aglugub, Dewar, Hawranik,
Jennissen, Loewen, Martindale, Penner
(Emerson), Schellenberg, Mrs. Smith

APPEARING:

Hon. Jon Gerrard, MLA for River Heights

WITNESSES:

Bill 4–The Fire Departments Arbitration
Amendment Act

Mr. Don Fotti, President, Professional
Paramedic Association of Winnipeg

MATTERS UNDER DISCUSSION:

Bill 2–The Civil Remedies Against
Organized Crime and Liquor Control
Amendment Act

Bill 3–The Legislative Assembly Amend-
ment Act

Bill 4–The Fire Departments Arbitration
Amendment Act

Mr. Chairperson: Good morning. Will the Standing Committee on Law Amendments please come to order? The first order of business is the election of a Vice-Chairperson. Are there any nominations?

Mr. Gregory Dewar (Selkirk): I nominate Mr. Jennissen, the MLA for Flin Flon.

Mr. Chairperson: Mr. Jennissen, MLA for Flin Flon, has now been nominated. Are there any other nominations? Seeing none, I declare Mr. Jennissen elected Vice-Chairperson.

This morning the committee will be considering the following bills: Bill 2, The Civil Remedies Against Organized Crime and Liquor Control Amendment Act; Bill 3, The Legislative Assembly Amendment Act; and Bill 4, The Fire Departments Arbitration Amendment Act.

We have a presenter registered to make a public presentation on Bill 4. It is the custom to hear public presentations before consideration of bills. Is it the will of the committee to hear public presentations on Bill 4? *[Agreed]*

The person registered to make a presentation this morning is Don Fotti, President of the Professional Paramedic Association of Winnipeg. Is there anyone else in the room who would like to make a presentation?

Seeing none, is it the will of the committee to set time limits on presentations? No time limits have been suggested.

Did the committee wish to indicate how late it is willing to sit this morning?

Mrs. Joy Smith (Fort Garry): I would recommend that we sit till business is completed this morning.

Mr. Chairperson: It has been recommended we sit until business is completed this morning. Is that agreed? *[Agreed]*

Bill 4—The Fire Departments Arbitration Amendment Act

Mr. Chairperson: Mr. Fotti, please come to the podium.

Mr. Don Fotti (President, Professional Paramedic Association of Winnipeg): Good morning, everyone. Thank you for the opportunity to speak to you today in support of the bill regarding binding arbitration for paramedics.

Three and a half years ago after our contract talks had ground to a halt and we had been without a contract for over three years, my association took a strike vote. Even though we had taken a strike vote, as caregivers, we had no desire to go on strike. That would have put the citizens of Winnipeg at risk. We simply wanted to resolve our contract. We had asked the City to deal with us like they do with the other emergency services of police and fire by sending us to binding arbitration, but they had refused. Instead, we were forced to come and defend our position here at the Legislature. With the help of the opposition parties, we were able to convince the government of the day that all we really wanted was to be able to take our contract issues to a third party. We were sent to a mediator, Mr. Paul Teskey, and were able to resolve our contract to the satisfaction of all parties.

During that episode, we received a commitment from the then-Leader of the Opposition, the Honourable Gary Doer. He indicated that, if he became the next premier of Manitoba, he would support a bill to provide binding arbitration for the paramedics of the City of Winnipeg. This brings us to the reason we are here today. Mr. Doer is honouring his commitment to our association, and on behalf of my association I would like to publicly thank him for this bill before you today.

There are many other people that we need to thank for helping us obtain our goal, but I would be remiss if I did not mention the Honourable Becky Barrett, Minister of Labour and Immigration, as well as her deputy minister, Mr. Tom

Farrell, and the Opposition House Leader, the Honourable Marcel Laurendeau. I must also publicly thank the Mayor and Council for changing their position and now supporting this initiative.

The last time I was here to present to the law review committee, our issue was a political football. From the tone of last Wednesday's session of the Legislature it is great to see that the issue of binding arbitration for paramedics has become something that all parties can support.

Please accept the thanks of my members and me for the anticipated support of all the members of this law review committee and the Legislature in the passing of this long-awaited bill. Thank you.

Hon. Becky Barrett (Minister of Labour and Immigration): I do not have a question, I just have a comment. I want to thank you and the members of your association for working so diligently over the last number of years to bring this legislation before us here today. I anticipate, as well, that we will have smooth and speedy passage of it. So, while the journey may have been long, the end result is what we all want. Thank you for the hard work that you and everyone in your group has done, and look forward to having this be a very positive process in our labour legislation. I hope, as we all do, that we never have to use the elements of the act that are being debated here today. So again, thank you very much.

Mr. Fotti: Thank you.

Mrs. Joy Smith (Fort Garry): From the Opposition side, I would like to thank you all also for coming and making the presentation today. There are many—

Mr. Chairperson: Excuse me, Mrs. Smith. I am sorry to interrupt you, but can you move your microphone closer so we can all hear you?

Mrs. Smith: Yes.

Mr. Chairperson: Thank you.

Mrs. Smith: I would just like to thank you for coming today. From the Opposition side, we are

supporting this bill, and I appreciate all the effort and the good will that has been put into this bill to make things comparable to the rest of the association as well. So I want to thank you for coming today. I, too, see this as a speedy journey through the Legislature. Hopefully, today we will get everything tied up quite quickly. Thank you.

Hon. Jon Gerrard (River Heights): Just very briefly, thank you for presenting today. I support the initiative that you have taken, and hope that it works out very well for all concerned. Thanks.

Mr. Chairperson: Thank you for your presentation.

That concludes the list of presenters. Are there any other persons in attendance who wish to make a presentation on any of the three bills this morning? Seeing none, we will move to clause by clause.

What is the will of the committee in terms of the order of bills?

Ms. Barrett: Well, I would like to suggest that we do clause by clause of Bill 4 and have it dealt with. That is my concern. I do not know if other committee members might wish to have different order of the other two bills, but if we could agree to conclude clause by clause that would be helpful.

