

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

Chairperson
Mr. Daryl Reid
Constituency of Transcona

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MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Ninth Legislature

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

Wednesday, June 4, 2008

TIME – 10 a.m.

LOCATION – Winnipeg, Manitoba

CHAIRPERSON – Mr. Daryl Reid (Transcona)

**VICE-CHAIRPERSON – Ms. Jennifer Howard
(Fort Rouge)**

ATTENDANCE – 11 QUORUM – 6

Members of the Committee present:

Hon. Ms. McGifford, Hon. Messrs. Rondeau,
Struthers, Swan

Messrs. Briese, Derkach, Mrs. Driedger, Ms.
Howard, Messrs. Jennissen, Reid, Mrs. Rowat

Substitutions:

Mr. Hawranik for Mrs. Driedger

APPEARING:

Hon. Dave Chomiak, MLA for Kildonan

MATTERS UNDER CONSIDERATION:

Bill 14–The Criminal Property Forfeiture
Amendment Act

Bill 26–The Legal Profession Amendment Act

Bill 35–The Statutes Correction and Minor
Amendments Act, 2008

Bill 37–The Lobbyists Registration Act and
Amendments to The Elections Act, The
Elections Finances Act, The Legislative
Assembly Act and The Legislative Assembly
Management Commission Act

Bill 39–The Court of Appeal Amendment Act

Bill 40–The Drivers and Vehicles Amendment,
Highway Traffic Amendment and Manitoba
Public Insurance Corporation Amendment Act

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Mr. Chairperson: Good morning, everyone. Will the Standing Committee on Justice please come to order.

Our first item of business is the election of a Vice-Chairperson. Are there any nominations?

Mr. Gerard Jennissen (Flin Flon): I nominate Jennifer Howard.

Mr. Chairperson: Ms. Howard has been nominated. Any further nominations? Seeing no further nominations, Ms. Howard is elected as Vice-Chairperson of this committee.

Committee Substitution

Mr. Chairperson: For the information of committee members for the Standing Committee on Justice, Mr. Hawranik is substituting for Mrs. Driedger.

* * *

Mr. Chairperson: This meeting has been called to consider the following bills: Bill 14, The Criminal Property Forfeiture Amendment Act; Bill 26, The Legal Profession Amendment Act; Bill 35, The Statutes Correction and Minor Amendments Act, 2008; Bill 37, The Lobbyists Registration Act and Amendments to The Elections Act, The Elections Finances Act, The Legislative Assembly Act and The Legislative Assembly Management Commission Act; Bill 39, The Court of Appeal Amendment Act; and Bill 40, The Drivers and Vehicles Amendment, Highway Traffic Amendment and Manitoba Public Insurance Corporation Amendment Act.

At our meeting last night, this committee agreed to commence clause-by-clause consideration of Bill 14 for this morning's meeting until the noon hour.

**Bill 14–The Criminal Property Forfeiture
Amendment Act**

Mr. Chairperson: Accordingly, we will now move on to Bill 14.

During the consideration of a bill, the enacting clause and the title are postponed until all other clauses have been considered in their proper order. Also, if there is agreement from the committee, I will call the 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.

Does the minister responsible for Bill 14 have an opening statement?

Hon. Dave Chomiak (Minister of Justice and Attorney General): Yes, thank you, Mr. Chairperson. I just had discussions with the House leader of the official opposition who indicated that we'll try to get through Bill 14 today and then finish 37 and then go—just kidding. Oops. No, just that we'll probably only have the opportunity to get through Bill 14 today and, just for purposes of the committee, we won't be able to get into other bills today.

On Bill 14, I just want to quickly point out and members will know that the bill is based on both experience and research. The nature of the amendments are that we're going to have a director and not police-led applications. Proceedings are going to be distributed differently than the previous bill. Applications to forfeit will be conducted by judges who will have even greater powers to make interim orders and an asset manager position will be created.

As members will know, Alberta, Saskatchewan and Manitoba all passed police-based models and experienced the same difficulty, that the police were focussed on criminal investigations and were not able to invoke the act. In places like Ontario, Québec and British Columbia where they approached it through a director internally based program, they've had success. So, as a result of both our experience and the other experience in the other jurisdictions, we've now changed the act to go to a director-led model.

We've also, just so members are aware, had extensive consultations now with Winnipeg Police Service and the RCMP who are in favour of this particular act. There have been some court challenges to the various acts, some of them the police-based act, mostly the director-based act. At this point, the provisions of the act have been upheld, although there are some cases pending.

