



Second Session — Thirty-Second Legislature
of the
Legislative Assembly of Manitoba
STANDING COMMITTEE
on
INDUSTRIAL RELATIONS

31-32 Elizabeth II

Chairman
Mr. C. Santos
Constituency of Burrows



MG-8048

VOL. XXXI No. 3 - 8:00 p.m., MONDAY, 25 JULY, 1983.

MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Second Legislature

Members, Constituencies and Political Affiliation

Name	Constituency	Party
ADAM, Hon. A.R. (Pete)	Ste. Rose	NDP
ANSTETT, Andy	Springfield	NDP
ASHTON, Steve	Thompson	NDP
BANMAN, Robert (Bob)	La Verendrye	PC
BLAKE, David R. (Dave)	Minnedosa	PC
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FILMON, Gary	Tuxedo	PC
FOX, Peter	Concordia	NDP
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GRAHAM, Harry	Virden	PC
HAMMOND, Gerrie	Kirkfield Park	PC
HARAPIAK, Harry M.	The Pas	NDP
HARPER, Elijah	Rupert Island	NDP
HEMPHILL, Hon. Maureen	Logan	NDP
HYDE, Lloyd	Portage la Prairie	PC
JOHNSTON, J. Frank	Sturgeon Creek	PC
KOSTYRA, Hon. Eugene	Seven Oaks	NDP
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McKENZIE, J. Wally	Roblin-Russell	PC
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LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON INDUSTRIAL RELATIONS

Monday, 25 July, 1983

TIME — 8:00 p.m.

LOCATION — Legislative Building, Winnipeg

CHAIRMAN — Mr. C. Santos (Burrows)

ATTENDANCE — QUORUM - 6

Members of the committee present:

Hon. Messrs. Cowan, Kostyra, Penner and
Storie, Hon. Mrs. Smith

Messrs. Enns, Mercier, Nordman, Santos and
Steen

WITNESSES: Representations were made to the committee with respect to Bill 2 - The Law Enforcement Review Act; Loi sur les enquêtes relatives à l'application de la loi, as follows:

Mr. Walter Kucharczyk - Private citizen

Mr. J. Thornborough - Board of Police
Commissioners of Brandon

Mr. J. Janzen - Chief of Brandon Police
Association

Councillor Jim Ernst - City of Winnipeg

Mr. Ken Johnston - Chief of the Winnipeg
Police Department

Mr. Doug Buhr - City of Winnipeg

Mr. A. McGregor - Solicitor appearing on
behalf of the Winnipeg Police Association and
the Manitoba Police Association

Mr. George Marshall - Private Citizen

Ms. Judy Elliott - Law Union of Manitoba

MATTERS UNDER DISCUSSION:

Bill No. 2 - The Law Enforcement Review Act;
Loi sur les enquêtes relatives à l'application de
la loi.

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MADAM CLERK, Carmen DePape: Committee, come to order. Since our former Chairman, Mr. Ashton, is no longer a member of the committee, we will have to proceed with the election of a new Chairman. Are there any nominations? Mr. Kostyra.

HON. E. KOSTYRA: I would like to nominate Mr. Santos.

MADAM CLERK: Any further nominations? Seeing none, Mr. Santos, will you please take the Chair?

MR. CHAIRMAN: Committee, please come to order. We are about consider Bill No. 2 and Bill No. 49 and we have here a list of persons wishing to appear on

Bill No. 2. The committee normally gives consideration to those people who live out of town so we intend to call them first.

The Attorney-General.

HON. R. PENNER: Mr. Chairperson, I agree with your proposal to call the out-of-town people first. There is a substantial group from Brandon, perhaps we can begin with that group.

MR. CHAIRMAN: Is Walter an out-of-towner?

HON. R. PENNER: He's on holiday, that doesn't count as being out of town.

**BILL NO. 2 - THE LAW ENFORCEMENT
REVIEW ACT**

MR. CHAIRMAN: Mr. Walter Kucharczyk.

MR. W. KUCHARCZYK: Mr. Chairman, honourable members of the committee, greetings. I gave lots of thought to your bill since you had my name on the list since December of last year pertaining to Bill No. 2 and I would urge you whatever technicality you require pertaining to Bill No. 2, perhaps you should look into the matter much deeper. In your press release of December 16th you outlined all the details, what is the bill all about. However, for unknown reasons, and I guess that's the privilege of the Executive Council, no reasons were given about the bill. Somebody help me with the English language, it says, it's just like winking at a girl in the dark. You're the only one who knows what you're doing or transpires.

Now, the matter of course is very serious indeed. I would rather see, Mr. Chairman, that the inquiry would be set up since the force has been for considerable length of time. From day to day, chief pertaining to the force itself has values, events do happen. He cannot foresee himself for his whatever their ranks are. Same with Attorney-General. Yet, if a citizen would be given opportunity to come forward and present values, either complaints or bouquets or opinions, whatever case might be; that would be easier and better and more beneficial for both parties. That is to say the law enforcement and the Government of the Day and the law enforcement people. Surely there would be some cases that people would testify in camera. Some would be wide open suggestions made.

Now, provincially to support the question of inquiry, I will refresh your memory that you have had in the past, no doubt a long time ago, (1) dealing with Churchill Forest Industry and (2) the Hydro one by Justice Tritschler I believe. Well those matters of course applied strictly from economical point of view, but here the economical well-being of people, very often depends on their mental status as well. So when you hear some unpleasant events between the police department, on

a small scale, nothing big, \$20 - \$25, \$30 fine would do the job, pleading guilty. But gradually people get annoyed. They set their mind why did it happen to me but not to somebody else. What do they want from me, etc. etc?

Now that's just from a mental health point of view. A chap parks his car and gets a ticket. Why? Well because it says, no parking, but my God I was here about two hours ago, there was no sign. How come there was no sign? Well there was no sign, no parking. I wasn't notified, nevertheless, the police officer gives him a ticket, so the man is annoyed and throws the ticket through the window. The police officer lays another charge for littering, so once the charge is made of littering, the man gets mad as hell- excuse my language - and he steps on the gas, so he spins his wheels. By spinning the wheels, another charge is being laid for attempting to break the windshield and the headlamps; by the way, finally, the judge dismissed all of them. Things like that, after all, one should be mature. I have had some experience when it comes to dealing with people that have a problem, including myself.

I will pass around the work that I have done for 10 years as a volunteer with the Canadian Mental Health Association. I have the consent of Miss Patricia Desjardins. I spoke also to the Minister of Health that the Police Department doesn't have enough training in how to deal with people who have had some mental disturbances one time or another. Just simply, you cannot blame them; perhaps there is no money available, no time, whatever the case might be.

Now then, if you would have an inquiry, certainly matters of this kind would be brought to attention. Some program would be established. A number of you, from the mental health point of view, ladies and gentlemen, recall way back in 1969 there was a Maxwell Weir Mackenzie, Chairman of the Royal Commission on Security. He signed the report; that's 1969. That report consisted of 159 pages, that's all. I checked out, it wasn't available for the public to get it. The punch line there of course was the civilian police force, that is, to say, the section of the RCMP on security matters.

Many opinions were expressed on the subject matter; there is no need to go into details of what the press, politicians, etc., had to say. Subsequently - don't worry, I won't quote from it - just to remind you, there is logic to it. That's Mr. McDonald's report and not all of it, some 400 pages missing. Somebody borrowed it and didn't give it back.

Now, if you don't do a job thoroughly, if you just put the Band-aid on, then that Band-aid will wear out and won't do the job. You've got to approach the matter - perhaps this is the most opportune time - the manpower is available to review the past history procedure. You, Mr. Chairman, have an excellent Attorney-General's Department. I'm not suggesting to spend the time and money to the extent - excuse me, Mr. Chairman - as we call a date, nevertheless what better precedent can one have but the historical event, and that's already repetition of the opinion. Now, we won't go into details about the meeting of Attorneys-General, that's another matter. I'm talking about the principle, I'm not talking about the details to support the question of the inquiry.

The other day I noticed in the press that the Chief of Police and his staff had difficulties with a pregnant

woman. That's his problem not mine. The only thing is, Sir, Mr. Chairman, that it shows that they could not foresee that a woman would get pregnant while she's a police officer. Maybe chastity belts should have been purchased way back in Great Britain.

Now, then we'll go further. I spent a year in Great Britain, that would be '46, '47, part of each. I have seen the behaviour and the attitude of the police officers toward the public, and I respectfully submit, Mr. Chairman - I don't know today, I'm talking about '46 and '47 - perhaps a good look should be taken at the police forces and their methods dealing with the public in Great Britain. A police officer would just touch either shoulder or an arm and suggest that he would like to talk to an individual at the station, and that was it. How often here, including recently, the first that's done, the handcuffs are put on, just in case. Now, that's degrading.

Furthermore, whenever somebody tries to insult somebody in political debates comparing to a Soviet citizen of some rank, KGB or whatever, the person being called by that name, and let me tell you, Mr. Chairman, I have been questioned for eight months; 23 months of confinement in Soviet Union. I didn't even know how the devil the handcuffs looked like. There was a system, a central jail that we were brought for questioning, to temporary confinement. From temporary confinement, slightly over a kilometre walk to the headquarters where the questioning was done. Not even a weapon. Then after both directions, in and out, Sir, not even a revolver - they mostly have revolvers, not pistols - was pointed at an individual. No Sir. There was not even warning given. But why here, when we have such a wonderful country and we pretend to be so democratic, the first thing we have handcuffs on that individual? Now is that a discretion of an officer? I don't know. That's why I say the inquiry would find out. Is that an order of the chief? Is that in the manual that it says?

