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Legislative Assembly of Manitoba
STANDING COMMITTEE

ON

LAW AMENDMENTS

29 Elizabeth II

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The Honourable Harry E. Graham
Speaker*



THURSDAY, 26 JUNE, 1980, 10:00 a.m.

MANITOBA LEGISLATIVE ASSEMBLY
Thirty - First Legislature

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LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON LAW AMENDMENTS
Thursday, 26 June, 1980

Time — 10:00 a.m.

CHAIRMAN — Mr. J. Wally McKenzie (Roblin).

MR. CHAIRMAN: Committee come to order. We'll proceed with dealing with Bills 13, 20, 34, 37, 38, 39, 42, 49, 50 and 70, and I'll call Mr. Dolin to speak on Bill No. 49.

LAW AMENDMENTS

**BILL NO. 49 — AN ACT TO AMEND
THE OMBUDSMAN ACT**

MR. MARTIN M. DOLIN: Mrs. Westbury and gentlemen, thank you for allowing me to appear on behalf of the Manitoba Association for Rights and Liberties on Bill No. 49. I believe on Thursday, copies of our submission were given to the Clerk. The Manitoba Association for Rights and Liberties is concerned about Section 4(3) in Bill 49 amending The Ombudsman Act, which exempts the Ombudsman from the compulsory retirement stipulations of the Civil Service Superannuation Act. We find the proposed amendment at least paradoxical, and at most discriminatory.

The committee certainly is aware that The Manitoba Human Rights Act prohibits discrimination on the basis of age, but the Human Rights Act does not take precedence over the Civil Service Superannuation Act. The Civil Service Superannuation Act requires compulsory retirement at the chronological age of 65, regardless of the state of health or competence of the individual civil servant. We commend the government on the recognition that at least one individual, the Ombudsman, has the competence and capacity to perform his duties after the age of 65, but would suggest that there are other individuals presently covered under the terms of The Civil Service Superannuation Act who would also meet these criteria.

The current session of the Legislature already has before it an Act to amend the Civil Service Superannuation Act which has not yet been referred to this committee. Surely it would not be difficult to recognize the principle by an amendment to Bill 73, the principle which has recently been recognized in the case of Professor Imogene MacIntyre before the Court of Appeal, which ruled in favour of her claim that she should not be compelled to retire from the university at the age of 65. The same principle of putting an end to compulsory retirement is involved and we would hope that the Legislature would be quickly prepared to deal with the entire issue rather than deal with one case at a time such as that of the Ombudsman in this instance.

It is ironic to us that the Ombudsman, who is charged with the responsibility of protecting the individual against the excesses of the state and ensuring fair treatment for all, is himself in the

proposed legislation singled out for preferential treatment. We would imagine that Mr. Maltby would be flattered by the legislative vote of confidence, but also somewhat embarrassed by being accorded a privilege not granted to other persons his age.

The Manitoba Association of Rights and Liberties is of the opinion that compulsory retirement at any specific age is a denial of the spirit of human rights legislation which prohibits discrimination because of age and is a denial of the rights of the individual to be considered on his or her own merits as an individual. The Manitoba Association of Rights and Liberties does not wish to suggest that the proposed amendment not be carried. We feel that Mr. Maltby is well qualified to carry on past the age of 65, but we also feel that many other individuals presently forced into premature retirement are also qualified to continue serving and are being denied the right to do so. It is our opinion that if Mr. Maltby's case can be considered on its merits, then so can that of any other person covered under Civil Service legislation.

The proposed amendment to The Ombudsman Act to waive compulsory retirement for the Ombudsman is not what is required. What is required is the amendment of the Civil Service Superannuation Act to strike the section forcing retirement at age 65 and allow each individual to be considered on his or her merits if they wish to continue employment after age 65. We feel that this would be a just solution to the problem of allowing Mr. Maltby to continue serving the people of Manitoba after his 65th birthday, and will provide fair and equal treatment, consistent with the principle of outlawing discrimination because of age, to all civil servants.

We respectfully request that this committee give consideration to tabling the proposed section of the amendment to The Ombudsman Act and consider striking the discriminatory sections of The Civil Service Superannuation Act. This is submitted for the Manitoba Association for Rights and Liberties by myself, Martin Dolin, and Garth Erickson, co-convenor. If there any questions, I'd be pleased to respond.

MR. CHAIRMAN: Thank you, Mr. Dolin. Mr. Corrin.

MR. BRIAN CORRIN (Wellington): Mr. Dolin, I would like to know whether MARL in its deliberations has considered whether The Human Rights Act might supersede the Civil Service Superannuation Act. I know this is a question that has been put to the Human Rights Commission by the Attorney-General, but I was wondering whether your particular interest committee considered this matter in deliberating.

MR. DOLIN: We had some of our legal persons look into this and it was their opinion that is is somewhat questionable. There may be a possibility, but we are not sure. In other jurisdictions it has not seemed to have been interpreted as taking precedence. I think that is still to be tested in Manitoba courts. Obviously, the decision regarding

Imogene MacIntyre deals with non-legislated, compulsory retirement, which is a different situation.

MR. CORRIN: No further questions.

MR. CHAIRMAN: Any further questions for Mr. Dolin? We thank you for your presentation, sir.

MR. DOLIN: Thank you.

MR. CHAIRMAN: I guess there is nobody else that wishes to make a presentation on any of these bills. Shall we proceed with the bills, then? Mr. Tallin has requested, he said Mr. Minaker wants to be here for Bills No. 20 and No. 39. Maybe somebody can get him because . . .

BILL NO. 13 — AN ACT TO AMEND THE DEFAMATION ACT

MR. CHAIRMAN: Bill No. 13, page by page? Page No. 1—pass; Page No. 2—pass; Title—pass; Preamble—pass. Bill be reported.

BILL NO. 34 — AN ACT TO AMEND THE GARAGE KEEPERS ACT

MR. CHAIRMAN: Bill No. 34, An Act to amend The Garage Keepers Act. Page 1—pass; — (Interjection)— 34, well, we're holding 20 and 39 until Mr. Minaker arrives. Page 2—pass; Preamble—pass; Title—pass. Bill be reported.

BILL NO. 37 — AN ACT TO AMEND THE HIGHWAYS DEPARTMENT ACT

MR. CHAIRMAN: Bill No. 37, An Act to amend The Highways Department Act. Page 1—pass — (Interjection)— An amendment, I'm sorry. Mr. Einarson, you have an amendment?

MR. HENRY EINARSON (Rock Lake): Yes, Mr. Chairman. I have a proposed amendment to Bill 37, An Act to amend the Highways Department Act. The motion reads, Mr. Chairman, that the proposed new Clause 2(j) to The Highways Department Act as set out in Section 1 of Bill 37 be amended by adding thereto at the end thereof the words "or survey monuments or posts that are authorized to be placed under the provisions of any Act of the Legislature or Canada.

MR. CHAIRMAN: Any questions? Mr. Jenkins.

MR. WILLIAM JENKINS (Logan): Thank you, Mr. Chairman. Just through you to the Minister, is this the survey monuments that we would find, say, on international and interprovincial boundaries? Is that the type of survey monuments and posts that we are speaking about here?

MR. CHAIRMAN: The Minister of Highways.

HON. DON. ORCHARD (Pembina): It could do, if those monuments were within the right-of-way limits that we're specifying in the Act. The prime ones that we're targeting are the township brass pegs that are commonly within highway rights-of-ways.

MR. JENKINS: Through you, Mr. Chairman, to the Minister, how about historical monuments and whatnot? Does that include these as well that are within the highway limit?

MR. ORCHARD: No, not this amendment. This is strictly for legal surveys.

MR. CHAIRMAN: Mr. Jenkins. Mr. Hanuschak.

MR. BEN HANUSCHAK (Burrows): Do I understand that Minister to say then that under this law it would not be permissible to construct or to retain historical monuments within the 50-foot limit?

MR. ORCHARD: You would understand that this amendment does not change the construction of new monuments or the placement of new monuments within the control zones. That restriction has always been there; it has always had to have been by departmental approval. The existing monuments that are already there prior to the establishment of control lines are not affected by this Act.

MR. HANUSCHAK: Existing monuments; what about other structures of whatever kind existing prior to the enactment of this law?

MR. ORCHARD: If I can refer to some of the comments that the Member for Burrows, during his comments he indicated that this amendment would give us the ability to go in and take out trees without compensation. What this amendment is designed to do is to provide us with a certain amount of control over new plantings of trees, new establishments of buildings. Existing windbreaks, trees, landscaping that are in place are not affected by this amendment. This amendment is designed to give us some direction over new plantings, new establishments of structures.

MR. HANUSCHAK: Well, Mr. Chairman, if that's the Minister's intent, then why doesn't he say so clear and unequivocally in his bill, rather than put people into the position when interpreting this bill of having to read the bill as well as getting a transcript of Hansard of what the Minister is at the present saying to find out what his real intent is. Because if one reads this section of the bill or the bill in its entirety, it would seem to apply not only to structures which may subsequently be constructed, but also to existing ones.

It does not appear to exclude existing structures of whatever kind and this is the reason why, when I spoke in the House, I made mention of the fact that this will give the Minister the — well, this one and then there's another bill that we're going to be dealing with, The Highway Traffic Act, which is even a bit rougher. —(Interjection)— No, no, it's this one. Yes, it's this one that seems to accorded a liberal interpretation of it gives the Minister the right to uproot cemeteries and historic sites, fences, gates and whatever, anything that may exist within 50 feet of a road.

Now the Minister says that now this doesn't apply to the existing ones, but I think that he should make that point clear in the bill and not just give that assurance here in committee.

MR. ORCHARD: Mr. Chairman, in specific reference to fences, I think if the Member for Burrows refers to the definitions of structure, it excludes or does not include wire fences.

MR. HANUSCHAK: For agricultural purposes.

MR. ORCHARD: The other part that he refers to that he made his issue on, 15(2) of the bill specifically states no person shall plant. No reference to existing, it's no person shall plant or place . . .

MR. HANUSCHAK: Or place or cause to be planted, or placed.

MR. ORCHARD: . . . or cause to be, which is shall — Mr. Chairman, do I understand that I have the floor here or is the Member for Burrows . . .? It is rather explicit in there that no person shall — and shall I would assume to be present tense from now forward — plant, place or cause to be planted or placed, which means from the enactment date of this Act forward. That is the restriction that is being imposed. There is no other imposition implied in here.