Finally, direct victims of crime will now be assisted from proceeds from the act, and funds from forfeited property will be placed in a trust fund. That's just—and I know we've talked about this before—a general overview; actually, to be honest, because we've been so focussed on other matters, just to update myself, almost, as to the major provisions of the bill. Thank you, Mr. Chairperson.

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

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

* (10:10)

Mr. Gerald Hawranik (Lac du Bonnet): Yes, I do, Mr. Chair, just a very brief one, just to point out to the minister, of course, and he's well aware, that in 2003, The Criminal Property Forfeiture Act was passed in this Legislature and that, in fact, it was touted with much fanfare, although not by this particular minister, certainly by the previous minister. He stood up on a soapbox and proclaimed he was taking on the gangs and criminal organizations of this province. The results speak for themselves, when we found out that there have been no charges laid under this particular piece of legislation and no property was ever forfeited to the Crown.

So, when the current Minister of Justice (Mr. Chomiak) introduced Bill 14, we certainly were very interested in reviewing it and found that to be the case that, as the minister had indicated, other jurisdictions had moved to a different model and in fact had been relatively successful. So, on the record, we have indicated our support for this particular bill, Bill 14, hopeful that it's going to change things, that in fact property will be seized as proceeds of crime and, in fact, work as a deterrent to gangs and criminal organizations in this province.

So we are supportive of this bill. We have a few possible amendments to certain sections of the bill, and we would hope that the government would support those.

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

Honourable Minister of Justice, do you have a comment?

We'll now proceed with clause-by-clause consideration.

Clauses 1 and 2—pass; clauses 3 through 6—pass; clauses 7 and 8—pass; clauses 9 through 11—pass; clauses 12 through 14—pass; clauses 15 and 16—pass.

Shall clause 17 pass?

Mr. Hawranik: Yes, this is where we have a couple of amendments to the bill.

I have an amendment to this particular portion. I would move

THAT the proposed clause 19(4)(d), as set out in Clause 17 of the Bill, be replaced with the following:

(d) to promote safer communities through payments, at the direction of the director, to benefit programs or activities designated in the regulations for this purpose.

Motion presented.

Mr. Chairperson: The amendment is in order.

Mr. Hawranik, did you wish to add comment?

Mr. Hawranik: Yes. Just a brief comment with respect to clause 19(4)(d). I am concerned somewhat that it's wide open in terms of where the funds from the proceeds of property are going to be going. I know that section (a), (b) and (c) certainly indicate where those proceeds will be going, and I think that (d) is a little too wide open. It even possibly leads to the possibility of the Cabinet, by regulation, taking proceeds from crime and using it even on the Spirited Energy campaign or other campaigns such as that. I'm very concerned about the fact that it's wide open in terms of the ability of Cabinet to be able to make those kinds of decisions.

I think any assets that are seized as a result of this piece of legislation should be directed specifically towards programs that promote safer communities and not necessarily have it wide open in terms of where those proceeds are to go.

I would hope that members opposite would support this amendment.

Mr. Chomiak: Clearly, the example as cited by the member would not even be in the realm of possibility. The provision does call for prescribed by regulations, and I don't see any problem in accepting this amendment in order to clarify that the director should move the funds to benefit those kinds of programs. That's precisely the intention, so we certainly will accept this amendment.

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

Some Honourable Members: Question.

Mr. Chairperson: Do you wish the motion to be reread?

Some Honourable Members: No.

Mr. Chairperson: Is it the pleasure of the committee to adopt the motion? *[Agreed]*

The amendment is accordingly passed.

Shall clause 17 pass?

An Honourable Member: Pass.

An Honourable Member: Pass—as amended.

Mr. Chairperson: Pardon me, clause 17 as amended—pass.

Shall Clause 18 pass?

Mr. Hawranik: I have an amendment to this particular portion of the bill as well. I would move, Mr. Chairperson,

THAT Clause 18 of the Bill be amended by adding the following after the proposed section 19.9:

Annual report to the minister

19.10(1) As soon as practicable after March 31 of each year, the director and the asset manager must jointly prepare and submit to the minister an annual report, for the 12-month period ending March 31, that includes the following:

- (a) the number of property seizures made within that period;
- (b) a statement of the total value of the property seized within that period;
- (c) a statement of the total amount realized within that period from the disposition of seized property;
- (d) a financial statement—*[interjection]* Oh, okay; (b) and (c)?