* (10:10)

Mr. Chairperson: Is it agreed that we start with Bill 4? *[Agreed]*

Bill 4, does the minister responsible have an opening statement?

Ms. Barrett: Just very briefly, again. Thanks to all of the people who have worked very hard over the last number of years to bring what could have been a very difficult situation to a calm and reasoned and, I think, very positive outcome. It shows that when there is a will and an understanding of the issues, that the stakeholders, in this case, the paramedics as well as the City of Winnipeg and all the parties in the Legislature can work together and reach consensus on issues. So congratulations to everyone

who was part of it and I look forward to seeing this concluded.

Mr. Chairperson: Does the critic from the Official Opposition have an opening statement?

Mrs. Smith: Just very briefly. I want to again thank the paramedic association and all those involved. I would concur with the Minister of Labour that it is great to see when all parties can work together and bring this to a conclusion that is beneficial for everyone all around. So thank you for that.

Mr. Chairperson: We thank the Minister of Labour and the Member for Fort Garry. During the consideration of a bill, the enacting clause and the title are postponed until all other clauses have been considered in their proper order. Also, if there is agreement from the committee, the Chair will call clauses in blocks that conform to pages, with the understanding that we will stop at any particular clause or clauses where members may have comments, questions or amendments to propose. Is that agreed? *[Agreed]*

Clauses 1 to 4—pass; clauses 5 to 8—pass; clauses 9 to 12(2)—pass; clauses 13 to 15—pass; clauses 16 to 19—pass; enacting clause—pass; title—pass. Bill be reported. We thank the minister.

Bill 2—The Civil Remedies Against Organized Crime and Liquor Control Amendment Act

Mr. Chairperson: The next bill on the list would be Bill 2, The Civil Remedies Against Organized Crime and Liquor Control Amendment Act. Are there any presenters? Seeing none, we will proceed to clause by clause.

Does the minister responsible for Bill 2 have an opening statement?

Hon. Gord Mackintosh (Minister of Justice and Attorney General): The legislation before the committee, I think, is an important step forward to deal in a more innovative way with the challenge of organized crime. I am noticing that there is some criticism of this legislation, in that it may, according to some sources, be an infringement on the rights of certain Canadians,

and I want to say that I think that kind of criticism is very unfortunate. Those who engage in that criticism seem to ignore the fact that organized crime undermines the fabric of a community, the well-being of youth. I do not think sometimes that when people make that argument they are concerned about the liberties of Canadians, the liberty to grow up drug-free, not to be intimidated and coerced into prostitution, other crime, or simply be intimidated in order to protect the interests of criminal organizations. This legislation is a balance, nonetheless. It was developed recognizing that the Province can only go so far in developing legislation under the area of property and civil rights and the other heads of provincial responsibility. The Province fully recognizes that the enactment of criminal law is the jurisdiction of the federal government. That is reflected in this legislation. I think this legislation, by the way, marks really a developing area of innovation. I think the civil laws can be used to protect public safety by way of a crime-prevention tool and be available for law enforcement as one more tool in an arsenal that, most notably, of course, has the criminal laws available to police.

I am also very concerned about a proposal from the Opposition to have this legislation triggered by private citizens in Manitoba. There are some very serious concerns about that that would undermine this legislation and its objectives. First of all, that would expose ordinary citizens to a risk that I do not think should be underestimated in some circumstances. But saying to private citizens to go and sue the Hells Angels, for example, saying to Jane Doe to go to court and fight the Hells Angels, I think, is not the way to see the potential of this legislation. One of the developments that go along with criminal organizations is the use of intimidation by criminal organizations to counter those who will challenge them. I think we have to keep the safety of Manitobans front and centre, which is really what this legislation is all about in the first place, and not instead go back and allow legislation to endanger private citizens. In fact, I think the legislation would likely not be used, not only because it could be a risk to people to come forward and stand up against criminal organizations, but the cost of a private citizen taking on a court application would likely be in

the thousands of dollars. I think that we have to accept that taking on criminal organizations should not simply be a personal responsibility of individual Manitobans.

So that is why we have given this tool to the police. But there are also two very important other reasons why the police are the ones that should have this tool available to them. First, it is the police that will have the evidence as to whether there is a criminal organization at work and will have the necessary amount of evidence to meet the threshold test for the evidence.

Finally, and by no means least, to allow private citizens to pursue orders could undermine well-thought-out and very critical strategies that have been developed by police. The main objective of police is, of course, to lay criminal charges in circumstances. If the police were, for example, on the verge of laying charges of money laundering or dealing in drugs, and then along came a civil order that could disrupt that intelligence gathering and that strategy, I think, would be unfortunate and would undermine police efforts to counter organized crime in the professional way that police conduct themselves. To put it more bluntly, there are four reasons why it is the police that are given this ability to go to court to seek an order. Just to go over them again, the risk to individual citizens. Number two, the cost that would prohibit that in any event. Three, it is the police that have the evidence. Number four, we do not want to undermine police efforts against organized crime.

If anything should be paramount, it is to support the police, not undermine them in their strategies against organized crime. We have carefully considered that and cannot support that suggestion, but I look forward to discussions this morning with this legislation. I want to thank the Opposition for giving leave to have this bill come forward on an expedited basis in this period of sittings. I will leave my remarks at that.

* (10:20)

Mr. Chairperson: Does the critic for the Official Opposition have an opening statement?

Mr. Gerald Hawranik (Lac du Bonnet): I would like to say a few words about the bill. I would like to first of all thank the minister for his efforts in directing the staff to draft this legislation, and for bringing it forward and ensuring that we can pass it before Thursday.