I know a case back from an incident where an ex-patient from Emily Street, or mental institution, asked for help in one of the departmental stores, that his medication is not working properly. He asked one of the ladies. She calls the security officer; the security officer calls the police and they handcuff him right on the spot and take him to Emily Street.

I have no worse - not alone, not myself alone - that matter's been discussed a number of times elsewhere. It just happens that I also was - you can check your Orders-in-Council - for eight years a director of Manitoba Mental Health Research Foundation. Many different cases came forward which I am not able to discuss in detail for the name; but there is definitely a distinction.

Then it was brought to our attention the attitude of the Mounted Police, where the man complained it had come to the point that he needed help. So what do they do? Who is your doctor, etc? They check on the form. Apparently, the doctor suggested that it would be advisable if they wouldn't show their uniforms, etc. So they brought the man in a plain clothes and unmarked car, and they didn't need to put the handcuffs. To anyone who talks about the freedom to anyone who had them on, let me tell you, that's an experience that you shall not forget.

I tried to find out the process of training. Well, I just about was told to go opposite direction of the heavens.

Well, that's fine; it shows the results on the street, hey, in different ways.

According to the Department of Indian Affairs, in Winnipeg we have one of the largest Indian reservations, it fluctuates from 7,000-10,000; Metis from 13,000-14,000. I'd like to know, Mr. Chairman, how many police officers of the City of Winnipeg we have of the Indian origin and Metis? What is the program dealing with the Metis?

The 1980 Annual Report of the "D" Division of the RCMP about Native policing, you will find in detail, perhaps there is no need to take extra of your time, but I would draw definitely your attention to it as to the program that the Mounted Police has, and that's not a federal program, because in the second paragraph it says, "Traditionally, the police service was provided by regular members of the force. On June 3, 1976, the Manitoba Attorney-General announced that the Province of Manitoba and the Federal Government signed an agreement to adopt the Native Special Constable Program."

I heard in this Legislative Assembly how many people we have in Headingley of Native origin. Perhaps you ask yourself the question, Mr. Chairman, "why"? The policeman is not to prosecute or persecute; the police officer is also to assist the citizens. Now which avenue do you want to carry on? So every year we hear from the chief, we need more and more and more police officers; and I recall, sir, before the disaster happened of this city, the unification of this city, we living in East Kildonan, our small community had a record of the North American Continent, per capita, for lack of fatal accidents, traffic-wise, and other crimes, because the small unit had been much more effective. Sure, they had to buy an extra pair of boots from time-to-time, more often than sitting in a car. Well, then the tires wear out, hey?

So I ask you again, are you going to follow some parts of the North American Continent, or are you going to carry the British tradition when the constable on the beat noticed that a bottle of milk is still standing in a chute that the lady didn't pick up at a certain time at the place where he was working or patrolling - I'm talking about Great Britain - so naturally, it's something unusual so he checks; he finds she is sick. That's just an example. You could multiply many many different instances that do occur where you have the help from the police department, from the police officers, but surely you have to have them on foot. But just driving the car, well, you know what happens, it's not capable to notice everything that occurs in the due course.

I do not expect with today's system of reporting various police incidents, etc. that could happen today but I want to impress upon you, Mr. Chairman, so you will think and think and think what could happen in this city. I mean to say between the citizens and the police department. The three color pictures being taken by professional with the assumption to go to the court

Mr. Chairman, this is not a question of revenge of some sort, it's very easy to forgive, very hard to forget. When we told that we are an example to the rest of the world to our democracy. I listen on the shortwave radio, our CBC International, how wonderful it is here, how we're concerned about countries such as the country of my origin, Poland. You just think for a second

millions on the street and maybe one got hurt, started fight, God only knows with whom, that means the police is strained as to their attitude without being told what to do because here they only repeat the sensationalism. I say again the police should be on the level of the responsibility and time of training given to them that they would fulfill whatever duties they have being contended. When the man would come on the street and gladly would talk to the police officer but not to avoid him or her. Now that's an example of a healthy society and again here you have the opportunity now to set up the proper mechanism so that you really would justify what you are telling the rest of the world that this country is the country in every respect that you don't need to use the legal tricks to cover certain issues.

Now the pictures you are looking, I have, by the way, a bill to prove the cost of those pictures, the pictures you are looking at, mistaken identity initially, and secondly that it was a prisoner that caused the damage. Even confession from the prisoner went to the next Crown Prosecutor who just left the place withholding the court therefore we just gave up. That doesn't matter, the point is this it should never happen here in Canada particularly time and time again when I hear that the other countries are belittled to no end and those that belittle them the most all of a sudden became experts and they even don't know from which end to start.

Mr. Chairman, how many different advantages useful things could be brought during the inquiry. Now, this is not a love story in front of me or some best seller, those are fact after fact after fact which the next generation and generations after will appreciate because you cannot very well expect from the man that hasn't got sufficient training to do the things that his counterpart or against whom is more superior in an issue, perhaps you would have to have a different standard of education. Perhaps you might have a different demand, different way of screening. I would ask you what is the waiting list to the City of Winnipeg or Brandon for those that like to join in relation to the RCMP in Regina? I tried to get that answer myself, they won't tell, perhaps you look into it.

Now, again if you go to the point of having Bill No. 2 you have the confidential information that we ordinary mortals are not in the possession of, you see the need of it. Now, if you see the need to have a Bill No. 2 then I repeat myself why to have a band-aid approach? Might just as well do the job right to the end. You have experienced First World War, the men untrained were sent to the battlefields, they were decimated. As an example, now what that proves, proves simply that somebody didn't do any planning but you today with all this stuff that is available to you, you have no other avenue but one to the success for the people whom you represent. I see that some are too busy, I've only one or two more, perhaps, remarks to make. Oh, yes by the way overlook.

Mr. Chairman, as I mentioned from the beginning, Mr. McKenzie's inquiry, 159 pages, on December 15, 1977, one of the senators, I have no consent of his to mention his name. I was trying to get that copy of the report to read and here it says, cannot get a copy of the McKenzie Report, etc. Now, surely, initially it looked so bad that it was not for the public consumption and I say to you if you will go step by step investigating the municipal police forces, not because they are

corrupt, they have no chance, but you can improve for the benefit of the country, improve for the benefit of the men that perform duties, improve for the well-being of their families.

With the help of my daughter whose English is much better of course than mine obviously, you notice how I butcher it, but somehow you're patient with me.

I conclude, Mr. Chairman, by saying, long long after we are all gone, history will be the ultimate judge of your actions. Don't disappoint those you must serve and don't disappoint yourself, but let your wisdom echo down to one corridor of time. Let it serve as an inspiration for future generations.

Thank you, Mr. Chairman.

MR. CHAIRMAN: Are there any questions from members of the committee to Mr. Kucharczyk?

Thank you, Mr. Walter Kucharczyk.

The Chair now wishes to call upon Mayor Ken Burgess, Board of Police Commissioners, Brandon.

MR. J. THORNBOROUGH: Good evening, Mr. Chairman. My name is Jim Thornborough. I am the solicitor for the Brandon Police Commission. I might advise you that Items 8, 9, 16, 17 and 18, which appear on the appearance list, are all appearances by myself acting on behalf of the Brandon City Police Commission.

I appear tonight, Mr. Chairman, as the solicitor of the Brandon Police Commission and I appear together with several members of that Commission. Alderman Jean Guntart, Mr. Mick Burke, Police Chief Ken Elliott and Deputy Police Chief Les White. Any questions that this committee may have of me, they may also feel free to direct to those individuals because they are present.

I might also say, Mr. Chairman, that earlier today, the Brandon Police Commission received telephone communications from the Town of Morden and Altona, in which they asked the Brandon Police Commission, through myself as their attorney, to speak on their behalf in opposition to this proposed legislation.

Let me say by way of introduction, Mr. Chairman, that the Commission regrets that its submission before this committee couldn't be more comprehensive than it is. We had originally targeted our appearance for Thursday of this week and the change in the committee hearing date has resulted in a less than complete and final draft of our position.

It has unfortunately made it impossible for the Chairman of the Commission, His Worship Mayor Burgess, to be present here tonight. We should also note that we have only just received the most recent amendments to Bill 2, Wednesday of last week actually, and really haven't yet had sufficient time to assess the Commission's position in their regard.

We would very much like to have further input into the deliberations of this committee and would ask that you give consideration to further sittings at which we might be present, as well as the possibility of our making further written submissions to this body. I make that request of you at this time. I would ask that you give it your consideration and advise us at a later date as to your inclinations.

By way of introduction to our formal presentation tonight, I might first say that the Commission's position on Bill 2, as advanced through myself, will be generally

limited to its proposed application to the City of Brandon. The Commission recognizes that circumstances and procedures within other municipal entities relative to law enforcement are different. We recognize that the size of the police organization in the City of Winnipeg, for example, may of itself give rise to different policy considerations than might be the case for our community.

Also by way of introduction, I might say that the City of Brandon Police Commission is opposed in principle to the passage of this bill so long as it is expressed to be universal in its application and so long as it would specifically govern citizen's complaints, rights and procedures relating to the law enforcement in our community. The passage of this bill into law effectively emasculates the Brandon City Police Commission except as an administrative body.