MR. HANUSCHAK: Mr. Chairman, if one continues reading the bill, then one also finds that there's a section that contradicts what the Minister has just said because there is a section that gives somebody the authority, and I don't know who, whether it's the Minister. But it says that any tree, shrub, hedge or other object planted or placed, in the past tense, planted or placed upon or within 50 feet of a departmental road, outside a city, town or village, may be removed and the person is not entitled to any compensation. So it doesn't say that any tree, plant, shrub or object planted or placed after the proclamation of this bill may be removed, but anything that may have been planted or placed at any time may be removed.

So that's why I made the point on second reading, that there are many cemeteries or portions of cemeteries falling within the 50-foot limit of highway rights-of-way and that gives the Minister the right after the funeral to dig up the coffin, and that's why I call him the body-snatcher.

MR. ORCHARD: Mr. Chairman, the Member for Burrows did raise the cemetery aspect. That was an issue that we had discussed. We had contemplated putting a specific exception in the Act to apply to cemeteries, because we were well aware that there are certain cemeteries that are within the highway right-of-way which would be affected here. We chose not to make cemeteries a specific exemption because it would be our hope that the establishment of new cemeteries would not be within the 125-foot right-of-way. It is explicitly known to department officials administering this Act that cemeteries aren't part of the considerations. There is no change in authorization or anything to apply to a cemetery.

We didn't enshrine it in legislation because then we would have no ability to say to a person or a group of people wanting to establish a new cemetery that you cannot locate within 125 feet. We would prefer them to be off, back from the highway that 125 feet. Any new cemeteries, had we made an

exemption a blanket exemption for all existing cemeteries, may have come under that exemption. That isn't the intent of our government or of any government to have that happen, because that is not in the best long-run interests of those establishing a cemetery, nor the taxpayer.

MR. HANUSCHAK: Yes, well, Mr. Chairman, I think to clearly protect existing structure of whatever kind, I think when we reach 15.2.2 on the bill I will move an amendment.

MR. CHAIRMAN: Mr. Desjardins.

MR. DESJARDINS: Mr. Chairman, it seems to me that the Minister is contradicting himself. He is saying that he doesn't want — he's talking about the future, from now on, and there's a list of things. He said that they discussed the question of a cemetery and of course he would prefer that they, the cemeteries be included, that is that they build at least 120 what is it — (Interjection)— Well new ones, but the Minister just said, so if he states that, it means that the other concern for other things than a cemetery is valid. Now if the Minister in effect intends to be for the future, for these things, he could include a cemetery at this point, but add another clause and then there wouldn't be any concern, that this would only be for those after a certain date that it was to apply.

If the Minister means that, it would be very very simple to satisfy both the Minister and Mr. Hanuschak by putting a short clause that this will take effect only from the date of proclamation in these areas and then everybody would be satisfied and apparently that's what the Minister is saying that he wants. That he could include cemeteries. He would protect himself. It's not for the future that we're concerned, we're talking about what's in place now.

MR. ORCHARD: Well, Mr. Chairman, I believe that's the intent of Clause No. 5 of the bill.

MR. DESJARDINS: Well, Mr. Chairman, you don't deal with intent here, you deal with the law and there's an interpretation that has to be made at times by the courts and it would be — you don't start by leaving loopholes or leaving things and saying, well that's the intent, because the intent of the law is not always followed. It would be very simple to say, if it's the intent I don't see why the Minister is not ready to say, okay, fine, that's what I mean, I don't mind making sure that it's clear for everybody and insert something in there that these — for the day that this — or put a date or put whatever you want, but make sure that it applies only for future things. And to protect yourself, add the word cemetery in there.

I think I know what the government wants and I think they should add cemetery, new ones. But what we're concerned about is we don't want to see that everything that is there now will have to be moved, that's the only concern.

MR. ORCHARD: Mr. Chairman, I'm not convinced that that isn't taken care of already, that existing

cemeteries will not be affected by this as it applies . . .

MR. DESJARDINS: Would you mind showing us in the bill where it says that?

MR. ORCHARD: No provisions of this amendment, Mr. Chairman, come into effect until the day it receives Royal Assent. Anything that has happened prior to that is not affected by these amendments.

MR. DESJARDINS: Mr. Chairman, with your permission could we ask Andy to give us his opinion on that.

MR. CHAIRMAN: Certainly.

MR. BALKARAN: Mr. Chairman, it's my opinion that the legislation can only be applied prospectively and that it will deal only with things placed subsequent to the coming into force of this Act. Anything that's placed prior to that in my view will not be affected by the provisions of this bill.

MR. HANUSCHAK: Could we ask Andy for further clarification. I appreciate the point that he has made. However, looking at this section of the bill, namely 15.2.2 subsection 15.2 of it, would Mr. Balkaran not agree that that section, when it receives Royal Assent, will give somebody the power to remove objects which he may find within 50 feet of a departmental road and he would not need to concern himself as to when that object was placed there or not. He goes along with a tape measure and he finds an object not permitted to be there under this law, within 50 feet, and he removes it, and he will have the power to remove it, regardless of whether it was placed the day after the bill received Royal Assent or whether it was placed there a hundred years ago. But if it's within 50 feet he'll have the right to remove it.

MR. BALKARAN: Mr. Chairman, I don't interpret it that way. I think that you have to interpret "placed" as placed subsequently to the coming into force.

MR. HANUSCHAK: So then it should be very easy for the Minister to say that. Yes, then I would say that it would be very easy for the Minister to say that clearly, specifically and unequivocally. It doesn't.

MR. CHAIRMAN: Mr. Boyce.

MR. J.R. (Bud) BOYCE (Winnipeg Centre): I have a couple of questions. From what the Minister has said, I understand that this bill is to try and prevent the placement of hazards, is that correct?

MR. CHAIRMAN: The Honourable Minister.

MR. ORCHARD: Yes, hazards are part of it.

MR. BOYCE: What other reason is there? You said "part of it". What other part is there if it isn't just for hazards?

MR. ORCHARD: Okay. Let's deal with a specific. Let's deal with a building within 50 feet. It may obstruct view and be hazardous but the prime concern, or one of the prime concerns, as well as the

safety, is that within 50 feet — 50 feet is picked because that is the normal additional right-of-way which may be required when the road is upgraded in the future — it is deemed advisable on behalf of the taxpayer to have some sort of say as to what is located there, because if you locate a major building within 50 feet, you not only have the safety hazard but should you need that right-of-way for future development of a road, having it improved to the extent of having a building on it, is going to raise additional costs to the department, hence to the taxpayer for developing and improving that road.

So what we're saying in this Act is that if it is deemed essential to have something close to that road, we would like to know what it is and assure that the department is aware that it's going to be located there and give approval to it, if it's not going to be in the long run detriment to the future expansion plans and safety on the highways.

MR. BOYCE: Mr. Chairman, through you to the Minister. The way I understand what you're saying is that what the Crown is asking for is a statute to protect another 100 feet of right-of-way.

MR. ORCHARD: No.

MR. BOYCE: Mr. Chairman, I think from what the Minister's suggested, that we're getting into bad law; as a layman I'm a little concerned; because the principle that the Minister has just mentioned is that we want to put into statute future anticipated needs of the Crown; and if that be the case, Mr. Chairman, in light of the next clause which we will consider, is the whim of the Minister, because it says, "A permit can be issued by the Minister". I think the onus should be on the Crown so that if a person applies for a writ of mandamus, then it is up to the Crown to prove that it is a hazard. I don't think we should build into law future anticipated needs of the Crown without putting in some onus on the government to prove that that structure shouldn't be there. Because we're talking about two things; we're talking about the law itself, which is legal and the legal people's mind's deal with it, but then we have to deal with the bureaucracy also and, when you deal with the bureaucracy, the top of the bureaucracy is the Minister.

I think the government should be willing to amend this particular section to make it to be the case that the onus would be on the Crown in the sense that if a person wants to do something, that some person out in the Highways Department — and I'm not knocking the bureaucracy at all, they've got a tough job to do — but nevertheless if some farmer for some reason or other has only one place to put a granary and in his mind he wants it there for two or three rotations of a crop or something, that some Highway person can say that he can't put it there. It goes to the Minister and the Minister is much influenced by the advice of the bureaucracy.

The only thing that can protect this individual is the Crown would have to make a case, that someone would judge that it is necessary to prevent this individual doing what they want. For gosh sakes, Mr. Chairman, for people who screamed at us, freedom of the individual and everything else, they should be willing to accept the responsibility of proving a case,

that it is a hazard. So I don't see why the government would be reluctant to amend this section, to build in some safeguard other than that which is in the next section, which is at the whim of the Minister. Because as I understand it — and maybe the Legislative Counsel can advise us — the Minister, the way that section reads, would not have to show cause for prohibiting the structure. I think the Minister should accept that clause, that it would have to be proven to be a hazard.

One question through you, Mr. Chairman, to the Minister. We have 90 feet or so road allowance already. I don't know how many acres this takes up but nevertheless you want, as I said earlier, 50 feet on either side of that so that's another 100 feet.

MR. ORCHARD: Mr. Chairman, it is indicated in here, "within 50 feet of a departmental road". That is not within 50 feet of a 99-foot right-of-way extending it to 199 feet. It is 50 feet from the departmental road, not from the right-of-way, from the edge of the road.

Now, Mr. Chairman, I want to point out to the members here that what we are doing, if you want to get down to what we are doing in this Act, the old provisions under The Highway Department Act which was brought in, I believe, — I'm not too sure, I think it was 1974 — prohibited the planting except by Ministerial permit, anywhere within 125 feet of the edge of the road. We have found that to be, particularly with the case of trees for the purpose of landscaping, beautifying our rights-of-ways, beautifying beside our highways, we have found that to be, let's say, administratively unworkable because 125 feet on both sides was a little difficult.

What we're talking about with this 50 feet is, by and large, the ditch and maybe 10 feet beyond the ditch; that's what we're talking about with this 50 feet. That's what we're saying now has to be planted under permit. It was formerly 125 feet. We are lessening that requirement.

Now that is an improvement of individual land owners' freedoms over what was available when the Act was brought in in 1974. So that, Mr. Chairman, what we are trying to do is make this Act more workable. From a safety standpoint to the motoring public, I doubt if a case could be very often made to locate anything within 50 feet of the edge of a road. In our country, and the mention that the member makes or one of the members made about a granary to be located, that granary would, in all probability in the wintertime, cause our roads to drift in, which would be a safety hazard to the travelling public. It would increase maintenance costs and an additional 50 feet back would solve those problems. That is what we are saying we would prefer to have. I don't think that is an onerous requirement. It is a reduction of the requirement in distance that was placed in the Act originally in 1974.

MR. CHAIRMAN: Mr. Mercier.

HON. GERALD W.J. MERCIER: Mr. Chairman, I would just like to verify something, because Legislative Counsel advised me that departmental road includes the whole right-of-way.