It is important legislation because we have increased crime in Winnipeg and in the province, and we have increased presence of organized crime within the province and in Winnipeg. We have to deal with a situation like that for the protection of the public. The minister had mentioned that the federal government has jurisdiction over criminal law and he is absolutely right, but we still have to take steps as a province to try to protect our residents and ensure that they feel safe within their own communities. There is a place for this type of legislation within the civil law. I have heard criticism, as the minister mentioned. I have heard criticism about this bill with respect to the Constitution as to whether or not the bill is, in fact, constitutional and whether we have the constitutional rights to pass the bill. I look beyond that. We have to look at the constitutional rights of victims, and we have to look at the constitutional rights of the general public, and what are their rights as well, as a balance in terms of whether or now we have the constitutional rights to pass this bill.

This morning, I expect to present a few amendments to the bill. Amendments that will, hopefully, be passed by members of the Government to strengthen the bill. Strengthen it in terms of allowing us to better target criminal organizations and to improve the remedies. The remedies have to be improved to ensure that they are more appropriate with respect to criminal organizations. The minister's comments with regard to private citizens or organizations that can take on organized crime will be met by some of my amendments. I look forward to that discussion a little later in the process.

Mr. Chairperson: We thank the Attorney General and the critic from the Official Opposition. During the consideration of a bill, the table of contents, the enacting clause and the title are postponed until all other clauses have been considered in their proper order. Also, if there is agreement from the committee, the Chair

will call clauses in blocks that conform to pages with the understanding that we will stop at any particular clause or clauses where members may have comments, questions or amendments to propose. Is that agreed? *[Agreed]*

Clause 1(1)—pass. Clauses 1(2) to 3(2).

Hon. Jon Gerrard (River Heights): Sorry. I actually have a question on 1(1), but I did not bring it up immediately because it is on the second page. You had suggested that things were conforming to pages. I wonder if I could have leave to ask a question on a point in 1(1).

Mr. Chairperson: Is there leave to revert to clause 1(1)? *[Agreed]*

Mr. Gerrard: My concern here, and I would ask the Minister of Justice (Mr. Macintosh) about the definition of "police chief," which refers to a chief of police at a municipality or the commanding officer of the RCMP in Manitoba.

Clearly we have other police organizations, Aboriginal police organizations, which have police chiefs. I think there is a concern either that this is discriminatory or that it will leave out certain jurisdictions. In a number of communities, there was a big debate, for example, about the relative authority of the RCMP and the Dakota Ojibway Tribal Council in dealing with issues on the Dakota Tipi First Nations some time ago, and I think that, in this case, it would seem to be rather wise to change this to include those police chiefs who are chiefs of Aboriginal policing organizations.

Mr. Mackintosh: The member raises a good point. This is an issue under The Provincial Police Act as well, which has been of concern. I am certainly prepared to look at that issue if not right now, at a report stage. We are just getting some legal advice on that one, but I know under The Provincial Police Act First Nations policing would come under the definition of municipality, which I do not think is appropriate. I think that they would find it offensive.

I think the member makes a really good point, and we should look for clarification there to recognize First Nations police chiefs as well,

but perhaps if we can agree we can come back to that clause before we rise this morning.

Mr. Gerrard: I am quite ready to have that considered if the minister would like at report stage, but I would like to get the intent of the minister is to make sure that it covers First Nations communities. Is that correct?

Mr. Mackintosh: Oh, absolutely. I would prefer that if we can make the amendment this morning, if the advice is supportive of the member's presentation.

Mr. Hawranik: For the point of clarification, which section are we—

Mr. Chairperson: We are going to do 1(2) to 3(2) again. Call 1 again just to make sure.

Clause 1(1)—pass. Clauses 1(2) to 3(2).

Mr. Hawranik: Yes, I have an amendment to section 2, and I move that we amend section 2 of the legislation.

Mr. Chairperson: We are going to revert and pass the clauses preceding your amendment first. Clause 1(2)—pass. Clause 2.

Now Mr. Hawranik, you can move your amendment now.

Mr. Hawranik: Yes, I move to amend section 2

THAT section 2 be replaced with the following:

Eligible applicants

2 An application under this Act may only be brought by a police chief or a person who resides in Manitoba.

Mr. Chairperson: It has been moved by Mr. Hawranik

THAT section 2 be replaced—

An Honourable Member: Dispense.

Mr. Chairperson: Dispense.

Mr. Hawranik: Yes, if this amendment were to pass, I have similar amendments—

Mr. Chairperson: Excuse me. I need to say for the record that your amendment is in order.

Mr. Hawranik: Okay.

Mr. Chairperson: Please proceed.

Mr. Hawranik: If this amendment, in fact, passes, I have similar amendments to other sections allowing other people other than just the police chief to, in fact, bring an application under the act.

In support of this amendment, I can tell you that private prosecutions can be brought by individuals under the Criminal Code, and I do not see a big difference between private individuals bringing private prosecutions in the Criminal Code, from bringing private prosecutions under a civil remedies legislation. There are very few civil remedies that cannot be brought by members of the public, and if the amendment is passed, it may, in fact, further the argument that this legislation would be constitutionally compatible, because I believe that if we restrict it to simply the police chief and the RCMP, that, in fact, a further argument could be made that this legislation may be within the realm of criminal law and, therefore, not constitutionally sound.

So I think that the amendment will, in fact, strengthen the constitutional argument that this bill is constitutionally sound. I do not buy the argument by the minister that there is risk involved. There is risk involved for everyone in criminal law when they take private prosecutions under the Criminal Code, and there is risk in everything we do. I believe that the public has a right to protect their own communities, and I do not think that we should restrict the public from, in fact, taking an action if they wanted to bear the cost of that action. We do not restrict the general public from bringing civil actions or other criminal actions on the basis of costs, and I think that is an irrelevant argument in terms of the cost. If somebody wants to bring an action under this act and bear the cost of that prosecution, then I think they should be entitled to do so.

