

Second Session - Thirty-Eighth Legislature
of the
Legislative Assembly of Manitoba
Standing Committee
on
Justice

Chairperson
Mr. Doug Martindale
Constituency of Burrows

Vol. LV No. 1 - 10 a.m., Tuesday, May 18, 2004

MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Eighth Legislature

Member	Constituency	Political Affiliation
AGLUGUB, Cris	The Maples	N.D.P.
ALLAN, Nancy, Hon.	St. Vital	N.D.P.
ALTEMEYER, Rob	Wolseley	N.D.P.
ASHTON, Steve, Hon.	Thompson	N.D.P.
BJORNSON, Peter, Hon.	Gimli	N.D.P.
BRICK, Marilyn	St. Norbert	N.D.P.
CALDWELL, Drew	Brandon East	N.D.P.
CHOMIAK, Dave, Hon.	Kildonan	N.D.P.
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DOER, Gary, Hon.	Concordia	N.D.P.
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DYCK, Peter	Pembina	P.C.
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FAURSCHOU, David	Portage la Prairie	P.C.
GERRARD, Jon, Hon.	River Heights	Lib.
GOERTZEN, Kelvin	Steinbach	P.C.
HAWRANIK, Gerald	Lac du Bonnet	P.C.
HICKES, George, Hon.	Point Douglas	N.D.P.
IRVIN-ROSS, Kerri	Fort Garry	N.D.P.
JENNISSEN, Gerard	Flin Flon	N.D.P.
JHA, Bidhu	Radisson	N.D.P.
KORZENIOWSKI, Bonnie	St. James	N.D.P.
LAMOUREUX, Kevin	Inkster	Lib.
LATHLIN, Oscar, Hon.	The Pas	N.D.P.
LEMIEUX, Ron, Hon.	La Verendrye	N.D.P.
LOEWEN, John	Fort Whyte	P.C.
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LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON JUSTICE

Tuesday, May 18, 2004

TIME – 10 a.m.

Bill 16–The Manitoba Public Insurance Corporation Amendment Act (Denial of Benefits for Offenders)

LOCATION – Winnipeg, Manitoba

CHAIRPERSON – Mr. Doug Martindale (Burrows)

Bill 29–The Public Trustee Amendment Act

VICE-CHAIRPERSON – Ms. Kerri Irvin-Ross (Fort Garry)

Bill 41–The Profits of Criminal Notoriety Act

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ATTENDANCE - 11 – QUORUM - 6

Clerk Assistant (Ms. JoAnn McKerlie-Korol): Good morning. Will the Standing Committee on Justice please come to order.

Members of the Committee present:

Hon. Mr. Mackintosh

The first order of business is the election of a Chairperson. Are there any nominations?

Messrs. Aglugub, Cummings, Faurchou, Hawranik, Mses. Irvin-Ross, Korzeniowski, Mr. Martindale, Ms. Oswald, Messrs. Penner, Santos

Ms. Kerri Irvin-Ross (Fort Garry): I nominate Mr. Martindale.

APPEARING:

Clerk Assistant: Mr. Martindale has been nominated. Are there any further nominations?

Mr. Kevin Lamoureux, MLA for Inkster

Seeing none, Mr. Martindale would you please take the Chair.

WITNESSES:

Bill 15–The Highway Traffic Amendment Act (Police Powers Respecting Unsafe Drivers and Miscellaneous Amendments)

Mr. Chairperson: The next item of business before the committee is the election of a Vice-Chairperson. Are there any nominations?

Rod Sudbury, President, MADD Canada
Rob Riffel, Winnipeg Police Service

Mr. Cris Aglugub (The Maples): I nominate Ms. Irvin-Ross.

Bill 41–The Profits of Criminal Notoriety Act

Mr. Chairperson: Ms. Irvin-Ross has been nominated. Are any further nominations?

Ken Mandzuik, President, Manitoba Association for Rights and Liberties

Seeing none, the Vice-Chair is Ms. Irvin-Ross.

