



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

**STANDING COMMITTEE**

on

**INDUSTRIAL RELATIONS**

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**31-32 Elizabeth II**

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*Chairman*  
*Mr. C. Santos*  
*Constituency of Burrows*



MG-8048

**VOL. XXXI No. 4 - 11:00 a.m., TUESDAY, 26 JULY, 1983.**

**MANITOBA LEGISLATIVE ASSEMBLY**  
**Thirty-Second Legislature**

**Members, Constituencies and Political Affiliation**

Name	Constituency	Party
<b>ADAM, Hon. A.R. (Pete)</b>	Ste. Rose	NDP
<b>ANSTETT, Andy</b>	Springfield	NDP
<b>ASHTON, Steve</b>	Thompson	NDP
<b>BANMAN, Robert (Bob)</b>	La Verendrye	PC
<b>BLAKE, David R. (Dave)</b>	Minnedosa	PC
<b>BROWN, Arnold</b>	Rhineland	PC
<b>BUCKLASCHUK, Hon. John M.</b>	Gimli	NDP
<b>CARROLL, Q.C., Henry N.</b>	Brandon West	IND
<b>CORRIN, Brian</b>	Ellice	NDP
<b>COWAN, Hon. Jay</b>	Churchill	NDP
<b>DESJARDINS, Hon. Laurent</b>	St. Boniface	NDP
<b>DODICK, Doreen</b>	Riel	NDP
<b>DOERN, Russell</b>	Elmwood	NDP
<b>DOLIN, Hon. Mary Beth</b>	Kildonan	NDP
<b>DOWNEY, James E.</b>	Arthur	PC
<b>DRIEDGER, Albert</b>	Emerson	PC
<b>ENNS, Harry</b>	Lakeside	PC
<b>EVANS, Hon. Leonard S.</b>	Brandon East	NDP
<b>EYLER, Phil</b>	River East	NDP
<b>FILMON, Gary</b>	Tuxedo	PC
<b>FOX, Peter</b>	Concordia	NDP
<b>GOURLAY, D.M. (Doug)</b>	Swan River	PC
<b>GRAHAM, Harry</b>	Virден	PC
<b>HAMMOND, Gerrie</b>	Kirkfield Park	PC
<b>HARAPIAK, Harry M.</b>	The Pas	NDP
<b>HARPER, Elijah</b>	Rupertsland	NDP
<b>HEMPHILL, Hon. Maureen</b>	Logan	NDP
<b>HYDE, Lloyd</b>	Portage la Prairie	PC
<b>JOHNSTON, J. Frank</b>	Sturgeon Creek	PC
<b>KOSTYRA, Hon. Eugene</b>	Seven Oaks	NDP
<b>KOVNATS, Abe</b>	Niakwa	PC
<b>LECUYER, Gérard</b>	Radisson	NDP
<b>LYON, Q.C., Hon. Sterling</b>	Charleswood	PC
<b>MACKLING, Q.C., Hon. Al</b>	St. James	NDP
<b>MALINOWSKI, Donald M.</b>	St. Johns	NDP
<b>MANNESSE, Clayton</b>	Morris	PC
<b>McKENZIE, J. Wally</b>	Roblin-Russell	PC
<b>MERCIER, Q.C., G.W.J. (Gerry)</b>	St. Norbert	PC
<b>NORDMAN, Rurik (Ric)</b>	Assiniboia	PC
<b>OLESON, Charlotte</b>	Gladstone	PC
<b>ORCHARD, Donald</b>	Pembina	PC
<b>PAWLEY, Q.C., Hon. Howard R.</b>	Selkirk	NDP
<b>PARASIUK, Hon. Wilson</b>	Transcona	NDP
<b>PENNER, Q.C., Hon. Roland</b>	Fort Rouge	NDP
<b>PHILLIPS, Myrna A.</b>	Wolseley	NDP
<b>PLOHMAN, Hon. John</b>	Dauphin	NDP
<b>RANSOM, A. Brian</b>	Turtle Mountain	PC
<b>SANTOS, Conrad</b>	Burrows	NDP
<b>SCHROEDER, Hon. Vic</b>	Rossmere	NDP
<b>SCOTT, Don</b>	Inkster	NDP
<b>SHERMAN, L.R. (Bud)</b>	Fort Garry	PC
<b>SMITH, Hon. Muriel</b>	Osborne	NDP
<b>STEEN, Warren</b>	River Heights	PC
<b>STORIE, Hon. Jerry T.</b>	Flin Flon	NDP
<b>URUSKI, Hon. Bill</b>	Interlake	NDP
<b>USKIW, Hon. Samuel</b>	Lac du Bonnet	NDP
<b>WALDING, Hon. D. James</b>	St. Vital	NDP

**LEGISLATIVE ASSEMBLY OF MANITOBA**  
**THE STANDING COMMITTEE ON INDUSTRIAL RELATIONS**

**Tuesday, 26 July, 1983**

**TIME — 11:00 a.m.**

**LOCATION — Winnipeg, Manitoba**

**CHAIRMAN — Mr. C. Santos (Burrows)**

**ATTENDANCE — QUORUM - 6**

*Members of the Committee present:*

Hon. Messrs. Cowan, Kostyra, Storie, Penner,  
Hon. Ms. Dolin, Hon. Mrs. Smith

Messrs. Enns, Mercier, Nordman, Santos and  
Steen

**WITNESSES:** Representations were made to the  
Committee as follows:

Mr. Harry Peters, Manitoba Association for  
Rights and Liberties

Mr. Paul Johnston, Winnipeg Police Senior  
Officers' Association

Mr. Don Douglass, Private citizen; and  
Winnipeg Police Commission

**MATTERS UNDER DISCUSSION:**

Bill 2 - The Law Enforcement Review Act; Loi  
sur les enquêtes relatives à l'application de la  
loi

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**MR. CHAIRMAN:** Committee, please come to order.  
We are in the process of hearing presentations on Bill  
No. 2, The Law Enforcement Review Act.

The Chair wishes to call on Mr. Harry Peters,  
representing the Manitoba Association of Rights and  
Liberties.

**MR. H. PETERS:** Good morning, Mr. Chairman,  
honourable members of the committee. My name is  
Harry Peters, I'm here on behalf of the Manitoba  
Association for Rights and Liberties. I'm chairperson  
or chairman, however you like to call it, of the Police  
Powers and Citizens' Rights Committee which has been  
dealing with Bill 2 and previous drafts for the last two  
or three years.

I don't believe anyone here is from the Manitoba Trial  
Lawyers' Association. You may have noticed Mr. Robert  
Pollock in the audience last night, he asked me to  
indicate that my remarks were concurred in with respect  
to the Trial Lawyers' Association. He could not appear  
because a partner of his is representing the section of  
the Winnipeg Police Department and there appears to  
be a conflict between their positions. In any case, he's  
reviewed MARL's brief and advised me that the  
Manitoba Trial Lawyer's Association are in agreement  
with the points we wish to make today.

We can begin by saying that my committee welcomes  
the initiative of the Attorney-General's Department in  
declaring that the need for a citizens' committee to  
review police conduct shall be met by legislation. Our  
committee has received numerous complaints about  
police conduct from individuals and we concur with  
the government's perception that there is a pressing  
need for a public system to resolve disputes of this  
type. It is the committees perception that many  
complaints reach us because no consistent, fair and  
well-defined system exists for the resolution of  
complaints against police in Manitoba.

I say this personally, as a lawyer, that I am often  
confused as to where to send a person I meet in my  
office, where he should go to complain. This is not just  
the committee's perception as citizens, but I can repeat  
that as a lawyer that is a problem I have in dealing  
with such clients and complaints.

It is our view that if the province takes no action to  
ensure the fair resolution of such matters, we believe  
that relations between the community and police will  
deteriorate steadily.

The committee believes the creation of a public board  
to review police conduct will benefit all concerned  
parties. The committee hopes that the police morale  
will improve when public confidence in law enforcement  
agencies is bolstered by the operation of a citizens'  
review committee which insures just resolution of  
complaints against the police who submit that the  
individual officer as well will benefit from a procedure  
which enables him to determine his rights, the  
procedures to be followed, the nature of the case  
against him and the consequences of an adverse  
finding.