His comment about undermining police officers and so on—I think this, in fact, supports the police. It does not undermine the police

activities. I think it supports the police in their activities and their investigation, and it gives another tool, I think, to police officers and to justice officials within which the community can support this legislation. For that reason, we ought to support this amendment.

* (10:30)

Mr. Mackintosh: Just a couple of preliminary remarks. I think I have spoken largely about this already in my remarks, but the private prosecutions will only continue with the consent of the Attorney General.

This compares very closely to a debate around the safer communities act and its earlier incarnation as The Community Protection Act, where the former government said it was private citizens that could bring forward the applications to shut down booze cans and prostitution houses and sniff houses and drug dens. Our concern at that time was, and our commitment on coming into office was that we were going to ensure that the public bear the cost and responsibility of seeking the remedies because of concern of exposing citizens to risk. You know, citizens not only have to put their names forward and go into court, but they have to pursue the notices to what might even there, be criminal organizations.

As well, I could not understand how that legislation would be effective because private citizens would have to raise significant monies and, you know, if they are going up against a criminal organization in particular, there is certainly a risk that there would be legal challenges, and the legal costs could be very significant. So, when we brought in the safer communities act, the responsibility then fell to the State to pursue the remedies. One of the commendations that I have heard about the new legislation is the fact that it is a simple complaint to the authorities that can lead to remedies. I have heard that, for example, and most recently in an article mentioned by the Member for Lac du Bonnet, Reverend Lehotsky, who found that to be a very useful element of that legislation.

This bill intends to strengthen, not undermine police strategies against organized crime. I am aware of circumstances through media reports about police operations that have been

ongoing for some time with regard to an alleged drug operation, and sometimes those undercover operations can take months and months to ready the case for the laying of charges. It would be very unfortunate if that kind of police intelligence and operational strategy was undermined by a citizen coming along and going to court with an application which could blow the whole thing out of the water because, of course, the objective has to be to get the most effective and strongest remedies. I am aware, for example, one of the recent situations on Main Street where the police not only got federal time for the operator of that establishment but got the entire property forfeited to the federal Crown. Although there were only allegations around the link to organized crime in that circumstance, it provides the example of why we have to, I think, particularly dealing with organized crime, respect the operational strategies of law enforcement in this country. In fact, the move more and more of law enforcement in Canada is to have intelligence-led operations, to plan very carefully to make sure that the charges are laid against the individuals that can most effectively undermine a criminal organization. As well, the intention of the legislation is to reduce and not increase the risk of intimidation of citizens.

So I think I have set my reasons out. I just do not understand too, though, why citizens are being asked to pay personally to go after organized crime. That should be the responsibility of the police and the justice system as best we can. So we cannot support this amendment.

Mrs. Joy Smith (Fort Garry): Just to clarify some points. I have to say, on the onset, it is worrisome that the Attorney General believes that this particular amendment would, indeed, undermine the police. Traditionally here in the province of Manitoba, community involvement such as the Neighborhood Watch and Crime Stoppers, a lot of community involvement is already in place. Historically, since this Government came into power, the Attorney General has talked about all sorts of initiatives that, indeed, had total community involvement. Here, the intent of this amendment presented by the critic for Justice is simply to strengthen the support that the police officers have right on the street. It is common knowledge for anybody who is familiar with how police operations work that it

is often the person on the ground, at the grass roots, that gives the tip to the police. It is the person watching what is going on in their neighborhood. It is the person that is involved in helping put crime down in the streets.

Here, it is a well-known fact too that even in New York City, when Mayor Giuliani set out to clean up the streets in a city that has much more crime than we have here, although here in Canada, Winnipeg has become the violent crime capital of the nation. But, having said that, New York City stood out as being a very crime-ridden city up until the point when Mayor Giuliani got citizens involved and actually cleaned up the streets in a relatively short time.

So just to underscore the fact that the intent of this amendment presented by the Justice critic is to strengthen and support police initiatives, not to interfere, as alleged by the Attorney General. It is a tool that can be used by police officers to help them out. Having said that, I would ask the Attorney General to be mindful of the impact that citizens do have in maintaining safe streets here in the city of Winnipeg.

Mr. Mackintosh: The role of citizens in assisting in countering organized crime is absolutely critical. On that point I certainly agree with the member. What citizens have a role in doing is making sure that communities are better organized, that they are eyes and ears for the police, but, most importantly, that individual citizens report tips to police and come forward with their allegations and their knowledge about what is going on in their neighbourhood to the police, so that the police can take action and can co-ordinate their strategy with their criminal investigation strategy.

So, eyes and ears, yes, coming forward, yes, tips, yes. We cannot do enough to encourage people to come forward, whether through Crime Stoppers, or whether it is through direct calls to the police or letting their local officer know, or, indeed, through other kinds of initiatives that are out there. Indeed, the safer communities act thrives and has been successful to date solely because of the role of citizens in coming forward with their tips. The citizens can come forward with anonymity and provide their tips and complaints to officials to be acted on, which is

proving, in Winnipeg, to be a good model. This builds on that.

Mr. Hawranik: Having heard the minister, I can say that, personally, I am disappointed in the minister's response that he is not prepared to support this amendment. I believe that, by doing that, he is really eliminating the rights of individuals and Manitobans, and organizations within Manitoba, to take court action in a civil court. Everyone should be entitled to have their day in court, whether they are right or whether they are wrong. That is the principle of law by which we live, that everyone should have their right to go to court and have a hearing.

He has to remember that this is not a criminal proceeding, because if it is a criminal proceeding this law will be struck down because of the Constitution. This is a civil proceeding, not a criminal proceeding. I think, for that very reason, we ought to ensure that Manitobans have a right to take an action in court.

Mr. Mackintosh: Of course, this legislation is not about taking rights from citizens, it is giving a brand new right to police to use in concert with their other tools. So I will leave my remarks at that.

