

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

*Chairperson*  
*Mr. Daryl Reid*  
*Constituency of Transcona*

**Vol. LX No. 1 - 7 p.m., Monday, April 28, 2008**

ISSN 1708-6671

**MANITOBA LEGISLATIVE ASSEMBLY**  
**Thirty-Ninth Legislature**

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**LEGISLATIVE ASSEMBLY OF MANITOBA  
THE STANDING COMMITTEE ON JUSTICE**

**Monday, April 28, 2008**

**TIME – 7 p.m.**

**LOCATION – Winnipeg, Manitoba**

**CHAIRPERSON – Mr. Daryl Reid (Transcona)**

**VICE-CHAIRPERSON – Ms. Flor Marcelino (Wellington)**

**ATTENDANCE – 11 QUORUM – 6**

*Members of the Committee present:*

Hon. Messrs. Chomiak, Swan, Hon. Ms. Wowchuk

Messrs. Briese, Caldwell, Eichler, Hawranik, Maguire, Ms. Marcelino, Messrs. Reid, Saran

*Substitutions:*

Mr. Dyck for Mr. Maguire

**APPEARING:**

Mr. Kevin Lamoureux, MLA for Inkster

**WITNESSES:**

Bill 7–The Child and Family Services Amendment Act (Child Pornography Reporting)

Mr. Garry Boyachek, Private Citizen

Mr. Edward Lipsett, Manitoba Association for Rights and Liberties

Ms. Lianna McDonald, Canadian Centre for Child Protection

Ms. Signy Arnason, Canadian Centre for Child Protection

**MATTERS UNDER CONSIDERATION:**

Bill 3–The Highway Traffic Amendment Act

Bill 4–The Provincial Court Amendment Act (Family Mediators and Evaluators)

Bill 5–The Witness Security Act

Bill 7–The Child and Family Services Amendment Act (Child Pornography Reporting)

Bill 20–The Gunshot and Stab Wounds Mandatory Reporting Act

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**Madam Vice-Chairperson:** Good evening, everyone. Will the Standing Committee on Justice please come to order.

Our first item of business is the election of a chairperson. Are there any nominations?

**Mr. Drew Caldwell (Brandon East):** I am going to nominate my good friend and colleague the MLA for Transcona.

**Madam Vice-Chairperson:** Mr. Daryl Reid, MLA for Transcona, has been nominated.

Are there other nominations?

Hearing no other nominations, Mr. Reid, will you please take the chair.

**Mr. Chairperson:** Good evening, everyone. Thanks to my nominator.

For the information of everyone in attendance this evening, you will notice that we have some lights and some cameras set up in the room this evening. This is because the Legislative Assembly Media Services will be filming part of tonight's proceedings for inclusion in the video, *Standing Committees of the Legislative Assembly of Manitoba*.

This meeting has been called to consider the following bills: Bill 3, The Highway Traffic Amendment Act; Bill 4, The Provincial Court Amendment Act (Family Mediators and Evaluators); Bill 5, The Witness Security Act; Bill 7, The Child and Family Services Amendment Act (Child Pornography Reporting); and Bill 20, The Gunshot and Stab Wounds Mandatory Reporting Act.

We have a number of presenters registered to speak this evening, and I will refer to the list. On Bill 7, The Child and Family Services Amendment Act, the first presenter registered is Garry Boyachek; then Edward Lipsett; and Lianna McDonald and Signy Arnason.

If there are any other presenters that are in the audience here this evening that wish to make a presentation, they may see the Clerk at the back of the room here to add their names to the list, and then we will call you as your turn comes.

### Committee Substitutions

**Mr. Chairperson:** We have for information of the committee members to make the following membership substitutions for this committee, effective immediately. From the official opposition caucus, we have Mr. Peter George Dyck substituting for Larry Maguire.

\* \* \*

**Mr. Chairperson:** Before we proceed with the presentations, we have to do a number of other important pieces of information for committee members.

First of all, if there—also, for the information of presenters this evening, I should mention, while written versions of the presentations are not required, if you're going to accompany your presentation with written materials, we ask that you have 20 copies. If you need help with photocopying, please speak with our staff in the room here and we'll assist you with the photocopying.

As well, we would like to inform our presenters that, in accordance with our rules, a time limit of 10 minutes has been allotted for presentations, with another five minutes allowed for questions from the committee members present here this evening.

Also, in accordance with our rules, if a presenter is not in attendance when their name is called, they will be dropped to the bottom of the list. If the presenter is not in attendance when their name is called for a second time, they will be removed from the presenters' list.

I would like to inform all in attendance of the provisions in our rules regarding the hour of adjournment. Except by unanimous consent, the standing committee meeting to consider a bill in the evening must not sit past midnight to hear presentations unless fewer than 20 presenters are registered to speak to all bills being considered when the committee meets.

As of 7 p.m. this evening, there were three persons registered to speak to these bills. Therefore, according to our rules, this committee may sit past midnight if necessary.

How late does the committee wish to sit this evening?

**An Honourable Member:** Until the business is finished.

**Mr. Chairperson:** It appears to be agreed that the committee will sit until the business of this committee is concluded.

Now, prior to proceeding with public presentations, I would like to advise members of the public regarding the process for speaking in committee. The proceedings of our committee are recorded in order to provide a verbatim transcript. Each time someone wishes to speak at the microphone at the podium, whether it be an MLA or a presenter, the Chairperson has to indicate the person's name and that is a signal for our Hansard folks behind me here to turn the microphones of the committee on or off. I thank you for your patience.

### Bill 7—The Child and Family Services Amendment Act (Child Pornography Reporting)

**Mr. Chairperson:** We'll now proceed with public presentations.

I'll now call Garry Boyachek. If you're in the audience here this evening, please come forward, sir.

Good evening, sir. Do you have a written presentation to make as well?

**Mr. Garry Boyachek (Private Citizen):** Yes, Sir.

**Mr. Chairperson:** Do you need assistance with photocopying?

**Mr. Boyachek:** No. Can I have a glass of water?

**Mr. Chairperson:** Yes.

Good evening, Mr. Boyachek. Please proceed when you're ready, sir.

**Mr. Boyachek:** Thank you, Mr. Chairperson. Honourable members, I consider this a real privilege to be able to address the Legislature on this very important bill, Bill 7, which is amendment to The Child and Family Services Act to include the reporting of Internet child pornography, and be able to deal with that through the Child and Family Services Act and agencies. I apologize, I am a little bit out of breath. I just got back from Brandon.

In introduction, a little bit about my background; I was a social worker for a number of years. I have a Bachelor's degree in social work as well as a Bachelor's degree in psychology and sociology. I have worked in child welfare as a protection worker in the past, both in the province of B.C. and in the state of New Mexico. I am very concerned about this bill because for a couple—three reasons. First of all, I

don't think, after reviewing the bill and so on and so forth, I don't think that the committee is—I think their heart is in the right place; I think that what they're trying to accomplish by the bill is okay, but I think in the long run, we're kind of throwing the baby out with the bath water.

\*(19:10)

The reason why I say that is that protection services is a very complicated and very intense field of social work and The Child and Family Services Act is what social workers use as a guideline when they're doing protection investigations. As I understand, this bill will be a bill that will mandate the different agencies in Manitoba to do field investigations should they get a report of child pornography. Workers right now are very much overloaded, very much underfunded, and, unless you've got some pretty strong evidence and so on and so forth, your chances of being able to do a thorough investigation are hampered.