We believe that random or uneven discipline levied  
by superior officers and perhaps based upon complaints  
received or investigated in private should cease as a  
result of the creation of this Act. We perceive that as  
a good thing.

As well the police force will be relieved of the  
demoralizing effect of uncertain or indeterminate  
disciplinary measures.

In making a submission on behalf of MARL to the  
Law Amendments Committee we note that the  
preliminary discussions on this bill have been going on  
for over two years and that we received the first version  
of draft legislation from Gil Goodman as he was  
Assistant Deputy Attorney-General in March of 1981  
- I believe he still is - we received this from Mr. Mercier's  
office although I believe in his remarks last night, Mr.  
Mercier indicated he never approved of the draft  
legislation, he did send to us draft legislation. I guess  
it never received Cabinet agreement but in any case  
we received that back in March of 1981.

While we are very keen to see this bill enacted into  
law, we commend the fact that the Attorney-General's  
Department has had considerable advance discussion  
about the legislation with all interested parties in the  
community going back two years. We trust that these

discussions will now come to a successful conclusion with the adoption of this bill following these hearings. Before this is done, we hope that the fullest consideration will be given to the further recommendations that we make this morning.

Before getting onto specific recommendations, I would like to reply to some of the comments made last night by people addressing your committee, Mr. Chairman. We believe that there is a demonstrable need for this legislation. We have seen numerous articles in the newspapers about complaints about the police conduct in the last few years and we have received numerous complaints from citizens, both in Winnipeg and in Brandon where we have I understand 30 to 40 active members. These complaints, I should note, are not only about the conduct of the police vis-a-vis their duties, but also about the conduct of the police respecting the reception of those complaints.

Perhaps I need not remind you, Mr. Chairman, but it is a criminal offence to cause an investigation to be entered into by a police officer by the filing of false information. It's an offence known as public mischief. What has been stated several times before this committee is that the police can carry on these investigations themselves. It has been our experience that several times the person who making the complaint has been told to this effect: "Do you realize if we investigate your complaint and it proves to be false, you can be charged with public mischief?"

There's nowhere I submit in this act, and thankfully so, that a person can be charged with a criminal offence for making a false report. That doesn't mean that the police are totally unprotected. If they're slandered, they've got the civil courts to proceed in. It would also appear that frivolous and vexatious complaints will be dealt with summarily, according to this bill, and we think there has been one good recommendation made, that the Commissioner be given the power to dismiss a patently obvious, frivolous and vexatious complaint without investigation and we would recommend that amendment.

However it has been our experience that people are confronted with this veiled threat, that if they are mistaken, that if they get the dates wrong or something to that effect, they might be charged with a criminal offence and that is our chief complaint, or one of our chief complaints about the present system, the police investigating themselves have the power to turn around and sort of almost threaten back and say, if you're wrong, this could lead to a criminal charge.

Secondly, with respect to the argument that there is a conflict between the rights under a collective agreement that police officers now have, and the legislation, we believe that those conflicts are well dealt with by the legislation as it presently stands. We think it's a red herring; we think that the bill deals with this quite well and, as I say, we believe that the bill deals with this issue well and that it's a red herring.

You heard last night, the legal representative for the Police Association. That's the police union, as I understand it, and we do not endorse those views. We do not see any reason whatsoever - what they're asking for is that a police officer, when he appears at a hearing under this legislation, has two lawyers, or at least the option of having two lawyers - he can have a lawyer from the Police Association if the amendment is agreed

to and he can have his own lawyer. We don't see that as being necessary.

It was also brought out by Mr. Mercier in his questioning of Mr. McGregor, that under the collective agreement the Police Association has with the City of Winnipeg, that legal representation is often provided. We submit that the best way to deal with that issue is for the Police Association to bargain with the City of Winnipeg, to have a guarantee as to legal representation with respect to hearings under this bill. So, we don't feel that should concern the Legislature. Let the police bargain for legal representation before this committee through the collective agreement process. I don't think this bill needs to guarantee them a lawyer.

Now, I'd like to enter into a few specific comments with respect to the bill. Although there's nothing specifically in the bill, the discussion paper distributed by the Attorney-General referred to the fact that the public through this bill should not be entitled to complain about the speed or thoroughness of criminal investigations. I don't see that in the bill myself, but it is our view that they should be able to complain about the speed and thoroughness of criminal investigations. A complaint that a burglar hasn't been found or a thief or something to that effect could be dismissed as being frivolous or vexatious, but when the complainant has some persuasive evidence that the whole investigation was botched by officers not doing their duty properly, I think the bill's features should be utilized.

Although I can see nothing in the bill, it's our view that the bill should not be drafted or contain any provisions which forbid a citizen from complaining about the speed or thoroughness of criminal investigations.

We commend the Attorney-General's Department for finally getting the police involved in spousal disputes. We think that if the Attorney-General's Department had not acted as it has done in the recent past with respect to this area of law, we think that this bill should be broad enough to cover those kind of complaints. I've been practicing family law now for five years, and I welcome the change. It's wonderful to tell a client now that the police will assist in a complaint. A few years ago, I had to say I'll have to go to court and get a restraining order. The procedure now relieves me of a lot of stress and tension and work.

I would think that if things continued the way they were, I would advise clients that they should complain to the Law Enforcement Review Committee, because I feel when police officers attend on a complaint and don't lay charges when there's clear evidence that charges should be laid, they have breached their duties to the citizens. I think that this is something, an example that has been recently remedied, but nevertheless an example the bill should be open to those types of complaints.

I refer now to Section 5(3.1) wherein a recent amendment provides for the appointment of police officers to the board. We believe that this is wrong. We believe that it ignores the purpose for which the legislation was drafted. We feel that the board should be composed of citizens and that the reason The Law Enforcement Act was made necessary was because of the wide-held public belief that the police could not police themselves, so we don't think police then should be put in judgment of themselves by placing them on

the board. So we believe that Section 5(3.1) should be changed.

I believe last night, Mr. Chairman, a brief dated April of 1982 was circulated among the honourable members. This brief I should say was based on a draft bill that has subsequently been revised so that it is completely unrecognizable.

Our brief suggested that bill should be thrown out and completely revised and this brief is basically what we would like to see in a redrafted Law Enforcement Review Act. Now this brief was presented to the Attorney-General before the present LERA Bill was drafted, but nevertheless it contains our views with respect to the appointment of police officers to the commission. It states on Page 2, the committee believes that the participants on the board lean far too heavily in favour of so-called experts in the law enforcement field, i.e. lawyers and police - in a way that implies that citizens from other walks of life would tend to be unable to hold fair hearings. We emphatically disagree.

We do not demand the exclusion of ex-police or lawyers, but we recommend that the majority of any board hearing a complaint be participating citizens from other walks of life. The committee appreciates the necessary inclusion of some representatives from the law enforcement field. They have a specific interest in the disciplinary proceedings. To meet this need, we recommend that the Attorney-General requests that all police associations in Manitoba jointly recommend three persons for the board who are not peace officers and not more than one of whom would sit at any one hearing.

So we present basically a compromise position to Bill 5(3.1). We appreciate that the police have an interest in the process. We would ask that they be requested through their associations to submit the names of three parties they believe have their interests in mind and those persons not be police officers.

Although I believe the bill makes it clear in Sections 8.1 and 34.2 that a police officer is not entitled to make a complaint under the legislation. We believe that's wrong. We believe that police officers as citizens should be entitled to lodge complaints and anywhere in the bill where this right is denied should be deleted.

We feel that there are instances when police officers will observe off and on duty, their fellow police officers committing disciplinary offences which go beyond the parameters of the collective agreement, which may even go close to criminal acts, and we feel that such complaints should be received by the Commissioner.

Another amendment which we would appreciate would be that the public should be advised that a complaint not made in writing will not receive any consideration. The bill now provides that the complaints must be made in writing. We want the bill to say that people monitoring the phones and setting up appointments, tell the public when they call if a complaint isn't received in writing, no consideration will be given to that complaint. This will weed out frivolous and vexatious complaints, and as well, we feel that the Commissioner's office should not be used as a placebo. We feel that it should be used to investigate complaints. Officers' times should not be wasted talking to people on phones or even interviewing them if the reason for that interview is not to file a formal complaint.

We look upon the commission's job as very important and not to be wasted just talking about a situation and

never getting to the final point that if you don't file a written complaint, we're not going to take this any farther. We would like the bill amended to include a duty on the officer or the Commissioner to advise people that only written complaints will be investigated.