Mrs. Smith: Just very briefly, I want to reiterate the fact that the basic premise that our country operates on is the democratic rights that we have, the freedoms and rights. It is not a Big-Brother, top-down kind of thing. I have to underscore what the Justice critic has just previously pointed out to the Attorney General: No one is forcing citizens to do anything. It is just allowing them to do it if they so choose to do it. That is the basic premise, as I said before, of the democratic society. It is worrisome when the present Government makes a decision for citizens on how they are to conduct themselves. And everybody does have the right, in a democratic society—maybe not in Russia, maybe not in some of the other countries, but in Canada they have the right—to make those choices. And people who have the means can use their money in whatever way they choose; that is also part of the democratic society.

When citizens want to rise up—and I daresay now, here in the city of Winnipeg, there are

many citizens who are fearful for their safety. There are many families who have been touched either by drugs, prostitution or whatever, having to stand back and take what has happened with this organized crime element here in the city. So I would implore the Attorney General to allow citizens to make their own choices. I thank you for that.

Mr. Chairperson: We will now deal with the amendment. Shall the amendment pass?

Some Honourable Members: No.

Some Honourable Members: Yea.

Voice Vote

Mr. Chairperson: All those in favour of the amendment, say yea.

Some Honourable Members: Yea.

Mr. Chairperson: All those opposed, say nay.

Some Honourable Members: Nay.

Mr. Chairperson: In my opinion the Nays have it. The amendment is defeated.

* * *

Mr. Chairperson: Clause 2—pass; clause 3(1).

Mr. Hawranik: Mr. Chairperson, I have an amendment for section 3. My amendment strengthens the remedies that are available to a judge under that section.

* (10:40)

Mr. Chairperson: Please introduce your amendment.

Mr. Hawranik: Under section 3(1):

Application

3(1) If a police chief is satisfied that a respondent is a member of a criminal organization and owns or manages a business, or is reasonably expected to own or manage a business that promotes the criminal organization or otherwise advances its interests, he or she may

apply to a judge for an order as described in subsection (2).

Under section 3(2), we propose an amendment:

Order

3(2) If the judge is satisfied that the respondent is a member of a criminal organization and owns or manages a business, or is reasonably expected to own or manage a business that promotes the criminal organization or otherwise advances its interests, the judge may make an order doing one or more of the following:

(a) requiring the respondent to cease owning or managing the business, in a manner satisfactory to the judge, within a period specified in the order;

(b) requiring that the business cease operations in Manitoba;

(c) requiring that the business be liquidated in a manner directed by the court;

(d) cancelling any licence under *The Gasoline Tax Act*, *The Liquor Control Act*, *The Motive Fuel Tax Act* or *The Tobacco Tax Act*, or any registration certificate under *The Retail Sales Tax Act* held or used in connection with the business;

(e) prohibiting the respondent from owing or managing a business whose operation requires such a licence or registration certificate for the period specified in the order;

(f) if the business is operated by a corporation incorporated under *The Corporations Act*, liquidating and dissolving that corporation;

(g) if the business is registered under *The Business Names Registration Act*, cancelling that registration;

(h) designating any premises used or occupied by the business as a prohibited place for the purposes of section 37 of *The Liquor Control Act*, for the period specified in the order.

Mr. Chairperson: The amendment is in order.

It has been moved by Mr. Hawranik

THAT section 3 be replaced with the following:

An Honourable Member: Dispense.

Mr. Chairperson: Dispense.

Mr. Hawranik: Mr. Chairperson, the reason I move this amendment to that section is the fact that I believe that section is really quite weak in its remedies that are available to a judge.

I believe that section 3, in fact, is the Hells Angels provision. That is what I call it, in any event. It is much too narrow in its scope. First of all, it indicates that a member is, in fact, the one that is targeted. The member of a criminal organization, in fact, is targeted with respect to businesses. I think, as I understand it, the business that is being targeted under this section, in fact, is not owned or managed by a member, but is owned or managed by a brother of a member. So, in fact, this section will likely not be able to target the Hells Angels store on Main Street, and that is my concern.

In addition, what it does is the existing section really only cancels the licences under five different pieces of legislation so that the business, as long as it is selling gasoline, as long as it is selling liquor, as long as it is operating a restaurant with a liquor licence, or as long as they are operating a gas bar, or a fuel station, or selling tobacco, or selling in any retail business, the existing section will that business.

They will be able to withdraw a Retail Sales Tax licence, Gasoline Tax licence, Motive Fuel Tax licence, Liquor Control Act licence or Tobacco Tax licence. That is all they will be able to do. I believe that the Government feels that this is enough to shut down that business, but I disagree with them in the sense that, as I understand it, that business that they are targeting is, in fact, a mail order business. While that mail order business requires a Retail Sales Tax licence to operate, currently, and the Government can walk in and, in fact, cancel that licence and think that they are closing down that business, while there are doing that, I believe, the very nature of a mail order business is such that it does not always require a Retail Sales Tax licence. A simple modification to the business

plan by whoever owns that business would allow it to continue to operate.

As I understand it, that business now has a Retail Sales Tax licence, because it does sell mail order parts or mail order items within Manitoba. But all it would have to do is change the nature of the business so that the mail order business would supply parts outside Manitoba. You do not need a Retail Sales Tax licence for that. That is all they would have to do. They do not sell tobacco; they do not sell liquor and they do not sell gasoline. So, while the minister may think that he is targeting that particular business and will be able to put that business out of business, I think he is wrong. A very simple modification to their business plan would, in fact, exempt them under section 3 as it is now proposed.

So that is one of the problems with the section. Our proposed amendments though, in fact, increase the possible remedies that are available to the Government and, in fact, mirror the remedies that are in the next section, section 4.

I am not sure why we try to target criminal organizations for licences simply under five acts and not simply put them out of business. I do not think there is any place in Manitoba for criminal organizations, and I do not think there is any place in Manitoba for businesses that are operated by criminal organizations. I think we ought to widen, under section 3, the remedies that are available to a judge in that respect. For that reason, I have mirrored the remedies that are available in the event that a business is doing an unlawful activity within Manitoba.