MATTERS UNDER DISCUSSION:

Bill 11–The Manitoba Public Insurance Corporation Amendment Act (Protection of Crown Assets)

This morning the committee will be considering the following bills: Bill 11, The Manitoba Public Insurance Corporation Amendment Act (Protection of Crown Assets); Bill 15, The Highway Traffic Amendment Act (Police Powers Respecting Unsafe Drivers and Miscellaneous Amendments); Bill 16, The Manitoba Public Insurance Corporation Amendment Act (Denial of Benefits for Offenders);

Bill 15–The Highway Traffic Amendment Act (Police Powers Respecting Unsafe Drivers and Miscellaneous Amendments)

Bill 29, The Public Trustee Amendment Act; Bill 41, The Profits of Criminal Notoriety Act.

We do have presenters registered to speak to Bills 15 and 41.

It is the custom to hear public presentations before consideration of bills. Is it the will of the committee to hear public presentations on these bills? *[Agreed]*

I will then read the names of the persons who have registered to make presentations this morning. Bill 15, Josh Weinstein, Manitoba Association of Rights and Liberties; Rod Sudbury, MADD Winnipeg; Patrol Sgt. Rob Riffel, Winnipeg Police Service; and Bill 41, Mr. Ken Mandzuik, Manitoba Association of Rights and Liberties; and Edward Lipsett, private citizen.

Those are the persons and organizations that have registered so far. If there is anybody else in the audience who would like to register or has not yet registered and would like to make a presentation, would you please register at the back of the room.

Just a reminder that 20 copies of your presentation are required. If you require assistance with photocopying, please see the clerk of this committee.

In what order does the committee wish to hear public presentations on these bills?

An Honourable Member: As listed.

Mr. Chairperson: As listed. I would like to inform presenters that in accordance with our rules, a time limit of 10 minutes has been allotted for presentations, and 5 minutes for questions from committee members. As well, in accordance with our rules, if a presenter is not in attendance, their name will be dropped to the bottom of the list. If the presenter is not in attendance when their name is called a second time, their name will be removed from the presenter's list.

Are there any suggestions from the committee as to how long we should sit this morning?

Ms. Bonnie Korzeniowski (St. James): I would suggest we sit until the bills are finished.

Mr. Chairperson: It has been suggested we sit until we are finished. Is that agreed? *[Agreed]*

We will now proceed to public presentations.

Bill 15—The Highway Traffic Amendment Act (Police Powers Respecting Unsafe Drivers and Miscellaneous Amendments)

Mr. Chairperson: Would Mr. Weinstein please come to the podium on Bill 15. Do you have copies for the committee members?

Mr. Ken Mandzuik (President, Manitoba Association for Rights and Liberties): I am Ken Mandzuik from the Manitoba Association for Rights and Liberties. Mr. Weinstein will not be here this morning.

Mr. Chairperson: Thank you for that information. We will next ask for Rod Sudbury representing MADD Winnipeg. Please proceed.

Mr. Rod Sudbury (President, MADD Winnipeg): I am speaking on behalf of Mothers Against Drunk Driving, MADD Canada, the national organization. MADD Canada supports the amendments included in this bill as a valuable step to improve the safety and security of Manitobans and visitors to our province. The inclusion of the provision for police officers to request field sobriety tests gives law enforcement officers an important tool to use when assessing a person's ability to operate a vehicle.

Field sobriety tests will allow peace officers to conduct a test that will reveal the impairing effect of substances other than alcohol that can interfere with a person's ability to operate a vehicle. This will allow peace officers to evaluate drivers who have ingested substances that cannot be detected by use of the existing approved screening devices. These devices are specifically designed to detect the presence of alcohol, and they cannot detect any of the other substances that can affect a person's ability to drive.

* (10:10)

Peace officers who are charged with the responsibility for protecting us from those who would break the law will now have an additional tool to use in order to protect us from those who engage in this dangerous criminal behaviour.

In cases where small amounts of alcohol have been used as a decoy substance to distract peace officers and deflect attention away from an

evaluation that would reveal drug or substance abuse, field sobriety tests will help to reveal the impairment. It is, after all, the impairment of a person's ability that is of concern, not just the presence or the fact that alcohol is present.

This bill also gives peace officers the statutory authority to ask drivers and passengers questions regarding their identity. This authority is important in cases where peace officers are investigating novice drivers and their supervising passengers in cases where impairment is an issue. In these cases, there is clearly a need to give peace officers the statutory authority to collect relevant information, without advising the individuals involved of their right to counsel.

Mr. Chairperson: Thank you for your presentation. Are there questions or comments from the committee members?