As members of this committee are no doubt aware, the City of Brandon Police Commission was established by way of legislative amendment to the city's Charter in 1949. The amendment provided for the creation of the committee and prescribed its powers, duties and procedures. Bill 2, if passed into law, would give the Law Enforcement Review Board almost all of the powers and duties prescribed in the 1949 amendment to the Charter.

As we understand the proposed legislation, the only powers remaining to the Commission would be administrative and as a tribunal to which a member of the City Police might appeal to from a matter of internal police department discipline. The only other possible area that the Commission might have a role to play would be in a circumstance where a citizen complaint, at which the Commissioner under the proposed legislation, might reject by reason of application of Section 12(1) of the bill.

The Commission's principal complaint about and opposition to this bill is because of the centralization of the jurisdiction relating to citizen's complaints in our city into the hands of a provincial body. Under the proposed legislation, local authority is, to all intents and purposes, by-passed completely. This bill represents a significant encroachment by the central authorities in this province over the jurisdiction of the City of Brandon. Of itself that we believe represents an undesirable policy position, but in addition, the Commission is of the view that the new review agency would not and could not be as responsive and sensitive to the needs and rights of the citizens of Brandon as can the local commission.

Committee members might well understand the Commission's opposition to this bill in an absolute sense. The opposition is even more understandable, we suggest, because there is not a demonstrable need for this type of legislation insofar as the City of Brandon is concerned. The Brandon City Police Commission is every bit as independent as the proposed review board. The Commission is made up of elected members of the city council and citizen commissioners appointed by that council. While the Chief of Police sits with the Commission, he has no vote on issues raised before it.

As this committee is no doubt aware, any person who has appealed to the Brandon City Police Commission and who feels aggrieved by its decision, can appeal further to the Manitoba Police Commission.

In some 34 years of the Commission's existence there were, to this Commission's knowledge, only two such appeals taken, only one of which was ultimately adjudicated upon.

Having said that, the question then needs to be asked - Who will be better served than the City of Brandon by this legislation? One of the fundamental qualities that any review board must necessarily have is that of accessibility. Under the present structure any citizen who feels he has been aggrieved, has easy access to the review body that is very much in touch with and at tune to the feelings and opinions of the people it serves.

The Brandon Police Commission is, we suggest, much more accessible to the people of Brandon than would be a commissioner's office in Winnipeg and a board sitting inside the perimeter. This government must well know that the citizens of Brandon, like all citizens of Manitoba, are jealous of their autonomy and very cognizant of what is colloquially known as the perimeter complex.

The passage of Bill 2 would remove from the people of our community access to a local group and supplant it with a requirement to deal with a body much further removed philosophically and geographically. With great respect this Commission believes that only in the most extreme of circumstances should this be contemplated.

Insofar as the situation in the City of Brandon is concerned, it must be noted that not only are the circumstances not extreme, but there is no demonstrable need for the legislation at all.

It has been argued by some proponents of this legislation that the program must, in order to be fair, be universal. Without going into great detail on the experiences of other jurisdictions, it should be noted that review mandates in such other jurisdictions are not all universal. The City of Toronto, for example, has a review agency while the balance of the province is not within the jurisdiction of the same body. With respect to the question of universality, it should also be pointed out that the federal authorities are in disagreement with the principle of a review agency having jurisdiction over any of its agencies. Given that position and given the constitutional reality that it is unconstitutional for provincial authorities to pass any such legislation insofar as it relates to federal bodies, the concept of universality is impossible, in any case, to attain.

It seems clear that the conduct of forced discipline and the administration of complaint procedures, insofar as the RCMP is concerned, will remain within the purview of that force. So in the City of Brandon, which has an RCMP City Detachment and a Municipal Police Force, the question of police conduct will be resolved in two different manners under the proposed legislation.

This cannot help, we suggest, but result in the citizens of our community making unfair and unfavourable comparisons between the two police bodies. The Commission's position, in principle, is that this legislation in fact it is to become legislation, should be aimed at the specific areas in which this government perceives a legitimate need as is contemplated by the bill.

We would specifically request that the City of Brandon be exempt from this legislation. Insofar as the legislation, in principle, is concerned, this Commission also has some general policy concerns.

If this government believes it has identified a need for this type of review legislation, why has it not sought to facilitate it through utilization of existing agencies?

It would seem that appropriate amendments to The Provincial Police Act might well have accomplished the aims and objectives of this government without imposing another layer of administration upon the people of Manitoba. It is this Commission's position that by strengthening the Manitoba Police Commission and the local municipal police commissions, the objectives of this government could be obtained without sacrificing the autonomy of the local groups.

This approach might also serve to meet two of the express concerns of the Honourable Attorney-General about local commissions. The Honourable Minister wrote to the then solicitor for this Commission, Mr. Meighen, on September 24th, 1982, and in his correspondence, the Minister indicated two of his concerns were to ensure that citizens would be free to voice complaints about police without fear of reprisal, and secondly that justice not only be done, but seem to be done.

With the greatest respect to the Minister, there doesn't appear to be anything in Bill 2 which would guarantee that a complainant would be protected from harassment any more than he or she might be under the existing system.

Any peace officer who might be sufficiently offended to commence harassment is, we would suggest, as likely to be equally offended under either one of the jurisdictions. The question of justice being seen to be done however is a more serious matter. The Commission would suggest that problem could be dealt with under a revised provincial police act giving access to complainants who feel aggrieved by the decision of local commissions.

While the Brandon Police Commission remains opposed in principle to a centralized civilian review agency, it would accommodate the notion of such an agency if it were an appeal tribunal.

The bolstering of the powers of the Provincial Police Commission with like authority and general powers as is contemplated in Bill 2, but as a body of last resort rather than first resort, would leave the initial control of its own police force where it should reside, in the hands of the local authorities. Those citizens who are inclined to say that a police force investigating its own alleged improprieties is not satisfactory, would have the opportunity to take their grievances to an authority which they might regard with less suspicion. In such a scenario, this Commission is of the belief that not only would justice be done but, among right-thinking people, would be seen to be done.

Such an approach would also have the further desired effect, at least at first instance, of leaving the question of disciplinary procedures in the hands of the local chief constable. In that respect, the observations of the Royal Commission on the Police in Great Britain, in its 1962 Report to the House of Commons, shed some light on the attitude of the other jurisdictions in this regard.

I quote from that report as follows: "The police are a disciplined body and proper leadership requires that the administration of discipline should be in the hands of the chief constable. Any whittling down of this responsibility would weaken the chief constable's

command of the force and this again would lead to a loss of morale and confidence. There is no strict analogy between a disciplined body like the police and the medical or legal professions where it is proper that professional discipline should be administered by a specially appointed body, rather than a single individual."

Similarly, the Chairman of the British Police Complaints Board, Sir Cyril Phillips, has recently been quoted as follows: "It is in nobody's interest to prevent the force from keeping their own house in order, whether by taking the job out of their hands or by placing artificial constraints on the application of the police discipline code."

While it is true that Paragraph 10(2) of Bill 2 prohibits the investigation of a complaint made by a force member about any discipline meted out to that member, it is just as clear that once a complaint is made by a citizen, any discipline ultimately determined with respect to a police officer as a final result of the investigation of such a complaint, would be undertaken by and in the final instance abide by the review agency.

The effect of the legislation, as it is now proposed, would be to reduce the office of Chief Constable, except in purely internal discipline matters, to an administrative officer with no ultimate power to discipline where a civilian complaint was involved. There can be no question that this would have a negative impact on the morale and discipline of the City Police Force, particularly when the police and the citizens are mindful of the fact that the officers commanding RCMP detachments have no like impairment of their discipline powers.

A closer examination of Section 10(2) might also suggest that a member of the force shall not have a right to file a complaint against a police chief in respect of a matter of discipline, but there appears to be no prohibition against the Police Association from doing so. Were such a complaint allowed, a further erosion of the police chief's authority and his power of discipline would be almost certain.

Having put its position on a general policy basis, this Commission would also like to state some of its concerns with respect to specific sections of the legislation itself. In addition to the comments that have already been made about the effect of some of the sections on the authority of the police chief and what this Commission believes to be a subsequent deterioration of his authority, the Commission also has a concern about the makeup of the review board itself.

The recent amendment to Section 5, with the addition of Section 53(1) provides for a membership in the board of at least two persons who are or were police officers. The proposed legislation does not, however, provide for the involvement of at least one of those individuals on the hearing of any of the matters contemplated in the act. Section 23(1) specifically provides for the presence of one of the individuals who is required to be a member in good standing of the Law Society of Manitoba, but makes no such provision for either of the two police representatives to be present.

It would seem that if the expertise of those particular classes of individuals is to be desired and to be relied upon during a hearing, the act should provide that at least one of the police representatives to the board be on the panel for any particular hearing.

This Commission also opposes the amendments to Sections 21 and 31. The proposed legislation, as it stood before these last amendments, provided in both of those sections for referral of the subject matter of those sections to the local police commission.

The amendments now contemplate the referral of the subject matter of those two sections to the municipal authority rather than the Police Commission. With those amendments, the bill has the effect of by-passing the local commissions with matters of concern in the already very small area of jurisdiction which is left to the local bodies.