I know the minister will likely point to the next section by saying: Well, yes, he can run this particular business out of the province by, in fact, applying the next section to it. But the next section simply targets businesses; section 4 targets businesses that are doing activities that are unlawful. This business is not doing an unlawful activity by operating a mail order business. It is doing a lawful activity and I do not think that business could, in fact, be targeted by the next section.

I think that we have to be tough on criminal organizations. As I say that, there is no place in

Manitoba for them. We have to get that message out, that there is no place in Manitoba for them.

The other concern that I have with section 3, as was proposed in the bill, is not to look at section 3 and then determine what is allowed or what is not allowed. I think we have to look at what is allowed under section 3 as a criminal organization. The minister is targeting criminal organizations simply for selling gasoline, selling liquor, selling tobacco and operating a retail business. That is all he is targeting them for. That does not stop criminal organizations from operating businesses outside of those areas. If they do not require a Retail Sales Tax licence, or they do not sell tobacco, do not sell liquor or fuel, they can still operate a business in Manitoba. You are not targeting them for any other reason. This organization, if it is a criminal organization, they can, in fact, operate a towing company in Manitoba. They can operate in the service industries in Manitoba. For that very reason, I believe that the bill has to be amended. Thank you.

* (10:50)

Mr. Mackintosh: What is important with this legislation—any legislation—is that it withstand judicial scrutiny and can be held up in court. The section that the member is talking about is targeted at those businesses that actually are not doing anything unlawful, so, therefore, there have to be some very careful checks and balances. There has to be a very careful tailoring of the legislation to ensure that this targeting would be supported.

In order to cancel licences on the basis of evidence of bad character, there must be a nexus—a connection, or strong, relevant link between evidence of bad character and the nature of the licence in question. In the case of tax licences, the Province does have a valid interest in ensuring that persons who handle tax money—that is, public money—are trustworthy. In the case of liquor licences, those who handle liquor are of good character. Members of criminal organizations do not meet those requirements. Also, the businesses cited by the Opposition do not need a tax licence to operate, and if the Opposition is suggesting that the Province expand the provincial sales tax, or tax

licences, then I would be interested to hear from them on that.

But I think that what is being looked at by the Opposition in terms of this section is really getting mixed up with what is being targeted in the following section. So I think to concentrate too much on one section at the expense of disregarding the remedies in another is unfortunate. I might also add that this legislation does not target one specific operation. It is there to counter a growing challenge across the country, and if the Opposition has certain intelligence on one particular operation, I urge them to pass that on to law enforcement officials. I heard allegations—in fact, Hells Angels do not operate one particular operation there. If that is their intelligence, that certainly raises other questions.

The remedies have to be looked at in total. But, for this section to be upheld, there has to be that connection to the licences operated by certain establishments. I might also add that the wording in the amendment about promoting a criminal organization or otherwise advancing its interests as being a trigger was rejected earlier in drafts because of its vagueness.

Mrs. Smith: Mr. Chair, it was clear at the beginning that members on this side of the House wanted to have this bill go through very quickly. It was also understood that members on all side of the House were to work in partnership to try to strengthen the bill to such a degree that criminal organizations would not be allowed here in the province of Manitoba.

The proposed amendment to Bill 2 brought forth by the member from Lac du Bonnet certainly does just that. It is, indeed, a great help to put teeth to the legislation, and I think I would ask the Attorney General to—we will give full credit for bringing the bill forward. I think it is a very important bill. I think the member from Lac du Bonnet said that. But I would hope that political considerations do not enter into the dialogue today because, clearly, it is very worrisome listening to the kind of arguments that have just been heard here around the table. The fact of the matter is, plain and simple, that this Government has talked very tough on crime and organized crime, but there has been little put

forward to actually strengthen the teeth and the laws and the civil remedies against organized crime.

So we have to put strength and teeth into this legislation in partnership with the Government to ensure that organized crime gets a full message that they are not welcome in Manitoba; we do not want them here, and we want to give the tools to the police department to help them get them out.

So I would ask that the Attorney General take a second look because the arguments I am having a great deal of difficulty accepting. I think definitely this amendment would strengthen the bill that the Government is trying to put forward.

As I said, we are very supportive of the bill. We just want it to be a useful one.

Mr. Mackintosh: I think all members recognize that this legislation is the first of its kind, although the third ground is based on Ontario's statute which has not yet been tested but which we think is good law. So we certainly are eager to see enhancements, improvements and so on, and I was very eager to hear comments from the Opposition because I for one am prepared to accept arguments that will enhance the bill so that it can do a better job.

But the advice we have, the analysis, lends itself to a conclusion that this change would really put the legislation over into the area of criminal law, because what you are doing is making it really illegal to carry on a business if you are simply a member of a criminal organization. That the Province cannot do. One frustration is that we cannot make new criminal laws here in Manitoba, and it would be wrong for an Attorney General to bring forward legislation where the legal advice was that it would not stand up in court or that it was unconstitutional in terms of a division of powers. I just cannot do that as a law officer. So it appears from the presentation that this is enough to put it over into the area of criminal law.

But I also want to leave this with the members, that ground three, as well, should not be forgotten in terms of the ability to get at the

wrong that is the target of this amendment but in a different way, and that is by the use of the injunction for conspiracy.

So we think that, as a result of all four components in this bill, we can make a significant step forward while maintaining that this is not intrusion into the federal area of legislating criminal law.

Mr. Chairperson: The question before the committee is the amendment moved by Mr. Hawranik

THAT section 3 be replaced with the following:

An Honourable Member: Dispense.

Mr. Chairperson: Dispense.

Shall the amendment pass?

Some Honourable Members: No.

Some Honourable Members: Yes.

Voice Vote

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

Some Honourable Members: Yea.

Mr. Chairperson: All those opposed, say nay.