I also will say that Child and Family Services carry a lot of power and a lot of responsibility to the public and to the government for the protection of children. If you have a report where a person is not sure, whether it's child pornography or not, and they are mandated to report that, or if you have a situation where you have a marital domestic situation where there is conflict between the two parents, one can easily use this as an opportunity to cause problems for the other parent. Child and Family Services are asked to do an investigation. I don't have the statistics with me, but I know that Manitoba right now is the top province in Canada, if not the top province, one of the top three provinces that have the highest ratio of children in care.

Sometimes snap decisions are made to bring children into care to protect children. I remind the committee that workers are human. Workers care very much about what they're doing. Most workers do. I disagree with the set-up of what Child and Family Services is as workers are not licensed. They're not mandated to be licensed. There's no checks and balances in the system. Basically, the agency makes the decision, and if the parents want to protect themselves, they basically get a lawyer and go to court. Now, if you're a parent that has lots of money and time, justice will rule at the end of the day. If you're not, if you're a parent that is intimidated by the system, you have a big chance of losing your child. I would like to see some checks and balances. It would be nice, for example, if there

was a community committee where all child welfare cases, not just ones that are dealing with Bill 7, but all child welfare cases are referred to the committee before a child is brought into care unless it is clear that the child is in immediate danger.

From my research with child pornography people, they're very, very secretive in what they're doing, obviously because of the nature of what they're doing. Secondly, it's difficult to prosecute those things in court. If you make these things mandatory to report, you're overloading the few police officers that are involved on a 24-hour, seven-day-a-week, 365-day-a-year job in policing the Internet, looking for child pornographers, looking for predators on the Internet and stuff.

The other thing is, as I mentioned before, you're overloading the Child and Family Services system that is already greatly overloaded. I know there's workers, for example, in Brandon right now, that are setting up telephone visits for parents that are not having their children at home at the moment at 7, 8 o'clock at night from their own homes because they've got no time during the day to be able to set these things up. They put themselves at risk because their home phone numbers the non-custodial parents have access to, sometimes they even have access to their addresses, which could be a risk for the workers if you're dealing with someone that is perhaps maybe mentally unbalanced or is having some problems with someone and so forth. It could put a worker at risk. It could put the child at risk.

So what I'm suggesting is, if you, in your wisdom, feel that this is an important bill that needs to be passed, what I would ask is that you put in some checks and balances so that workers will go to a community and say that Mr. Jones here, we've got a complaint about Mr. Jones and child pornography. We believe his children are in need of protection, and then they convince the committee why they think the child needs to be removed from the home.

Secondly, the parent has a chance to present their case to the committee and in an informal manner, so that they can tell the committee their side of the story. Perhaps, maybe, they're doing research, they come across a child pornography site. Somebody sees that; they report it. Perhaps there's another reason, or maybe it's unfounded and stuff, and they have a chance to defend themselves. They have a chance to go to the community board and explain their case, and then the community will make

a final decision on whether that child is in need of protection or not.

Thirdly, if there are false allegations out there—they're rare but they are there—it holds people accountable, and if you write something in the bill that people are making false accusations, or whatever, to have some kind of punishment or consequences for those actions, then you get less of the grey area of things being reported and more of the areas where children are really in need of protection, 'cause there's many families that need services but don't need their children removed from the home. I believe that this province is too—some of these agencies, in some cases, are very drunk with power, and I've been told by workers that they apprehend children, not because it's in the children's best interests, but they apprehend the children because they can, and, you, sir, or ma'am, have the rights to go to court, get yourself a lawyer and prove us wrong.

Lawyers cost money. I know that there's at least two lawyers here in Winnipeg that are very, very good, but their base fees, walk into their office, is \$5,000. How many have that kind of cash to be able to fight something like that? Lastly—am I just about out of time? Okay. Lastly, what I'd like to suggest is—lost my train of thought, now. Lost my train of thought.

Well, I basically have said everything. I think that basically had all the points that I wanted to make.

Thank you for listening. Thank you for considering my submissions. I hope that they've been helpful. I know it's hard to write these bills. It's not easy and stuff, but I've sort of come with the idea of giving you sort of a parent's view and a social worker's view, because lots of social workers can't come here if they work for the CFS system. So thank you very much for listening. I hope I make some impact.

**Mr. Chairperson:** Thank you, Mr. Boyachek, for your presentation here this evening.

Do the committee members have questions for this presenter?

**Hon. Dave Chomiak (Minister of Justice and Attorney General):** Thanks for your presentation, Mr. Boyachek. Obviously, you've looked at the bill and you've made some thoughtful observations and you said our hearts are in the right place. I think your heart's in the right place in trying to do the right

thing, but, if you read the bill, the reporting provisions provide a checklist, or a check on the system, insofar as a person is asked to report to a reporting entity, and the reporting entity, in this case, would be Cybertip or the Canadian Centre for Child Protection, which is not only expert, but recognized dealing with this issue. So in fact we do have a triage system in place as a check and balance.

With that consideration, putting aside the other observations, which, you know, are—one could discuss, but the fact that there's a reporting to a world-renowned, expert agency that is used to dealing with these issues, thousands of them, and has the expertise to do it, does that not provide you with sufficient information so that you could feel that there are the appropriate checks and balances in place?

\* (19:20)

**Mr. Boyachek:** Honourable member, sir, what I am suggesting is that, yes, cyberspace police that are dealing with that particular arm of police work, and so on and so forth, are experts, but, if you get a huge volume of reporting that would happen based on the passage of this bill into law, then there are going to be some that are going to slide through the cracks, I think.

Also, they don't have a staff. There's what? Two, four, six, eight, 10, 12 people here. Let's say you're all cyber people, cyberspace police officers, and you're getting 10,000 to 20,000 calls a day about child pornography. How are you going to be able to handle that kind of volume with such a small thing?

If the federal government was to increase the expertise people and so on and so forth, then maybe I could see there could be some checks and balances.

But I'm still suggesting that if you bring it down to the community level, you have your macro, your meso and your micro. If you bring it down to the meso situation, which is your community, and your micro is your family, your macro is your cyber folks, there is another check and balance there to ensure that innocent families are not being bothered by protection workers, and protection workers are not being more overloaded than they already are.

**Mr. Chairperson:** Any additional questions for the presenter?

**Mr. Stuart Briese (Ste. Rose):** Yes. I'd like to thank you for your presentation, too.

You talk about a community level, not community committee. What's your view of what the make-up of that committee would be?

**Mr. Boyachek:** I'm sorry, sir. What was your—I believe your question was what would be the make-up of the committee.

**Mr. Briese:** That's right.

**Mr. Boyachek:** Honourable member, sir, what I would suggest is a broad representation from the community. You may have some lawyers on there. You may have some police officers. You may have some teachers. You may have some ditch diggers, blue collar workers, like a representation of the whole community. Of course, Winnipeg is bigger than, say, my old hometown of Allen Creek with 400 people in the village. There are obviously going to be a whole lot more people to choose from here than there would be in Allen Creek, but it gives you a bland—like a flavour—of what the community is. That's what you're wanting to look at, and that way, it's a fair way of having a situation looked at.

The information is there from cyberspace. The information is there from Child and Family Services, who have done, initially, an investigation, and the family has a right to represent themselves in a community where they're known and respected. I know that, once a family is investigated by Child and Family, whether anything is done or not—if they go in at midnight tonight, they do an investigation, they come out at 4 o'clock in the morning, and the decision is that nothing needs to be done. The file may be closed, but those families' names are on that system forever. If they're ever run for whatever reason through the CFS system, it'll always come back as a hit. So they've got that sort of black mark against them, that we've had child welfare in our home, that we've had child welfare investigate us and so on and so forth. So they never have a clean slate again because that is never removed. They have their reasons for that, but it's never removed.