We believe that the Commissioner as well should have the absolutely unfettered discretion to extend time for the filing of a complaint. The reason we believe that is because we can envisage numerous situations where a complainant would not want to come forward immediately. Specifically, many of these complaints arise while a person is being arrested and charged. There's no doubt about that. What if that person can't get bail and is in the Public Safety Building and the Remand Centre awaiting preliminary hearing, awaiting trial for months, and he has a legitimate complaint which he perhaps has fully related to his lawyer in confidence, that man may fear the consequences of publicly raising that complaint until he is through the judicial system and perhaps even through the penal system. He might want to wait until he's out of jail, and his reasons for doing so may be legitimate and valid, and for that reason we think that this six month limitation on the use of the Commissioner's discretion should be lifted.

We still believe that the legislation should say that the Commissioner needs to consider whether there was a reasonable opportunity to file the complaint, but the six-month limit, we can envisage breaches of that. This is a point that Mr. Pollack made with me last night. He feels that the 30-day limit is unrealistic from a trial lawyer's point of view, because in a lot of cases that lawyer is handling criminal charges. He has priorities, and because the 30 days is a short time, he's dealing with other aspects of that client's case, he felt the 30 days was far too short for a lawyer to properly deal with his client's complaints.

As well, you may recall the Frampton case, where the complaint of a Mr. Frampton about police treatment was referred to, I believe, the Manitoba Police Commission many months after the six-month period. It was as a result of hearing testimony at Mr. Frampton's trial, I believe it was Judge Hewak sitting in the County Court that referred the matter to the Manitoba Police Commission well beyond the 30-day limit, well beyond the six-month limit. Mr. Pollock advised me that this happens on occasion frequently, that a judge will hear evidence, throw out a statement, throw out evidence because of what he considers a breach of police discipline and refer it to the Manitoba Police Commission. If such a revelation is made at a trial and there's a 30-day limit, those kind of complaints, which a judge considers should be referred to the Commission, would be out the window.

So, we believe that that six-month limitation is unnecessary. We believe that Section 8.2(2), which indicates that the complainant must give his consent within a specified time limit, is unnecessary and may do an injustice to the complainant because he might not be around to give his consent a second time. It could be for health reasons, it could be simply that he's on holidays, 14 days is two weeks, and just a tangential comment, I believe that every single limitation, every deadline, the interpretation of this bill will be subject to intense judicial review in the next three or four years if it's passed. So, 14 days, I submit, would be strictly interpreted - this is a quasi-penal type of

legislation and I think if a complainant did not give his consent within 14 days, as indicated he need do so in Section 8.2, the whole complaint would be out the window.

**HON. R. PENNER:** 14 days after receiving the notification.

**MR. H. PETERS:** Very well, perhaps I've misunderstood slightly the intention of the amendment, but it's still a deadline which we don't see the need for, except in the rare case where the complaint is made by a third party, and then the person who's the subject matter or the individual directly involved in the complaint, then I can see a need to seek his consent.

Well, if that's the intention of the amendment, I'm afraid I still don't see it as being that strictly construed. Hopefully, the courts will see it the way Mr. Attorney-General sees it now.

The next comment that we strongly endorse is that adequate funding be provided to the commission so that it is able to train investigators and never have to depend upon former police officers to staff the commission. Therefore, Section 11(5) should be broadened to prohibit the employment of former Manitoba police officers. I believe the legislation now says that ex-police officers can be hired by the commission. We do not agree with that, we think the bonds of years of previous employment extend perhaps too far and we feel the best way to alleviate that perceived problem is to simply prohibit the hiring of ex-police officers from Manitoba. That doesn't prevent the hiring of ex-police officers from other jurisdictions, and it's frequently the case that such ex-police officers come to Canada seeking similar employment, and I submit that this is a niche they could easily fill. We perceive a great danger in hiring ex-police officers. What's to prevent an ex-police officer from serving on the commission for a few years and then going back to his former employment?

We believe that Section 14 should indicate that informal resolutions of a complaint must meet with the concurrence of, not only, both parties, but of the Commissioner, and if there is no concurrence by the Commissioner of the informal resolution, that he should be free to proceed with the hearing when the interests of the public are at stake.

For example, a complainant may forgive a trigger-happy police officer who shoots up his house, but the public has the right to see that that officer is disciplined. For example, I can see if I had a teenage son who is chased by the police into my home and the police took a pot shot at him, I would perhaps initially register a complaint against the police officer, but then upon reflection, after learning that my son maybe had been involved in a serious offence, change my mind and say the police officer had the right to shoot at my son. That's not what's at issue. I shouldn't just be entitled to say, all is fair and square with me; the public has a legitimate concern. They've got a police officer who might be shooting unnecessarily at other members of the public and so any informal resolution we submit, not only must meet with the concurrence of the parties but with the concurrence of the Commissioner, who will uphold and stand for the public good at large and

not just the simple resolution of a complaint between a police officer and a citizen.

It is our view that Section 17(1) is too broad. That provides that the accused police officer may have statements retained by the Commissioner. We believe that it's too broad in that it might unnecessarily involve innocent witnesses who happen to be around at the time the alleged complaint is made in pre-hearing harrassment if their names and statements are released.

You must remember that the badge and authority, the uniform of a police officer is a powerful symbol, one that can make people do all sorts of things. I have heard complaints from people who have lodged complaints against the police that suddenly a police car shows up in front of their house for days on end. That in itself would not amount to harrassment if it wasn't a police car, but I tell you, how would you feel just to have a police car sit in front of your yard for a couple of days and know that you just filed a complaint, or know that you just witnessed a case where a citizen and a police officer had a violent confrontation? I think you'd be intimidated, and yet at law I don't think you have a remedy to prevent police officers from having their lunch in front of your house.

That's why, I submit, that section 17(1) is far too broad. As well, it does not accord with the practice in criminal or civil proceedings as they are now. In civil and criminal proceedings you get particulars, you get statements from the complainant. Or rather, in civil proceedings, you get to examine the other side. You don't get the names of his witnesses; you don't get to examine them for discovery. This is a civil proceeding. Why should your rights suddenly be broadened to include every potential witness?

We also see the danger of the - 17(1) says that. The respondent is entitled to examine any relevant documents or statements in the possession or under the control of the Commissioner and I would say that a statement of a witness is a relevant document.

**HON. R. PENNER:** I'm sorry, Mr. Peters, we're reading this section as if it stated you had the right to examine the witnesses. That's what you were saying.

**MR. H. PETERS:** No, I'm saying in civil proceedings you don't have that right and if you have the right to examine the statements, I'd submit, you have close to that right to examine. The problem is, we feel, that their names should be kept confidential. They're innocent bystanders and we perceive the danger of pre-hearing harassment as being great and, as I've described harassment, it could be of a minimal nature, simply the appearance of a police car in front of your house.

In any case, if this is the case, if the accused police officer can establish that the Commissioner had knowledge or had a statement in his possession and did not pass it on, then would that mean that evidence produced by a surprise witness would not be admissible? And we all know the value of a surprise witness.

If the Commissioner presents, in rebuttal evidence, that surprise witness, I think the police officer would be entitled to say, hold on a sec, we didn't get a copy of this guy's statement; he shouldn't be entitled to

testify. I think that would unnecessarily hamper the proper conduct of a case, a trial, because rebuttal evidence would pretty well be ruled out completely. The surprise witness who comes out of the woodwork would probably not be able to testify. Those are the dangers I foresee and, as I say, it's an expansion of rights that a person in Civil Court has now and I don't see, these being civil proceedings, the need for any expansion of those rights.

Although every recommendation I'm making to this committee would probably amount to icing on the cake, because we really like this legislation; we consider it the cake. If you accept our suggestions, we'll have icing. The next suggestion I would be urging your committee to make, Mr. Chairman, I think goes to the flavour of the cake. It's making the cake without sugar. We strongly recommend that the standard of proof in these proceedings be the balance of probabilities and not beyond a reasonable doubt, as stated in Section 25(2). We believe these are civil proceedings, the standard civil test of whether a plaintiff has established his case, should be the usual civil standard, the balance of probabilities.