Some Honourable Members: Nay.

Mr. Chairperson: In my opinion, the Nays have it.

* * *

Mr. Chairperson: Clause 3(1)–pass; clause 3(2)–pass; clauses 4(1) to 4(3)–pass; clauses 5(1) and 5(2)–pass; clauses 6(1) and 6(2)–pass; clauses 6(3) to 7(3)–pass; clauses 8 to 12–pass. Clauses 13 to 17.

Mr. Hawranik: I have an amendment to section 15.

Mr. Chairperson: First we will pass 13 and 14.

Clause 13–pass; clause 14–pass.

* (11:00)

Mr. Hawranik: I have an amendment to section 15.

THAT the following be added after section 15:

**BAN ON GANG COLOURS
IN PUBLIC PLACES**

Gang colours forbidden

15.1(1) No person shall wear gang colours in any public place.

Definition of "gang colours"

15.1(2) In subsection (1) "gang colours" means a sign, symbol, logo or other representation identifying, associated with or promoting a group of persons who conspire to engage in unlawful activities.

Offence and penalty

15.1(3) A person who contravenes subsection (1) is guilty of an offence and is liable on summary conviction,

(a) in the case of a first offence, to a fine of not more than \$1,000. or to imprisonment for a term of not more three months or to both; and

(b) in the case of a second or subsequent offence, to a fine of not more than \$2,000. or to imprisonment for a term of not more than six months or to both.

Mr. Chairperson: The amendment is in order.

It has been moved by Mr. Hawranik

THAT the following be added after section 15—

Some Honourable Members: Dispense.

Mr. Chairperson: Dispense.

Mr. Hawranik: This amendment speaks to forbidding gang colours not simply as proposed in the proposed legislation. The legislation really proposes that gang colours are, in fact, banned only in licensed premises under The Liquor Control Act, and I believe that if we can ban gang colours from licensed restaurants and bars, we should be able to extend the banning of gang

colours in other areas. I would propose that under this proposed amendment gang colours be banned from all public places.

I note that the Finance Minister (Mr. Selinger) was quoted in the paper the other day, in the *Sun*, stating that he could support this amendment because gang colours in fact incite violence, and that is why he is supporting this amendment. I implore the Minister of Justice (Mr. Mackintosh) to realize that violence because of the presence of gang colours is not only confined to liquor licensed premises. In fact, the presence of gang colours in other places such as shopping malls and schools also incites violence. Simply because it is in the liquor licensed premises should not make any difference. I think we ought to ban these gang colours in any public place.

We can limit smoking in public places. We have no problem with jurisdiction in that respect; yet we can only stop gang colours in bars and beverage rooms? It does not make any sense, and I think, by implication, this Government, by introducing this amendment, is treating gangs better than law-abiding smoking citizens. For that very reason I would encourage the members of the Government to support this amendment.

Mr. Mackintosh: This is an area that we have spent some considerable time looking at in the development of the legislation, and that consideration will continue, because there is a concern about the gang colours being able to strengthen the presence of criminal organizations. But, of course, as I said earlier, the Province can only act in areas of provincial jurisdiction, cannot be acting in areas of criminal jurisdiction. This provision is either on the line or over the line in terms of the analysis of intruding into federal jurisdiction of criminal law, because it now creates a new offence on this issue, arguably.

So, first of all, there is some concern in that regard. Second of all, in terms of the definition of gang colours, it says here: It means a sign, symbol, a logo or other representation identifying, associated with or promoting a group of persons who conspire to engage in unlawful activities.

There is a concern about what mischief that might create, for example, if there are uniform

identifiers of certain organizations and criminal activity, or unlawful activity results from, say, marching at Portage and Main, does this mean that marches by community groups or other activists, or labour groups, for example, would end up in offences? So I think this has to be very carefully tailored, that it not be capable of misdirection at persons who are not involved in organized crime because the link to organized crime is not part of the member's amendment. So I am very concerned about that.

In addition to the concerns about the division of powers, I think there are some Charter issues here that have to be explored carefully. But we certainly will undertake to continue to look at how the use of gang colours can be dealt with at the provincial level. The legislation is a big step forward. It is going into an area where the Province does have an interest by way of liquor control licences and there is some valid provincial angle. This section seems to go way beyond that, or at least it raises the risk that it goes way beyond that objective and, in fact, could bring in persons who have nothing to do with a criminal organization and result in charges.

So two main concerns and again, I go back, we have to be careful that we do not bring in legislation that is essentially criminal in nature. I do not think the Province should have any interest in putting in place legislation that is going to get thrown out of court.

Mr. Hawranik: I find it interesting that the minister would, in fact, highlight my definition of gang colors. That definition of gang colours that I propose in my amendment is exactly the same definition of gang colours as he proposes in this bill. So, if he is concerned about my definition being too wide and not appropriate, then he ought to amend his own bill, section 120(10) of the amendment to The Liquor Control Act. So his comments with respect to gang colours and my amendment are equally of concern or should be of concern to him in his bill.

I hear his comments with regard to that it is arguably not within our right or constitutional right to enact this amendment. But, if we have the constitutional right to enact the amendment

with respect to gang colours and liquor licence establishments, I believe we have the right in all public places. We have the right now to, in fact, ban smoking in public places, and we can ban smokers from public places. I do not see the distinction between gang colours. I believe we do have the constitutional right, and I would implore the minister to look at this particular amendment and think of supporting it.

* (11:10)

Mr. Mackintosh: There has to be, of course, the connection between this kind of offence and crime prevention. For example, with smoking, there is a link between the laws and health promotion, or the prevention of disease from smoking. So this needs some examination, and it may be that there is some fruit here. But I sense there is not the time to do the proper analysis between now and later in the week. But I will make this pledge to the members opposite that we will take this further in our analysis, because we do have a similar interest in dealing with this more effectively. It is just that there are serious concerns about how this is construed right now. It has to be tied to a valid provincial objective, and the analysis, so far, is showing that, as worded, the approach is certainly at high risk of being struck.