Mr. Gerald Hawranik (Lac du Bonnet): Yes. Mr. Sudbury, I would like to thank you for coming out to committee this morning and giving your presentation. I think it is an important bill, not only to yourself, but to your organization and, I think, to all Manitobans.

At the same time, I think it, you know, I think it has come to the forefront in terms of the fact that the federal government is going to be decriminalizing marijuana use. Certainly, we need a test for drugs, but one of my concerns, I guess, is that there is really no objective test to determine whether an individual is impaired by drugs, like there is with alcohol, where, if you are over .08, there is an objective test. As I understand it, one of the concerns by I believe it was the Canadian Bar Association was the fact that they said that, once you do the field sobriety test, it gives you an authority then to ask for an objective test, such as the saliva or blood or urine test, but there is no objective standard as to whether or not that level of drug that is in your body is, in fact, creating an impairment. Would you be able to comment on that?

Mr. Sudbury: One of the concerns is not the level of alcohol or drug in the person's body that is of concern, and should be a concern to everybody, it is the fact that their ability is impaired. That is one of the things that a standardized field sobriety test will reveal, the basic impairment of the person's ability. I think that is crucial here.

We have, in our society, become so used to technology that can establish a level, as in the approved screening devices with alcohol. It will detect a level of alcohol in the person's system, and that is linked to impairment, but the crucial thing is that there are varying levels and varying effects on a person's ability. The field sobriety tests reveal the impairment that the person is suffering, not just a pure level in the person's system. Field sobriety tests have so much value to evaluate the impairment and allow the police officers to proceed with an investigation from there.

Mr. Chairperson: Thank you for your presentation. Seeing no further questions, we will invite the next person to the podium.

Patrol Sgt. Rob Riffel, Winnipeg Police Service, please proceed when you are ready.

Mr. Rob Riffel (Winnipeg Police Service): Good morning. I am Patrol Sergeant Rob Riffel, Winnipeg Police Service. I am currently the Impaired Countermeasures Co-Ordinator for our Service; as well, I am a drug recognition evaluator, instructor, and a standardized field sobriety testing instructor.

I have given you a handout, a brief overview. I am just going to expand on what Rod Sudbury had said. For a long time police officers did not have the tools necessary to investigate impaired driving offences. Several studies were conducted in the United States in the mid-seventies, and they found that for every one person arrested for impaired driving, three others were contacted face to face and released without charges.

There were a myriad of different sobriety tests used throughout the States. So, starting in 1975, the Southern California Research Institute, under the auspices of the National Highway Traffic Safety Administration in the United States, undertook some research to find out if there would be some sort of sobriety tests that could set a reliability factor to those tests.

During their research, they came up with three tests: Horizontal Gaze Nystagmus test, the Walk-and-Turn test and the One-Leg Stand test. The research was done and they were found that, in combination, they could be found to be reliable up to 80 percent of the time to show that someone's impairment would be above or below 100 milligrams percent.

There is further research done in the late nineties, after this program had been put in place, that actually raised that percentage into the 91% range in the studies, and it has adopted these three tests as the standardized field sobriety tests. It is administered by the International Association of Chiefs of Police, the administrative body for the tests, and it does all the research pertaining to them. When we say standardized, we mean standardized.

Anybody who has taken the accredited course, if you go to British Columbia, Saskatchewan, Texas, New York, they are all administered in the same way. You will be able to walk up to a policeman, have him do the test on you, and they will be done exactly the same way in every jurisdiction.

I have given you the handout that tells you what the tests are. Driving is a complicated divided attention task. In saying that, when you drive a car there are many things that you have to concentrate on, your speed control, your steering, the changing environment that you have to react to. These tests were developed to address those issues.

The Walk-and-Turn test has two phases. It is the instruction phase, and the walking phase. There is information processing that needs to be done: short-term memory, judgment, decision making, balance, steady, sure reactions, clear vision, small muscle control, and co-ordination of limbs. That is to say, if you are impaired by a drug or by alcohol and you are driving down the street, you may be able to concentrate on keeping it between the lines, but when you come to a curve, or you come to a light, you may not be able to take your focus away from that one task and be able to address the issue, or someone pulling out in front of you. That is what these tests are based on, and that is what they are to replicate, to divide your attention. They are psychophysical divided attention tasks is what they are referred to. So what they will do is when you do the Walk-and-Turn test, for example, you have instructions, you will get the instructions, and you will have a myriad of instructions you have to remember. Then you have to perform the tests, without any further instructions. If you cannot marry the two up based on what the finding is, there is a level of impairment that we can draw from that.