We see this danger if they are not simply the standard balance of probabilities. We see, in cases where there is little or no corroboration, then the mere fact that the accused is a police officer, may make that standard impossible to meet. After all, it's the citizen's word against a police officer's when there's no corroboration. As well, such standard would require the complainant to act as a professional witness would. The police are trained to be professional witnesses. They remember times, places, dates, names, weather conditions, etc. We're dealing with citizens who are probably reluctant to complain. They're not particularly pleased about being there. If they're expected to live up to the standards of testimony that the police officers have, I'd say the police officers will win in practically all except the most outrageous cases, Mr. Chairman, and that's when there's corroboration. Let's leave the standard for these civil proceedings at their usual standard of a balance of probabilities.

Our next suggestion is in respect with the clean-slate amendment. That's the service record, Section 30(3). We believe that to be a terrible idea. I can only repeat the comments made by the City Solicitor's representative last night. It would give officers with bad departmental records that prove they are poor police officers, the same footing before the commission as police officers with excellent records. The commission may not perceive the demoralizing effect this would have on the police departments, but I'm sure fellow police officers would be demoralized.

We don't believe that the rationale that this clean-slate amendment is necessary to prevent the retroactive application of this act is acceptable. We don't accept it for one minute. In addition, the proposed amendment would be to withhold relevant information from the Commissioner and the board which would result in inappropriate punishment recommendations by the Commissioner and inappropriate punishment by the board order. This is also, we submit, a denial of the competence of the board and the Commissioner to treat the police officer in question fairly, and we ask this question, would the clean-slate amendment mean that merit awards, commendations, etc., are to be

ignored if awarded prior to the commencement of the act?

If their record is clean, that means they shouldn't be able to refer to all the commendations and awards they've received; but our chief concern is that it will demoralize police officers who know that fellow police officers who are being punished should be punished more severely, but aren't. It will demoralize the excellent police officer who says, why am I getting treated exactly the same as this other guy who should have been out of the force, and I don't think for a minute that there aren't any bad apples; I think there are bad apples and every police officer knows there are bad apples.

Our next point is that we are of the view that an admonition should form part of a police service record and not be eliminated as proposed in Section 30(4), just as the record of an absolute discharge is relevant for sentencing a person when convicted of a subsequent offence, admonitions are of the same importance. The judge deserves to know about a person getting a break by way of an absolute discharge; the commission and the board deserve to know that the police officer got a break on a previous occasion. Once again we would submit that this amendment is a denial, an attempt to withhold relevant information and a denial of the competence of the board or Commissioner to properly consider a police officer's record and sentence him or her accordingly.

I now refer to the wording of Section 29(1) which we believe is ambiguous and unnecessary. That's the section that applies for appeals, to review jurisdiction or points of law. We believe that any appeals should not be permitted. As a lawyer, I can confidently assure you that this would not exclude judicial review which would remedy jurisdictional defects. The judiciary has consistently interpreted no-appeal clauses as meaning they can still review the court's jurisdiction or the board's jurisdiction to make an order.

We feel that the wording as it is now, is ambiguous and unnecessary, and that simply the section should read "no appeal from a decision of the Commissioner or Board lays to a court." We think that will still give the affected parties their rights to have judicial review but, most importantly of all, it will prevent the courts from usurping the role of the Board by substituting upper class - and most lawyers and judges are upper class - legalistic and judges depend upon police officers' evidence every day, and I don't think for a minute that you would find a judge who could say he can find a police officer to be lying. I don't think you'll find a judge who would say it's harder for him to judge that person's credibility.

Judges, on the strength of police officer testimony, put people in jail every day. They see them every day and they depend upon their evidence as being reliable every day. If the courts have the right to review the facts I would think that would mean that they would start retrying the cases. So to simply restrict the courts to a proper role, in other words, reviewing jurisdiction, I think the legislation should be amended to say that no appeal lies from a decision of the Board or Commissioner. While this is not included in the act, we feel that there should be a provision to provide that the offices of the commission should be located somewhere else apart from any police department offices.

Once again, it's a problem of complaining to the police about their conduct and if the offices of this commission are located at the Public Safety Building in Winnipeg, or a similar place in Brandon, we perceive that there will be a problem. We feel that the legislation should simply state that the commission's offices shall be elsewhere and, to alleviate the concerns of our friends from Brandon, I think the legislation perhaps should indicate that the Commissioner has the authority and power to open up branch offices. I'm sure he has that now, but putting it in the legislation would perhaps alleviate their concerns.

As well, another point that isn't covered by the legislation, we believe that the legislation should provide for the appointment of representatives from ethnic minorities in Manitoba. I believe, Mr. Chairman, those cover my points that we wish to make on behalf of MARL.

In conclusion, I'd like to thank the government and the Attorney-General's Department, in particular, for its co-operation with our association in providing us with draft copies of the bill, discussion papers on the bill, and giving us this opportunity to speak. We urge that this committee recommend the speedy enactment of this bill with, hopefully, some of our suggestions taken into account.

Thank you.

**MR. CHAIRMAN:** Does a member of the committee wish to direct questions to Mr. Peters?

The Attorney-General.

**HON. R. PENNER:** Just a few questions, Mr. Peters, because of the time. Let me commend you and MARL for the extensive input you've had to this date and the suggestions you've made in your submission this morning.

With respect to the appointment of police officers to the Board itself, can you see a difference between there being police officers on the Board in their capacity, which they enjoy with everybody else as citizens, and where there is a potential conflict of interest not being on a particular hearing panel?

**MR. H. PETERS:** Well I think the way of addressing that situation would be to, instead of having the commission go to court to exclude a certain Board member from a hearing if he didn't step down voluntarily, would be the legislative method. The problem with this legislation - and I'm sure, Mr. Attorney-General, you appreciate it - this is going to be contested in the courts vigorously by all parties concerned, but particularly by the police. I understand that is the Toronto experience.

When we talked to, I believe, the legal counsel for the commission in Toronto, the legislation had been in effect for over a year and there hadn't been one hearing because of judicial manoeuvring to prevent the Board from having hearings. I foresee a simple solution to the problem of a conflict of interest being a legislative prohibition which would prevent the opportunity of such a conflict.

**HON. R. PENNER:** Again, with respect to police officer complaints, do you not make a distinction between the

complaint which a police officer may have as a citizen - and which clearly to have the same right as any other citizen - and the complaint that a police officer might have as an employee which would normally be handled through the collective bargaining process?

**MR. H. PETERS:** Well, it appears to me that the legislation has this intent; that's what it appears to me to be, it may not be the court's interpretation. The Legislature can make its intent completely clear by simply stating a police officer may complain about non-disciplinary matters. If there's some doubt or ambiguity, I would prefer that the legislation includes a few more sections to clear up that ambiguity rather than the courts usurp the legislative role in the next few years by interpreting it and holding up the effect of this act. That's what we want to see, we want to see this act working.

**HON. R. PENNER:** With respect to time extensions, both you and Ms. Elliot last night used the same example, and it appears to be the main, if not the only, concern with respect to time extension. What would you say about a time extension provision which allowed a citizen who has a complaint the right not to - I'm putting this awkwardly, but you'll understand - file it until after charges pending are disposed of?

**MR. H. PETERS:** That's not a suggestion of mine.

**HON. R. PENNER:** I'm just asking for your comment.

**MR. H. PETERS:** If disposed of means after the person has served his sentence . . .

**A MEMBER:** It might be 15 years.

**HON. H. PETERS:** It might be 15 years.

**HON. R. PENNER:** Think it's still fresh in the memory.

**MR. H. PETERS:** I think that we can entrust the exercise of this discretion to a prominent Manitoba citizen who uses good judgment and . . .

**HON. R. PENNER:** Who's that?

**A MEMBER:** The Attorney-General.

**HON. R. PENNER:** Oh, in that case now you're talking business.

**MR. H. PETERS:** I might remind the committee, if it's not already aware, that when this bill was in draft form from the previous government, the limitation was six months and then it was redrafted to three. It was presented as Bill 2. I believe it went from three months to 30 days - 30 days I think is a reasonable limit - if the Commissioner has the discretion to extend it. I don't see the six-month figure as being magic.