Does that answer your question?

**Mr. Chairperson:** No further questions.

Thank you, Mr. Boyachek, for your presentation here this evening, sir.

The next presenter I have on the list this evening is Edward Lipsett. Is Mr. Lipsett in the audience?

Please come forward, sir. Do you have a written presentation, sir?

**Mr. Edward Lipsett (Manitoba Association for Rights and Liberties):** Yes, I have 20 copies, I believe.

**Mr. Chairperson:** Thank you very much. We'll distribute them to committee members and then we'll give you the signal to start.

Please proceed when you're ready, Mr. Lipsett.

**Mr. Lipsett:** Mr. Chairperson, honourable members, my name is Edward Lipsett and I'm representing the Manitoba Association for Rights and Liberties.

The Manitoba Association for Rights and Liberties (MARL) is a provincial, non-profit, non-government volunteer organization established in 1978 as a human rights and civil liberties advocacy group. MARL's objectives are to promote respect for and observance of fundamental human rights and liberties and to defend, extend and foster the recognition of these rights and liberties in the province of Manitoba.

We appreciate the opportunity to address the proposed amendments to The Child and Family Services Act introduced by Bill 7.

First, we'll deal with a few issues of principle. MARL applauds the government's commitment to address the very real concern of child exploitation and the scourge of child pornography. However, our concern is that the proposed amendments are, with respect, somewhat problematic.

Our concerns are as follows:

First of all, the freedom of expression issue. Although the prohibition against child pornography as originally enacted has been upheld, the amendments, these amendments here, could chill or even penalize material beyond child pornography. The thought that one could be reported and subject to investigation could deter the use of even legitimate material that could raise suspicion.

Privacy. Not only could these amendments invade the privacy of the person who would be reported but, also, that of the person required to do the reporting. Perhaps, the computer professionals who come across such materials in the course of their jobs have no significant privacy interests against reporting. It could be just seen as part of their occupational regulation. However, the amendments would include people in purely private relationships, purely private citizens. Example, a friend or relative could be required to report if he or she accidentally came across such material while on a social visit or

even if the possessor confided in a friend or relative with innocent intentions. For example, I accidentally came across this while downloading research material, or I picked this up while purchasing adult magazines. Is this illegal? What should I do? Requiring the person who was confided in could create a profound crisis of conscience; either break the law or betray your friend or relative. This seems too draconian.

As an aside, I may add that I realize the Internet is the main concern of this bill because, regrettably, professional hard-core child pornographers, producers and users, find the Internet a very convenient tool. However, nothing in this legislation restricts it to the Internet. It could be, again, a purely private person came across relatively innocuous material, i.e. a casual accessor, and requiring him or her to report it. As I said, it could create a tremendous crisis of conscience and would probably not help in the battle against cyberporn at any rate.

The third issue is the Orwellian connotations. Expecting a citizen to report on one's neighbours is an inherently totalitarian or authoritarian phenomenon, especially where expressive material is involved.

\* (19:30)

Again, there are limitations on the pursuit of even the worthiest goals. Certainly, we do not deny that the protection of vulnerable children is, indeed, a worthwhile, indeed, compelling purpose or to use the words of the Supreme Court, a pressing and substantial objective. However, even the noblest ends do not justify all means. We must not allow the desire to protect the vulnerable to become an obsession that leads us into unreasonable or disproportional measures that would make all citizens vulnerable to unduly onerous laws or an overzealous state.

Furthermore, there might be some division of powers problems. Possibly this is *ultra vires* the province. It may well be *ultra vires* the province to impose a duty to report a criminal offence.

At common law, misprision of felony was a criminal offence, but this offence was not included in the Criminal Code. However, the failure to report, or attempt to prevent, treason or high treason still is criminal. See section 50(1)(b) of the Criminal Code. This bill could be seen as an analogous attempt to enforce citizen co-operation in criminal law enforcement.

Now I'll get down to a few particular points of this bill: Section 2 amending subsection 1, the definition of child pornography. Although the definition of child pornography here is somewhat narrower than that in the Criminal Code, it still seems too broad for inclusion here. The term child in (a)(i) or (ii) isn't clearly limited to an actual child. It could still include an imaginary child just as person in the corresponding provision in section 163.1(1) of the Criminal Code has been held to include imaginary human beings.

Furthermore, (b) clearly doesn't involve any actual children being used; (b) is the advocacy section. The purpose of The Child and Family Services Act is, or at least should be, to protect actual children at imminent risk, not to assist in criminal law enforcement. Furthermore, the definition here gives no indication to a potential viewer that said material is only *prima facie* criminal. It doesn't refer to its legitimate purpose defence in section 163.1(6) of the Criminal Code. However, even if it did, it might not be that helpful as the average viewer would not be in a position to assess whether or not the defence is applicable.

Section 4(1), new section 18(1.0.1). This section is overly broad for several reasons. It is not limited to cases where there is an identifiable child or, indeed, any actual child in need of protection or, indeed, capable of protection by a group or person, in or outside of Manitoba. Furthermore, the threshold reasonably believes that a representation or material is, or might be, an unduly low threshold to impose a duty on a private citizen to report another person for expressive material, which might not even be criminal after all.

Section 4(1), new section 18(1.0.1). In conjunction with section 8 new section 18.7(1), reference to a reporting agency in section 18(1.0.1), and the reference to a law enforcement agency in new section 18.7(1) show that this new provision is as much a tool for criminal law enforcement as it is for child protection *per se*.

We'll conclude that even if it is justifiable to require a private citizen to report an actual child in need of protection where the remedy likely to be sought is more likely to be protective rather than punitive, it is an undue extension of this duty in cases which are more likely to result in criminal investigations, especially where this might impact on expressive material which might turn out to be legitimate.

If I have time, a couple of extra comments. We have to remember, as I mentioned before, in *R v. Sharpe*, the current Criminal Code provisions, as they were in 2001, have been upheld, but, since that time, the Criminal Code provisions have been substantially expanded. They've yet to be tested in the courts. They may or may not be constitutional, but, as the law expands, the uncertainty of the law expands. The chilling effect on materials that aren't even pornography expands. Something like this could even further deter perfectly legitimate, benign use.

Just as a conclusion remark, I certainly appreciate the dangers that widespread disseminators, or even possessors, especially using the Internet, involve. As I said, the Internet service providers or Internet servers do not themselves have any privacy interests. Their users do, but their profession, like most professions or trades, can be regulated. However, this legislation goes beyond that. It puts the duty on every person the duty to become an informer, even when he or she suspects or knows that the person to be informed on is not a danger.

I would respectfully suggest that this provision, at least in its current form, not be enacted and that if there's any need to target cyber porn, to work maybe in conjunction with the computer industry and to develop a more carefully and narrowly tailored law. But this law I would respectfully and humbly request not be enacted. Thank you.

**Mr. Chairperson:** Thank you, Mr. Lipsett, for your presentation here this evening.

Do members of the committee have questions for the presenter? Honourable Minister? Any other committee members? No.

Thank you very much for your presentation here this evening, Mr. Lipsett.

The next presenters we have on the list have made a request to have a joint presentation. Is it the leave of the committee to allow for a joint presentation? *[Agreed]*

We have Ms. Lianna McDonald and Signy Arnason.