These tests are not complicated. They were made so that they would be uncomplicated, so that the people doing them, a regular unimpaired person

could do them without difficulty. The last thing you want to do is have someone do a bunch of tests that they just cannot perform even when they are sober. These are very simple tests. The process, the three-test battery, takes approximately five minutes. It is done roadside, and it is no more intrusive than an approved screening device test, in my opinion.

I just wanted to address one more thing that Rod Sudbury touched on. The approved screening devices are a great tool for the police in finding alcohol impairment. The SFSTs show impairment, period. They may be linked to certain categories of drugs, but the bottom line is that they show impairment, not actually an alcohol level, which was what the approved screening device is based on. Using the SFSTs, we are looking at impairment, as opposed to a legislated level of alcohol impairment, like a per se.

So that would give the police a very valuable tool, especially in the sense where now if we stop someone and they are just not right but they pass the screening device test, we really have no authority to stop them from driving down the road. This legislation, I think, will give us a better opportunity to make our roads safer in that, if they do not pass the field sobriety tests but they are found not to be over the legal limit, we will still be able to impose that 24-hour suspension based on the sobriety tests.

* (10:20)

Mr. Chairperson: Thank you for your presentation. Are there questions?

Mr. Cris Aglugub (The Maples): Thank you for that presentation. Thank you, Mr. Chairman.

I was just wondering, is there any difference between assessing somebody who is drunk and someone who has been smoking dope, marijuana, or whatever? Is there a big difference in the way you assess those? Is there a difference between the level of impairment?

Mr. Riffel: We use the screening device when there are not any signs of impairment. If I stop you in a check stop and I can smell liquor on your breath and there is no other sign of impairment, that is when I use the screening device. If there are other signs of impairment, then I would arrest you for my opinion and arrest you on those signs.

Basically, with the SFSTs, the screening device would be used to determine the chemical basis of the impairment. If we were to stop you and have you do the test battery, the SFST test battery, and you perform poorly on them, then we would give you a screening device test and see what the chemical basis of that impairment would be. I do not know if that answers your question or not.

There is a difference, and what I am saying is when I talk to you I may not detect impairment by alcohol or marijuana, because just talking to you, that is a very focussed thing. You can probably talk to me, there will not be any problems with that. When you do the actual tests and it divides your attention and makes you do those replicated tasks of driving, that is when that impairment will become evident, whether it is alcohol or marijuana.

Mr. Aglugub: Do you subject him to breathalyzer tests or do you apply those methods when you start testing? I know that the breathalyzer test is for alcohol only, but what about somebody who has been smoking pot or marijuana?

Mr. Riffel: That is what the difference is. If I have the basis to ask for a screening-device test based on alcohol, then that is what you would do. If you do the standardized field sobriety tests, then that is going to give you your reasonable probable grounds to form your opinion that the person is impaired. Then you would move on to the breath testing.

Mr. Conrad Santos (Wellington): Sergeant Riffel, given your experience and level of expertise, and given that the main concern here is the person's ability to drive, and given that the ability to drive is a multi-task kind of job that requires attention to different things, what is your opinion about using the cellular phone while driving?

Mr. Riffel: That is a tough one. Using a cellular phone while driving when you are not impaired, and I am not an expert on cellular phone use while driving, as I said, any substance taken into the body impairs you to some extent. The use of a cellular phone may or may not impair you.

If you are sober and driving and using a cellular phone, obviously your multi-tasking or your divided-attention capability is greater. Now, if you were to be impaired using a cellular phone, that is just one more thing thrown into the mix that you have to concentrate on.

Mr. Kevin Lamoureux (Inkster): I had a question in regard to the 24-hour suspension. If you were to guesstimate in terms of the frequency of use of that particular tool, could you give us some sort of an indication?

I know when you were commenting on the stats, I think you referred to an American stat where one in three impaired drivers actually appears to get recognized as being impaired. Reflecting on that, I am thinking in terms of what sort of frequency would you see using the 24-hour suspension?