In accordance with our earlier recommendations outlined in this submission, this Commission would propose that the whole of Bill 2 be revised, either to exclude the City of Brandon from its applicable, as it appears that the bill originally contemplated before the most recent amendments, or in the alternative to be amended so that the provisions of this legislation would be triggered insofar as the City of Brandon was concerned at least, only after a determination on a complaint had been first made by the local police commission.

With respect to our position in that matter, it would seem that such a change in the direction of the legislation could still provide for the civilian review agency centralized in its authority that this government seems intent upon, but at the same time preserves the autonomy of the local association. The only significant changes that would have to be contemplated would be an extension of the time permitted under the act to bring complaints before the central review agency, and we recommend to the committee's attention the consideration of such a change in the direction of these proposals.

In closing, Mr. Chairman, I would ask this committee to consider that this legislation proposes a significant disruption of the local affairs of Manitoba's second largest city. Brandon is not like the City of Winnipeg. It has different problems which manifest themselves in different ways and our community has been successful in dealing with those problems locally and without the necessity of a central authority in many areas.

We say in conclusion that where there is a demonstrable need for the kind of legislation that is being contemplated, the Commission could take a more conciliatory view to the proposed legislation. But in the absence of any justification for the imposition of this type of extensive central authority imposed over its local affairs, the city can only protest that it be left alone to manage its own police force. Thank you.

MR. CHAIRMAN: Is there any member of the committee who wishes to direct one or more questions to Mr. Thornborough?

The Attorney-General.

HON. R. PENNER: Mr. Thornborough, just a couple of questions. You spoke early in your submission - which many thanks incidentally - about the legislation. I think your term was "emasculating the Brandon Police Commission," I just want to pursue that with two questions. The Brandon Police Commission, as I understand it, hears complaints with respect to abuse of authority or police misconduct that derive either,

without reference to third parties as citizens, that is, just something in breach of the particular discipline code that doesn't involve a citizen and complaints that might involve a citizen, is that right, hears both classes?

MR. J. THORNBOROUGH: That's correct.

HON. R. PENNER: Do you have any approximate figures for recent years of how many of the complaints dealt with by the Brandon Commission come from citizens and how many come from the disciplinary power of the Chief with respect to constables not related to citizens?

MR. J. THORNBOROUGH: I don't have any exact figures with respect to the number of complaints that have been brought by citizens, but my understanding - and Chief Elliott can correct me if I'm wrong - I believe there has been one appeal or possibly two taken to the Commission by a force member as a result of discipline meted out to him or her by the chief constable.

HON. R. PENNER: The reason I asked the question is I'm not so much interested in the figures as such, but to pursue the question about the Brandon Police Commission being emasculated, because in any event the Brandon Police Commission would still be dealing with the internal matters.

MR. J. THORNBOROUGH: They would be dealing with the internal matters only where there was not the advent of a citizen complaint. That's right, but the moment that there was a citizen complaint, notwithstanding that the complaint ultimately did not result in an action being taken by this review board, the discipline of the member in question is removed from the hands of the chief constable; that is, once the complaint is laid and it is a matter beyond the jurisdiction of the chief constable and he's in a position where he can't even discipline his own force member.

HON. R. PENNER: Except that any matter of going up further would carry a recommendation as to penalty which would have to be done in consultation with the chief.

MR. J. THORNBOROUGH: It has to be done in consultation with the chief, but the sections of this proposed bill are drafted as such that his proposal and his suggestions can be overridden by the Commissioner.

HON. R. PENNER: My next question, so that you can't tell me the total number of matters that get to the Commission and how they're divided - you haven't got those figures available today?

MR. J. THORNBOROUGH: No, I don't.

HON. R. PENNER: Okay. Related to that, you've talked about accessibility and said that there is easy access, did you say to the Commission?

MR. J. THORNBOROUGH: Yes.

HON. R. PENNER: To get to the Commission, does a citizen have to go through the internal investigation unit

or is there that kind of mechanism? How does a citizen who has a complaint about the police get to the Commission?

MR. J. THORNBOROUGH: He files a written complaint with the Commission.

HON. R. PENNER: Right. Then what happens? Is there a hearing?

MR. J. THORNBOROUGH: The Commission causes the chief constable to investigate the complaint and then there's a hearing at which the complainant may, if he wishes, attend.

HON. R. PENNER: Are you familiar with the criticism levied by the Manitoba Police Commission in the case of Stuart and Watson about the failure of the Commission, in fact, to give a citizen an opportunity to appear in person following the filing of a written complaint?

MR. J. THORNBOROUGH: I'm aware of that criticism, Mr. Attorney-General, I'm not aware of how it arose. I do not believe that it was a case of the complainant being refused access to make representation.

HON. R. PENNER: My final question relates to a point you made I think twice through your submission about the RCMP. Are you, Mr. Thornborough, familiar with the proposed amendments to The Provincial Police Act insofar as it will now allow complaints with respect to the RCMP to be referred to the Commissioner under The Law Enforcement Review Act for investigation?

MR. J. THORNBOROUGH: I'm aware that those are being proposed. I'm also aware and it's also my understanding that the federal authorities have taken the position that they will not submit to any discipline of their force members by a provincially constituted body.

HON. R. PENNER: That's right; that is, that the matter may be investigated, recommendations made, but it couldn't go for actual adjudication and discipline, that's true. The fact is that the RCMP would be to some extent under the same umbrella in terms of investigation and recommendations under the proposed changes to The Provincial Police Act.

MR. J. THORNBOROUGH: Quite.

HON. R. PENNER: Those are my questions.

MR. CHAIRMAN: The Member for St. Norbert.

MR. G. MERCIER: Mr. Thornborough, at the end of your submission, you indicated that it was your perception that the act originally intended to exempt the City of Brandon. What led you to believe that?

MR. J. THORNBOROUGH: The bill in its original form prescribed in the section just doesn't come immediately to my mind, prescribed that where this act and where an act creating the City of Winnipeg came into conflict,

this act would be deemed to prevail. That particular section was subsequently amended to provide, and in the recent amendment which we received on Wednesday that where this act and any other act of the Legislature, which presumably would contemplate the Charter of the City of Brandon, where they came into conflict, then this act would prevail. So with the omission in the initial bill of any reference to any act other than The City of Winnipeg Act, we took it that it was the intent of this government to adjudicate or to have this matter govern only with respect to the City of Winnipeg.

MR. CHAIRMAN: Is there any other member who wants to ask questions? Hearing none, I want to thank Mr. Thornborough for his presentation.

MR. J. THORNBOROUGH: Thank you, Mr. Chairman.

MR. CHAIRMAN: The next speaker will be Mr. Jansen, also from the City of Brandon, if he wishes to make his own presentation.

MR. J. JANZEN: Mr. Chairman, and members of the committee, my name is Janzen. I appear here this evening on behalf of the City of Brandon Police Association. Appearing with me is Constable Rene Christmas who is the Chairman of the City of Brandon Police Association. Any questions which you may have of me might also be directed to Constable Rene Christmas.

Let me begin by saying, Mr. Chairman, and members of the committee, that the City of Brandon Police Association is opposed to this legislation. In the view of the association, and we speak only of the experience of the City of Brandon, we cannot speak of the experience in the City of Winnipeg, in the view of the City of Brandon Police Association there is no demonstrated need for this legislation. This legislation represents a significant intrusion into the administration of the City of Brandon Police Department and it is our submission that it should be adopted only if the need for it is demonstrated in the clearest terms. Such demonstration has not been made, Mr. Chairman, and, indeed, in our view it could not be made.

In this regard, Mr. Chairman, permit me to refer you to legislation in place in the Province of Ontario, The Metro Police Complaints Project Act assented to in November of 1981. That act contains provisions similar in scope and intent with that of the present legislation. In the Province of Ontario it applies only to Metropolitan Toronto. The City of Brandon Police Association believes that if legislation like this is passed it should be passed in such a fashion as to be applicable only to the City of Winnipeg.

Again we cannot speak with authority regarding events and circumstances in the City of Winnipeg but if there is a problem here the solution lies in passing legislation applicable to the city, not to the province as a whole. If there is a problem in the City of Brandon, Mr. Chairman, we are anxious to learn of what that problem is and as to whether or not the passage of this legislation is a solution to that problem.

Mr. Chairman, the Honourable Attorney-General has, on numerous occasions, promised legislation like this

in one form or another. My further comments, therefore, Mr. Chairman, are predicated on the assumption that legislation like Bill No. 2, together with its amendments will be passed. The City of Winnipeg Police Association does not approve of the assumption I make but I make it. Continuing then, Mr. Chairman, . . .

HON. R. PENNER: Would you just repeat that last remark, I didn't get it.

MR. J. JANZEN: My comment was, Mr. Attorney-General, that you have promised legislation of this kind in one form or another. My further comments therefore are predicated on the assumption that legislation like Bill No. 2, together with the amendments which we have to date will be passed. The assumption on which my further remarks are predicated is not one with which the City of Brandon Police Association is happy but my further comments will nevertheless make that assumption.

I will, on behalf of the City of Brandon Police Association, commend the committee on the amendments which it has brought forward to date which have, in the view of the association significantly improved the bill. In this regard I refer particularly to Section 5 which introduces a requirement that two members of the Law Enforcement Review Board shall be peace officers or former peace officers.

I refer also to the amendment to Section 25 which makes the standard of proof in all proceedings before the board, the standard of beyond a reasonable doubt, and I refer in particular also to the recent amendment proposed to Section 23(1) which guarantees anonymity of the respondent under certain circumstances and for a certain length of time.