I'm sorry. It looks like I had the wrong version of my draft. If I could—I think I read (b) and (c), and I'd like to substitute a different phrase or a different sentence for each of (b) and (c):

- (b) the total value of the property seized within that period;
- (c) the total amount realized within that period from the disposition of seized property;
- (d) a financial statement of the criminal property forfeiture fund that includes, without limitation, the following information:
 - (i) the total amount paid for costs and expenses under subsection 19(3),
 - (ii) the total amount paid to compensate victims of unlawful activity or to remedy the effect of unlawful activity, as permitted under clauses 19(4)(a) and (b),
 - (iii) the total amount paid to support programs operated by law enforcement agencies, as permitted under clause 19(4)(c),

(iv) the amounts paid to support programs or activities under clause 19(4)(d), showing the total amount paid for each program or activity;

(e) any other information requested by the minister.

Report to be included in department's annual report

19.10(2) The minister must include the report under subsection (1) in the annual report of his or her department.

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

THAT Clause 18 of the Bill be amended by adding the following after the proposed section 19.9:

Annual report to the minister

19.10–

An Honourable Member: Dispense.

Mr. Chairperson: Dispense.

THAT Clause 18 of the Bill be amended by adding the following after the proposed section 19.9:

Annual report to the minister

19.10(1) As soon as practicable after March 31 of each year, the director and the asset manager must jointly prepare and submit to the minister an annual report, for the 12-month period ending March 31, that includes the following:

(a) the number of property seizures made within that period;

(b) the total value of the property seized within that period;

(c) the total amount realized within that period from the disposition of seized property;

(d) a financial statement of the criminal property forfeiture fund that includes, without limitation, the following information:

(i) the total amount paid for costs and expenses under subsection 19(3),

(ii) the total amount paid to compensate victims of unlawful activity or to remedy the effect of unlawful activity, as permitted under clauses 19(4)(a) and (b),

(iii) the total amount paid to support programs operated by law enforcement agencies, as permitted under clause 19(4)(c),

(iv) the amounts paid to support programs or activities under clause 19(4)(d), showing the total amount paid for each program or activity;

(e) any other information requested by the minister.

Report to be included in department's annual report 19.10(2) The minister must include the report under subsection (1) in the annual report of his or her department.

Mr. Chairperson: The amendment is in order.

Mr. Hawranik: Just a few comments about the motion itself. I believe that this motion should be passed, this amendment should be passed simply for the fact that I believe Manitobans need to have full and true disclosure on a timely basis as to what the effect of this amendment is having in terms of its ability to deal with gangs and criminal organizations in the province.

* (10:20)

What this amendment really does is just ensure that there's an annual report to the minister and that report is, in fact, given by his department to members of the opposition and to members of the public. I think it's important for the public to know how this particular amendment to The Criminal Property Forfeiture Act is working, whether it, in fact, is working, and we would know, on a timely basis of course, if it isn't working and we'd be able to make further changes possibly to The Criminal Property Forfeiture Act in order to deal with it.

It's not asking for information that is confidential or it's not asking for information that would certainly jeopardize the program itself or the legislation itself or the ability of law enforcement officials to go after getting some criminal organizations. All we're asking for is financial disclosure so we can determine whether or not the amendment is working on a year-to-year basis. I think the minister would probably agree that he, too, would like to know whether or not it's working, and it's required, of course, that on an annual basis, at the very least, that he gets a report, and as members of the opposition, we'd like to know as well, so that in the event that amendments could be made to improve it, I think it's only in the public interest that we support this motion and this amendment.

Mr. Chomiak: I can indicate in the brief discussion we've had with departmental officials there's no problem in principle with dealing with this. I do

know, even without talking to departmental officials, there are problems in process.

I'll just outline, for example, the dilemmas we face on this. For example, the total value of property seized may be difficult to ascertain in any one particular period of time. The number of property seizures, I think that's possible. The total amount realized within that period will be difficult to ascertain because there will be long periods of time between a seizure, holding on an interim basis, interim judicial order, a final disposition of assets, et cetera, so to calculate that will be difficult. Cost and expenses paid, I think, is possible. Amount to compensate victims may be possible. Support programs—all of those where the money goes may be possible.