MR. CHAIRMAN: Mr. Boyce.

MR. BOYCE: The Minister just reinforces my case. I would suggest that it should be even broader than that. It should perhaps be 300 feet if it's on a bad curve. If it's on a high speed road and people plant trees within 50 feet to see far enough around that curve, perhaps it should be even further than that. All I'm saying is that there should be some case, with our example of the granary, Mr. Chairman, that if prevailing wind is such that it won't drift, and some bureaucrat says, well, you can't put it there because the law says that you can't put it there. But if the Crown could show that it would cause drifting, then perhaps they would say that is a good case for not putting it there. All I'm saying is, rather than restricting people, arbitrarily in law, that they be given some flexibility to be reasonable. I am sure with most of the farmers that I know, if there was any other place to put his granary that it wouldn't cause a nuisance, he wouldn't put it in a place to cause nuisance, you wouldn't need a law. What we're talking about is the difference between an individual citizen and their bureaucracy, that we should protect that individual by saying that it isn't just the bureaucracy that's going to decide, we have to deal with the . . . I'm sorry, Mr. Chairman, I get harping on the concept of equity in law. We have to make the law fair for people. Administratively, it's a nice thing. Don't put anything there. Everything lined up in rows. But I don't think this is what we should be after as far as legislators are concerned. All I'm suggesting is the government should be willing to amend this particular law, to build it in some suggestion that the onus is on the Crown to prove that it is a hazard.

MR. CHAIRMAN: The Minister of Highways.

MR. ORCHARD: Mr. Chairman, would the Member for Winnipeg Centre not admit that a reduction from 125 down to 50 feet is removing some of the onerism that was in the previous Act and is certainly a step in the right direction? If it doesn't accomplish all that he would like to see, which may or may not be possible, it certainly is a step in the right direction.

MR. BOYCE: Mr. Chairman, perhaps it should be silent as to distance. It should be to the point of hazard. If it is 10 feet —(Interjection)— This is true, you are putting the judgment on the bureaucrat whether it is 50 feet or 125 feet or any stipulated distance. What I am suggesting is that there should be no other case to prevent somebody putting something where they want to put it, except a hazard to someone else, and that's the principle that should be in this particular amendment. If it is 10 feet, then it shouldn't be there; if it is 300 feet, it shouldn't be there if it's going to cause a hazard.

Mr. Chairman, I am suggesting that it isn't a case of 125 feet or 50 feet. If what the government is trying to do is prevent hazard, then that's perhaps what they should address themselves to. I'm not a draftsman, but I suggest the government should be willing to accept that suggestion, that they deal with the question of hazard and not distance, and allow some recourse to a judgment outside of the legislative and bureaucratic process.

MR. CHAIRMAN: Mrs. Westbury.

MRS. WESTBURY: Thank you, Mr. Chairperson. It does seem to me at times that we are trying to make our prairie highways as boring as possible. However, I really wanted to speak to the matter of interpretation. Whatever is enacted is not going to be interpreted out in the field by lawyers and if every tree is removed, if it has been planted before this Act was passed, it is not going to be easily replaced — or a hedge or whatever — and just because somebody comes along and interprets this to mean this Act comes into force on the day it receives the Royal Assent, that they can perhaps remove something already existing, it's not easy to replace that, so I really do feel it has to specify that this does not refer to already planted or already constructed before this comes into force.

MR. CHAIRMAN: Mr. Hanuschak.

MR. HANUSCHAK: Yes, Mr. Chairman. Firstly, let me say one could drive along any departmental road and find many homes built and the yards landscaped all the way up to the property line. The Minister had reminded us that this legislation has been in effect for some time. I would ask the Minister, in all those cases, was there an application made for permission to landscape up to the property line, or did the people do that on their own? Were they violating the law?

MR. CHAIRMAN: The Honourable Minister of Highways.

MR. ORCHARD: I can't answer if everyone has applied for a permit to landscape their yards. I think that law came in in 1974 and I believe, in 1974, there were yards that were landscaped within that 125 feet. Did the previous administration go out and tear up the shrubs and pull out the trees in those yards that had landscaped up? I suggest certainly not, Mr. Chairman, and neither will this amendment change that basic intent of 125 feet.

MR. HANUSCHAK: Yes, Mr. Chairman, there is another very significant change and a dangerous one. As the law presently reads with respect to structures, plants, whatever, placed or planted without permission from the Minister, at the present time, yes, it's true, it is an offence, but there is also recourse to the courts because there is a subsection which is being repealed, which opened the way to the courts. I will read it to you, Mr. Chairman: The justice by whom a person that is convicted for an offence, for contravening any provision of this section, may, upon application of the Crown, made either at the trial or within 30 days thereafter, order the person convicted to remove within a period specified in the order, the thing in respect of which he is convicted, and then, if he fails to do so, then the penalty that follows.

Now, Mr. Chairman, the Minister is taking this section out of the jurisdiction of the courts and he is assuming the sole responsibility for the administration of it. There will not be an opportunity to go to the courts, Mr. Chairman. As I have indicated a moment ago, the Minister can go driving

down a departmental road with his tape measure and remove anything within 50 feet that he finds objectionable or that he thinks is violating the provisions of this Act, without any compensation, without any advance notice, without any recourse through the courts, without any compensation to the person who placed that particular object or planted that tree there. So the fact that this law was in existence since 1974 and that now it's being made less onerous by reducing the distance from 125 feet to 50 feet doesn't in itself make this a good law.

I would also like to remind the Minister of the fact that there are many small communities which do not fall within the definition, which cannot be defined as a city, town or village. They are small hamlets; they are part of the rural municipality. According to the strict interpretation of this law, those little hamlets will be affected by this law. You can drive down any highway; the Minister of Education can drive to Balmoral, Duncan, Komarno, those are not incorporated villages. One of them may be, I'm not sure, but I don't think that all of them are. Now, those places would be affected by it. So here you have a couple living on a lot 100 feet deep, their house is probably within 50 feet of the road allowance and they have a little rosebush in front of their livingroom window that they took great pride in and that gave them a tremendous amount of pleasure, and that rosebush dies. So what the Minister is saying to this couple living in that house is they can't replace that rosebush in front of their livingroom without permission from the Minister. That is ridiculous, Mr. Chairman.

As I mentioned a moment ago that I was giving you notice that I intended moving an amendment to 15(2.2), but the more I think about it and as the debate is continuing in committee, it becomes more and more apparent that what the Minister should do is withdraw this bill and come back to the House with a more sensible one and a more practical one than what is before the committee at the present time.

MR. CHAIRMAN: Mr. Boyce.

MR. BOYCE: Mr. Chairman, another point that disturbs me is the idea of no compensation. I can't help but say I'm surprised that this section of the bill survived the Conservative Caucus. We're sitting in here as a Law Amendments Committee, not as the government or anything else, we're all legislators and all members of this committee, and I would ask my Conservative colleagues to dwell for a moment on some of the nuances of this bill, where you remove the right to appeal. I, as a dweller in the city, resent some of the zoning laws that all my houses have to be in a particular row and everything else and if you want to sneeze, you almost have to apply for a permit. I accept the fact that we have to subject ourselves to some degree of order or chaos prevails, but nevertheless this particular principle that the Crown will have the right to act arbitrarily, with no recourse to anyone except the Minister, and Ministers change and governments change, they tell me, so that I, as one member of the committee, Mr. Chairman, would ask the Minister to perhaps not proceed with this bill at this time but to give pause and consider some of the ramifications of it. The

principle is important, that we won't subject ourselves to the bureaucratic process with really no built-in protection for the citizens.

MR. CHAIRMAN: The Minister of Highways.

MR. ORCHARD: Mr. Chairman, Section 3 of the bill deals only with Section 15(2) of the Act, and what it is doing, Mr. Chairman, as I pointed out, is taking, and first of all, in 15(2), it's not allowing anything that will encroach or overhang on the road, number one, which is a cleanup of a definition. Then in the other two additional clauses which we are adding in, it does two things. Number one, it reduces the prohibition that is presently in the Act, of 125 feet, and reduces it down to 50 feet, certainly an improvement, I think by anybody's standards. The second part of that, 15(2.2), is designed that we're not prohibiting carte blanche, but what we are saying is that if someone is going to establish a new farmyard, let's take an example, within that 50 feet and they want to landscape it, that they apply so we know what they are going to do, so we can make suggestions to them. We may know that three years from now, we will be upgrading that road and are going to need 25 feet of that right-of-way. That is why we are saying that plantings within that 50 feet should be done or landscaping within that 50 feet should be done by authorization by permit.

Now, 15(2.2) is designed that if someone is aware of this — and we do have people, I suppose, who would be aware of this and would proceed post haste to do as they please, and we have had some instances of this — then what 15(2.2) is designed to do is to assure that should be need that extra 25 feet, part of which has been utilized, that we, after having advised the individual that we do not think you should undertake the project that you have there, we are saying in 15(2.2) that because you have gone ahead and done it against the advice, because we have indicated we are going to need that property for future development, that we should not have to compensate you for doing something against the advice that was available.

I don't think that's an unfair clause to put in any Act, because we're not doing anything other than protecting the taxpayer against untoward expenditures in the development of a highway system. I'll leave my comments there.

MR. BOYCE: The Minister keeps reinforcing my case, Mr. Chairman. If the department is going to use this bill to prohibit the erection of structures for possible future use, go back to my case of somebody with a granary. If there is no hazard in somebody putting a granary there on skids, then he shouldn't be prevented from putting it there, because if there is some future use . . . They can pull the darn thing away, if it isn't considered an improvement. But in this particular case, an individual would be prohibited bureaucratically from putting something within that 50 feet, just by the mere fact that it is 50 feet.

I don't know how you can improve upon a bad principle. The former administration passed bad law too, so don't think I'm just picking on the Minister, and I don't want to drag my feet on it. It's such a small point in relationship to the things that we have

to consider, Mr. Chairman. It sounds stupid but, you know, Lincoln said the price of freedom is eternal vigilance and this is one thing; for gosh sakes, put our finger in the dike. If I was working for you in the Department of Highways, I would love this law. I would be asking you to pass it, because it would make my job easier. I understand that, but I'm not here as one of your employees, I'm not here as a lawyer or a bureaucrat. I am here trying to represent the rights of people, that if there is no hazard in putting something there, this person should be allowed, they should be free to do what they want.

So all I am asking the government to do is put something in that bill which protects the individual. The very principle of protecting land for future use, for that principle to be put in law by the Conservative government, I find it passing strange because of the general principle about the government being involved in land at all.

I would implore the government to not proceed with this bill until they take some of those nuances into consideration.

MR. CHAIRMAN: Mr. Hanuschak.