My first area of concern then, Mr. Chairman, relates to the multiplicity of investigations to which a peace officer will be subject if this legislation is passed, investigations both internally and by the Commissions. Recent amendments to the legislation have significantly improved problems in this area, Mr. Chairman, but it is the submission of the Brandon Police Association that problems still remain in this area. In this regard I refer the committee in particular to Section 13 and Section 34.1 of the bill together with amendments. It is the submission of the City of Brandon Police Association that Section 13 should be struck out altogether, as should Section 34.1(4).

It is the view of the Police Association, Mr. Chairman, that Section 13 simply contradicts in its terms Section 34.1(1). Section 34.1(1) provides simply that if there is a complaint filed with the Commissioner, no further action shall be taken whatever with respect to internal investigation. Section 13, if I may refer you to it, Mr. Chairman, provides that under certain circumstances where the investigation has revealed evidence of matters which may be subject to internal police discipline, the Commissioner may forward all relevant material to the appropriate Chief of Police and, of course, there has been an amendment in the second-last line of Section 13 of recent date.

Mr. Chairman, either Section 34.1 contradicts Section 13 or it doesn't and if it does not and adds something to Section 34.1, what it adds is objectionable. It is objectionable, Mr. Chairman, that the Commissioner

should be able to forward material he has gathered on to the disciplinary authority in the police department. The City of Brandon Police Association sees no reason why the disciplinary authority in the police department should have the advantage of any such material gathered by the Commissioner. In general, Mr. Chairman, why should further discipline be imposed internally if the Commissioner has already determined the matter? Either, Mr. Chairman, the Commission and the board's decision is determinative or it is not.

The City of Brandon Police Association does not understand why, once the Commission has made a determination or the board has made a determination, a peace officer should be subject to further investigation. It is submitted that once a complaint is filed within the terms of the act, Mr. Chairman, and it falls within the jurisdiction of the Commission, no peace officer should be subject to any further internal investigation. Section 13 should be struck, Section 34.1(4) should be struck.

We find it objectionable, Mr. Chairman, both that there may be additional internal investigations subsequent to a complaint being filed and that the Commissioner should be permitted to furnish any additional material to the disciplinary authority.

The second area of concern, Mr. Chairman, relates to the publicity of hearings. In this regard I refer you to Sections 23(10), (11), and Section 23.1 of the bill. Mr. Chairman, hearings of this nature are typically of the character or fall within the purview of labour-management relations. They have the character of grievance hearings, these hearings are not typically of a public nature, Mr. Chairman. Accordingly we would minimally propose that Section 23(10) be amended to provide that every board hearing be private or in camera unless the proper administration of justice otherwise requires.

Accordingly, Mr. Chairman, we would propose that Section 23(11) be amended to place the onus on the parties seeking to have the hearing held in public, rather than in camera.

Looking at Section 23.1, Mr. Chairman, a recent amendment. It is a welcome amendment, Mr. Chairman, but it is a submission of the Brandon Police Association that as it stands, it is useless. It is useless, Mr. Chairman, so long as no penalty is prescribed and it is essential that if Section 23.1 is to have any effect, a further amendment must be added to impose a substantial penalty on any person who will act in violation of Section 23.1.

Accordingly then, Mr. Chairman, on the issue of publicity, if this committee is not prepared to revise Sections 23(10) and (11), to make the hearings in camera, unless the proper administration of justice requires, minimally, Section 23.1 requires the further amendment that a substantial penalty be imposed on any party who acts in violation of Section 23.1.

The third area of concern, Mr. Chairman, of the City of Brandon Police Association, concerns the general intrusion of this legislation into the area of labour-management relations. The legislation, in the view of the association, reflects a substantial derogation in the rights of the certified bargaining agent and a corresponding derogation in the rights of members of that association.

The collective agreement in force, Mr. Chairman, between the City of Brandon Police Commission and

the City of Brandon Police Association is typical of most collective agreements, in that it provides for a rather elaborate grievance procedure in the event of disciplinary matters coming forward. At the centrepiece of that grievance procedure is the certified bargaining agent. It assesses the nature of the grievance, makes a determination as to whether the grievance is justified, and then it fights the cause on behalf of the griever.

Fundamental principles of labour law are at issue here, Mr. Chairman. The certified bargaining agent, in general, has a duty to represent fairly its members, to not act arbitrarily, and to not act in bad faith. How, Mr. Chairman, is the certified bargaining agent to discharge these duties if, as under this present legislation, there is no access to the procedure provided for in the act?

We would minimally request, Mr. Chairman, that the certified bargaining agent, in this case the City of Brandon Police Association, should receive notice of any complaint, it should receive particulars regarding any complaint, it should be a party to consultation among the parties as provided for, in example, Section 14 of Bill No. 2, and it should have the right to appear before any hearing of The Law Enforcement Review Act.

It goes without saying I think, Mr. Chairman, that the decisions which the board makes or which the Commission makes will have an important precedent-setting effect. They will affect not only the member, who is the particular respondent in that proceeding, but they will affect other members. Those other members have a right to be heard and they have a right to be heard through that certified bargaining agent.

As part of that particular matter, Mr. Chairman, the act provides for the right of legal counsel to the respondent. Who is to provide legal counsel to the respondent? Is it the certified bargaining agent? If it is, should the certified bargaining agent not be in a position to assess the nature of the case and be a direct participant in it?

Those then, Mr. Chairman, reflect the principal concerns of the City of Brandon Police Association with respect to this legislation. As indicated earlier, important amendments have, in our view, already been made. The matters which I have urged upon you this evening are other matters which, in our respectful submission, must be made before this legislation can be palatable to members of the City of Brandon Police Association.

Thank you, Mr. Chairman.

MR. CHAIRMAN: Is there any member of the committee who wishes to direct one or two questions to Mr. Janzen?

The Attorney-General.

HON. R. PENNER: With respect to a point that you made in an excellent presentation, Mr. Janzen, about the publication ban on names. You proceeded on an assumption which concerns me that there's no teeth in the prohibition and that some specific penalty had to be provided. Would it not be case, in your view, that by reason of the provisions of The Summary Convictions Act, in the absence of a specific penalty being named in a piece of legislation, an offence, that is a breach of a provision of a provincial statute, would carry the penalty set forth in The Summary Convictions Act?

MR. J. JANZEN: I don't know that I share that view as a general point of statutory interpretation, Mr. Attorney-General, and second of all, I am not satisfied that the penalties provided for in that act would be of a substantial enough nature to act as a sufficient disincentive to members of the media who might wish to publish names, nevertheless. Thus it would seem to me, Mr. Chairman, or to the City of Brandon Police Association that the conservative and cautious approach would be to insert in this legislation a specific penalty provision and not to rely on an arguable principle of interpretation, as to whether or not the penalties prescribed in The Summary Convictions Act would be applicable.

HON. R. PENNER: I'm intrigued by your reference to a conservative and cautious approach. I'm known for one but not the other. Section 38 of the bill provides and I take your point about the uncertainty, as you feel it, of The Summary Convictions Act. Section 38 provides, "Any person who, without lawful excuse, fails to comply with an order, decision, or directive of the Commissioner or the board is guilty of an offence and is liable on summary conviction to a fine of not more than \$2,000, and in default thereof to imprisonment for a term not exceeding three months or both." Would you not think that is a severe enough penalty?

MR. J. JANZEN: Two points, Mr. Attorney-General. One is no, I do not believe that the fine prescribed in Section 38 is sufficient. I would urge you to bear in mind that the parties who we would be concerned about breaching Section 23.1 are media and I would expect that they would have no difficulty in raising the money for a fine prescribed there.

Second of all, Mr. Attorney-General, Section 38 provides for a penalty for failure to act in compliance with an order of the Commissioner or the board. Now Section 23.1 is neither, Mr. Chairman, an order of the Commissioner or the board, but rather a provision of this legislation and it would be submitted, as it is presently worded, Section 38 does not impose a penalty relating to Section 23.1.

HON. R. PENNER: We'll have a look at the point you made with respect to 23.1, Mr. Janzen. It's helpful and you may be quite right in the concerns that you raise.

Finally with respect to your suggestion that 34.1(4) be struck, 34.1(4)(b) deals with two specific circumstances: one where no proceedings are being taken; the other where that is because the consent hasn't come in in time, and the other where the subject matter of the complaint is not within the scope of the legislation. So there you have a situation where, in fact, nothing is being done through the LERA mechanism. Would it still in your view constitute technically not double jeopardy, but double proceedings?

MR. J. JANZEN: My concern, Mr. Attorney-General, is not so much with Part (a). I believe that a proceeding as provided for in 34.1(4)(a) would be acceptable. My concern is more for (b). In (b), Section 12 provides for a determination by the Commissioner under two circumstances. One is in which the complaint is thought to be frivolous or vexatious, or secondly, does not

disclose a disciplinary default. It would be our submission that under either (a) or (b), the Commissioner has made a determination of the complaint on the merits. Having made a determination of the complaint on the merits, no peace officer should be subject to further investigation.

HON. R. PENNER: Thank you, Mr. Janzen.

MR. J. JANZEN: Thank you, Mr. Chairman.

MR. CHAIRMAN: Excuse me, Mr. Janzen. The Member for St. Norbert would like to ask a couple of questions.

MR. G. MERCIER: Mr. Chairman, what is the association's views of an internal investigation unit?