**HON. R. PENNER:** Of course there is presently the power to extend the time.

**MR. H. PETERS:** Only up to six months as I read the bill.



**HON. R. PENNER:** I see. You want an unlimited extension of power?

**MR. H. PETERS:** Yes.

**HON. R. PENNER:** My next question; you asked that 11(5), I think, be broadened to prohibit the employment of ex-police officers. Surely, Mr. Peters that would be discriminatory, contrary to law and contrary to the Charter? You're not really suggesting that we could legislate a provision that an ex-police officer could not serve in a capacity here?

**MR. H. PETERS:** Well, you may be right and I haven't given it much thought from a constitutional point of view. I'm not suggesting that all ex-police officers should be excluded. I would think that a competent police officer from another jurisdiction could well fill the role because that person would have the familiarity with police procedures, investigative experience, etc.

However, I feel that the danger of an ex-police officer from Manitoba being asked to sit in judgment on fellow police officers, it's asking too much of a person. I don't believe that if such a person was hired, he could be expected to act completely impartially. As well, I feel that the commission should be well enough funded so that expertise could be built up within the commission and soon the argument that we need police officers or ex-police officers wouldn't be necessary because the commission's own investigators would have the talent, the knowledge and able to train new investigators.

**HON. R. PENNER:** What's your view - this is my final question, Mr. Peters - about lawyers sitting in judgment on lawyers as they do through the Law Society?

**MR. H. PETERS:** Well, I must admit that I have a frank and honest - I feel uncomfortable - and if I was speaking on The Law Society Act or The Medical Act, I would be recommending to this committee that amendments be made to include more citizens on their boards because I feel that in my profession as a lawyer, there is a need. I often get complaints from people saying that lawyers are covering up, the doctors are covering up. They're assisting each other, it's a buddy buddy system, old boys system. Is that a sufficient reply?

**HON. R. PENNER:** Yes, sure. Thanks Mr. Peters. I would have expected none other from you. Thank you very much.

**MR. CHAIRMAN:** Any other member of the committee who wishes to direct some questions? Hearing none, the Chair thanks Mr. Peters.

The Chair wishes to invite Mr. Paul Johnston, Winnipeg Police Senior Officers' Association.

**MR. P. JOHNSTON:** Mr. Chairman, members, I thank you for having me make a presentation on this very important issue. Mr. Myers was to appear with me, however he's presently on holidays and has left it to me to make a comment.

I represent the Senior Officers' Association of the Winnipeg Police Department and in that capacity, in

dealing with Law Enforcement Review I wear two hats. I wear that of the head of a collective bargaining unit. I also wear the hat of an administrator of the police department.

I've had a scattered career in the police department throughout all divisions with the exception of vice. I had the opportunity to serve as the executive assistant to the former Chief of Police, Norm Stewart, for 2-1/2 years and during that time I was seized with the responsibility of discipline within the Winnipeg Police Department.

Back in 1978 when the Law Enforcement Review Board concept was brought forward by the Manitoba Police Commission, I was very upset at the whole concept. I was certainly upset at the content. It started with one section that said, "police officers will at all times obey the law." I took great exception to that, that was the negative kick-off to the draft proposal. However, in holding dialogue on that particular proposal, it seemed that there was a perception somewhere - nobody has identified it to me yet - but somewhere out there is a perception that we as a department, as a police community, cannot police ourselves.

I haven't seen this demonstrated; it hasn't been demonstrated to me in my deliberations of approximately five years. However, taking into consideration that maybe this obscure consensus in the community was out there, maybe we should just have a look at that and I took an exceptional step at that time. Much to the astonishment of the former Chief of the Winnipeg Department, I invited the Manitoba Police Commission down to my office and I said, there are my files. Pick any number you want and I will show you what we've done. I had two members of the commission with me for an entire day reviewing the processes that we went through to ensure citizen complaints were adequately addressed.

I believe, and I'm very very certain of this, that they left my office in the Public Safety Building having reviewed the files with a far different impression than they had started out with when they drafted the first bill, saying police officers will at all times obey the law.

As a result of that dialogue there were further meetings. The Senior Officers' Association has taken the position that although we don't perceive this need, we are certainly willing, ready and quite capable of assisting in bringing into being an act that's workable and that's effective. Now to that end we've put a great deal of thought and effort into our submissions over a number of years and into our contacts with those persons who were involved.

On behalf of the senior officers, the administrators of the Winnipeg Police Department, I would thank the Minister and I would thank the members for favourably considering a number of our submissions and bringing changes into the legislation which possibly will make it workable and make it workable from an administrative prospective within the department.

I'll try and be reasonably brief in my presentation but I feel obliged that I should make comments on certain sections within the act. I think they bear some consideration and I think we should look very very closely at the drafting of this act because I have worked with it over a number of years through many many changes. I still read it and sometimes wonder what it is we're trying to do. It's not good terminology and we

should be very very specific when we produce this act, that everybody in the community, in the police community, and within the Law Enforcement Review Board understands what it is we are trying to accomplish and what we are duty bound to accomplish.

I have a real concern in the exclusion of associations from this particular process. We have an interest in the police community, I'm concerned that complainants have access to legal aid, government-appointed counsel to protect their interest. There are no penalties for malicious complaints. I think you heard last evening of a man, a police officer, going hat in hand seeking donations to pay his mortgage. I can go one further and say that he lost his house as a result of litigation, which was ultimately he was found not guilty of an offence, but he did lose his house.

I'm very very shocked that this government, as I understand it, is committed to civil liberties and to the trade union movement and yet they render the associations and the collective agreements ineffective.

The comment was made this morning on 17(1) about disclosure of documents and the possible harassment, and cruiser cars sitting in front of a house for two days. I would welcome anyone to show me any of my men who have time to sit two days in front of Mr. Peters' house. I know how much time they have, we are running right now 30 percent patrol time in District 6. Now, if he can show me police officers who have the time, while on duty, to park a black and white in an intimidation, then I would be pleased to investigate that because they're neglecting their duty and I'm certain that the present incumbent executive would be pleased.

Just dealing with . . .

**HON. R. PENNER:** That was just for lunch, Paul.

**MR. P. JOHNSTON:** No, for two days, and also it was altered that they ate their lunch there too, but certainly I would suggest that, again, if he can show me where it happened I would gladly investigate.

I'd like to deal with some of the sections and just very briefly. 5(3), the appointment of two police officers or former police officers to the board, and Section 5(4) where a quorum is three persons, one a presiding officer under 5.3, but there's no requirement that a police officer sit on any board. You could have two dummies appointed to this board who never appeared at anything. What's the point of having them?

On Section 7(5), I think that if the complainant hasn't complained within the 30 days but comes along in five months to lodge a complaint, I think that the respondent should be notified, and I think there should be an opportunity for some dialogue on the question of the complainant's reasonable opportunity to complain within the 30-day time frame.

I'm concerned about 8(2), where a person affected by the alleged disciplinary default may direct within 14 days that the Commissioner take no action. This is all well and good; this deals with the third party complaint, where someone complains that a police officer did something to someone else. That's fine. The man receives a notification. What if he chucks it? What if there is no response? There's no provision in the act for where do we go from there. Silence, I think, should cancel the complaint if notification has been properly made.

In 11(2), I'm concerned about where copies of documents . . .

**HON. R. PENNER:** Paul, make that 8(2) submission again, I didn't quite get it.

**MR. P. JOHNSTON:** Well, I'm concerned that on a third party complaint the Commissioner will notify the person affected by the alleged disciplinary default. He must respond or direct within writing within 14 days that the Commissioner take no action. But, what if he doesn't bother? What does the Commissioner do then?

Did I make myself clear, sir?

**MR. DEPUTY CHAIRMAN, Hon. J. Storie:** The Honourable Attorney-General.

**HON. R. PENNER:** I think I've discovered what the difficulty is. You don't appear to have the fully up-to-date set of amendments where that matter has been addressed. There must be a written consent and if there isn't a written consent, then it's a dead issue.

**MR. P. JOHNSTON:** Okay, with all the amendments that have come through, sir, I'm quite likely not up-to-date.

Section 11(2), I'm concerned about the forwarding of documents, statements and materials relevant to be forwarded forthwith. In my view, many people complain as a result of arrest, as a result of involvement with the police because of criminal charges against them, and here that materials relevant, really the entire crime report is relevant, and if you skip down to 23(7), the complainant under the Law Enforcement Review Board can have conduct of his case. There's only one way he can conduct his case is if the Commissioner provides him the material on which to conduct it.