Mr. Riffel: In relation to the SFSTs, I would imagine it would be fairly close to the screening devices what they are now, and just speaking from experience, probably for every impaired driver we arrest, we probably issue, and this is an educated guess, probably seven to ten 24-hour suspensions where they are in that 50-milligram to 99-milligram range.

Mr. Chairperson: Thank you for fielding questions. That is it for the presenters on this bill.

Bill 41—The Profits of Criminal Notoriety Act

Mr. Chairperson: Mr. Mandzuik, Manitoba Association for Rights and Liberties. Please proceed when you are ready.

Mr. Ken Mandzuik (President, Manitoba Association for Rights and Liberties): Thank you, good morning. I am Ken Mandzuik. I am the volunteer president of the Manitoba Association for Rights and Liberties, which is a non-profit, non-partisan group founded in 1978 with an aim to educate and advocate for human rights and civil liberties for all Manitobans.

My submission today is based in part on contributions made by our volunteer members of our Charter of Rights and Legislative Review Committee, one of whom is Edward Lipsett, who is listed to speak today. I do not know that he will be attending, given my attendance today, but he also had input in this submission.

MARL has some significant concerns with Bill 41. Rather than proceed on a clause-by-clause analysis or critique of the bill, this submission deals with the bill of the whole, which, we respectfully submit, ought to be withdrawn.

An obvious concern with this bill to us is that it seems unnecessary. The bill does nothing significant for compensating victims of crime, which is a laudable goal, nor does it do anything for deterring crime or preventing crime.

We sincerely doubt that anyone embarks on a life of crime or commits crime in the hopes or with the design of getting a book deal. The overriding achievement of this bill, unfortunately, is the deprivation of Manitobans' constitutionally guaranteed rights to freedom of expression.

Before moving to those concerns, we also point out this bill might be unconstitutional on a division-of-powers issue. The effect of the law is to impose additional sanctions on those convicted under the Criminal Code of Canada.

This is not imposing a legal disability in an area of provincial competence, such as taking away a driver's licence. Rather, by taking away people's rights, it is an expressed disapproval of criminal conduct, and, arguably, this falls within the exclusive purview of Parliament, pursuant to section 91(27) of the Constitution Act, 1867. We also submit that this bill is likely unconstitutional for infringing section 2(b) of the Charter of Rights, which guarantees our rights to freedom of expression.

To many or most right-thinking people, the thought of a criminal profiting by writing a book based on his crime is repugnant, but the best way for the public to express that repugnance is to not buy the book.

Creating what is, in effect, a fine for certain speech that the state deems unacceptable is also repugnant to the fundamental freedoms in a democratic society. This bill does not just affect the high-profile criminals, it does not just affect the Paul Bernardos and the Karla Homolkas and the Clifford Olsons. It could affect the David Milgaards and the Thomas Sophonows.

I have outlined a list of certain things that this bill could affect. Someone wrongfully convicted of an offence writing a book explaining his or her innocence before vindication could be affected by this bill; a journalist writing an expose on prison conditions; a journalist or author writing a book about crime, like Mike McIntyre of the *Free Press*, who just wrote his book on the Strongquill case.

Someone writing about political corruption might need to pay someone covered by this act to obtain full information. Someone writing about an unjust law and campaigning for its reform might fall under this act. Someone writing an autobiographical account of their life in crime with a view to deterring people from entering into a similar life of crime would be affected.

This bill would cover someone like Stephen Reid, the poet who is in B.C., his wife, Susan Musgrave. It could affect people like Gandhi or Dostoevsky or Bertrand Russell, if they were alive and well, writing or serving time in Manitoba.

Depending on how the regulations to this act turn out, depending on how interpretation of the federal terrorism legislation turns out, someone like Martha Stewart could also be included in this act if she had been convicted of securities fraud. That is a serious property crime, arguably, and her autobiography could fall under this act.

*(10:30)

Unfortunately, it is no answer to say that being able to establish a public interest at a later point in front of a judge allows people to get paid for their work and therefore there has been no stifling of free speech. It is a specious argument. No other paid speech needs vetting by a justice of the Court of Queen's Bench to determine its worth to society. In a free society the rights of citizens to obtain information, including the right to pay for it, should not depend on their ability to convince a judge that they are seeking to benefit the public.