MR. HANUSCHAK: Yes, Mr. Chairman, in line with what my colleague, the Member for Winnipeg Centre, has just said, that I want to re-emphasize a point which I had made earlier and that is the effect that this would have on small hamlets, clusters of homes that one finds alongside departmental roads, perhaps communities which at one time did enjoy the status of being a village but today they are not, many never have and perhaps never will.

I gave you examples in the Interlake country and I'm sure that every member of this committee has small hamlets of that kind which are not towns, villages, or cities, but they are administered by the rural municipality within which they are located. And even accepting the Minister's explanation that this will only affect structures, objects, planted or placed after the proclamation of this bill, and I'm reluctant to accept that, but with some reluctance I will accept that definition. But I say to the Minister, Mr. Chairman, that in keeping with his own definition or explanation of the intent of this bill, then it would mean that someone living in such a little hamlet who would want to replace an existing structure or plant or tree or shrub, would have to go to the Minister for permission. Perhaps I gave an extreme example of rosebush in front of the livingroom, but according to a literal interpretation of this bill that in fact is what that individual would have to do. A little shrub in his front yard dies. He lives in a little hamlet. He lives in Balmoral; he lives in Gunton; he lives in Komarno. He wants to replace it. Before he replaces it, he will have to obtain the permission of the Minister.

There is one other very significant point which the Minister did not mention in explaining the intent of this section of the bill and that is, and I repeat again, that under the existing law, the Minister had to go to court to enforce the law and the person had an opportunity to defend himself in court, and then there was a time limit set, 30 days within which . . . If the decision should go against the property owner in favour of the Minister, there was a 30 day time limit for that decision to be acted upon. But now the doors to the court are being closed. There is no

appeal. There is no provision for any notice. The bill before us gives the Minister the right to immediately, without any notice, remove that which he considers as contravening the provisions of this bill, without any compensation, without any recourse to the courts and that, Mr. Chairman, I sincerely believe is an encroachment upon our rights and liberties, denying the individual the right to appear in court to have a complaint against him by the Crown to be properly dealt with, but just giving the Minister the right without notice to do as he pleases under the law without any compensation or appeal. That portion is bad and I want to impress upon you again, Mr. Chairman, that under the existing law . . . The Minister keeps repeating that this is an improvement, reducing the 125 foot limit to 50, that that is an improvement. But even if that is an improvement, Mr. Chairman, it's made much worse than the existing law by removing the existing Subsection 6, of Section 15, which gave the individual the right to go to court, and now the Minister is denying the individual that right.

For that reason, I say this is a bad law and I would urge the Minister to take this back to his department, have it rewritten, rewritten properly, and then, if he wishes, to bring it back before the House and the committee for consideration.

MR. CHAIRMAN: Mrs. Westbury.

MRS. WESTBURY: Thank you, Mr. Chairperson. I was thinking of Highway 59, and I travel that road a lot. Some of the people who live beside Highway 59 have fenceposts defining the entrance to their driveways and this sort of thing. I am wondering if they can't replace their fenceposts defining their driveways. I think, when I read this, it could be interpreted that you can't stop your car within 50 feet of a highway. It says, place any other objects, and so I think it is poorly worded.

I wanted also to ask about cottage areas. Perhaps they're not included under definitions. I couldn't tell, and if I can't tell I wonder if a person out in the field can tell. Are we going to have inspectors going into places and demanding to know when something was planted, demanding proof of when something was placed there? This doesn't sound like Conservative Manitoba; it sounds like Russia to me. I don't think the Minister was listening but perhaps somebody could answer my questions.

MR. CHAIRMAN: Mr. Hanuschak.

MR. HANUSCHAK: Mr. Chairman, it was drawn to my attention that Subsection 6 of existing Section 15 is not being repealed, so then it makes it all the worse law because then it contradicts itself. Then within the same section you have two subsections, one which appears to give the individual access to the courts, the other section which allows a Minister the right of entry at any time without notice and removing plants, shrubs, and objects, without compensation, without notice. Of what use, of what value is Subsection 6 to the citizen of Manitoba, after the Minister has gone in and uprooted that rosebush or that tree or that ornamental gate, or that signpost, or whatever else he finds objectionable? It's like locking the barn after the horse is stolen, Mr.

Chairman. Either we have the full protection of Subsection 6 of existing Section 15, and that's the way I'd like it to be. And if that's the way it's intended to be, that individuals do have the protection of that subsection, then the present bill before us giving the Minister the right to remove without notice contradicts it. What's the point of a legal action after the objects or the plants have been removed?

So again, I repeat that it is a badly drafted law. It's a contradictory law. It violates the basic rights and freedoms and I urge the Minister to withdraw the bill, have his department reconsider it, and bring it back in more proper and acceptable form.

MR. CHAIRMAN: The Honourable Minister of Highways.

MR. ORCHARD: Mr. Chairman, the reference that the Member for Burrows is making to Section 15 (2), refers to the planting of trees and shrubs, and placing of objects, which was part of the original 15 (2) in the original draft of the bill.

I want to attempt to clarify for him what other object would fall within because I have to give him credit that that may have broader implications than what was specifically designed but the prime intention, as is indicated in the preamble to each of the clauses, is the planting of trees, planting within 50 feet, and removal of unauthorized trees.

Mr. Chairman, the prime intent of 15 (2) in the original Act was to restrict the planting of trees within 125 feet and, as I've indicated to the member, and I appreciate his comment that we are improving it by reducing it by some 75 feet, but the idea, the principle is not changing, it is improving by the fact that we are removing the 125 feet restriction down to a 50 foot restriction. We are still allowing planting within that 50 foot restricted zone by permit, and the only time that 15 (2.2) comes into effect, Mr. Chairman, is if someone, upon the advice of the department, proceeds with landscaping or planting of those trees when they have been advised that that land is going to be used at some future time, which may be a year, two, three years down the road. That's the only circumstances under which 15 (2.2) comes into effect. And in fact this amendment on 15 (2) is an improvement over the existing law.

MR. CHAIRMAN: Mr. Hanuschak.

MR. HANUSCHAK: Mr. Chairman, again I would like to attempt to impress upon the Minister that it is not an improvement because under the existing law, as I read Section 15 in its entirety, the only way that a Minister was able to remove a tree, shrub, or object placed within, under the present law, 125 feet, now he is cheering about the fact that he is reducing it to 50 feet. Let's say within 50 feet. But if that were the only change that he made was reduce the 125 to 50 feet and left the rest of the law as it presently stands, the Minister would have to go to court and charge the person with a violation of this section of the act, the individual has an opportunity to appear in court, plead his case, and then it would depend upon the finding of the judge, whether the judge finds the person guilty of violation of the act, in which case the Minister would then have the right to

remove that tree, shrub or object, or acquit him, and then the tree, shrub or object remains where it is.

Now there is a vast difference between that procedure, as is now open to the individual, and what the Minister wants to do. The Minister now wants the right to go in without notice and remove that tree, shrub, or object without any compensation and then there is no recourse through the courts. That is one of my main concerns about the inequity, the unfairness and the unjustness of this section of the bill; that it removes the right of access through the courts but gives the Minister the right, as I've said before, to travel down a departmental road with his tape measure and measure off 50 feet and anything violating the Act, within that section, he has a right to remove it without compensation and no recourse through the courts. So even though Section 15, Subsection 6, is not being repealed, even though it still remains in the bill, but now becomes totally ineffective, because he's taken the tree away, he's taken the shrub away, he's taken the object away, the gate, the signpost, whatever it is that the property owner placed that the Minister finds being a violation of the bill. That is my concern, and it is for that main reason that I would urge the Minister to withdraw this bill and bring it back in a redrafted form, taking into account some of the concerns and apprehensions which were expressed in this committee this morning.

MR. CHAIRMAN: Mr. Boyce.

MR. BOYCE: Mr. Chairman, we're really belabouring this point but it is the principle. Since 11 years yesterday, when I first got involved with this sort of thing, I kind of had the approach that the Minister had, but it is having the experience of being involved with the law and the bureaucracy, and in one particular case it was with the Liquor Control Commission, and where the bureaucracy moved arbitrarily, wrongly in my judgment, and in this parallel case, there was a successful writ of certiorari issued in the Northwest Territories.

As I understand or misunderstand the law, because I don't know a writ of certiorari or mandamus from a hole in the fence, you say the Minister can't issue a permit. If the Minister doesn't issue a permit, a person can, through a lawyer, which is an expensive process, apply for a writ of mandamus to force the Minister to issue the permit, if there is something in the law which protects the citizen. But if the only thing in the law is the Minister's discretion, the Minister's opinion, or whatever, then the citizen, in my estimation, has no protection, and that's what we're here for is to deal with the protections of the citizenry, not the bureaucratic process or the legal process. And we are dealing with thousands of people out there, and we don't know how the individual relationship between one of your people in the Highways Department and some particular individual out there is going to come down to a day-to-day operation. In the particular case that I used, they arbitrarily reduced the seating capacity of a number of beer parlours downtown, just like that, took 10 percent of their seating capacity away from them. But by the time we got through all the legal process, these people had been actually fined, in other words, they

had their incomes reduced. They gave them all back quickly when I think they came to the conclusion that they were wrong. That's not the point. All we're asking is that the government build into this, and I don't fault you for making the case at 50 feet, it's just like saying that hitting somebody on the head lightly is not as bad as really clobbering them, but asking a legal draftsman to build in some protection for the individual. We don't expect the bureaucracy to be foolish. We want some protection in the individual that you don't have to go to some expensive legal process to protect your rights. Because in this country, we still have the right to do that which we want to do, unless we're prohibited by law. In some jurisdictions, you can't do a darn thing unless it's allowed by law, and if we keep slipping in this direction, every time it occurs, I have to dig in my heels. I'm sorry to deal your bill, but it's an important principle that the citizens have to have the right, as much as possible, to do as they want. And the only time that you should prohibit them from doing what they want is when there is some overriding public wheel. And to protect that right the only instrument we have are the judgments of the courts.

MR. CHAIRMAN: Any further discussion?
The Minister of Highways.

MR. ORCHARD: Mr. Chairman, I want to try to straighten out two things. First of all, I don't want the impression to be left, following discussions here today, that this applies to all shrubs, etc. within 50 feet. That 15(2) is designed for new establishments of landscaping, okay? It has no application to the existing landscaping that has taken place. Okay? The intent of this amendment, and I think the intent is good, is to attempt to develop a system of control so that you have a framework to advise a person who wants to landscape up to within 50 feet on a new established yard site for whatever purpose, that that land may be required or a portion of it may be required at some future time. We don't want to put all taxpayers of Manitoba to an additional expense by allowing that to be developed like the Palace of Versailles grounds. Okay? That is the intent of the Act. The landscaping will be permitted in the vast majority of instances, because many roads will not need an additional 50 feet, because we're not going to get to developing all of our roads in the province. But there are instances, and honourable members opposite know them as well as I do, where we have, before The Planning Act, uncontrolled development along our highways which caused us many, many problems. Highway No. 9 out to Selkirk is probably the classic example of them all.