You have copies? A written presentation? Thank you very much. We will proceed in a moment after they are distributed.

Welcome. Could you please identify yourself and then proceed when you're ready.

**Ms. Lianna McDonald (Canadian Centre for Child Protection):** Excellent. Good evening, everyone. My name is Lianna McDonald. I am the executive director of the Canadian Centre for Child Protection. I thank you so much for this opportunity. Our agency is going to have quite a strong and unvarying position in terms of why we believe that this bill is good for Manitoba children. I've included my written remarks for you to review. In advance of going forward, I have sourced a piece from the United Nations on the Convention of the Rights of the Child. We believe that this is a very important piece of legislation. It is in front of you for your perusal and review after.

As mentioned, I'm Lianna McDonald. I'm the executive director for the Canadian Centre for Child Protection, formerly known as Child Find Manitoba. I'm here today to speak in support of Bill 7. Our agency is a non-profit organization that is dedicated to the personal safety and protection of all children.

We have a very unique role here. We operate something unlike any other entity in the country, we operate *Cybertip.ca*, which is Canada's national tip line to report the on-line sexual exploitation of children. The tip line was set up with the Government of Canada, a national law enforcement advisory committee, the Manitoba government, a federal task force and a federal steering committee.

*Cybertip* was modeled after both the National Centre for Missing and Exploited Children in the United States, and the Internet Watch Foundation in the United Kingdom. Like these organizations, we are a not-for-profit clearinghouse with the function of accepting and forwarding reports to the appropriate authorities. We have analysts who are special constables who review, research, and then triage reports to the appropriate law enforcement jurisdiction.

\* (19:40)

Since launching nationally, the tip line, to date, has received over 25,000 reports from the public regarding the on-line sexual exploitation of children and has forwarded to law enforcement these reports, which have resulted in 33 arrests. Note, 33 arrests, not 25,000. The tip line is not an investigative body. It triages and analyzes information to ensure that agencies within the proper jurisdiction receive the important information. These authorities determine whether or not they take action to investigate the report. The triage function saves time and resources so that police agencies spend their time investigating

crime. Cyber tip has been instrumental in addressing the on-line sexual exploitation of children as it receives reports from Canadians on child pornography, on-line luring, child sex tourism and children exploited through prostitution.

Of all the reports to the tip line, over 90 percent of those reports deal with child pornography with some concerning statistics. Of these reports of child pornography, 93 percent are images of children under the age of eight years old, and 38 percent of confirmed reports involve actual sexual assaults being committed against children. This is not babies in bathtubs.

What we know is that reporting works. Since operating as a national service, the tip line has received approximately 800 child sexual exploitation reports per month, and, to date, approximately 10 children have been removed from abusive homes or environments. These important results are due to the fact that some Canadians chose to report. What is not captured in these numbers is how many people chose not to report and how many children are still living in abusive environments through that failure to report.

The Canadian Centre for Child Protection strongly supports Bill 7 amendments to The Child and Family Services Act. In order to better understand why, specifically why, this legislation is important to the work of our agency, it is better to understand the grasp and the scope of the problem. Child pornography includes images, written material, audio recordings, all of which involve the sexual abuse or sexual exploitation of a child. It is a growing global problem, and what we know is that millions of images are available at any given moment on the Internet.

To provide one example to show you the magnitude of what we're talking about here, over an 18-month period on one single file-sharing network one particular video of a six-year-old girl who was being sexually assaulted was perfectly reproduced and distributed 800,000 times. Not only was the video made available to others, but it was downloaded by nearly a million consumers of child pornography who may have access to children.

What is important to note is that this child was sexually assaulted by someone who had access to her. These images do not just surface up on the Internet. It was someone who knew her, who had access to her and also made the decision to capture the abuse and make it available on the Internet. The

abuse often happens in bedrooms in homes on streets across this country. In order to stop the production of child pornography, we must stop the child abuse.

The proposed legislation recognizes that child pornography is child abuse. The bill clarifies this and obligates any person who reasonably believes that they have come across child pornography to report it. It correctly acknowledges that adults have a responsibility to protect children and that those around a child have the best chance of recognizing when something is not okay. The obligation of every Manitoban to report suspected child abuse has been in place for years with a failure-to-report provision in The Child and Family Services Act.

The bill logically extends the definition of child abuse to include child pornography. This makes obvious sense because child pornography is child abuse. Average citizens do not need to be experts on what does or does not constitute child pornography, rather to report what one would reasonably believe to be so. It is the responsibility of child welfare agencies that have a professional capacity to investigate such allegations. Concerns surrounding malicious allegations are misguided, as under the current mandatory reporting structure of child abuse this has not proven to be a major problem. The focus of the proposed legislation is about protecting children and removing them from abusive situations, not about the criminalization of law-abiding people.

I'm just going to point to you and not go through it in great detail. You need to understand the connection between possessing and contact offences against children. They are not separate. We know that those who consume child pornography are more likely to have sexual interest in children. You don't collect sexually explicit images of children unless you're interested in them.

Additionally, recent findings emphasize the connection between those who possess child pornography and those who commit contact offences. I have included some data on that for your review, some statistics.

The proposed legislation acknowledges that collectors of child pornography often pose a risk to real children. The bill takes away the personal or professional quandary that an individual may experience over whether to report. So, what we do know is that, again, it's about the consumerism of it. So, those who consume it are likely to pose real risks to real children.

It is often difficult for people to think that a friend, colleague or neighbour may be sexually abusing a child. What I've heard over and over again is this discussion concerning neighbours turning on neighbours. Imagine a neighbour turning on a neighbour for the best interests of a child. Can we imagine that? Neighbours, they're good people.

Creating a legal obligation, again, removes the personal dilemma and puts the child first. Reporting a suspicion is not, I will underscore not, a conclusion that someone is guilty. It is a critical first step in determining whether there is in fact a child in need of protection.

In conclusion, before my colleague gives you a few case examples, we strongly support the new bill. We believe it will increase reporting. There's research that emphasizes that the introduction of mandatory reporting legislation in fact increases reports. As stated by the renowned political philosopher, Hannah Arendt, not just teachers and educators, but all of us insofar as we live in one world together with our children must take toward them an attitude radically different from the one we take toward one another. She worried about adults competing with children for rights, thereby essentially deserting children, who, in reality, have no political rights. If adults' freedoms encroach on their responsibilities toward children, then it is in the public interest that they give way to them.

One might ask where the greater responsibility lies in protecting children, and it lies with adults. So, this evening, when you carefully review the proposed legislation, we ask that you consider our agency's perspective and that we in this province do everything possible to ensure that children have the opportunity to thrive, flourish and not be robbed of their childhood.

We support the new bill. It is the right thing to do, and we urge you to make it law.

At this point in time, for 1 to 2 minutes, I will bring up my colleague, Signy Arnason, just to give you a few tangible examples of reports to the tip line and how that connects with contact offences against children.

**Ms. Signy Arnason (Canadian Centre for Child Protection):** Good evening. I apologize, I don't have a copy of this handy, but I can absolutely provide that to the members.

My name is Signy Arnason. I'm the director of Cybertip.ca, Canada's national tip line for reporting

the on-line sexual exploitation of children. Cybertip.ca is a program operated by the Canadian Centre for Child Protection.

I am here tonight with my colleague, Lianna McDonald, in support of Bill 7.

I would like to share with you some Cybertip.ca case examples, which involve citizens taking action and reporting on-line crimes against children, which resulted in real children being rescued from sexual abuse. The following examples underscore the value and effectiveness of reporting, as well as emphasize the need to identify ways in which children can be better protected.