Premature disclosure of the entire police report under these circumstances could turn out to be a great fishing expedition for the defence counsel in a criminal charge against a complainant, and if a man is charged with a violent robbery, is arrested and is before the courts, as you are all well aware, it can be a long long time before that's processed through the court system. In the meantime you have every opportunity to look at everything and, again, to go to Mr. Peters' concern, the complainant can find out who all the witnesses are and he can park on their front street for three days and have lunch. I don't think it's proper. Police reports are the property of the Winnipeg Police Department; they are there for the direction of the Crown Attorneys; they are there for the benefits of the court. I don't think we should be forced to send an entire report to a Commissioner to deal with a citizen complaint. I think it has to be edited somewhere, because in the broad terms in which it's put forward, all materials relevant, certainly an entire police report is probably relevant to why the person was arrested or in contact with our department.

In 11(2) - I'm concerned about where there's the possibility of a 14-day extension to complete a criminal investigation. Criminal investigation was very very simple when I started out in the criminal investigation field, and that's many many years ago.

Today, criminal investigation is very very complex, extremely complex. Lawyers ask for more and more;

the courts ask for more and more. They're far more comprehensive, far more detailed, and some investigations take months to complete, and premature disclosure of the material in that report could very well be fatal to a very important investigation which might even concern criminal charges against members of our department. I think 14 days is ludicrous. It takes longer than that to investigate an NSF cheque nowadays. Just try and develop the information to support criminal charges in the community today.

Section 11(5) deals with the fact that a member or a former member cannot investigate a complaint within the force. I think we're doing a disservice to this individual, this good citizen who will be appointed Commissioner. If we have enough faith to appoint that man Commissioner, I think he should be able to judge who should have conduct of the investigation. I think you're starting out on a negative point. You're saying to this man, you are the Commissioner, you will have conduct of all these matters, and then you're saying to him, but wait a minute, you've got to have all kinds of restraints on you as to who you can use and who you think is any good to do the job for you.

Section 14(3) - I think all complaints should be recorded. This is probably the only thing that Mr. Peters and I can agree on. All complaints should be recorded whether they're informally resolved or whatever. The reason for that is that you can develop a pattern of behaviour. If a man resolves something informally three times in a row and then is subject to an admonition and none of it is ever recorded, how do you address the problem before it gets too big?

I think we have to look very closely at that, very closely indeed. Police officers are human beings. Police officers can be marvellous individuals and go on for a long period of time, and like anybody else - like lawyers, like doctors, anybody, truckdrivers - they can get themselves into difficulties. It shows up in their contacts with other members of the force, with members of the public. A member of the public might complain that he's a surly s.o.b., he didn't treat me right at all. So, you sweep that under the rug and don't record it. The next time we have a complaint that he swore at somebody and nobody reports it, and before you know it he loses his temper and beats somebody up. Now, where's your background? The criticism would be why didn't the Winnipeg Police Force do something about that man? I think that it has to be officially recorded.

Section 15(1) - Again, I assume this is a drafting problem, but "Where the respondent admits having committed a disciplinary default, the Commissioner shall recommend one or more penalties as in section 28." Who is he going to recommend it to? Does he recommend it to his secretary? Does he recommend it to the Chief, to the respondent, the complainant? Who is he going to make the recommendation to? It's just a point that left me hanging when I read it. What do we do with that?

Section 15(2) - Before there is any recommendation, the Commissioner will consult with the Chief of Police and with the service record. Now, I switch hats immediately. I don't think that the Chief and the Commissioner should get in the closet and talk about my well-being without me being there. If the Chief has something to say in regard to penalty, I think it should be said in the open in the presence of the respondent.

If we're going to have an act and, of course, people have talked about justice seen to be done. I think it has to be seen to be done from both sides. If everybody was honourable, if everybody was totally independent and totally impartial, then I don't suppose there would be any problem. I haven't got that faith in human beings. I think if we're going to have consultation, I think it has to be in the presence of he who is accused. Of course, the same thing flows in 15(3).

15(6) - Where there is some debate about the penalty and the Commissioner is to forward a report to the board, I would suggest to you that the respondent should first be consulted on that report, because the Commissioner might send a report which contains a number of facts to the board to deal with on penalty. Now, they've gone through this informal process and they've agreed to a certain set of facts, but the facts in the report might be quite different, and rather than clutter up the board with an argument at the time of board hearing where the respondent says I didn't agree to Points 7, 9, 13 and 18. I admitted a default, but I didn't agree to those facts; then you're in a bag of hammers. Far better you should have a statement of agreed facts sent forward on the question of penalty, and that would preclude anyone arguing against the merits or the facts of the case when you're only there to talk about how much time.

23(2) - "No board member who is or has been a member of the department involved shall sit on a hearing." To me, that shows a perception that policemen really aren't honourable and they are biased as hell. All right, I'll buy into that; we're human beings. What about the board members? Let's talk about the board members if we're going to do without bias. No presiding officer or no member who has ever been prosecuted so much as a speeding offence by the department involved should sit in judgment on a case. He might be judging the very constable that clocked him at 83 miles an hour. I'm sure he'd have a bias. Personally, I don't think it's necessary. I think that within the police profession, there are many many honourable people, and there are many people who are quite concerned about the impact of the police service on the community. Who is better qualified to sit in judgment really? We've been on Main Street. I know where the garbage is. You were invited last night by the Chief of Police to come out and see some of it, maybe get your hands in it.

The other morning I looked at my 24-hour summary which appears on my desk every morning in my office; four-and-a-half pages of street violence in the City of Winnipeg in a 24-hour period. There was nothing else on that summary. They're summaries that would take up possible and inch and a quarter per incident. I think police officers, particularly police officers who have been through the mill, grown with the system, and have had enough foresight to look at the various areas outside of the usual tunnel vision that appears with many of them, I think they're quite qualified to sit on a board whether it be a constable from Pukatawagan or a 25-year veteran from the City of Winnipeg Police Department. I could sit on judgment on it. I have sat in judgment.

Section 23(1), I think that should go just a little further. I think that should be extended to read that, ". . . until the complaint is determined to have been proved beyond a reasonable doubt . . ." Why publish the

name of a police officer who's acquitted of a default?" You're defeating the whole purpose of the ban on publication because police officers are public figures. They deal with the community every day of the week. If the media reports they've been acquitted, there are certain fringes in society who will sit in the local hotel and say, yeah, he was acquitted, but boy, those cops are dirty devils. That guy in particular, that guy Johnston, he's bad. The next three people he arrests know you're Johnston, they're going to take a swing at you - guaranteed - either physically or through the Law Enforcement Review Board. I don't think a man's livelihood and his professional life should be jeopardized by inappropriately publishing his name if he has been acquitted of the default. If he has been convicted, if there's substance to it, by all means give it in all its glory and all its detail.

I have some concerns in Section 27; it's very very broad. The criminal code covers a lot of those things and really if there is an alleged criminal code offence reported under the present discipline process, it always go to the senior Crown. If the Crown wouldn't proceed, why would the board proceed on an identical thing? I think it's just too broad.

Section 30(2) - with the bringing forward of this act we'll now develop two totally separate systems. We will have the internal things with the internal and the discipline committee and the Chief and the Winnipeg Police Commission and ultimately, the Manitoba Police Commission, we'll have that system in place; on the other hand we'll have the Law Enforcement Review Board. The government has made a definite effort to separate those two. There is no doubt of it as you read through the act that there is a separation between those things internal and those things external. Yet 30(2) says that service record will include internal discipline. Why would it do that? I don't know if we've got two separate systems and everybody's got a clean slate as of Day 1, why would we now be covering internal things on a service record that deals only with Law Enforcement Review Board?

30(4) - I think I've covered this, that an admonition by all means, should be recorded in a service record as well as any other resolution and, for the reasons I stated, might well show a developing pattern of behaviour which we can nip either by counselling, by internal discipline or, ultimately, if it is a recurring and developing pattern of behaviour that is adverse to the community and the police service, we can dispense with them. There are some people that should be dispensed with.

Section 32 - I don't feel that section goes far enough. If there is a stay of proceedings after a trial has commenced, my feeling is that the respondent should be considered to have stood trial. If a police officer is charged with assault causing bodily harm and his accuser, who is also the complainant under LERA, appears in court and he falls down and his witnesses fall down, and the Crown in the middle of the day or towards the end of the days says, we haven't got a case, there is nothing here, I'm going to enter a stay of proceedings; then why would the Law Enforcement Review Board pick it up later? Further to that, if the Crown has further evidence which comes forward, they have a year to continue the process. I'm a little concerned about that.