Through The Planning Act, through this amendment on 15(2), the attempt is being made, not to provide a new concept here, because the concept was established in 1974, the intent here is to provide a framework of advice and knowledge to a person developing, alongside of our departmental roads, that's the PRs and the PTHs, to indicate to them whether, in the near future, we are going to be needing a portion of that 50 feet for future development, to advise them that if we do need it, we would prefer you not to do your landscaping up to there. It is an attempt not to have bureaucrats get

more control, in fact it gives them less control. It is an attempt to save taxpayers in this province from untoward costs in developing our highways, and surely there's been sufficient example in the past of where we have had exorbitant costs of buying right-of-way because we have had no control over the development juxtaposed to highways. And that has caused all of the people of Manitoba considerable sums of money, and we have to bear in mind that by and large, our highways and our PRs are not designed strictly for the convenience of those living next to them, they're transportation corridors to facilitate the movement of people and products between, and we, as government, have an obligation to assure that those highway corridors are safe, are improved as needed. In having that objective in mind, as any government should have, we want to attempt, where possible and where it is deemed not to be causing an untoward inconvenience to the landowners adjacent to the highway, to be able to protect a certain portion of the road that may be required at some point in time in the future, for development.

We are limiting the amount of restricted area by this amendment. We are providing it on new establishments of trees and shrubs by permit. The permit is granted, and plans all of a sudden change, the person will be compensated who has been given a permit to plant next to that; two years later we come along, because circumstances have changed, and we need that land, we will compensate the person fully who has planted under the permit. If the permit was applied for and it was suggested by my department, no, three years from now we will need 25 feet of that because we're going to upgrade this road, and the person ignores that advice, what we are saying in 15(2.2) is that he ignored that advice at his expense, at his personal expense, rather than the expense of the taxpayer of Manitoba. And I think that's one of the responsibilities that we all have in government, is to provide for the taxpayer of Manitoba, value for his dollar.

One of the members mentioned the hamlets, and I'm advised by legal counsel that we have difficulty, that the definition of a hamlet is not as precise as those established for city, town or village, but we can amend Section 15(2) of this bill by striking out 'or village' where it appears in the proposed subsections 15(2.1) and 15 (2.2), as set out in Section 3, and substitute therefor the words, 'village or unincorporated village district' and that will provide us with the degree of protection that was mentioned.

MR. HANUSCHAK: Mr. Chairman, I'm glad we're making some progress. I would like to get back to the other point of concern to me, which I have mentioned before, and in listening to the Minister's explanation, it's becoming increasingly apparent that by giving himself the right to remove trees or shrubs planted, or objects placed within the 50 feet, unilaterally, he'll be placing himself in an impossible position. Let me explain. The Minister finds a tree or shrub planted, or an object placed within 50 feet that he considers to be in violation of the bill. He removes it. And then, the Minister decides that he's going to take another whack at the offending individual, and not only is he going to remove the tree or shrub or the object there in place, but he is also going to

charge the person under this section of the bill, and he takes the person to court because he wants him fined. He takes him to court, and in court he fails to prove his case. The Justice of the Peace dismisses the case. So now, the Minister had removed the tree, shrub or object, the judge had dismissed the case, what is the Minister going to do? Is he going to replace that tree or shrub with exactly the same kind and the same size, in the same spot, immediately, from where he removed it? Is he going to replace the object? That's impossible.

So that is why I say, Mr. Chairman, and that's the horrendous part of the Minister's bill, to which he very carefully avoids making reference in his repeated assurances and reassurances and explanations of the intent of the bill. But the fact still remains that this section contained within the bill does deny the individual access to the courts, and in the example that I have given where the Minister may act by removing a tree, shrub or object, and then takes the individual to court and if the case is dismissed, then it leaves the Minister in an impossible situation. So that is why, once again, I would urge the Minister to withdraw this bill and come back with the amendments which he had promised to make, and also reconsider this particular offensive section of the bill which denies the individual access to the courts.

MR. CHAIRMAN: Page 1, as amended. Mr. Boyce.

MR. BOYCE: Mr. Chairman, I really can't understand the reluctance of the government to pause and consider this point. Rightly or wrongly, as much as possible, I try and view these laws as if I was being affected by them, and as I understand it, the only recourse I would have, if the department came and exercised the powers of this Act, would be to apply for a permit, and if the Minister refused to issue the permit, apply for a writ of mandamus. And all a Minister would have to prove is that he exercises discretion, which means that I would lose before I started. In other words, all he has to demonstrate is that he uses discretion.

So my next attack on this bill is, it is ultra vires. I am sitting there, and this is, for some reason or other, emotionally important to me that I put my tree, shrub, barn, pork barrel or whatever else on this particular 50 feet, and I go through this process, as somebody did with a traffic ticket here recently. I think it is bad law, and I can't, for the life of me, Mr. Chairman, understand the reluctance of the government to have some access to a judgment, other than lawyers and bureaucracy, if some structure, object or whatever else, is in fact a hazard to the rest of us, rather than just Ministerial discretion. I really, Mr. Chairman, can't understand this at all. In keeping with 11 years of listening to Conservatives talk about the protection of the individual, and free Manitoba and everything else, I'm just flabbergasted. It's such a small point. But nevertheless, if we don't put our damn finger in on these small points, we're going to lose the whole system, Mr. Chairman. We're supposed to sit here to protect the public, not put more and more and more laws on them.

It's just a small point to ask the government. Build in there some system to protect the citizenry other

than the bureaucracy. I think that the Minister would exercise excellent judgment, if somebody came to him for a permit. But that's not the point. There's plots afoot to throw you out of there, so maybe future people won't be as objective as you are. So I cannot understand your reluctance, Mr. Minister, to hold this particular bill and take a look at it. That's all we're asking from this side, rather than just ram this through with your majority. It's an important principle.

MR. CHAIRMAN: Page 1 as amended—pass; Page 2 — is there an amendment for Page 2?

MR. ORCHARD: Mr. Chairman, the same amendment as would apply to 15(2) of Page 1 would apply to clauses 15(2.1), 15(2.2), in other words, the inclusion of an unincorporated village district in the city, town, village.

So I would move, Mr. Chairman, that Clause 15(2.1) be amended . . .

MR. CHAIRMAN: It's 15(2) and 15(2.1). Is that correct?

MR. EINARSON: Mr. Chairman, the motion on the amendment is that Bill 37 be amended by striking out the words or village where they appear in the proposed Subsection 15(2)(2.1) and (2.2), as set out in Section 3 and substitute therefor the words village or unincorporated village district.

MR. CHAIRMAN: Page 1 as amended—pass; Page 2 as amended — Mr. Hanuschak.

MR. HANUSCHAK: Mr. Chairman, before we pass Page 2, we from this side of the committee had raised on a number of occasions our concern about the effect of this section of the bill which closes the door to the courts to an individual, which gives the Minister the right to remove a tree, shrub or object without notice, without compensation, and that by incorporating that section into the bill, then it makes the subsequent section, which does appear to have recourse through the courts, it makes it meaningless. What in hell's the point of going to court after the Minister had removed the tree or shrub or gate or ornamental tree or signpost or light, or whatever, that the Minister found objectionable? We have raised this point on a number of occasions in the course of the committee's meeting this morning, but the Minister hasn't responded to that so, once again, I would ask the Minister, why does he want to deny people access to the courts? Why does he want the right to go around the province with his tape measure and remove whatever he finds objectionable, whatever he finds a violation of the Act, without giving people the opportunity for their day in the court and the proper hearing and let the judge make the decision?

Again, I want to ask the Minister, what would he do if, in exercising his judgment, he removes a certain tree or object and then he decides to take a second whack at the offending individual and decides to take him to court, takes the matter to court and the judge dismisses the case, says to the Crown, No, you haven't proved your case, you're wrong. There is no basis for charging this guy. He is

not in violation of the Act. What are you going to do then? Are you going to replace that 50-foot tree?

MR. CHAIRMAN: Mr. Desjardins.

MR. DESJARDINS: I think the suggestion of the Member for Burrows is a good one and I think it keeps up with the policy of expropriation, that you can go to the court, and you have to prove that it is needed for the public. That should be the same protection at these times because we know what that has caused in the past.

MR. CHAIRMAN: The Minister of Highways.

MR. ORCHARD: Mr. Chairman, I realize I have to keep on saying the same thing over and over again. 15(2) is designed to provide advice to people, that whether we are indeed going to be needing that right-of-way for development of the highway. Now, if and when the plans are made to reconstruct the highway and the department requires the additional right-of-way, what Clause 15(2) says is that existing trees, existing shrubs are compensated for. Any new plantings which are undertaken within that 50 feet, in new landscaping, should be done by permit. It has to be done by permit. Where the person who wants the permit will not abide, will not apply for the permit, will not, when he is told that three years from now we're going to need that land and we don't want him to landscape it, what this gives us the right to do is protect the taxpayer from untoward cost. It does not do anything to prevent compensation for existing landscaping in there because upon occasion, unfortunately, we do have to require land which is landscaped.

Mr. Chairman, I might point out that when that land is required and the department has to, upon occasion, go through expropriation, the landowner, if he objects to the value that is being offered by the Land Value Appraisal Commission, has his day in court and it is decided as to whether he was offered fair compensation for his land and for the improvements thereon and that will be still assured, Mr. Chairman.

MR. CHAIRMAN: Mr. Hanuschak.

MR. HANUSCHAK: Mr. Chairman, the Minister is not offering a full explanation and interpretation of this bill. He still refuses to talk about the section which gives him the right to act before a decision of the court is made, because the section does more than just offer — what did he say, offer the people advice? It does more than that. It gives the Minister the right of entry, the right of removal of trees, shrubs or objects, whatever he finds objectionable.

Now, it might be that the Minister might underestimate the age of the tree and he might think that it was planted after this bill —(Interjection)— His colleague is laughing. He might underestimate the age of the object. He might underestimate the date when the object was placed, and it may have been placed prior to the enactment of this bill, and he removes it. —(Interjection)— Check that Minister's teeth. —(Interjection)— He thinks it's funny. He removes it and then the owner of the object takes the Minister to court and the court says,

Yes, the Minister was wrong in removing it. Then I suggest to the Minister that it places him in an impossible position.