Cases in point: The report came in to Cybertip.ca in October 2004 regarding an adult male possessing and sharing links of child pornography on MERK [*phonetic*], which is a peer-to-peer file-sharing program. Following a review of that report in various on-line searches, a Cybertip analyst forwarded that report to law enforcement. The Sûreté du Québec proceeded with an investigation which resulted in the search of the suspect's home in June of 2005. The investigators ended up seizing equipment and 1,000 DVDs and CDs as well as diskettes containing child pornography material. The accused pleaded guilty to accessing, distributing and making child pornography, as well as two counts of sexual assault against his six-year-old child and the child's step sibling. These images of the children had been posted on-line since 2002.

\* (19:50)

Second case in point: February 2003, a suspect was reported for posting images of himself and his supposed seven-year-old son in soiled diapers on a parenting forum board. He had a paraphilia for diapers. The individual was also offering the services of his son to pose for other pictures as requested by other individuals. In addition to the seven-year-old, the suspect claimed to have two other children, a 13-month-old daughter and 11-year-old son. A Cybertip analyst executed various Internet searches and forwarded the information to law enforcement in the appropriate jurisdiction.

Following an investigation by the Toronto police services, the suspect was arrested and charged with multiple counts which included: sexual assault times two, sexual interference times two, invitation to sexual touching, indecent exposure to a person under 14, possession of child pornography and manufacture of child pornography. This individual received a

sentence of two years less a day, plus three years' probation and a submission of a DNA sample.

These case examples illustrate the connection between the consumption of child pornography and contact offences. These are only two examples of the many that Cybertip.ca has been involved in since its inception. While there have been 33 arrests that the tip line has been made aware of by law enforcement across Canada, what isn't reflected in that number is the number of children that have been removed from harm. One case alone in Ontario, over a year ago, involved an adult male sexually exploiting and threatening over 100 children. They do not limit the exploitation and abuse to one child. What these examples demonstrate is that without citizens reporting, these offenders would not have been arrested and more importantly, these children would not have been removed from their abusive environment, their environment of ongoing sexual harm and abuse.

I'd also add that we triage the reports for law enforcement; 44 percent of what we get is forwarded to law enforcement. So 56 percent of what comes in actually does not contravene the criminal code, is not something that law enforcement can investigate or not something that can be forwarded to child protection services. As Lianna had stated, we've had 33 arrests, we've had 25,000 reports. This isn't an overreaction, Bill 7 is the right thing to do and as my colleague mentioned, we encourage you to make this law. Thank you very much.

**Mr. Chairperson:** Thank you very much for your presentation here to both of you.

Any questions of the presenters this evening. No questions?

Thank you very much for your presentation.

Are there any additional presenters to Bill 7? Seeing no further presenters to Bill 7, we'll consider that matter closed. Are there additional persons in the audience here this evening that wish to make presentations to Bill 3, 4, 5 or 20? Seeing no further public presentations, we'll conclude the public presentation component.

I'm wondering if it's the will of the committee, since we are moving into clause-by-clause consideration of the bills, if committee members would, in the interests of the public who have joined us here this evening to make presentations, if there would be a willingness to consider Bill 7 first for consideration. *[Agreed]*

### **Bill 7—The Child and Family Services Amendment Act (Child Pornography Reporting)**

**Mr. Chairperson:** Then we'll proceed with Bill 7.

Does the minister responsible for Bill 7 wish to make an opening statement before I proceed to that? Is there leave of the committee members to allow Honourable Minister Chomiak to take the place of the sponsor of the bill this evening as the acting minister? *[Agreed]*

**Hon. Dave Chomiak (Minister of Justice and Attorney General):** Thank you, Mr. Chairperson. Thank you to the committee members, and thank you to the presenters.

I normally would not make an opening statement, but, because Minister Mackintosh was the sponsor of this bill, and because I'm acting on his behalf tonight, and because of the fact that there are presenters in the audience, and because of the nature and significance of this bill, I'm going to make some opening statements that, hopefully, will clarify and explain some of the components of the bill. Although I have to admit that, quite frankly, the last presentation in particular fundamentally made the case for both the need for the bill, its utility, and cited examples as to why it's necessary.

Crimes of sexual exploitation of children and youth, including acts related to child pornography, are crimes of child abuse and must be stopped. It's pretty clear from the presenters. I mean, if 93 percent of the sites are eight years old and younger, this constitutes a problem, and we're dealing with a worldwide phenomenon in terms of the Internet. Bill 7 amends The Child and Family Services Act to include child pornography in the definition of child abuse and imposes a mandatory requirement on Manitobans who encounter child pornography on the Internet or on any other form to report that information to a reporting entity that is designated by regulation.

The following are the main points of the bill: First, a definition of child pornography is added to the Child and Family Services bill.

Second, clause 17(2)(c) is amended to make it clear that child abuse includes the likelihood of a child suffering harm or injury due to child pornography. In other words, the child abuse quite rightly includes child pornography.

Three, any person who reasonably believes their representation or material is or might be child pornography shall promptly report the information to a reporting entity. You've heard essentially from the reporting entity. We've heard about the triage function, and I think it's much clearer now to committee members.

Fourth, no one was required or authorized to seek out child pornography. That particular aspect of the bill speaks for itself.

Five, it's an offence to fail to report information on child pornography to disclose the identity of a person who reports child pornography. In other words, there's protection for those individuals who provide the information. We have that in other Manitoba acts, most notably The Protection for Persons in Care; that is, someone who protects by virtue of reporting is protected by law from any kind of retaliation.

Six, on receipt of a report, the entity shall review the report and if they reasonably believe—remember, the person has to reasonably believe; then the entity has to reasonably believe—the representation or material is or might be child pornography, they must take action to protect the child by reporting to Child and Family Services or a law enforcement agency, or both as necessary. Again, that speaks for itself.

Finally, the reporting entity must submit an annual report to the minister regarding their activities and the minister must table the report in the Legislature.

Obviously, I think there's a fair bit of support for this particular bill. I think I'm going to conclude my comments by indicating that we will be bringing in an amendment to Bill 7 to expand the definition of child pornography to include—and I'm not sure if members had been pre-informed of this; I apologize for that—we are amending the bill to include audio recordings that advocate or counsel sexual activity with a child that would be criminal in nature and that mirrors the Criminal Code definition, and both written and audio descriptions whose dominant characteristic is the description, presentation, or representation of criminal sexual activity with a child would be defined as pornography. In other words, we're taking audio and written material whose dominant characteristic is the representation of criminal sexual activity to also include child pornography. So we're broadening a little bit the

definition of child pornography to include written and audio recordings, and the broader definitions are in line with those definitions in the Criminal Code.

\* (20:00)

There are also a couple of housekeeping amendments that we're also introducing. The point is made that—actually I wanted to—I don't even want to get on the philosophical point of this, but child pornography's not just pictures. It can be written or audio descriptions, and that doesn't make it less harmful. There've been a significant increase of written forms of child pornography in terms of written descriptions, and I just would like to point out to members that, again, the broader definitions are within the framework of the Criminal Code and the definition includes: descriptions whose dominant characteristic. So, while there might be some that say, well, this might be broadening it too much, I think the fact that it's under the auspices of the Criminal Code, which is already in effect, and the fact that dominant characteristic must be a representation of criminal sexual activity allows us to expand the definition to capture what is a more expanded and unfortunate development and that is, it's not just pictures.