I'm concerned of course about Section 36. I touched on that in my opening remarks. The act prevails over the collective agreement. Associations, unions, if you will, are not included in any way, in any way in this Act are we included, except that we're going to have to foot the bill for our members because government won't do it - either that or watch them lose their houses.

Yet decisions made by that board are going to affect the entire police community. Now the individual police officer might have a far different interest in the hearing than the association acting for the general police community. Some of our concerns no doubt are compatible with the individual but many of them are more concerned with the general community. I don't think you would see the United Steelworkers or CUPE excluded from legislation, I really don't. But they hold a larger club than do police associations and particularly my association, which is only the senior people of the Winnipeg Department.

I thank you for my rather long-winded presentation. I planned to be very very brief but I got carried away.

**MR. CHAIRMAN, C. Santos:** Are there any members of the committee who wish to ask some questions, one or two?

The Attorney-General.

**HON. R. PENNER:** I just want to thank Inspector Johnston for his submission and to say to you as - or is it Deputy Chief?

**MR. P. JOHNSTON:** I'm in-between, Superintendent.

**HON. R. PENNER:** Superintendent, that's right. As I've said to other delegations, we're not going to attempt, nor indeed do we have time to do clause-by-clause today, and we will be looking at all submissions and see what we can bring forward by way of any further amendments.

**MR. P. JOHNSTON:** I thank you very much.

**MR. CHAIRMAN:** Thank you, Mr. Johnston.

Mr. Don Douglass, a private citizen, also representing the Winnipeg Police Commission.

**MR. D. DOUGLASS:** Mr. Chairman, honourable members, it's been a long session and I believe I'm the last person to address you in Law Amendments on this particular bill.

I have a dual submission. I have a submission primarily on behalf of the Winnipeg Police Commission. I will then add a few remarks which arise out of my own experience as counsel for that commission during the course of the last four or five years.

The Winnipeg Police Commission, it is important to acknowledge, is a separate legal entity from the City of Winnipeg. It is created pursuant to The City of Winnipeg Act, but it is a separate commission in law with a separate entitlement and a separate policy and separate statements to make with respect to the proposed legislation. It does not, *holus-bolus*, adopt the position of the City of Winnipeg or its police department.

Under the existing structure of The City of Winnipeg Act and regulations of the department, the Winnipeg

Police Commission plays a judicial function. The existing mechanism, whether it be a citizen complaint or an internal complaint, is that the complaint is made to the department, it is investigated by the internal investigation unit of the department. If that unit is satisfied that cause exists for laying a charge of a breach of the regulations of the department, that charge is laid. Something in the nature of a trial is heard before the discipline committee of the department, which involves oral evidence, examination, cross-examination of witnesses by counsel before three senior members of the Winnipeg Police Department.

That entity, the discipline committee, makes recommendations to the Chief of Police, either that the complaint be dismissed or that the member be found guilty and that a penalty be imposed. The Chief then actually makes that decision. Either the member or the citizen then has a right to appeal to the Winnipeg Police Commission. That appeal is heard by way of a review of the transcript; there are no further witnesses called before the Winnipeg Police Commission except in exceptional circumstances but, generally, no further evidence is heard and the Winnipeg Police Commission makes a decision as an appellate body. Its decision is then subject to a further appeal to the Manitoba Police Commission should either the citizen or the member so desire.

It is perceived by the Winnipeg Police Commission that the primary purpose behind the legislation is that the police department ought not to be obliged to investigate itself, and it is the reporting and investigatory mechanism that is at the heart of The Law Enforcement Review Act. There has been concern expressed by a number of the speakers before you that they don't know who to report to or that they're concerned about having to bring a report to the police department itself.

There was reference to the case involving Judge Hewak ultimately referring a matter to the Manitoba Police Commission. The Frampton inquiry came about and ultimately led to this bill. Chief Johnston, without naming that case, commented on it last night by saying, you know, no one ever complained to the Winnipeg Police Department; it's the reporting and investigative mechanisms that cause greatest concern; and the Winnipeg Police Commission fully supports this legislation as it relates to the reporting and investigative mechanisms.

The Winnipeg Police Commission is concerned, and strongly concerned, that justice not only be done, but that it be seen to be done; and to that degree, the idea, conceptually, of having a Commissioner who is responsible outside of the department for conduct of investigations is central and is good. Practically speaking, it will surely transpire that that Commissioner will work hand-in-glove in almost all instances with the internal investigation unit of the Winnipeg Police Department. It cannot be conceived otherwise.

The practical difficulties of outside people attempting to investigate what took place by members of the Winnipeg Police Department will result in the Commissioner using the existing mechanism, and that surely should be acknowledged and will almost certainly happen. The matter of continuing concern to the police commission and a matter that was touched on by Chief Johnston last night is the second stage, which is also dealt with by The Law Enforcement Review Act.

The second stage is the Law Enforcement Review Board, which is the judicial mechanism. We now have the investigation complete by the Commissioner if it is a citizen complaint, by the Internal Investigation Unit and the Discipline Committee if it's an internal matter, exclusively internal matter, and we now have the coming into play of the Law Enforcement Review Board to make its decision.

The concern of the Winnipeg Police Commission and the most significant, outstanding concern of the Winnipeg Police Commission is that on two incidents that are in all respects similar, except that in one incident the citizen complains but in the other incident he doesn't, but it does result in initiation of internal disciplinary processes.

That situation could result and would result, I suggest to you, in a situation where on exactly similar fact situations, you have the ultimate decision as to penalty, if we assume conviction, you have the ultimate decision as to penalty and the manner of disposing of the matter when it's a citizen complaint being the Law Enforcement Review Board; but when it's an internal matter, being the Manitoba Police Commission. That surely is not in the best interests of the citizens of the city; that surely is not in the best interests of the members of various municipal departments who may be faced with two completely different determinations and penalties arising out of a similar fact situation.

Furthermore, the existing procedure provides an abundance, and perhaps too much, in the way of appeal processings, but much time is given for reflection and consideration before ultimate disposition of the matter by the Manitoba Police Commission. With the Law Enforcement Review Board, there is no appeal process. The matter comes as a trial before the Law Enforcement Review Board, evidence is taken, findings of credibility are made, argument is heard and a decision is rendered, and there is no appeal; that's it, no time for reflection, no time for consideration, it's done.

The Winnipeg Police Commission expresses strong reservations at the process stopping at that point, and suggests that it should be continued with a further right of appeal to the Manitoba Police Commission. In so doing, you now have at the top of the disciplinary process on both sides of the ledger, one entity, the Manitoba Police Commission. Policy is dictated by a single entity; decisions are made by a single entity; uniformity, precedent, all of the other guiding features come from single entity, ultimately. It is good for morale, it is certain and it is predictable, and the Winnipeg Police Commission strongly suggests that the legislation be amended so as to provide for a final right of appeal from the board to the Manitoba Police Commission; and that The Provincial Police Act also be amended so as to clarify the situation to ensure that internal disciplinary processes arrive at the Manitoba Police Commission in the same fashion as the Law Enforcement Review Board process would arrive at that entity.

In closing, on behalf of the Winnipeg Police Commission, I should like to stress a couple of other points that are in the legislation and should stay in the legislation.

The Winnipeg Police Commission has laboured under most unfortunate relationships with the City of Winnipeg and the Winnipeg Police Association, which comes

about as a result of a clause in the collective agreement which provides that personnel matters shall be determined in camera. The Winnipeg Police Commission has lived under the yoke of the collective agreement for many years and most uncomfortably. It strongly represents to this committee that the provisions in the legislation which require the hearings to be held in public be maintained and if anything be strengthened. The Winnipeg Police Commission believes that it is in the best interests of all concerned that that be done, and has frankly been puzzled by the reluctance of the associations to change that particular clause, because it is the experience of the Winnipeg Police Commission that if the citizens of Winnipeg and the province could have access to the hearings, their esteem for the department would go up.