Therefore, I ask the Minister once again, why give yourself that power, that authority? Why not leave that portion of the legislation as it stands? In other words, if the Minister should feel that someone is violating the Act by planting a tree or shrub or placing an object within the 50-foot limit, take him to court and let the court decide whether that person in fact is violating the Act or not, rather than give him, himself, the right to barge in there at any time, without notice, and removing the tree or object and then having the matter go to court if it should go there.

There is nothing wrong, Mr. Chairman, with leaving the law as it is, letting the court make the decision, rather than him or his department make the decision.

That is my major concern and I realize, as my colleague, the Member for Winnipeg Centre, said, that this is a minor point but, you know, the bill isn't all that significant, whether it's 50 feet or 51 or 55, I'm not going to quarrel over that, but there is a very very important principle involved. If we allow this Minister to assume powers which would deny the people of Manitoba access to the courts or, the Minister will say, well, they can still go to court, but what the hell is the point in going to court after the Minister has removed the tree or shrub or whatever other object is placed there? If we allow this Minister to do that, then surely to goodness the Minister in charge of Social Services, he would want to follow suit, and he thinks that this law is funny; he would want to follow suit and he would want to write into legislation under which he operates the right to do certain things that would deny people access to the courts or, if they would not be denied access to the courts, that would make the access to the courts completely ineffective. And so would his other colleagues want similar legislation written in to allow them to do, and as the Member for St. Boniface reminds me, they are doing that. So I suppose this is all part of their Free Manitoba campaign, Mr. Chairman.

MR. CHAIRMAN: Mr. Desjardins.

MR. DESJARDINS: Mr. Chairman, my concern is that the Minister said that once this object has been removed, the people can go court and the court will decide, if they are questioning a fair compensation. I'm not misquoting the Minister? The court would decide if it was fair compensation. They could order the government to add, to pay more, if it's not fair.

That is only part of it, and if I remember The Expropriation Act, there is more than that. They can go to the court before this is done and they have to show just cause why they are doing that and if that's going to benefit the public. Now, if these objects are removed before that, then it's too late. So what we have in The Expropriation Act, with this bill, if I understand my colleague right, this then could be bypassed by removing it and then the only contention, the only thing that the court could rule on, is was there fair compensation. But then the government will decide, and it might be that they want to remove something, they want to do

something that is not needed, and that is covered in The Expropriation Act and not on this.

Could the Minister comment on that? Is that the intention then, of changing that, of not letting the court decide if there is reason for expropriation or reason for removing these objects?

MR. CHAIRMAN: The Minister of Highways.

MR. ORCHARD: Mr. Chairman, the object of 15(2.2) is that where we need lands, let's say a slice of 25 feet to upgrade a road, and that land has been landscaped, let's say this summer without permit, and we come along and we say, You applied for a permit; we told you it was going to be developed. You went ahead and landscaped it without a permit. So therefore, fixed into the price we are going to pay you for that land that we need for redevelopment, we cannot add any value for the landscaping that you did because we advised you not to do it. That's basically what 15(2.2) is saying.

MR. DESJARDINS: Mr. Chairman, I am not arguing with that. I think this is all right. I don't know if I agree with my colleagues on that. I think that the government has to do that because if you know there is going to be a road somewhere, you hurry up and plant something and then you have the compensation and the public has to be protected. That I can understand.

But the bill should be clear. We are concerned now with what was done before and I think The Expropriation Act, the way it is now, should be the one that should direct the government and the people and, therefore, then they are entitled to . . . And the Minister is saying, that anything that was done before, they are entitled to compensation, that's fine, and they have the right to go to court. My concern is that they can go and remove that; that the government can go and remove that without going to the court, without giving these people a chance to go to the court previously, or before this is done. Because The Expropriation Act says that the government has to show that this is going to benefit the public. I think that is the part that concerns me the most. With what the Minister explained, I couldn't agree more with him, I think that is needed.

Something that is there before, then you should not remove this without the people being advised and without them having the chance to go to court and say, Fine, we can prove that the road doesn't have to do that. There is a tree that has been there for a generation; we haven't got that many, and let the court decide. It might be that they could go around that tree quite easily without any extra cost.

That is my concern. I agree with the Minister on his explanation of anything future, because if you are told beforehand, now the law says you can't build anything there without a permit and if you do, you are doing it at your own risk, I see nothing wrong with that. But I am talking about what is there now, and I think the people should have the same protection that The Expropriation Act gives them at this time.

MR. CHAIRMAN: Mr. Boyce.

MR. BOYCE: Mr. Chairman, I don't think anyone has said anything to disagree with the Minister in what he wants to do, but there are some principles that we wrote at our peril. There are certain processes that are available to the citizenry, such as an injunction. You couldn't get an injunction against the Crown on this. And to prove three years hence, on an application for writ of mandamus, which wouldn't have succeeded today, to try and prove that it should have succeeded three years back, you are putting the citizenry in an impossible position, Mr. Chairman.

We apparently haven't got the right words on this side to convince the government to protect the public. I wish I had an immediate access process where I could dig out the current Minister of Health's speech on the muffled cadence of jackboots and perhaps that's the kind of speech which should be made relative to this particular point.

Once again, Mr. Chairman, I have neither the wit nor word, but this is the way that people slide into a situation where people say, how did we get here. How did we get here? It is because the politicians were led down the nose by the legal profession and the bureaucracy that this how we should act, and who takes the heat? It is the politicians, who are called idiots and crooks and asses and everything else. I am beginning to understand why some of the laws. You know, they say the law is an ass, well, I could expand on that, Mr. Chairman, but it is such a picayune point. Why won't the government take this back and consider the principles that they are impinging upon?

MR. CHAIRMAN: Mr. Minaker.

MR. MINAKER: Mr. Chairman, I just wanted to set the record straight and Mr. Hanuschak that I was not laughing at the law, I was finding Mr. Hanuschak funny, not the law funny, and that is why I was laughing.

I would like to make just a brief comment with regards to the debate that is going on. Over half of the population of Manitoba has existed under a similar law in the city of Winnipeg for a number of years and that is the law relating to the rivers and streams, that at the present time if anybody wishes to build something within a river or creek that has been designated under The Rivers and Streams Act, within 350 feet of the high water level mark they have to get a permit to do so, and if they proceed to do it without it, then if something happens where it has to be removed, then the law exists. So this law is very similar.

MR. CHAIRMAN: Mr. Boyce.

MR. BOYCE: Mr. Chairman, to the Minister of Community Services, that is exactly my point. I am reasonably sure that if you checked that law that you will see that the processes of applying for a writ of mandamus for the permit prevail, but in this particular act that you are asking us to pass, that is not the case. Perhaps legal counsel can contradict me, but I don't think that a writ of mandamus would prevail with the law that is being suggested we pass. On rivers and streams it would prevail, because the Crown has to make the case that the permit

shouldn't be issued, but here there is nothing. You couldn't apply for an injunction; you couldn't apply for a writ of mandamus; you couldn't apply for a writ of certiorari (OK), the only thing that is left is habeas corpus, and I don't know how the hell that would apply.

MR. CHAIRMAN: Mr. Desjardins.

MR. DESJARDINS: Mr. Chairman, I don't want to wait until it is time to report the Bill and vote against it. I think that some of the provisions in this Bill are needed, and I don't want to force an confrontation at this time, I don't think there is need for that, and I would move therefore, Mr. Chairman, that we just leave this Bill and pass on to the next Bill, and that could give the Minister time to look at it, and then if we could bring that later on at a further sitting of the committee.

MR. CHAIRMAN: Agreed? (Agreed)

BILL NO. 20 — AN ACT TO AMEND THE CHANGE OF NAME ACT

MR. CHAIRMAN: Bill No. 20, An Act to amend The Change of Name Act, Page 1 — the Minister, Mr. Minaker.

MR. MINAKER: Mr. Chairman, there is some amendments to the Bill. I think Andy (sic) has given out to one of the members to make the amendments. It primarily deals with Subsection 2(7) which will now delete the exception to the Director of Child Welfare being able to change the name of a child if the child is over the age of 12, that has been deleted and would require the consent, Subsection 2(7).

The other two amendments relate strictly to typographical errors or drafting errors, but do not involve any principles or changes in principles at all.

MR. CHAIRMAN: Mr. Kovnats.

MR. ABE KOVNATS (Radisson): Mr. Chairman, I move that proposed new Subsection 2(7) of The Change of Name Act as set out in Section 4 of Bill 20 be amended by striking out the words "except where an application is made by the Director of Child Welfare or a society as defined in The Child Welfare Act" in the second line thereof.

MR. DESJARDINS: So therefore now there is no exception, you have to have the consent.

MR. CHAIRMAN: The Honourable Minister.

MR. MINAKER: That is correct.

MR. CHAIRMAN: Would you like to read the other, Mr. Kovnats?

MR. KOVNATS: I would like to move . . .

MR. DESJARDINS: Wait a minute, don't we vote on this one.

MR. FERGUSON: Yes, that will be page 1 then, as amended—pass; page 2 — Mr. Kovnats.

MR. KOVNATS: Mr. Chairman, I would like to move that Section 7 of Bill 20 be amended by adding thereto immediately after the "or" in the second line thereof the word "the".

MR. CHAIRMAN: Page 2 as amended—pass — Mr. Kovernats.

MR. KOVNATS: Mr. Chairman, I would like to move that the proposed Subsection 2.1(1) to The Change of Name Act as set out in Section 10 of Bill 20 be amended by striking out the word "surname" in the second line thereof and substituting therefore the word "name".

MR. CHAIRMAN: Page 2—pass.

MR. DESJARDINS: Wait a minute.

MR. MINAKER: Mr. Chairman, if I might . . .

MR. CHAIRMAN: Mr. Minaker.

MR. MINAKER: Mr. Chairman, just for explanation to the committee, that is just making it consistent with the other sections of the Act, it is something that we missed.

MR. CHAIRMAN: Page 3 as amended—pass; Preamble—pass; Title—pass; Bill be reported. Do you want to deal with No. 39 as well.

MR. DESJARDINS: That is going to take too long.

BILL NO. 38 — AN ACT TO AMEND THE HIGHWAY TRAFFIC ACT

MR. CHAIRMAN: Bill No. 38, An Act to Amend the Highway Traffic Act. Page 1—pass; Page 2—pass; Page 3—pass; Page 4—pass — Mr. Jenkins.

MR. JENKINS: Page 4 I wish to move an amendment to. Mr. Chairman, I have copies of the amendment here.

MR. CHAIRMAN: Was it Page 5, Mr. Jenkins?

A MEMBER: 4.

MR. JENKINS: On Page 4, Mr. Chairman . . .