There're two other fundamental issues. One is, I don't know if, on terms of timing, we can make this into the annual report every year, and even if we do want—in our case, it actually would be helpful because for two years we're not going to be realizing much. I'm told by departmental officials at least for two years we probably won't be realizing much, we'll be losing. Probably we won't be making money in the first couple of years, so I'm going to suggest that we agree in principle—there are operational difficulties in doing this, can we commit to let—my officials come back and have recommended, I think, wisely, we'll accept this, we'll accept we'll give you a 12-month report and then work out the details.

I'm saying maybe we could come back with this amendment at report stage and third reading. It will allow my officials to come up with something that gives you some of the specifics you want that are doable but allow us to do something that's workable.

Mr. Hawranik: I guess, is there a possibility, then, of the minister dropping (b) and (c) then? Is that the concern, if that's a concern? Or, secondly, at very least, if he still wants a further opportunity to take a look at the amendment itself, whether or not, in fact, before he makes—and I would assume, then, that the minister would be making the report stage and amendment in third reading, that, in fact, at least he consults with me with respect to that amendment and gets my consent at very least. I'm prepared to be reasonable, of course. Would he at least do that?

Mr. Chomiak: Yes, my officials are agreeing that we'll be prepared to bring back a report stage amendment that meets with the approval of the member at report stage, that captures—and we agree—

captures the essence of what the member wants but is doable from a departmental standpoint.

If you think about it, really, like, that one issue of value seizure, seizure, interim order, intertrust, judicial order, distribution of assets, you know how that works. We'd have to have our general account and our trust account and then we'd have the loss of—but you know what? It will be a practical problem for us. If we could find a way of capturing that flow or that transition so that it doesn't—so that we get a real report, we don't have a problem with that, but we want to report on this, too, because the essence of this is to show to that bunch out there that we're going to grab their stuff and they're going to be pushed on this. So it makes sense for us to be able to do that. It's just the specifics.

So I'll agree to bring back a report stage amendment after my officials have reviewed it and we'll review it with the House leader. Then we can bring back this new bill on the third reading.

Mr. Leonard Derkach (Russell): Just further to what my colleague has recommended, I'm wondering whether this report stage amendment can be provided to the critic prior to report stage so that it can be reviewed and then perhaps proceeded with, without a great deal of loss of time in the House.

Mr. Chomiak: That would be my expectation.

Mr. Chairperson: Sounds like the committee has agreed then? My understanding is that this motion, this amendment that's proposed, would either need to have a vote to defeat the motion or to have unanimous consent of the committee to withdraw to allow for a further amendment at report stage.

What is the will of the committee?

Mr. Derkach: Just a question: I know that once an amendment has been introduced at this stage, it cannot be reintroduced at report stage in the House. I'm wondering if, in the spirit of co-operation between the minister and the critic, if this amendment could indeed, if one is not acceptable, if this amendment could then, in some form, be considered as an acceptable amendment at report stage. I guess this is a logistic question.

Mr. Chairperson: It's my understanding, it's been explained to me that if the proposed amendment is withdrawn and a new amendment is brought in at report stage and it's not identical to the one that was withdrawn, then it would be acceptable to the House.

Is there unanimous consent of the committee to withdraw this amendment? *[Agreed]*

Clause 18—pass; clauses 19 through 21—pass.

Shall clauses 22 and 23 pass?

An Honourable Member: No.

Mr. Chairperson: Mr. Hawranik? Did you wish either 22 or 23?

Mr. Hawranik: 23.

Mr. Chairperson: Just a moment then, please.

Clause 22—pass.

Shall clause 23 pass?

Mr. Hawranik: I'm sorry. I think I—too many amendments here. I think what I've ended up doing is—where is that one? I didn't see that one. Oh, here it is here. I have to ask leave to go back to 21, too.

Mr. Chairperson: Is there leave of the committee to return to clause 21 and 22?

Some Honourable Members: Leave.

Mr. Chairperson: Leave of the committee is granted. Thank you.

Mr. Hawranik, on clause 21.

Mr. Hawranik: Yes, on clause 21, it's really a consequential amendment to the regulation-making power because we did make a change—*[interjection]* Yes, I was going to get to that, but, in any event, just looking at my notes here, I would move

THAT the proposed clause 24(c.1), as set out in Clause 21(2) of the Bill, be amended by striking out "to which or purposes for which" and substituting "or activities for which".

Now this is a consequential—

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

THAT the proposed clause 24(c.1)—

Some Honourable Members: Dispense.