A more insidious result of this bill is the potential chilling effect it can have. Journalists who write about crime and criminals often do so at great personal risk and take great care to protect their sources. The prospect of having to go to court to satisfy a judge that they were writing about something for the public benefit could simply cause those sources to dry up or have the book not written at all. Prior censorship and the need to justify worth of speech based on its value to society have no place in a free and democratic society.

The bill discriminates solely on the content of speech and is an affront to the fundamental rights and liberties of all Manitobans. With respect, there is a shocking indifference to the need to protect speech

where it matters most, in situations where that speech might be unpopular or deemed offensive, not to mention the indifference to the taxpayers whose money will be inevitably spent in defending it for Charter challenges that will follow if this bill is enforced, and certainly the time and limited resources of the courts, the provincial Crowns, including the Constitutional Law Branch, and the legislative drafters could be better spent.

Again, MARL thanks the committee for its time and willingness to entertain this submission. Thank you.

Mr. Chairperson: Questions from committee members?

Hon. Gord Mackintosh (Minister of Justice and Attorney General): Well, Ken, I appreciate MARL coming forward with this presentation. In your examples here, I want to ask if you have looked at the provisions of the bill, which said that this only applies to criminals. It does not apply to journalists. It does not apply to someone like Mike McIntyre, someone writing about political corruption, or someone writing about an unjust law. Further, I just wonder how David Milgaard or Thomas Sophonow could ever profit from their crime if they never did the crime. So I do not understand your argument here, Mr. Mandzuik.

You might want to just react to that and provide the committee with an answer to my questions about the scope of the bill, because I can tell you the arguments that you are making are arguments that have been heard in the courts of the United States from time to time, dealing with Son of Sam bills, Son of Sam legislation, that indeed tried to go too far constitutionally. This legislation was tailored so that there is an individual consideration of the public value, of the expression, but it only applies to criminals. Like I say, how could Thomas Sophonow write about the crime; he professed he did not commit the crime.

Mr. Mandzuik: Some of the examples listed depend on paying people on the inside, or people who have committed crimes, to participate. It might be that it takes money to loosen lips. In that circumstance, the journalist, the authors, the non-criminals would all be affected by this bill if their sources to get paid have to go to court. Those sources are going to dry up if the money cannot be used. As far as the Thomas

Sophonows, David Milgaards, if they are writing pre-exoneration, in jail, they are writing about the crime. They do not have to say that they have done the crime. They have been convicted of that crime. If they talk about the circumstances, if they talk about the case itself, arguably, this act would apply to their situations.

Mr. Gerald Hawranik (Lac du Bonnet): I would like to thank you for coming forward this morning and making a presentation, giving us a written presentation as well. I had a similar comment to the Justice Minister with respect to the fact that it does apply only to criminals, but, as you correctly pointed out, that if you had a case like Mike McIntyre actually paying the criminal for the story, certainly it would fall under this legislation.

I am not sure that that is a concern. I guess the bill itself is there to stop criminals from profiting from their crimes. I am not sure that that is a concern that should necessarily be validated, but I believe that this is really a feel-good bill. You state that it is an unnecessary bill. It may very well be, because I cannot think of any situation in Manitoba to whom this bill would actually have applied in the past. I just wondered if you could comment on that.

Mr. Mandzuik: I do not have any idea who this bill might apply to. I will not specify whether it is a feel-good bill or not. I did read one statistic, and it might be outdated, that since 1982 something like eight books have been written by criminals about their crime, but I do not know how old that statistic is.

Mr. Kevin Lamoureux (Inkster): I recognize that it is a volunteer organization, but I will pose the question anyway. In regard to other jurisdictions, are you familiar with other provincial jurisdictions moving towards legislation of a similar nature at all?

Mr. Mandzuik: I know that Ontario does have a similar act. I have not done an analysis of the two. I do not know that it has been used, so I do not know if that would have been constitutionally upheld either on the division of powers or the freedom of expression concerns.

Mr. Chairperson: Mr. Santos, with 30 seconds.

Mr. Conrad Santos (Wellington): How do you react to the basic axiom of law that no one can profit from his own wrong?

Mr. Mandzuik: There is nothing wrong with that. People not being able to profit from their crime, that is fine, but when you single out speech as the problem, that is an infringement of our liberties. One of the problems the United States Supreme Court had with the Son of Sam law that it struck down was not only that it was over-broad but that it targeted just the speech of the criminal. It did not target the rest of their property. Why stop at book profits? Why not take their house, their car, their clothing, their TV sets and their stereos?