MR. CHAIRMAN: We will pass Page 4 then. Page 4—pass. Page 5 — Mr. Jenkins.

MR. JENKINS: Mr. Chairman, I would move that the proposed amendment to Bill 38, An Act to amend The Highway Traffic Act, the motion that proposed Section 19(1) of The Highway Traffic Act as set out in Section 25 of Bill 38 be amended by (a) striking out the first four lines thereof and substituting therefore the words and figure, subject to Subsection (3) "Every dealer who sells a used motor vehicle that provide the purchaser of the motor vehicle at the time of purchase a certificate in the form prescribed by," and (b) by adding thereto at the end thereof the words "or a similar certificate certifying that the vehicle is not in a safe condition to be operated upon the highway, or that it or its equipment do not comply with this Act and the

regulations setting out the particulars in respect which the motor vehicle is unsafe or its equipment do not comply with this Act or the regulations."

Speaking to the motion, Mr. Speaker, I feel that it is necessary to move this amendment at this time, because the present Act does make it mandatory that a used car dealer when he is supplying a vehicle for purchase by a member of the buying public, that there is a certain amount of protection built in for the buyer. Under the proposed amendment as has been submitted by the Minister the onus now reverts to the buyer. In other words, we see the old adage "Buyer Beware" and there are further amendments to the Bill that I will move later on, Mr. Chairman, some of the points that the Minister raised that vehicles are now being certified by the Registrar with defects and these defects are not being repaired.

The further amendment will take care of that and I think that the proviso that has been in the Bill is a good one. I think that people who are selling used motor vehicles should be selling these vehicles, either they are certified with a certificate of roadworthiness, that should be the onus upon the person who is selling this car. If he is selling the car with provisions that the vehicle is not roadworthy, then the onus, I think, should be upon the Registrar, the Registrar of The Highway Traffic Act, that that vehicle will not be registered with a certificate of roadworthiness until the person who has bought that vehicle under those conditions rectifies those defects before the vehicle is certified.

I ask the Minister and the government to consider this amendment quite seriously, because we have put it forward quite seriously. I feel that it is all part and parcel of the consumer protection legislation that we have in this province and perhaps the government isn't as worried about the consumer, but I think that the responsibility falls upon us as legislators in this Assembly to make sure that wherever it is possible that we build in protection of the buying public, and not have this old adage of the "Buyer Beware At His Peril".

With those remarks, Mr. Chairman, I welcome some comments from the Minister.

MR. CHAIRMAN: The Minister of Highways.

MR. ORCHARD: Mr. Chairman, I want to take a look at the proposed amendment that the Member for Logan is proposing. I am not certain that he explained it so that I caught the drift of what they are saying, but I will explain what we are attempting in this legislation.

If I can refer for a moment to the existing Act, a dealer or a wrecker as referred to in the legislation, in selling a used vehicle, they provide one of two things to the potential buyer, either a safe car certificate or a form which indicates what repairs have to be made to the car, it is one of the two things.

Now, what is happening and theoretically it is not possible to register a vehicle until that car has been put into a roadworthy condition, except that there is no provision in the Act which pertains to private sales, and as I used in my opening remarks when I described the changes that we were contemplating here, if a person did purchase a vehicle which had the unsafe certificate with it rather than the safe

certificate with it, he could not register that vehicle until he made the necessary repairs as prescribed in that unsafe certificate, however, that individual could turn around and sell that car to his wife, it would then be a private sale, she could register it without having to make the repairs. And there is no control here. Now, what we are proposing here is that we don't anticipate, and this amendment has been drawn up at the urging of the Manitoba Motor Dealers Association who have felt that the legislation, as it presently exists, has not provided the consumer with any degree of protection because, as they point out, the legitimate dealer who is in the car business on a long-term basis has been providing the safe car certificate. In other words, the vehicles have been in safe repair. They have objected to the fact that the private sale can be so easily circumvented and destroy the intent of providing our highways and our driving public with safe vehicles, so what we are proposing in this amendment is that all people who are registering a vehicle shall have a safe vehicle certificate with them to present to the registrar, and the registrar won't be able to register a vehicle unless it has that safe vehicle certificate. This, we feel, will not change the mode of operation by any used car dealer who has got his eye on the future and is presently supplying a used car safety certificate. Who this will have some fairly serious implications on, is the used car sales organizations who have been providing the second provision in the existing Act of the unsafe vehicle certificate without going the route of providing the appropriate repairs.

And by having the buyer in possession of a safe car certificate before he can register it, then any buyer who is going out to a used car lot, and that used car dealer refuses to supply that certificate, I think that is very ample warning to the person that there indeed is something somewhat more wrong with the vehicle than may it first meet the eye. Beauty is only skin deep, in other words. This amendment that we're proposing will provide the car buying public with built-in protection because he is going to insist that the person selling that vehicle provide him with a safe car certificate, and that will assure that, No. 1, the buyer is buying a vehicle that has been inspected and the necessary repairs to bring it up to a safe standard have been undertaken; and No. 2, the overriding intent, of course, being that we have safe vehicles on our highway.

MR. DESJARDINS: Mr. Chairman, if I understand this, the Minister, with this new 19(1) is introducing new protection — I'm going to wait until I get the attention of the Minister because I'm talking to him. Mr. Chairman, if I understand this right, this new 19(1) gives added protection. The Minister wants to give added protection to the buyer, and the way he explained it, I would be in favour of 19(1), but why not add that to the present Act. I haven't the Act in front of me, but I take it that the amendment presented by Mr. Jenkins is just re-introducing something that is covered in 25, that certain section has been repealed. So if we had (2) I don't see that there is a conflict there, if we kept the intent of the proposed amendment of Mr. Jenkins and pass this new 19(1), we'd get this protection and exactly the intent that both members want. Why was it repealed? You'd have to have the Act in front of you.

MR. CORRIN: Mr. Chairman, I want to speak in support of the amendment. I find it passing strange, Mr. Chairman, in this day of consumer awareness and all that we now know about the utility of vigilant consumer advocacy, that this Legislature would be considering a bill which would, in effect, reverse the onus from the used car dealer to the purchaser. It seems to me, Mr. Chairman, that the transfer of responsibility to the private citizen to assure him or herself that a given automobile is safe is very impractical. I think, with respect to the Minister, that he has misdirected himself in this regard. It occurs to me, Mr. Chairman, that it is the dealer who has access to mechanical experts. It is the dealer who is in the business of selling automobiles and it is the dealer, Mr. Chairman, who initially makes a decision to make a given automobile the subject of a commercial transaction. So on that basis, Mr. Chairman, since it is the dealer who stands to profit, it is the dealer who decides to take a vehicle in trade or purchase a vehicle in order to resell it to another party, it seems to me, Mr. Chairman, that common sense dictates that the onus, the burden of responsibility, should lie with the commercially interested individual. I don't think that, in any way, Mr. Chairman, should be interpreted as meaning that I wish to restrict free trade, but rather, Mr. Chairman, I think it means that the public is better protected by having responsibility borne by those who are in the best position to shoulder it.

Under these amendments to the Highway Traffic Act, Mr. Chairman, we will have a situation where purchasers, either prior to purchasing a given unit, or immediately thereafter if they are very unlucky, will have to have the automobile inspected by another qualified expert in order to evaluate its condition and establish whether or not it will be the subject of a safe vehicle certificate, and therefore be eligible for registration by the Motor Vehicles Branch. That, Mr. Chairman, seems to be exactly the reverse of what should happen. It seems to me, Mr. Chairman, that the onus should be on the dealer rather to notify the purchaser, or the prospective purchaser, that a given vehicle will, or will not, be eligible for such standing. So that the purchaser, prior to committing himself to a transaction, knows that a given vehicle will have to be upgraded to a certain standard, or knows that it will be immediately the subject of registration.

We're going to have situations, Mr. Chairman, if this particular piece of legislation is enacted, where dealers, in fact, will sell vehicles to purchasers and these, of course, will be the disreputable dealers, but nevertheless, it will happen, because there's always a rotten apple, and Mr. Chairman, in those circumstances, we're going to have people going to the registrar, having paid good money and having found out that their car doesn't qualify, and finding out they have no recourse but to make the repairs. It makes no sense, Mr. Chairman. The dealer is obviously the one who should bear that responsibility, and I think if the lobby or interest group that has motivated these changes were to consider this in good faith, I would think they would agree, because ultimately, if these amendments go through, there's going to be a great deal of dissatisfaction with their particular trade.

I think, Mr. Chairman, that what will happen is that the exceptional situation, the case where a

disreputable dealer takes advantage of a consumer, will become widely published, and I think that, as a result, used motor vehicle dealers will fall into great disrepute.

So I would suggest, and I do so with the greatest of respect, Mr. Chairman, that the amendments proposed by the Member for Logan be treated on a non-partisan basis. There are certainly no politics in this, it's strictly a question, I think, of common sense. I don't think anybody would suggest, unless somebody here would want to put the onus on the consumer, I think common sense says that the Act shouldn't be substantially tampered with, and certainly these amendments recommend themselves, Mr. Chairman. I'm saying that, I'll wait to hear what reply the Minister has with respect to the questions posed by the other members.

MR. ORCHARD: Mr. Chairman, as I indicated, the problem that we're addressing here is that roughly 52 or 53 percent, of motor vehicles are sold by private treaty and there has been no method of assuring that they are safe and are safe vehicles on the road. This amendment was intended to address that. What I would like to do, and I would make this suggestion to committee, that we would take the amendments that Mr. Jenkins has presented, we'll study them and come back and act appropriately the next sitting of Law Amendments, and if we could proceed, Mr. Chairman, to other clauses in the bill and any amendments that are thereto, we could deal with those at the next sitting as well.

MR. CHAIRMAN: Agreed?

MR. JENKINS: Yes, Mr. Chairman, I think that's agreed. I might throw out a suggestion to the Minister that if he has this worry about a private sale, that, I think, legal counsel could draft a new section under 19 for covering of that, because what we are mainly interested in here, and I'm glad that the Minister is going to take a look at it, is we are worried about the consuming public, and I think we should be, as legislators.

MR. ORCHARD: That's what stimulated the legislation.