Winnipeg Police Department members suffer unbelievable abuse at the hands of certain of the citizens and that results sometimes in response, sometimes ill-advised, but most frequently understandable. The Winnipeg Police Commission is absolutely convinced that to the extent that there are bad apples, expose them and get rid of them, but that in 99.9 percent of the cases, the police department, the police members would be enhanced by public hearings, as would the concept of justice not only being done but being seen to be done, which is of fundamental concern to the commission as well.

The second point, and I'll close on this, with respect to the Winnipeg Police Commission submission, is that the matter must not be seen to be one of labour relations. It is far more important that simple conditions of employment, work-related factors, employer/employee relationships. It is discipline. You're dealing with an organization that has great power and that deals with citizens on an intimate level, and citizen complaints should not ever fall within the realm of a labour relations matter. Citizen complaints that result in the invoking of the provisions of this act should always take precedence over any provision of any collective agreement that is ever negotiated that tries in some fashion to restrict those rights and the full exposure of those complaints.

That is my submission on behalf of the Police Commission. I have a brief personal submission. I don't know if you wish to direct questions to me now, or to hear the personal submission as well.

**MR. CHAIRMAN:** We'll hear both first.

**MR. D. DOUGLASS:** I had not intended until last evening to make a personal submission, and it's probably too late in the process to do any good in any event, but I have considerable experience in dealing with police matters on the Winnipeg Police Commission and disciplinary defaults.

I have been observing the legislation and listening to the speakers and, frankly, I've been very impressed by many of the deep felt feelings of the speakers who have appeared before you. It seemed to me, in reflecting on the hearing last evening and on the submissions that were made, that one of the primary concerns of people addressing the committee is that the municipal involvement in the process is going to be stripped away. The people from Brandon, particularly, expressed the

concern that the municipal involvement of the people of Brandon was going to be stripped away by this far-reaching faraway board.

As I considered those questions, it came back to me in thinking about it, that really the function of the legislation, it seems to me, is directed at the reporting and investigative mechanisms that I referred to in my previous submission. It's not particularly directed at the judicial functions.

The judicial functions as they exist under The City of Winnipeg Act and under The Provincial Police Act dealing with municipalities have by and large been well served by the existing process. The Commissioner could perhaps, and should, have responsibility for investigation and conduct of prosecution of charges, etc., but it's a suggestion that why not have the initial hearing, although conducted by the Commissioner under the legislation, why not have that initial hearing before the local municipal council, if that is the entity in charge of a particular police force, or the Winnipeg Police Commission, or the Brandon Police Commission, and have those entities which are independent make a determination on the original level and have a right of appeal to the Manitoba Police Commission?

It's perhaps a halfway measure, but it seems to me that it gets at the heart of the greatest problem, which is that justice not only be done but be seen to be done, that police departments not be seen to be investigating themselves, and by appropriate legislation certainly the concerns of the Winnipeg Police Commission as to public hearings and matters of that nature, collective agreements, etc., could be addressed. But it would perhaps be a halfway point that would not completely strip away the tie at the municipal level and yet would affect the result that the legislation is intended to achieve.

Thank you very much for hearing me on both those points.

**MR. CHAIRMAN:** The Member for St. Norbert.

**MR. G. MERCIER:** Mr. Douglass, I take it then your position is that you are opposed to Section 11(5) of the act with respect to internal investigation. That is the section that reads that "the Commissioner shall not employ for purposes of investigation any person who is, or at the time of the occurrence complained of was, a member of the police department involved in the complaint."

**MR. D. DOUGLASS:** I don't know if the original drafts - Mr. Attorney-General, you might be of assistance to me on this - the original drafts of the legislation, if I recall correctly, contemplated that the Commissioner would conduct independent investigations if he could, but that he was to be entitled, if he wanted to, to engage the services of the internal investigation unit of a particular department such as the City of Winnipeg.

**HON. R. PENNER:** At the request of the citizens. That is, the citizen can say, I want the internal unit to investigate this.

**MR. D. DOUGLASS:** All right, if that is the way it currently stands, it would just be my submission based

on - and I guess I would put this under my personal heading - but in seeing the way the police department works from the perspective that I've had over the last number of years, I don't think it can work if the Commissioner cannot retain the services of the internal investigation unit. The Commissioner should certainly be in a position, perhaps through dealing with the Chief of Police or the executive assistant to the Chief of Police, who is currently in charge of the internal investigation unit in Winnipeg, to engage the services of the Internal Investigation Unit.

Frankly I anticipate that if it is a separate police department, and some of my reading - and my reading is not extensive but I've talked to many individuals - where they've tried completely separate investigatory mechanisms in the United States, primarily on trial periods, my understanding is that, if they work at all they only work with great difficulty, because police witnesses, to the extent that they're police witnesses, are professional witnesses. They appreciate that more criminals convict themselves by their own statements than by good police work. If you're being investigated by an internal unit there is some anticipation of extra co-operation where, if it's a completely external Royal Canadian Mounted Police, or I'm an investigator from the Law Enforcement Review Agency, "I'm sorry I have no comment", will be the response that I think would be met time and time again.

**MR. CHAIRMAN:** Mr. Storie.

**HON. J. STORIE:** Thank you, Mr. Chairman. Mr. Douglass, I think you've made a very thoughtful presentation. I was interested, particularly in your comments about the effect that the Review Board might have on public opinion with respect to police officers, and I concur with you that the majority of Manitobans have a high degree of respect and admiration for police officers. I think, quite correctly so, that indeed the vast majority do a superlative job. I think the concern that we've heard expressed by a number of representatives from police associations has been that the publicity would be mostly adverse. I don't think that's correct.

My specific question is you've commented on the issue of whether there may be a set of similar facts, one in which an internal investigation is done, and another where the Review Board looks at it. Is it not the case that because the Chief of Police is, in fact, in consultation with the Commissioner, that in all likelihood similar facts would be dealt with in a similar fashion?

**MR. D. DOUGLASS:** Perhaps. The answer to that, I guess, is to examine the makeup of the Law Enforcement Review Board and the Manitoba Police Commission, because ultimately those are the two determining bodies.

The external complaints, citizen complaints envisaged by this legislation, would be disposed of finally by the Law Enforcement Review Board, and they would impose a penalty.

The internal complaints are ultimately disposed of by the Manitoba Police Commission, and it imposes a penalty, so that to the extent that the Manitoba Police Commission and the Law Enforcement Review Board are in harmony, the disposition of matters would bear similarities, but to the extent that there might be differences in policy or interpretation by those entities, then you could have different penalties imposed. It's more a concern of my own, frankly, the perception of different treatment is more a concern than the actual possibility of different treatment, that the police officer, or the citizen, might well get the impression that, well if I was in the other forum I might be better off, and it's not fair that I'm in this forum, I'd sooner be in the other forum. I say why have two forums, or fori, if that be correct?

**HON. J. STORIE:** One final question. I was interested in your comment about the necessity or the proceed necessity of another level, or a level of appeal from the Board's ruling. I wondered what additional benefit might be had by having the Manitoba Police Commission as a final appeal mechanism, what additional input could they provide that the Board could not provide.

**MR. D. DOUGLASS:** I guess the best answer to that is the same benefit that any appeal body ultimately provides. The manner of proceeding before a trial Board is that evidence is given - you might have a very long hearing, for example. You could have a hearing that could go eight or nine days of evidence being heard at a particular hearing. The judge or judicial body, whatever it be, the Law Enforcement Review Board, whomever, that is hearing that matter is trying to keep track in an informal way of the evidence. There can be tremendous amounts of evidence, some of it extremely technical in nature perhaps, difficult to understand, difficult to evaluate the various witnesses as they come forward, no opportunity for mature reflection on the basis of a transcript, for example. What happens frequently in the appeal process is that when you get to the appeal and you have a transcript, and you're operating from a transcript, you can demonstrate objectively that the trial Board paid too much attention to this particular evidence, in light of the evidence as a totality, as revealed by a transcript.

So, the purpose of an appeal is to give an opportunity for the body to have mature reflection and to make a decision after reflection, and also if there are, I suppose, patent errors in applying rules then you might be able to pick that up on appeal but, frankly, I think that the greatest benefit of an appeal in matters of this nature is the opportunity for mature reflection.

**HON. J. STORIE:** Thank you, Mr. Chairman.

**MR. CHAIRMAN:** The Chair wishes to thank Don Douglass for his presentation.  
Committee rise.