Mr. Chairperson: Time has expired. Thank you for your presentation and answering questions.

* * *

Mr. Chairperson: Is Mr. Edward Lipsett, private citizen, here? No. We need to ask again if Mr. Weinstein is here? If not, we will proceed with the bills. He is dropped from the list. I ask again if Mr. Lipsett is here. No one is coming forward. That concludes the list of presenters. We will go to clause by clause.

Is it the will of the committee to go sequentially beginning with Bill 11? *[Agreed]*

Bill 11—The Manitoba Public Insurance Corporation Amendment Act

Mr. Chairperson: Does the minister responsible for Bill 11 have an opening statement? No.

Does the critic from the official opposition have an opening statement? No. We thank you for that.

During the consideration of a bill the enacting clause and the title are postponed until all of their clauses have been considered in their proper order.

Clause 1—pass; clause 2—pass; clause 3—pass; enacting clause—pass, title—pass. Bill be reported.

* (10:40)

Bill 15—The Highway Traffic Amendment Act (Police Powers Respecting Unsafe Drivers and Miscellaneous Amendments)

Mr. Chairperson: Bill 15. Does the minister have an opening statement?

Hon. Gord Mackintosh (Minister of Justice and Attorney General): No.

Mr. Chairperson: No. Does the critic from the official opposition have an opening statement? No. We thank the members for that. I am sorry, Mr. Hawranik.

Mr. Gerald Hawranik (Lac du Bonnet): I would like to voice my concern a little bit about the bill, Bill 15, to the extent that the field sobriety test portion of the bill, I would hope that the minister would take into consideration not proclaiming it into force until the federal government actually proclaims its FST into force as well. I think they work in tandem, much like the breathalyser legislation. We, in fact, suspend driver's licences when someone is convicted of a breathalyser offence and the federal government imposes a criminal penalty. Here we have the field sobriety test and we do not have complementary federal legislation to complement that. So it would be well advised for the minister, while we may be passing this bill this session, it would be well advised not to proclaim it into force until there is actually complementary legislation in force under the Criminal Code to ensure that there is an equal and parallel penalty.

Mr. Mackintosh: Just to respond, I appreciate the question because I know in explaining the bill in introduction there was some confusion between federal and provincial powers, and what was possible under the Criminal Code. This legislation is needed by law enforcement in Manitoba now. Indeed, this bill was brought in not knowing if the federal government would ever get around to bringing in its legislation. I am glad that they did, and it is complementary but I do not think that the two are in any way necessarily joined. I think that we have to get on with the business here in Manitoba. If the federal standards for SFST differ from those regulated in Manitoba, we can have a look at it then and make change by regulation. But the legislation itself should enable us to go forward.

I just add, in conclusion, that I am pleased the federal government has come around. I think that Manitoba had some role in that. I like to think at least that our advocacy made a difference. We will do everything we can to ensure that there is a symmetry with the federal scheme, if the federal scheme is indeed robust.

Mr. Chairperson: 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 and 5—pass; clause 6—pass; clauses 7 and 8—pass; clause 9—pass; clauses 10 and 11—pass; clause 12—pass; clauses 13 through 15—pass; enacting clause—pass; title—pass. Bill be reported.

Bill 16—The Manitoba Public Insurance Corporation Amendment Act (Denial of Benefits for Offenders)

Mr. Chairperson: Does the minister responsible for Bill 16 have an opening statement? Does the critic from the official opposition have an opening statement? No. We thank the members for that.

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.

Clause 1—pass; clause 2—pass; clause 3—pass; clause 4—pass; enacting clause—pass; title—pass. Bill be reported.

Bill 29—The Public Trustee Amendment Act

Mr. Chairperson: Does the minister responsible for Bill 29 have an opening statement?

Hon. Gord Mackintosh (Minister of Justice and Attorney General): No.

Mr. Chairperson: No. Does the critic from the official opposition have an opening statement? No.

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.

Clause 1—pass; clause 2—pass; clause 3—pass; clause 4—pass; enacting clause—pass; title—pass. Bill be reported.

Bill 41—The Profits of Criminal Notoriety Act

Mr. Chairperson: Does the minister responsible for Bill 41 have an opening statement?