MR. JENKINS: But as said when I was discussing the bill, the Minister has taken a sledgehammer to kill a fly when he only needs a flyswatter. What you have done with the proposed amendment that you have here to The Highway Traffic Act under section 19 and its subsections, you have completely reversed the onus. The onus before was dealing with dealers, and that's what I'm talking about now. I agree with the Minister when he says that there is a problem in private sales, and I think that is something that has to be looked at. That can be dealt with by another subsection of this bill. I'm sure it can be dealt with. Legal counsel can draft up something that would cover that. And I think that then, that person going to register that vehicle, if he's buying it from a private sale, either he gets a certificate from the person who buys it, he gets a certificate of road worthiness which is covered in the present subsection 19(2), that there is an inspection under section 299, which makes sure that the vehicle is

roadworthy and safe for traffic on the highway, that is something that should be dealt with between a private seller and a private buyer. But what we're dealing with here, in this amendment, is with registered motor vehicle dealers who are dealing with used cars. And as I said before, it completely reverses the onus. The onus now, under your amendment, is that if I come to you as a buyer, you're selling cars, the onus now under the bill — you'll sell me the car, no certificate, I go to the registrar, the registrar says, where's the certificate? I say, I haven't got one. Well, I say, but Don Orchard sold me this vehicle, and he'll say, that's tough luck but you should have got a certificate from him stating that this vehicle was roadworthy.

So I then have to either come back to you and pay you some more money to inspect the vehicle, and if it's not roadworthy, pay you some more money on top of that to repair it in order that I can register the vehicle. And so I say, and as my colleague has said, surely we are here to look after the buying public. They are not here as a lobby, unfortunately, because there is no group of people, except perhaps the Consumers Association, but Motor Vehicles have a built-in lobby of their own because they have a motor vehicle dealers' association by which they can lobby the Minister. I think that the onus is upon us, as legislators, that we make sure that there is protection within the Act for these people. I throw that suggestion out to the Minister, that if he wants to cover between private sales that is something that is altogether different because we're talking about apples and oranges here, if we are talking about private sales and talking about dealer sales. I throw that suggestion out to the Minister when he is having an appraisal made of the amendment, that if he wishes to introduce a further amendment dealing with private sales, then we'll look at it.

MR. CHAIRMAN: Mr. Desjardins.

MR. DESJARDINS: Mr. Chairman, I'm quite satisfied with the suggestion of the Minister. It seems to me that the Minister wanted to bring more protection caused by loopholes and quite inadvertently probably deleted a section then that would change the intent of the law, if not his intention. I am pleased that he is going to look at the whole section. But I would like to bring another point that I wish he'd look at when they are going to prepare that section. The Minister jokingly said, when the member said, well Orchard didn't give me, when he bought this car from him — by the way he probably overpaid — but anyway, he said it was in good condition when I sold it to you. Maybe there could be a clause in there also that would state, as per section so and so, the section dealing with the amendment where the dealer has to give a certificate. In that case that certificate could be given to the registrar, providing there is a time period, because you wouldn't want to buy a car from you that covered what Bill wants, a dealer would give me a certificate; then with this new thing I would have to get a certificate, if it means getting another certificate. It would have to be clear. But mind you, you would want protection that that would be done within a certain period, because he can drive it around the block and it could fall apart. He'd

another certificate then. Do you understand what I'm saying? It's very very muddled, not very clear. I am saying that, if you reinstate the intent that you both want, and if the dealer has to give a certificate, that you make sure that particular certificate, in the case where it has been given by law that has to be given, that certificate could be used to satisfy the registrar. But providing of course, the registration is done within a certain period of the time of purchase. If you drive it for a while without . . .

MR. ORCHARD: It's in here.

MR. DESJARDINS: Okay.

MR. CORRIN: I just wanted to remind all members, Mr. Chairman, that the current law provides that the dealer can sell the car to the purchaser if the car is unsafe. There is nothing that prevents a dealer from doing that except that he has to present the purchaser with the unsafe certificate so that the purchaser knows what he's getting into. I think it's just a question of distinguishing, as the Member for Logan said, between private sales and sales as between dealers and their clients or their customers.

MR. CHAIRMAN: Mr. Jenkins.

MR. JENKINS: Yes, just to set my colleague's mind at rest, the further amendment, which is a new section 19 (2), if you'll look at it, it's the second page of the amendment, deals with cars sold with a non-certificate and it gives the registrar an unsafe certificate, listing certain things that have to be done. The onus now will be upon the registrar. He will not register that vehicle until that person, and that onus then to repair that vehicle would be on the buyer, because he buys that vehicle 'as is'. This is covering an 'as is' sale. If I bought the car from Mr. Orchard, and said well the shocks are gone, the steering is bad, various other things, he lists them all down, and then I go to the registrar with that certificate, the registrar under the proposed amendment will not issue me a certificate until I've gone, either back to Mr. Orchard, or to you, Mr. Chairman, if you were another dealer. You would repair them. I would come back with a certificate stating that all these things had been corrected. The registrar then would issue me a certificate. Under the present Act, and the Minister is quite right, he sells me that vehicle. I go there, it's noted, but he gives me a certificate, but subsequently I say, ah, to hell with it, I'm not going to, I'll just drive the car, now the registrar won't give me a certificate until I have done the things that are required to be done as set out.

MR. CHAIRMAN: Mr. Orchard.

MR. ORCHARD: Mr. Chairman, we will come back next Law Amendments and we will have this method resolved and if we could go on with the other pages of the bill and any further amendments that come up we can deal with them when the next sitting is . . .

MR. CHAIRMAN: Oh, we'll leave the whole bill until then.

MR. ORCHARD: Do the members have any other amendments at later stages in the bill?

A MEMBER: Yes, there are some.

MR. ORCHARD: Okay, could we have those now and then we'll can deal with them.

MR. JENKINS: Yes, on the one page effort you got there was some . . .

MR. CHAIRMAN: They were distributed.

MR. JENKINS: They were distributed. Motion 38, that Section 25, by adding immediately thereto, after Section 5, the following sub-section; 19(9),(10),(11), repealed and substituted 25(1).

MR. ORCHARD: Mr. Chairman, if I could have a copy of that one as well, we would . . . Okay here's one. I've got one now.

MR. CHAIRMAN: Okay, proceed, Bill No. 42, An Act to amend The Credit Unions and Caisses Populaires Act. (Pages 1 to 6 were read and passed.) Preamble—pass; Title—pass; Bill be reported.

Bill No. 49, . . .

MR. MERCIER: Mr. Chairman, I wonder, in view of the time involved, if we could probably deal with Bill No. 50.

MR. CHAIRMAN: 50, Boundaries . . .

MR. MERCIER: The Boundary Act which I think the Minister has explained to the Member for Logan and gone over on the map, and then probably, in view of the time involved, Committee could rise.

MR. CHAIRMAN: Bill No. 50, Page 1—pass; Page 2—pass; Page 3—pass; Preamble—pass; Title—pass; Bill be reported.

Bill No. 70, . . .

MR. MERCIER: I wonder if we could go back to 49?

MR. CHAIRMAN: 49, The Ombudsman Act, Page 1—pass; — Mr. Hanuschak.

MR. HANUSCHAK: Section 2(2), dealing with the filling of the position of Ombudsman, in one of three cases: where the office of Ombudsman is vacant, or where the term of the Ombudsman will expire within 12 months or where the Ombudsman has tendered his resignation to take effect within 12 months. Now I appreciate that at the present time, under the existing law, action can only be taken, as the Minister had explained, when the position is vacant, or has become vacant. Where the office of Ombudsman is vacant, the Assembly shall by resolution, and then it goes on to outline the procedure for the filling of the position. I appreciate the government's desire to take the necessary action in advance of the position actually becoming vacant, but this amendment to the bill does one more thing and it does something which this government, when it is was in opposition, was very much concerned about.

I regret that the Minister of Government Services hasn't fixed the xerox in the library, because I wanted to get a xerox copy of a speech made on this bill in 1969, when the office was created by the New Democratic Party government, at which time the then Leader of the Official Opposition spoke, Mr. Weir. One of the concerns that he expressed, and

one of the assurances that he wanted contained in the bill is to retain control of the office of Ombudsman, in terms of control over the appointment of the Ombudsman or the operations of the office; to have that control lodged within the Legislative Assembly; and that there be full opportunity for the members to deal with the operations of the office; deal with the appointment of the Ombudsman, etc., by all members. And the way the legislation presently reads, that guarantee, that assurance is there, because, just to refresh your memory, Mr. Chairman, it reads that; "where the office of Ombudsman is vacant the Assembly shall, by resolution, appoint a special committee of seven members of the Assembly to consider a person suitable and available to be appointed as Ombudsman and the special committee shall make recommendations in respect thereto to the president of the Executive Council. The key phrase, I suggest, is that the Assembly 'shall by resolution' do the things that I have just mentioned.

Now I suppose the government could say the matter of the appointment of the Ombudsman will still be in the hands of a committee of the House, that's true, but one feature will be lacking and that is the opportunity for debate. Because, as the law now stands, there must be a resolution brought to the Assembly of the House, and the resolution is debatable and it opens the opportunity for members to debate whatever they may wish to debate related to the matter of the office of Ombudsman. They may wish to debate the reasons why the position is vacant. Some members may feel that the Ombudsman was forced out or eased out of his position. Members may wish to offer some advice on the type of individual that they would want to see filling that position. The members may wish to debate the job description of the position of Ombudsman. They may wish to debate many other matters related to this particular position.

Now short-circuiting the operation will deny the members the opportunity for that type of debate. In fact, the members may even wish to debate the makeup of the special committee. It may be now that members may say well, under our present rules, we could change the makeup of committees. For example, we in our caucus may feel that the members whom we have sitting, there may be other members who may be better qualified, may be able to make a greater input into this particular function than those that we had delegated to serve on the committee of Privileges and Elections, so the government could say, well we're at liberty to make those changes. But we may also want to debate the wisdom of the appointment of some of the government's members to this committee, because we may feel that we would rather see some other members from the government side sit on this committee rather than those members appointed to the committee on Privileges and Elections. The opportunity for that type of debate would be denied.

Really, Mr. Chairman, I would suggest to the Attorney-General, the Attorney-General brought in this bill, that recognizing the government's desire to fill the position as rapidly as possible, I recognize that but I wish to remind the Attorney-General that there is a section within a bill which allows the government, the Lieutenant-Governor-in-council, to

appoint an Acting Ombudsman. So, armed with that, and if he were to amend Section 2, sub-section (2) of the present Ombudsman Act, simply by incorporating sub-clauses (a),(b) and (c) of his bill and I think that would satisfy his concerns and would serve the purpose. In other words, then, where the office of Ombudsman is vacant, although I appreciate that it may cause some delay because the office of Ombudsman could become vacant between Sessions, the Ombudsman may die, he may resign, or he dies and the office becomes vacant. All right so in that case the government appoints an Acting Ombudsman until the House next sits. But surely when the term of the Ombudsman in office will expire within 12 months, for example, now there is no more than roughly a six or seven month interval between Sessions from the end of . . .

MR. CHAIRMAN: The hour is 12:30, Committee rise.