Essentially, the bill, then, will be brought forward as we had in the Legislature with that exception, with a slightly broadened, or however one wants to term it, amendment that we'll be proposing on definition section under section 2. But having sat around the table of FPT meetings and having heard ministers of every political stripe from every province and the federal government talk about the dangers of child pornography, and seeing the descriptions and hearing the descriptions, I think we ought to take some satisfaction that we're able, as men and women legislators, to take a measure that will protect children now and into the future, a future that is increasingly dominated by Internet and high-tech communications and, as was said in the presentation, we, as adults, owe it to the children.

So those are my comments, Mr. Chairperson.

**Mr. Chairperson:** I thank the honourable minister for the opening statement.

Does the critic for the official opposition have an opening statement?

**Mr. Stuart Briese (Ste. Rose):** Mr. Chair, although I do have a couple of concerns about the bill, we will be supporting the bill. The concerns are that I have a problem believing that this will ever actually be

enforced. It becomes very difficult, I think, in these situations to—it becomes a "he said, she said," or whatever, type of situation and instead of being directed at the perpetrators of child pornography, this bill is directed at the average, everyday citizen and it gives the opportunity to have all of us, every person, as a potential criminal for not reporting something. It might be something that you're hardly even aware of, but the fact would be that you could be charged for not reporting something that, at some point, you might be proved to have known did exist.

Just on the amendment, which I haven't seen, the phrase I would question there that you used several times, the minister used several times was, dominant characteristic. I would wonder what the definition of that is, and who actually decides what a dominant characteristic is.

I would also like to thank the presenters. That was well done, and, as I said, we will be supporting this bill.

**Mr. Kevin Lamoureux (Inkster):** Mr. Chair, if I can just have leave to add comment to that.

**Mr. Chairperson:** Is there leave of the committee to allow Mr. Lamoureux to speak to the bill? *[Agreed]*

**Mr. Lamoureux:** Thank you, Mr. Chair.

I concur with the member of the official opposition in regard to some concerns on what sort of resources would be available given the potential for a very high number of cases being reported. Having said that, I suspect that the resources will be there

I do appreciate the system that we have inside the Legislature that allows for presentations on the bills. I appreciate the fact that we had three people come forward to make a presentation. I really do appreciate this. Mr. Minister, you had pointed out, the last presenter made it very clear as to why it is legislation of this nature is indeed warranted. I can honestly say, as I listened to the statistics in the cases, it becomes very—I could become very angry inside as trying to understand why it is some people would be participating in these types of activities and try to understand why. So I appreciate the fact that we had presenters on this particular bill just to highlight what I believe is a critically important issue to all Manitobans, and why it is that we do need to ultimately pass this legislation, as I indicated in principle in second reading.

**Mr. Chairperson:** We thank members of the committee for their opening statements.

During the consideration of a bill, the table of contents, preambles, enacting clauses, and the titles are postponed until all other clauses have been considered in their proper order.

Also, if there is agreement from the committee, I 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]*

Thank you.

We will now proceed to clause-by-clause consideration of the bills.

Shall clauses 1 and 2 pass?

**Some Honourable Members:** Pass.

**Mr. Chomiak:** As previously indicated, under clause 2, that is the definition section of child pornography, we're proposing, I move—*[interjection]* Oh, we'll do clause 1. Okay.

**Mr. Chairperson:** Then we'll start with the individual clauses, if that's the will of the committee? *[Agreed]*

Clause 1—pass; clause 2—pass.

**Mr. Chomiak:** I move

THAT the proposed definition of "child pornography", as set out in Clause 2 of the Bill, be amended

(a) in clause (b), by striking out "or visual representation" and substituting ", visual representation or audio recording"; and

(b) by striking out "or" at the end of subclause (a)(ii) and adding the following after clause (b):

(c) any written material whose dominant characteristic is the description, for a sexual purpose, of sexual activity with a child that would be an offence under the Criminal Code, or

(d) any audio recording that has as its dominant characteristic the description, presentation or representation, for a sexual purpose, of sexual activity with a child that

would be an offence under the Criminal Code;

This is also submitted in French.

*Il est proposé que la définition de « pornographie juvénile » figurant à l'article 2 du projet de loi soit amendée :*

*a) dans l'alinéa b), par substitution, à « ou représentation », de « , représentation ou enregistrement sonore »;*

*b) par adjonction, après l'alinéa b), de ce qui suit :*

*c) écrit dont la caractéristique dominante est la description, dans un but sexuel, d'une activité sexuelle avec un enfant qui constituerait une infraction au Code criminel (Canada);*

*d) enregistrement sonore dont la caractéristique dominante est la description, la présentation ou la simulation, dans un but sexuel, d'une activité sexuelle avec un enfant qui constituerait une infraction au Code criminel (Canada).*

**Mr. Chairperson:** It has been moved by the honourable Mr. Chomiak

*THAT the proposed definition of "child-*

**An Honourable Member:** Dispense.

**Mr. Chairperson:** Dispense.

For information of committee members and with your leave under section (c) after you see, at the end of that paragraph, Criminal Code, to include the word "Canada" in brackets, agree? *[Agreed]* And in (d) the same amendment, Criminal Code of Canada, "Canada" in brackets? *[Agreed]* Agreed. So it will be as written, then? Okay, thank you.

The amendment is in order. The floor is open for questions.

**Mr. Chomiak:** Subsequent to the drafting of the bill, information came forth that audio recordings and some written material may not be covered under the definition so for purposes of covering those instances, we've included these two amendments.

\* (20:10)

Now, the member had mentioned earlier in his statements about the dominant characteristic and I did point that out in my remarks, but you can see from the material that it's a pretty strong definition of the activity, that is, dominant characteristic, the description for sexual purpose of sexual activity with the children, and it aligns itself in addition with those

circumstances under the Criminal Code that would be a criminal offence.

So it allows us, by virtue of this amendment, to bring in written material and audio material to cover off child pornography and that's the amendment essentially we're asking the committee to consider tonight. It's simply an amendment that recognizes a reality of both written and audio material constituting the same danger and the same harm.

I just want to point out again, if one follows the flow of this, the report is made to the entity, Cybertip in this case, who do the work, assess the situation and, as was said by one of the presenters, in the majority of cases, no charges are laid. It's less than a majority of cases. There will be some cases where, under this present act, some notification may go to police authorities; some notification may go to Child and Family Services and/or both. Probably, in line with the other examples there would be, the majority would probably not go to either agency, but in order to protect children both here—in order to protect children, it seems to me that a definition that includes both written and audio material ought to be included.

There are not a lot of mandatory reporting structures in any jurisdiction, either civilly or criminally. It's in unique circumstances that we turn to reporting regimes, vulnerable people, senior citizens and others in institutions and children who cannot speak for themselves.

It is rare for us to put in place this kind of protection but it's important for us to do it, because of those who do not have the opportunity to have a voice on these matters.

So, with that, I recommend the amendment.

**Mr. Chairperson:** Is the committee ready for the question on the amendment?

Do you wish to have the amendment read?