Mr. Chairperson: Dispense.

The amendment is in order.

* (10:30)

Mr. Hawranik: It's really a minor amendment, a consequential amendment, which will be required because of our acceptance of the first amendment

this morning to clause 17, and I'm told that, as a result of that acceptance in clause 17, clause 24 (c.1) has to be consequentially amended.

Mr. Chomiak: My officials and the legislative draftspeople feel that that's appropriate.

Mr. Chairperson: Is the committee ready for the question? Do you wish to have the motion reread?

Amendment—pass.

Do you have any further amendments, Mr. Hawranik, to clause 21?

Mr. Hawranik: Clause 23.

Mr. Chairperson: One moment, please.

Clause 21 as amended—pass.

Clause 22 already has been passed by this committee.

Shall clause 23 pass?

Mr. Hawranik: I have an amendment to that as well. I move

THAT Clause 23 be amended by adding "or on September 1, 2008, whichever occurs first" at the end.

Motion presented.

Mr. Chairperson: The motion is in order.

Mr. Hawranik: This amendment is, I think, necessary but, because of the fact that it's fixed by proclamation and that could occur who knows when, we are somewhat concerned about this particular bill.

We are in support of the bill and we'd like to see it enacted and proclaimed into force as soon as possible. So fixing a date, at the very latest, I think, would be an appropriate amendment.

Mr. Chomiak: Mr. Chairperson, I'm a little loath to go with that, because we have people on staff starting to work now. We have a whole series of training measures, office procurement, et cetera.

The dilemma with the September 1 start date was that the clock would start ticking on accountability in the office when, in fact, I think realistically that December 31 of this year would be a more appropriate start date. So I'm willing to counter by saying, a date fixed by proclamation or December 31, which pushes us a little bit more, but I'm prepared to do that.

Mr. Hawranik: I'd be prepared to amend my amendment—[interjection]—okay, a little bit of time.

Mr. Chomiak: Yes, thank you, Mr. Chairperson. As the Member for Lac du Bonnet (Mr. Hawranik) will know, for the purpose of symmetry we're just recommending that maybe January 1, 2009, would be better than December 31.

An Honourable Member: I'll give up, from that date.

An Honourable Member: That's a big concession, you know.

Mr. Chairperson: Mr. Hawranik?

Mr. Hawranik: Okay. Okay, I'll give up, that date.

Mr. Chairperson: Sounds like there's agreement on that.

* (10:50)

Order, please.

Mr. Chomiak: With the assistance of discussions—oh, I don't have to say any of that, do I?

THAT the motion to amend Clause 23 of the Bill be amended by striking out "September 1, 2008" and substituting "January 1, 2009".

Mr. Chairperson: It's been moved by the honourable Minister of Justice

THAT the motion to amend to Clause 23 of the Bill—

An Honourable Member: Dispense.

Mr. Chairperson: Dispense.

The amendment is in order.

Any further discussion? [interjection]

Is there unanimous consent of the committee to remove, in the first line of the amendment, the second word "to"?

Some Honourable Members: Agreed.

Mr. Chairperson: Agreed? Unanimous? Thank you.

An Honourable Member: Is that t-o-o? T-w-o?

Mr. Chairperson: T-o. Yes. After the word "amend". That is removed then.

Is the committee ready for the question?

Some Honourable Members: Question.

THAT the motion to amend Clause 23 of the Bill be amended by striking out "September 1, 2008" and substituting "January 1, 2009".

Mr. Chairperson: Shall the amendment pass?

Some Honourable Members: Pass.

Mr. Chairperson: The amendment is according—subamendment is accordingly passed.

Amendment as amended—pass; clause 23 as amended—pass; enacting clause—pass; title—pass. Bill as amended be reported.

I believe that concludes this portion of the business. I will remind everyone in attendance again that, as was announced in the House, this committee will also meet in this room to consider these bills on the following occasions: this evening, Wednesday, June 4, at 6 p.m., and tomorrow, Thursday, June 5, at 6 p.m. as well.

Just before we rise, I'd ask committee members to leave behind any unused copies of the bills for further use in subsequent committee hearings.

Thank you for the co-operation of committee members and also to our Legislative Counsel staff for assisting us in this regard.

Committee rise.

COMMITTEE ROSE AT: 10:56 a.m.

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are also available on the Internet at the following address:

<http://www.gov.mb.ca/legislature/hansard/index.html>