MR. J. JANZEN: Could you ask that question again, please?

MR. G. MERCIER: What is the association's views on internal investigations and by whom they are done?

MR. J. JANZEN: As I indicated at the beginning of my comments, the general position of the Police Association is that this legislation is not needed. Accordingly, the position is that investigation done internally, as is presently the case, has served both members of the association and members of the public in the City of Brandon not only adequately but well.

MR. CHAIRMAN: Thank you, Mr. Janzen.

The Chair now wishes to call on Mr. Burke, also from Brandon, if he wishes to make a presentation of his own.

MR. J. THORNBOROUGH: No, Mr. Chairman. Mr. Burke was with our group, and is here adding support.

MR. CHAIRMAN: Thank you. So you have made presentation for him?

MR. J. THORNBOROUGH: Yes, Mr. Chairman. Thank you.

MR. CHAIRMAN: Mr. Anderson from the Town of Winkler. Is there anyone here from the Town of Winkler? — (Interjection) — Do you wish to speak? We'll hear him when he comes. Is there anyone else from out of town which we have missed who wishes to make a presentation?

If none, I wish to call on Jim Ernst from the City of Winnipeg.

MR. J. ERNST: Thank you very much, Mr. Chairman. If I may interject with a note of levity on such a warm evening, I would like to report to the Minister of the Environment that I have no mosquitoes in my backyard today.

HON. R. PENNER: How's the paint on your car?

A MEMBER: Roland!

MR. J. ERNST: As a matter of fact, the paint is quite fine. I was out of town over the weekend.

Mr. Chairman, our presentation from the City of Winnipeg is twofold. Firstly, there is me, and then there is the representative of the City Solicitor's Department to deal with the technical aspects of the bill and their concerns in that regard. I should point out that they have been adopted and supported by the City Council.

Therefore, it is important before we discuss the content of the act to reflect on the need and objectives of such an act. It would appear that the need for this act is based on a perception that the general public are presently adverse to filing a complaint against the police force, because they feel they would not get a fair hearing by registering their complaint directly with the force.

In addition, it is suggested that, unless the circumstances dictate, a complaint should be appealed to the level of the Municipal Police Commission or the Manitoba Police Commission. There is concern that the complainant will only receive a cursory acknowledgement of his complaint by the police force.

In addition, there is concern that the complainant will not receive a detailed report as to what was done by the police department in dealing with that complaint.

It should be noted that there does not exist any body of knowledge which would enable one to make a judgment as to the latent demand for this type of legislation. However, the city supports the concept that the public should have every confidence in being assured that should there be a legitimate complaint against any actions of the police department there will be a reasonable course of action open to resolve the matter.

There presently exists adequate systems for dealing with complaints, both external and internal, against the police department. We contend that the internal investigative process and discipline provided under The City of Winnipeg Act, plus the powers provided to the Winnipeg Police Commission by by-law and the Manitoba Police Commission by statute, provide an adequate process for resolving citizen complaints.

However, if the perception that citizens feel inhibited about filing complaints against the police department exists, then we should be quite prepared to develop amendments to the present process which would provide for an expanded external review of the matter. We would suggest that parameters for the system to be developed could be patterned on a trial basis in a similar fashion to what was undertaken by the Ontario Government for the Metropolitan Toronto Police Force. I will address myself more to this later in my presentation.

Another perceived need for the legislation is to provide for the uniform administration of discipline across the various municipal police forces. The City of Winnipeg contends that the size of a city force and the specialized skills within our force should dictate an administration of discipline related to comparable forces. By trying to administer justice to all based on small and large forces has the potential to achieve injustice rather than justice.

I now propose to discuss the present system, the proposed system, and then outline the basic difficulties we perceive which arise from the legislation. Presently the system within the Province of Manitoba allows for citizen complaints to be registered with the police jurisdiction involved in the municipality with the

exception of those municipalities policed by the RCMP. Should the complainant not feel satisfied, there is a Municipal Police Commission which can hear the case.

In the event that this particular course of action is not deemed satisfactory. There is a provincial body left to adjudicate as to the final resolution of the matter.

As far as we can see, the thrust of the new legislation is aimed at the municipal police bodies and the municipal police boards which are not adequately handling the complaints of the citizen. We believe this to be predicated on a concern regarding incidents of the type which recently occurred in Winkler and the actions of the Winkler Police Commission in hearing the case.

It should, however, be noted that the Manitoba Police Commission ultimately resolved the matter in what would appear to be a fair and reasonable manner. It would appear that this is an isolated incident and that the Manitoba Police Commission has resolved the matter satisfactorily.

We can clearly recognize the need for consistent standards, for similar size police departments to be administered across the Province of Manitoba and would suggest that it might be appropriate to develop some standards through the Manitoba Police Commission and have them provided to each of the municipal police boards.

Under The Law Enforcement Review Act, it is anticipated that the actions of the police department will be adjudicated in two different ways depending upon whether or not a citizen chooses to complain about the actions of an officer or whether he is observed and charged under an internal process. An example of this would be where an officer allegedly uses excessive force during the course of an arrest, and the citizen, in the first case, chooses to complain; and in the second case, chooses not to.

In the first case, the citizen complaint would be registered with The Law Enforcement Review Act. No disciplinary hearing could be undertaken by the police department but the Commissioner, under that act, would conduct his investigation and rule on that particular incident.

In the second case, where the person being arrested chose not to complain but it was internally observed that the officer had used excessive force, the department would take internal disciplinary action against the officer. The concern would be that in the two processes different penalties are levied against the officers and that the police department loses control over the management of its force.

I think it's important to point out that the City of Winnipeg Police Department is comprised of a force of in excess of 1,000 persons and is unique in the Province of Manitoba. We feel it is indeed unfortunate that in order to achieve apparent consistency among the many municipal police forces, this act gives no recognition to the fact that the activities of enforcement in a city the size of Winnipeg are clearly different from those in a small community.

We feel there are several major concerns which should be addressed. The first of these concerns is the administration of discipline within the police force. We have indicated earlier that we are concerned that there can be different discipline meted out depending upon whether a citizen complains or the action of a police

officer is dealt with internally. The act results in the creation of two different processes, two different standards of proof, the distinct possibility of two different penalties and two different tribunals to adjudicate on a matter, one with and one without a full appeal.

The second administrative matter of concern is, what would happen to frivolous and vexatious complaints? There does not appear to be any deterrent to citizens making frivolous and vexatious complaints against the force. It would appear as though the legislation anticipates that the Commissioner can weed out the frivolous and vexatious complaints, however it is our contention that the Commissioner should be in a position to dismiss any complaint that is clearly frivolous or vexatious. The effort and time spent in conducting investigations to determine legitimacy can be extremely time consuming and costly to the police department. In addition, it can be extremely frustrating if there are a continual number of frivolous or vexatious complaints brought by certain segments of our society. It is our contention that there should be some penalty provided in the event that frivolous and vexatious charges are instituted which create additional administrative costs and difficulties for the various police departments or for the Commissioner.

The next matter that concerns us is the question of who will investigate the complaints brought against the police department. It does not appear from reading The Law Enforcement Review Act that allowance has been made for the Commission's own internal investigative unit. One can, therefore, only conclude that the Commissioner will draw on the resources of the various municipal and federal forces to conduct his investigations. We feel that this can lead to many difficulties as police officers of the various departments could be perceived as not being objective enough in the eyes of the citizens in reviewing these complaints. The original logic behind the bill was that citizens are to have a fair and just hearing. Then it would appear that the only fair way to have complaints investigated would be by an independent body. While we recognize that it might be perceived as being somewhat more independent and objective to have the various jurisdictions investigate each other, rather than investigating themselves, we are concerned that the Winnipeg Police Force, which is significantly larger than any other force and has generally a higher level of training, would be unfairly imposed upon in conducting investigations.

In addition, the police force is stretched rather thinly in its resources. As well, it would not be an effective use of manpower to employ them in the activities of investigating other police departments.

Then we have a further concern, Mr. Chairman, and that is, how are the costs of such investigations going to be paid for?

Another significant area of concern is the extent of the discipline code. We believe that the majority of items listed in the discipline code, more properly lend themselves to internal discipline and should not be included under The Law Enforcement Review Act.

If there were not two streams of administration, as described earlier, then a standard discipline code could be appropriate. However, there are two streams, and we suggest that the act more properly should relate

only to Items 27 1.(b) using unnecessary violence or excessive force; or 27 1.(c) using oppressive or abusive conduct - and I suggest that "or language" might be stretching the point a little.

The department must deal with other items listed in the discipline code on a regular basis and by having the chief or the Commissioner rule on the matter, depending upon who lays the charge, then the possibility for inconsistent and confusing discipline is greatly increased. In order to minimize the possibility of this, we would suggest a program similar to that instituted, rather, in Toronto on a pilot basis.

In summary then, the City of Winnipeg feels that the public are clearly entitled to be assured that they have adequate avenues open to have any problems with the police force resolved. We acknowledge there could be a perception problem in that the public is concerned about filing complaints against a police officer with the police department involved and that perhaps some mechanism to overcome this is advisable. However, we feel that The Law Enforcement Review Act has clearly exceeded the boundaries necessary to achieve the same.

It is our contention that clearly an independent body should be adjudicating any complaints having to do with problems of officers utilizing excessive force or unnecessary violence or using oppressive or abusive conduct.