**An Honourable Member:** No.

**Mr. Chairperson:** Dispense.

*THAT the proposed definition of "child pornography", as set out in Clause 2 of the Bill, be amended*

*(a) in clause (b), by striking out "or visual representation" and substituting ", visual representation or audio recording"; and*

(b) by striking out "or" at the end of subclause (a)(ii) and adding the following after clause (b):

(c) any written material whose dominant characteristic is the description, for a sexual purpose, of sexual activity with a child that would be an offence under the Criminal Code, (Canada) or

(d) any audio recording that has as its dominant characteristic the description, presentation or representation, for a sexual purpose, of sexual activity with a child that would be an offence under the Criminal Code (Canada);

*Il est proposé que la définition de « pornographie juvénile » figurant à l'article 2 du projet de loi soit amendée :*

a) dans l'alinéa b), par substitution, à « ou représentation », de « , représentation ou enregistrement sonore »;

b) par adjonction, après l'alinéa b), de ce qui suit :

c) écrit dont la caractéristique dominante est la description, dans un but sexuel, d'une activité sexuelle avec un enfant qui constituerait une infraction au Code criminel (Canada);

d) enregistrement sonore dont la caractéristique dominante est la description, la présentation ou la simulation, dans un but sexuel, d'une activité sexuelle avec un enfant qui constituerait une infraction au Code criminel (Canada).

Amendment-pass; clause 2 as amended-pass.

Shall clauses 3 and 4 pass?

**Mr. Chomiak:** I move

*THAT the proposed subsection 18(1.0.1), as set out in Clause 4(1) of the Bill, be amended by striking out "or material" and substituting ", material or recording".*

**Mr. Chairperson:** Before we proceed to the amendment, clause 3-pass.

We have an amendment for clause 4, which, I think, is being distributed to committee members.

Dispense?

**An Honourable Member:** Dispense.

**Mr. Chairperson:** Dispense.

The amendment is in order. Any questions? Any comments?

**An Honourable Member:** Pass.

**Mr. Chairperson:** Is committee ready for the question?

**Some Honourable Members:** Question.

**Mr. Chairperson:** Amendment-pass; clause 4, as amended-pass.

Shall clause 5 pass?

**Mr. Chomiak:** I move

*THAT the proposed Clause 18.1(2)(b), as set out in Clause 5(1) of the Bill, be amended by striking out "or material" and substituting ", material or recording".*

**Mr. Chairperson:** It has been moved by the Honourable Mr. Chomiak-

**Some Honourable Members:** Dispense.

**Mr. Chairperson:** Dispense. The amendment is in order.

Is the committee ready for the question?

**Some Honourable Members:** Question.

**Mr. Chairperson:** Amendment-pass; clause 5, as amended-pass; clause 6-pass; clause 7-pass.

Shall clause 8 pass?

**Mr. Chomiak:** I move

*THAT the proposed 18.7(1) as set out in Clause 8 of the Bill, be amended by striking out "or material" and substituting ", material or recording".*

**Mr. Chairperson:** It has been moved by the Honourable Mr. Chomiak-

**An Honourable Member:** Dispense.

**Mr. Chairperson:** Dispense. The amendment is in order.

Is the committee ready for the question?

**Some Honourable Members:** Question.

**Mr. Chairperson:** Amendment-pass; clause 8 as amended-pass; clause 9-pass; clause 10-pass; enacting clause-pass; title-pass. Bill as amended be reported.

Thank you to members of the committee.

As previously agreed, we'll now proceed with the bills in numerical order.

**Bill 3—The Highway Traffic Amendment Act**

**Mr. Chairperson:** Does the minister responsible for Bill 3 have an opening statement?

**Hon. Dave Chomiak (Minister of Justice and Attorney General):** Mr. Chairperson, just briefly, these amendments to The Highway Traffic Act reflect changes to the Criminal Code that provide for penalties that will allow our forfeiture regime to kick in in terms of forfeiture under vehicles under The Highway Traffic Act and licence suspensions.

**Mr. Chairperson:** We thank the honourable member for the opening statement.

Does the critic for the official opposition have an opening statement?

**Mr. Gerald Hawranik (Lac du Bonnet):** Yes, I do. I'd just like to mention that we'd certainly like to applaud the Prime Minister, of course, and the former Justice Minister, Vic Toews, for bringing forward legislation to amend the Criminal Code to provide for streetracing offence. I think it's in response, of course, to the public, listening to the public and certainly responding to what the public has to say in terms of—and responding as well to the fact that street racers can cause damage to personal property. It can also cause personal injury as a result of their activities.

So we applaud the federal government for doing that, firstly; and, secondly, this proves to the Justice Minister and it proves to the Province and to this government that in fact there are roles for the Province to play in terms of the criminal laws in this country, not necessarily the amendment to the Criminal Code but certainly the Province does have a role in terms of dealing with these kinds of offences. We certainly would—and we've stated publicly on the record as well—support the licence suspension and forfeiture of vehicles for people who are convicted of street racing.

**Mr. Chairperson:** We thank the critic for the official opposition for the opening statement. We'll now proceed to clause-by-clause consideration.

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

Thank you to committee members.

**Bill 4—The Provincial Court Amendment Act (Family Mediators and Evaluators)**

**Mr. Chairperson:** Does the minister responsible for Bill 4 have an opening statement?

**Hon. Dave Chomiak (Minister of Justice and Attorney General):** Yes, thank you, Mr. Chairperson. Just briefly, Bill 4 clarifies the power of the Provincial Court to refer parties in the dispute about custody or access or matters related to that to mediation similar to that at the Court of Queen's Bench and to ensure that rules are consistent for similar proceedings and provide for confidentiality.

\* (20:20)

I'm glad the member recognized what Minister Toews said on Saturday night, and that is when—was it Mr. Toews or actually the head of the police association, who said, when he goes to meetings across the country with other police associations, they can't believe how much support police get in Manitoba compared to other jurisdictions. That was echoed by Mr. Toews' comments, later on, when he said how close we stand together with the federal government on crime activities. So I'm glad, as we said on Saturday night, that we're all one team working together on this, Mr. Chairperson.

**Mr. Chairperson:** We thank the honourable minister for the opening statement.

Does the critic for the official opposition have an opening statement?

**Mr. Gerald Hawranik (Lac du Bonnet):** That statement, obviously, needs another statement from the opposition. I believe what the police chief had mentioned, and I might be incorrect, but there was a lot of noise in the room at the time. From what I can recall, I think he said he really appreciates the support of the federal minister in Manitoba. But, in any event, it was a great evening that evening. There might a dispute over the facts, I don't know.

With respect to Bill 4, we have put our comments on the record in second reading and we will be supporting this bill because, obviously, it has the potential of allowing people to deal with custody or access in a family matter without the necessity of going to a court and hiring lawyers to do that. It's always better to mediate a solution rather than to have a solution forced upon you by a court.

So, for that very reason, we would support this bill. We're also happy that the act does come into force upon receiving Royal Assent which, hopefully, will be no later than the middle of June.

**Mr. Chairperson:** We thank the critic for the official opposition for the opening statement.

We'll now proceed to clause by clause consideration.

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

Thank you to committee members.

### **Bill 5—The Witness Security Act**

**Mr. Chairperson:** Does the minister responsible for Bill 5 have an opening statement?

**Hon. Dave Chomiak (Minister of Justice and Attorney General):** Yes, I do, Mr. Chairperson. Perhaps, by way of explanation with respect to this bill, Bill 5 codifies a program that has operated for five years in Manitoba. It's had input from police, prosecutors, justice officials, international experts, et cetera.

We're the first province to table this type of legislation. It's grounded on independent assessment of information supplied by police on the threat level facing a witness, input from prosecutors on the evidence of the witness, and their importance to the case and other factors directly related to ensuring the security of witnesses and their family.

There's an assessment panel that is appointed by the minister. It's composed of senior officials from within the Department of Justice and their appointments are based on their experience and expertise. The panel must make critically important decisions regarding the safety of witnesses and their families, and they must have the necessary background. The panel reflects five years of experience. We've checked with external and international agencies and this process appears to be state-of-the-art.