Mrs. Smith: It is indeed, this morning, worrisome about the political dance we are having around this bill. This bill is something that members opposite have welcomed, embraced and wanted to enhance to give some teeth to it.

The comments I have heard about gang colours—I mean, if we have a right to ban smoking, goodness sakes, we should have a right to ban gang colours. Talking about intimidation, we have seen in this province police being intimidated, firebombs going into homes, police being intimidated in courts. The gang colours are there. In schools across Manitoba, we are seeing gang colours walking down the halls.

So I would say that the arguments that we have heard this morning are very weak. Unfortunately, I think that, in the minister's own words, he wanted to take action and be tough on organized crime. This is an opportunity for the

minister to do exactly that, and so I would implore members opposite to accept this amendment and put it in.

I know we have all already acknowledged that there could be a possible challenge to this bill before it ever reached the room here this morning. We might as well do what we can to put a message loud and strong out to organized crime here in Manitoba and in Winnipeg. They are not wanted. Gang colours are not a cool, neat thing to wear, and we need to absolutely get rid of them. They are dangerous people, and it is a dangerous prospect for the safety of the citizens on the street.

So I do not think political dancing is something that we can afford to do. Members on both sides have to work very hard to make sure there are teeth in this bill, and make sure the police have the tools that they need to make sure that citizens are safe, plain and simple.

So I am asking the Attorney General to support this amendment this morning.

Mr. Mackintosh: Well, this legislation is breaking new ground, so it is very important that we proceed on a firm footing. I have to act in accordance with the best advice that I have.

I just will add that in terms of gangs in schools, the safe schools charter will be introduced in the session, and issues around the challenges of gangs in schools will be dealt with in that legislation.

Mr. Chairperson: The question before the committee is the amendment moved by Mr. Hawranik

THAT the following be added after—

An Honourable Member: Dispense.

Mr. Chairperson: Dispense.

Shall the amendment pass?

An Honourable Member: No.

Some Honourable Members: Pass.

Voice Vote

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

Some Honourable Members: Yea.

Mr. Chairperson: All those opposed, say nay.

Some Honourable Members: Nay.

Mr. Chairperson: In my opinion, the Nays have it.

* * *

Mr. Chairperson: Clause 15—pass; clause 16—pass; clause 17—pass; clauses 18 to 19(3)—pass; clauses 20 and 21—pass; table of contents—pass; enacting clause—pass; title—pass. Shall the bill be reported?

Mr. Mackintosh: We will have an amendment prepared for report stage to recognize the complaint being available to a chief of police of a First Nations policing agency.

Mr. Chairperson: Bill be reported.

Bill 3—The Legislative Assembly Amendment Act

Mr. Chairperson: The next bill is Bill 3, The Legislative Assembly Amendment Act. Does the minister responsible for Bill 3 have an opening statement?

Hon. Gord Mackintosh (Minister of Justice and Attorney General): This is a co-operative effort by all parties in the House. I see there may be some misunderstanding out there today that it is the recommendations of the Legislative Assembly Management Commission that are dealt with by the House, and that is not the case, of course. It is the recommendations from the Commissioner that must be rejected or adopted in whole or not at all.

But the intention of this legislation is to ensure that MLAs do not come up with their own little ideas on all the different indemnities and allowances and pay that MLAs are given. It builds, it really acts on the recommendations of the Fox-Decent commission.

Mr. Chairperson: Does the critic from the Official Opposition have an opening statement?

Mr. Jack Penner (Emerson): Mr. Chairperson, I know we are here to look at this legislation, make an overview of this legislation. I know that there has been a lot of discussion about this piece of legislation. I am only concerned about this one thing, and that is the statement that the minister just made. That concerns me. We, as members of the Legislature, are duly elected to make representation on whatever issues are brought before us as legislators to our attention by our constituents, and/or other issues that arise from time to time that we should comment on. If this act, in fact, takes away the right to comment, or bring ideas, or issues to the table—

An Honourable Member: No, it does not.

Mr. Jack Penner: That is what the minister said. He said this would take away the right of individual members to bring forward ideas and issues. I suggest to the minister that he might probably want to rephrase his comments in regard to this bill, because, when I read the bill, that truly is not part of the reflection of this bill. This bill puts in place a commissioner that will make decisions based on advice that he or she has received. I would suspect that any time during the interim when considerations are being made on given issues, individuals will have the right to bring those issues to that commissioner's table or, for that matter, to LAMC, or members of LAMC, from time to time. I hope that it is not the minister's intent, at this time, to restrict those comments being made to either the commissioner or to members of our legislative management committee. That, I believe, is our responsibility, our duly elected responsibility.

Mr. Mackintosh: Well, I do not know where the member gets that interpretation. The legislation speaks for itself. The member was part of the drafting of this bill, so it speaks for itself. I do not know what more has to be said. Members, presumably, if they are interested in the commissioner's role, we will be making presentations in some way, I do not know how that is, it will be in the next Legislature. When the matter goes to LAMC, members will be free to comment and make any recommendations on it, but, most importantly, it goes back to the House for full debate if that is what members want to do. So that is the process that is set in place, and I have no views on anything beyond that.

Mr. Chairperson: We thank the members. During the consideration of a bill, the enacting clause and the title are postponed until all other clauses have been considered in their proper order. Also, if there is agreement from the committee, the Chair will call clauses in blocks that conform to pages with the understanding that we will stop at any particular clause or clauses where members may have comments, questions, or amendments to propose. Is that agreed? *[Agreed]*

Clauses 1 and 2—pass; clause 3—pass; clauses 4 through 7—pass; enacting clause—pass; title—pass. Bill be reported.

What is the will of the committee?

An Honourable Member: Committee rise.

Mr. Chairperson: Committee rise.

COMMITTEE ROSE AT: 11:21 a.m.