It is our contention that the other matters listed under Section 27 start to interfere with the appropriate administration of the police department.

We respectfully submit that the mechanisms to provide for a fair administration of discipline and justice exist today. However, given that we acknowledge that citizens might feel inhibited about registering a complaint about the police with the police, perhaps consideration could be given to implementing on a trial basis a similar program to that effected for the Metropolitan Toronto Police Force. The concept of having an independent Commission established to impartiality in the administration of police discipline as related to citizen complaints has merit.

We would point out to you that the Public Complaints Commissioner in Toronto utilizes the investigative resources of the police department in his initial investigations. He does not interfere in the investigations unless he feels that further information is required. In other words, the Toronto system continues to utilize the internal investigative procedures of the police force and does not create a second level two-stream discipline process.

We believe that if you have that opportunity to examine the outcome of the trial program in Metropolitan Toronto, you will see that this has been a very effective program. We would respectfully suggest that a single stream of administrative process has considerably more merit than the dual stream process being advocated in the Law Enforcement Review Act.

In addition, the fact that this program has been run on a trial basis also has considerable merit. As can be seen from the multitude of amendments, which have already been proposed for The Law Enforcement Review Act, there is a great deal of uncertainty as to how this legislation would impact the operations of a major police force. By operating on a trial basis, proper adjustments could be made, and a system developed

which would ensure the effective administration of discipline and justice.

Thank you very much.

MR. CHAIRMAN: Is there a member of the committee who wishes to direct one or two questions to Councillor Ernst?

The Attorney-General.

HON. R. PENNER: Councillor Ernst, did I understand you to say that in your opinion the Commissioner should be able to strike out the "frivolous" and "vexatious"?

MR. J. ERNST: That's correct.

HON. R. PENNER: But that power is contained, is it not, in Section 12(1)(a) of the bill?

MR. J. ERNST: But it says only after investigation. We're suggesting that many could be so frivolous and vexatious that they should be struck down immediately, that we should not have to go through the process of investigating those kinds of complaints.

HON. R. PENNER: You're taking the view that the term "investigation" necessarily compels the Commissioner to actually go out and scurry around and look into the matter?

MR. J. ERNST: That's right.

HON. R. PENNER: Okay, we'll take a look at that concern.

You then raise the question of a penalty being attached to those situations, or at least some of them, where there has been a ruling that the complaint is frivolous and vexatious. Would you not be concerned that might have the unsatisfactory result of deterring those who indeed have a legitimate complaint but aren't sure whether or not it is, or worry that they are going to be punished for bringing this matter to the attention of the appropriate authorities?

MR. J. ERNST: I think not in, for instance, a first-instance type of case. But we have - and I'm sure any person involved in Municipal or Provincial Governments for that matter - individuals who continuously raise certain matters with them on a regular basis on a continuing basis. We're not able - that the Commissioner be able to strike down as frivolous and vexatious without any kind of work some of those kinds of concerns. Then barring that, let a person who wishes to in effect harass the Commission or the police force or whoever pay the price if they're going to do that.

HON. R. PENNER: With respect to the point that you made about Section 27. Councillor Ernst, in Section 27 1., in fact, deals with "abuse of authority," and then lists some examples. You feel that only two of the examples should be used. Are you suggesting that we would leave "Abuse of authority;" and the wording, "for example, without limiting the generality of 'obuse of authority'" (b) and (c)?

MR. J. ERNST: That's correct.

HON. R. PENNER: Would that not still leave it open to the board, when it adjudicates, to find anything which in its opinion constituted abuse of authority as abuse of authority? It leaves kind of blank cheque without examples, does it not? - because the charge that would come forward would be abuse of authority, then there would have to be some particulars? It might be . . .

MR. J. ERNST: Well, in our view, Mr. Penner, I think that abuse of authority would be, in effect, these two examples.

HON. R. PENNER: And nothing else?

MR. J. ERNST: That's correct.

HON. R. PENNER: Are you aware of the discipline codes in legislation to the west of us, Saskatchewan, Alberta, and B.C., with similar provisions?

MR. J. ERNST: Not specifically.

HON. R. PENNER: Okay. I think those are all the questions I have to ask Councillor Ernst.

MR. CHAIRMAN: Any other members of the committee who wish to direct questions?

Otherwise, hearing none, the Chair thanks the councillor.

MR. J. ERNST: Thank you very much.

MR. CHAIRMAN: The Chair wishes to call on the Winnipeg Chief of Police, Ken Johnston.

MR. K. JOHNSTON: Mr. Chairman, Mr. Attorney-General, members of the committee, I ask your indulgence for a very short period of time, but I ask it because I think you're dealing with one of the most important pieces of legislation which covers your constituents.

I've been a policeman for 37 years, and in acknowledgement of the first speaker's admiration of the British police, 10 of those years were with the British police. I'm also happy to state that of those 10 years all of them covered the time the first speaker was in residence in the United Kingdom.

A claim I might reasonably make is that I know police work, and I know policemen; that with this background and qualifications, I speak to you on the proposed Law Enforcement Review Act, an act which will deal only with complaints against the police, an act to which I am opposed in its present form.

It's not my intent to go through this act section by section pointing out error here, objection there; there are far more qualified in law who will speaking to you on that. Mine will be a general observation of the proposed legislation.

The difficulties facing a police officer on the street today are far greater than they were 20 years ago: more crime, more violence, more stress, greater scrutiny of police powers and practices, tribunals and commissions of inquiry abound. I'm well aware that there are times when the actions of the police either individually or collectively should be held up for scrutiny.

I realize that very well, and that is why on many occasions I have said publicly that I have no objection. In fact, I would encourage and welcome an independent body to deal with serious complaints of assault or abuse against the police from the public.

Now, in saying that, I suppose I've put my submission in a nutshell. Serious complaints of assault or abuse should be dealt with by an independent body. I don't believe that the work "complaint" is a statutory definition, although it is generally accepted that it refers to allegations of improper behaviour on a particular occasion by a particular officer of officers.

Improper behaviour - I would ask you to reflect on how many complaints of improper behaviour could be brought against a police officer in the handing out of a single traffic ticket; or a domestic dispute; a brawl in the local hotel; a suspect being interviewed after raping a child; violence on the picket lines; or at the other end of the scale, a traffic accident where the police officer makes an error, he's negligent. Improper behaviour? A shootout with a suspect, the policeman has a split-second to make a decision between life and death, a decision he will know will be examined, scrutinized and debated in courts of law by great legal minds for months. Was that decision he made in a fraction of a second a correct one, or was it improper behaviour? What I am saying, gentlemen, is that the police officer walks a very thin and slender line each time he goes out on duty. The difference between legality and illegality may be very difficult to define.

Maybe we should look and find out what measures are now in place for anyone who has a complaint against the police on improper conduct. Let's go to the bottom of the scale, a complaint of negligence or abuse. This type of complaint usually comes to my office complaining that a police officer has behaved in some improper manner. That complaint is given to my Executive Assistant who heads the internal investigation department. He sends investigators out and determines whether or not there are any facts or any basis to the case. Those facts are put before three senior officers, and they decide whether or not it should go further.

If they should decide, well there is no reason for complaint, there was no basis for this complaint whatsoever, the complainant is notified by letter that it's been investigated and that we see no reason for complaint. He is also informed that if he is not satisfied with our conduct, or with our investigation, or with our decision, he may go to the Winnipeg Police Commission or even on to the Manitoba Police Commission.

If however, there is some substance to the complaint, it goes before a Discipline Board. Charges are laid, and it goes before a Discipline Board of a Deputy Chief and two senior officers. Whatever the outcome, the complainant is notified. Usually he's there, testifying as a witness.

On the other hand, if it's more serious, if it's a complaint of assault, the investigation takes the same route, internal investigators, but before it goes before that panel of officers, it goes to the Attorney-General's Department. It goes to the Senior Crown Prosecutor. These are the facts that have been obtained. Should charges be laid? In fact, there is one before the courts now where there was a complaint of assault, that went to the Senior Crown Prosecutor, and it's being dealt with by the courts. Whatever the decision in the courts

of law, he still can face internal discipline charges when he comes back.

Let's look at something else which is given much publicity, the time when a police officer fires his gun. Any time a police officer uses that weapon, other than on the range, he must submit a report and a board sits within 24 hours of him using that weapon. Whatever the decision, it is taken again to the Attorney-General's Chief Crown Prosecutor to examine whether or not that police officer was justified in firing that gun.

I feel that complaints against the police are dealt with in a fair and proper manner. I feel that this department has an excellent record for dealing with any officer that steps out of the bounds of proper conduct. I think it would also be fair to state that the officers themselves feel it is fair. The opposite is thought about the new proposed Law Enforcement Review Act for it has formed a very special piece of law to deal only with complaints against the police, nothing else, just complaints against the police.

One might feel that the legislation is an open invitation to complain against the actions of the police, an open door to those inspired by lesser motives than the good of the community. These people will have a field day. Believe me, they'll have a field day. Complaint after complaint will be registered to tie up the resources of the police department, and they have nothing to fear about making such complaints, for there is nothing, no penalty for anyone making a frivolous or vexatious complaint.

The act, I would submit, is discriminatory for it deals only with municipal police in Manitoba. It does not cover the RCMP. The answer given is that the RCMP are covered by their own act, and the province does not have the power to bring them within The Law Enforcement Review Act. The answer is a true one, but it's not a good one.