With respect to witnesses, one of the points, I think, that has to be made is that all witnesses are important. In particular circumstances, risk assessments are made by prosecutors and by the police. Based on that information and the other factors that are codified, extra precaution, extraordinary precaution, if I could put it that way, is

taken, under this act. That does not say that if you are a witness, you do not have some risk assessment or some protection.

What this act codifies is the ultimate protection process that we offer in Manitoba, and it's done in legislation. As I indicated earlier, it's been practised for five years, and it's codified in order that it may be identified and understood by both the public and others. Not all witnesses are in need of protection. Most witnesses are not in need of the kind of protection divisioned under The Witness Security Act. Some witnesses in particular circumstances will need this extraordinary range of protection and will be offered based on the terms and conditions as laid out in the bill.

The message sent out by this bill and the support given by the Legislature is to indicate that we take security and safety seriously. We could say a thousand times that we are taking security seriously and we're protecting our employees and those involved particularly in the criminal justice process. That's almost a given. What this bill does say is that we will take extraordinary steps and that we do take witness security important enough that we've put in place a bill that essentially outlines the extraordinary steps that are taken in unique situations.

If members wish to discuss in great detail the aspects of the bill on this issue, because it's an issue dealing with security I would be loathe to entertain outstanding particulars. I have offered department officials to the opposition critic to discuss aspects of this bill, and I will offer to any member of the Legislature to discuss aspects of this bill that they may have questions on. But, having said that, we think that the bill is crafted in such a fashion that it appropriately deals with the exigencies that exist in Manitoba that have been found to exist in the five years of our witness protection program that will be codified, and I suspect it will result in codification right across the country as had happened in other crime-related—not crime-related but organized activity suppression that we do here in Manitoba, and we're very proud of the package that's been put together by our officials. This is part of the package. We've made, I believe, 11 recommendations for significant amendments to the Criminal Code. The federal Minister of Justice has indicated, and the federal government has indicated that they're going to put through the first tranche of those amendments. At the end of the year they're going to consider the second tranche of those amendments dealing with organized crime. As part of our approach to it

through our activities with organized crime, we also realized that we needed a codified and publicly accessible and knowledgeable witness protection program so the public will know that we take these matters quite seriously.

So with those few comments, I'll leave it at that, Mr. Chairperson.

**Mr. Chairperson:** I thank the honourable minister for the opening statement.

Does the critic from the official opposition have an opening statement?

**Mr. Gerald Hawranik (Lac du Bonnet):** Yes, just a brief opening statement and, as indicated in second reading, we support the principle of the bill itself. As the minister points out, the bill itself just codifies existing practice that has been occurring within the program already. There are a couple of concerns that I had expressed to the minister just after second reading and prior to this committee, and he provided me with an opportunity to meet with a couple of senior Justice officials to deal with those concerns to allay my concerns with respect to the bill itself to a couple of provisions in the bill.

\* (20:30)

The bill itself, as I say, we do support the principle of the bill, and I appreciate that opportunity. So I did get a briefing from a couple of senior Justice officials, but one question I guess I have of the minister, and he can certainly respond to it, is the assessment panel itself, and I just heard the minister indicate the fact that there will be Justice officials on the assessment panel. I have expressed to him somewhat of a difficulty with the fact that there are three or more people on this panel that are going to be appointed by the minister. My concern, of course, is that we have people who are knowledgeable within that particular panel. I would certainly want his assurance, at the very least, that they are going to be senior Justice officials and/or police officers that are going to be on that panel.

**Mr. Chomiak:** I think that's a fair question. The utility of the program would be put in jeopardy if we didn't have senior officials on the committee who take recommendations from police and Prosecutions as to the level of protection required. I can answer yes, complete assurance that it will be senior officials and, in fact, straying from that would in fact put the very nature of the process in jeopardy just as straying from being independent of Prosecutions would cause

difficulty for any minister. I can give the member that assurance.

**Mr. Hawranik:** Considering that, first of all, this bill codifies existing practice and we didn't have an existing statute to deal with the situation, I would assume then that there was an existing panel for the last five years that dealt with these kinds of situations, and, in fact, panel members were senior Justice officials and/or police officers?

**Mr. Chomiak:** Yes

**Mr. Chairperson:** Any further questions? I thank the critic for the official opposition for the opening statement. We will know proceed with clause-by-clause consideration.

Clause 1—pass; clause 2—pass; clauses 3 and 4—pass; clauses 5 and 6—pass; clauses 7 and 8—pass; clause 9—pass; clauses 10 and 11—pass; clause 12—pass; clauses 13 through 15—pass; clause 16—pass; clauses 17 and 18—pass; clauses 19 through 22—pass; clauses 23 through 25—pass; clauses 26 through 28—pass.

Shall the table of contents pass?

**Mr. Kevin Lamoureux (Inkster):** A couple of quick questions. How would the federal witness program work with this particular program?

**Mr. Chomiak:** Essentially, the programs work in tandem. I'll leave it at that.

**Mr. Chairperson:** Any further questions?

Shall the table of contents pass?

**Mr. Lamoureux:** I can speculate as to why it is the minister is saying he'll leave it at that. I'll pursue that at a later time when we're off the record. Thank you.

**Mr. Chairperson:** Thank you, Mr. Lamoureux.

Table of contents—pass; enacting clause—pass; title—pass. Bill be reported.

Thank you to committee members.

### **Bill 20—The Gunshot and Stab Wounds Mandatory Reporting Act**

**Mr. Chairperson:** We will now proceed with Bill 20, The Gunshot and Stab Wounds Mandatory Reporting Act.

Does the minister responsible for Bill 20 have an opening statement?

**Hon. Dave Chomiak (Minister of Justice and Attorney General):** No, thank you, Mr. Chairperson. Things are going so well, I think I'll just let it go as is.

**Mr. Chairperson:** We thank the honourable minister.

Does the critic for the official opposition have an opening statement?

**Mr. Gerald Hawranik (Lac du Bonnet):** In fact, I think that deserves a response.

In any event, I think I know why he doesn't want to have an opening statement. It's really because that was a plank in our election campaign to promise this legislation, and he didn't want to get up and stand up and say it was our idea in the first place, but all good ideas should be implemented, whether they come from government or whether they come from the opposition.

I thank the Member for Steinbach (Mr. Goertzen) for bringing this forward to start with and, of course, the government for thinking that it is a good idea and knowing that it is a good idea and working toward passing this particular piece of legislation.

There are lots of good ideas that opposition come forward with, and I could name at least probably two or three from the independent members, even though they've got about 40 bills out there, but two or three, and there's a lot of good private members' bills that we've put forward as opposition members. I'd certainly encourage the government to take a look for more good ideas. We come up with them on a daily basis, and if you can implement them, so much the better for Manitoba.

**Mr. Chairperson:** We thank the critic for the official opposition for an opening statement.

We'll now proceed with clause-by-clause consideration of Bill 20.

Clause 1—pass; clauses 2 through 4—pass; clauses 5 through 7—pass; table of contents—pass; enacting clause—pass; title—pass. Bill be reported.

That concludes the business of this committee. I thank all members for their co-operation here this evening.

The hour being 8:36 p.m., what's the will of the committee.

**Some Honourable Members:** Committee rise.

**Mr. Chairperson:** The committee rise. Thank you to committee members.

**COMMITTEE ROSE AT:** 8:36 p.m.

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