Hon. Gord Mackintosh (Minister of Justice and Attorney General): Well, just briefly, there are some questions that were asked and raised here today and some at second reading that deserve some answers, I think.

First, the Member for Inkster (Mr. Lamoureux) had raised some questions about the legislative schemes in other provinces. At the time we introduced the bill, we said that it would be important that the word be spread that this kind of legislation should be enacted in every jurisdiction in Canada because people can hop around in terms of their abilities to profit from crime.

We do not know the intention of other jurisdictions. We do know that a uniform bill was adopted in 1997 by the Uniform Law Conference of Canada which had representations from all Canadian jurisdictions.

At the staff level, the word is out that we have this legislation before the House and on passage, I will be sharing it with my colleagues other than in Ontario. Well, I will send it to all the jurisdictions letting them know that we have passed the legislation and urge them to consider it. I think that is all we can do. We have to respect, of course, their jurisdiction.

If the legislation had been brought in at an earlier time, was there some profiting that could have been prevented? I am myself not aware of that. I could be wrong, but the point of this legislation is that we do not want that to happen. This is a measure. I hope that this legislation will never be used, but I think that we would be negligent not to put the legislation on the books.

Ontario has done so; Manitoba is the second one. I think it is just a matter of good public policy reflecting that fundamental basic principle that is, I think, even more articulated today with the advent of the victims' rights movement, that criminals should not profit from their crime, and it is filling a gap in the law.

Other than that, I think that the scope of the legislation has to be always articulated because we are not stopping anyone from writing a book about their crime. Not a soul is prevented by this legislation from writing about their crime, unfortunate as I think that would be particularly to

the survivors or the victims of that crime and indeed to victims as a class and society as a whole.

But this legislation just says that you cannot profit from your criminal notoriety, so when we have examples about Thomas Sophonow, I cannot imagine how Thomas Sophonow, having been found not to have committed the crime could write about the crime. So I do not get that argument, and in terms of journalists and their writings, journalists can pursue their writings, and indeed we have many recent publications in this province of true crime stories.

It is the new hot genre. This is the time to bring in this legislation. It is flooding the airwaves. You cannot channel flip without true crime showing up any time of the day. You cannot go into a bookstore now without true crime books facing you, but we are saying that whether you are selling it to a journalist or you are selling it to a TV station or you are writing the book yourself, you should not profit.

But the legislation goes further than Ontario, and it brings in for the first time in this country the ability to pursue what is called murderabilia, which has become more prominent with the advent of the Internet. Thank you.

* (10:50)

Mr. Chairperson: Does the critic from the official opposition have an opening statement?

Mr. Gerald Hawranik (Lac du Bonnet): Yes, I do. Under the bill, the director can confiscate the amount paid under the contract to recall the crime, and under the bill, the director is able to distribute that money, first of all, to victims of that particular crime, and secondly, to the Victims Assistance Fund. That I would support, but what the bill also does is it creates substantial fines.

Under one portion of the bill, it creates fines of \$50,000 or more for those in breach of the act. Where does that money go? That money goes to the Province. So the Province is now profiting from the recollection of the crime, and could profit substantially. That is one of my concerns, and I hope the Justice Minister supports it. I plan to introduce an amendment to the bill in third reading, in the report

stage, to ensure that those substantial fines under the bill, in fact, also go to victims, either victims of that particular crime or the Victims Assistance Fund. Without it, I think, while criminals may not be able to profit from the crime, the Province certainly can.

Mr. Chairperson: I thank the members.

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—pass; clauses 2 through 4—pass; clauses 5 through 7—pass; clauses 8 and 9—pass; clauses 10 and 11—pass; clauses 12 and 13—pass; clauses 14 and 15—pass; clauses 16 and 17—pass; clauses 18 through 20—pass; clauses 21 and 22—pass; table of contents—pass. Shall the enacting clause pass?

Mr. Kevin Lamoureux (Inkster): Mr. Chairperson, I know we are going to be passing the bill right away. I just wanted to express my concern as expressed in second reading.

I appreciate the minister did respond to the questions I had placed in second reading. Having said that, there is concern on our part in terms of public expectation and what the government, the type of message that it is sending out and maybe if it could be doing more in other areas. So, with that, I just want to make that note before we pass the bill. Thank you.

Mr. Chairperson: 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: 10:53 a.m.