My job is Chief of Police, and from time to time I have got to have joint forces operations where I've got to send members of the Winnipeg Police Department out with the RCMP to deal, usually, with major crimes. Now I'll tell you, gentlemen, I shall have very serious thoughts whether I will ever send my men out again with the RCMP, because if there are allegations of improper conduct against those investigating officers, my men will be dealt with by an independent body, while the RCMP will deal with their own.

One might wonder the need for the act. By whom is it perceived? Does the Winnipeg Police Department, and for that matter any municipal force in Manitoba - but it's for Winnipeg that I speak - need to be dealt with in this manner? Certainly this is not acknowledged by the public. Come with me any day on any open-line show and listen to what the people of Manitoba say about your police departments. I invite you to examine the record of the department for dealing with complaints against the public. I think it's rather significant, but I think of all the appeals made against the judgment of our disciplinary board, with the exception of two, all have been reduced in sentences by either the Winnipeg Police Commission or the Manitoba Police Commission. I think that says something about the manner in which the Police Department deals with complaints from the public.

I don't think it is necessary for me to go into facts of how we deal with members of the department who

commit criminal acts. I think that has been well documented recently.

I ask again why this legislation is necessary? This act, specifically designed for complaints against the police, will hang like a sword over the police officer who has a sworn duty to protect the citizens of Winnipeg. He will go before a board from whom there is no appeal. Before any one of you make a decision, gentlemen, I will give you an invitation to come out with our officers on a Saturday night, go in a cruiser car and see what they've got to deal with, and then come back and make your decision.

To conclude - and I thank you for your attention - I go back to my opening remarks. There are times when the actions of the police should be scrutinized. Let them be so scrutinized by an independent body for serious complaints of assault or abuse of authority. This legislation in its present form will only serve to fetter the police and seriously undermine the authority of the police chief to govern, regulate and discipline those under his command.

Thank you very much.

MR. CHAIRMAN: The Member for River Heights.

MR. W. STEEN: Mr. Johnston, I'm going to ask you a question. Mr. Janzen, who represented the Police Association in the City of Brandon, made reference to legislation being in place in Ontario that only applies to the Metro Toronto Police. Are you familiar with that legislation?

MR. K. JOHNSTON: Yes I am.

MR. W. STEEN: Why, in Ontario, does it only apply to the Metro Toronto Police and not to, say, police departments in cities like Sudbury, Thunder Bay, and so on?

MR. K. JOHNSTON: I have no idea why that takes place. Again, I suppose that could be considered discriminatory, but it's somewhat different to the act that's being placed here. I believe that this act has gone through all other police acts across the country and taken out only those sections that deal with complaints against the police. If we had a police act dealing with all actions of the police, and this was included, then I would have no complaint.

MR. W. STEEN: So therefore, the bill before us is considerably different than the Ontario legislation?

MR. K. JOHNSTON: Yes.

MR. CHAIRMAN: The Attorney-General.

HON. R. PENNER: What did you say, Chief Johnston, the difference was between our legislation and the bill that's been referred to, or the Toronto complaint procedure that's been referred to time and time again?

MR. K. JOHNSTON: I said, Mr. Attorney-General, I have no idea. That also could be described as discriminatory - the Toronto one. What I'm saying about this act, and I believe we went west for it to B.C. and

Alberta, that only the sections pertaining to complaints against the police have been taken from those acts. If our police act - and we have a police act in Manitoba - is dealt with in the same manner as it is dealt with in B.C. and Alberta, then I would have no complaint, for it deals with all actions of the police, not only complaints against the police.

HON. R. PENNER: We've heard the criticisms of the legislation, that it takes away from the authority of police commissions. You would go further than the act and have the independent body deal not only with citizens complaints, but purely internal matters?

MR. K. JOHNSTON: No. What I'm saying, Mr. Attorney-General, is my criticism of this act is that it has only taken portions of other acts. If we are to have a police act, then let it be in its entirety, let it accomplish everything. I'm not advocating that, but I'm saying I'd be more prepared to accept that than I am to accept this.

HON. R. PENNER: Well, I would like to just be sure that I understand what you are saying. You did say that you thought there should be an independent body to handle complaints with respect to the police?

MR. K. JOHNSTON: Yes.

HON. R. PENNER: Okay, so we're starting with that. Now, are you saying that this independent body dealing with complaints about the police should deal with both citizen complaints and your complaints?

MR. K. JOHNSTON: So that I can be clearly understood, in my original submission, I'm opposed to this act. If we have to have an independent body, it should only deal with serious complaints of assault or abuse by the police.

In response to Mr. Steen's question in relation to Toronto, I couldn't compare this act to the Toronto act, because this is not being taken from the Toronto act; this has been taken basically from B.C. and Alberta.

HON. R. PENNER: Just on that Chief Johnston. In fact, the only similar act to ours is the Toronto act, because the Toronto act deals only with citizens' complaints and the others deal with citizens' complaints and complaints that originate internally.

MR. K. JOHNSTON: That's right.

HON. R. PENNER: You express concerns about undermining police morale. Are you able to say to us that the operation of the legislation in Toronto has caused any serious problems of that kind?

MR. K. JOHNSTON: I think the jury is still out on that, Mr. Attorney-General.

HON. R. PENNER: Well, okay, more specifically. Have you heard from your opposite numbers in Toronto that they have a serious problem of morale because of the operation of the civilian complaint procedures in Toronto?

MR. K. JOHNSTON: My opposite number in Toronto, Mr. Ackroyd, and the Law Amendments Committee of the Federal Government asked me some weeks ago to submit to them the manner in which we deal with shooting inquiry boards. The comment back from Toronto was that it's rather severe.

HON. R. PENNER: May I just restate my question? Have you heard from the authorities in Toronto; that is, those who manage the Metropolitan Police Force in Toronto, that they have problems in morale because of the operation of their civilian complaint procedures?

MR. K. JOHNSTON: No, I have not. I have not either questioned them or had any information from them whatsoever.

HON. R. PENNER: Thank you.

Just one other question in relationship to that. The report which, in fact, has just been received, and it may be that you haven't had a chance to peruse it, Chief Johnston, points out that of approximately 1,000 complaints dealt with in a year, 47.8 percent deal with verbal abuse and incivility - the highest category was in that area.

MR. CHAIRMAN: Does the Attorney-General have a question?

HON. R. PENNER: Yes.

MR. W. STEEN: What report are you referring to?

HON. R. PENNER: I'm referring to the First Annual Report of the Office of the Public Complaints Commissioner and the Public Complaints Board in Metropolitan Toronto for 1982.

MR. CHAIRMAN: The Member for St. Norbert.

MR. G. MERCIER: Chief Johnston, this bill proposes the investigation of complaints by someone other than the department's Internal Investigation Unit. In your experience in Winnipeg and with other jurisdictions, do you see any merit in that concept at all?

MR. K. JOHNSTON: Merit? No, I don't. One can only attempt to visualize who these other investigators may be. I would hope they would not be from another police department. In the knowledge I have of policemen, I would question anyone from an outside source attempting to question police officers within my force. I think they would have extreme difficulty.

MR. G. MERCIER: Chief Johnston, are you aware of any justifiable criticism of the work done by internal investigation units, either in this or other jurisdictions?

MR. K. JOHNSTON: Yes, I think we've been criticized, and at times, rightly so. We make mistakes, but I would like to think that when we've been criticized and seen our mistake, we've corrected them. Why I state that I've no problems with an independent body dealing with, or looking at, any investigation we have, any investigation, any complaint that's been made to the

Winnipeg Police Department. I have no problems in anyone looking at that, whether it be this group or any group, because I think we do a pretty good job, but I have some grave concerns about this legislation and how it will affect police work in this city.

MR. CHAIRMAN: The Member for St. Norbert.

MR. G. MERCIER: Chief Johnston, can you tell us whether any other jurisdiction uses an internal investigation unit, other than the police force's own unit, uses people from outside the police force?

MR. K. JOHNSTON: I don't know of one. I think if you go to the United Kingdom for certain serious complaints, they may go to another force, but one must also consider, too, that the United Kingdom all come under the Home Secretary, so you might say it's all one force.

MR. G. MERCIER: Chief Johnston, Section 27, the discipline code section, in Paragraph 7, refers to a member committing a disciplinary default, etc., when he affects the complainant or any other person by breaching any provincial law to the detriment of the civil or human rights of any person. It seems to me that in the course of an investigation, or carrying out the duties of an officer, that there are occasions where a provincial law, strictly speaking, will be violated - speeding, false identification, etc. How would you deal with a section like that? It seems to me to be very impractical.

MR. K. JOHNSTON: With some difficulty, with considerable difficulty. There are times, and one wonders if this is the forum to make the statements, that my officers do have to break provincial laws, and you're talking about identification. Certainly, one wonders what would happen if there was a complaint on those grounds. I think probably, sir, your police officer must be awfully cautious in the future, and believe me, I'm not saying that a police officer should abuse his authority, but all he's attempting to do is to carry out the duty he's sworn to do.

I suppose all this started with - without going to names - a rapist who was before the courts. The judge determined that there should be an investigation. I would point out to this committee that that rapist never at any time, at any time, made a complaint to the Winnipeg Police Department. So, I think it would be unfair if that was in the minds of anyone that this is a good reason for this type of act.

I think only recently - and I'm certain the Attorney-General will know what I'm speaking about - there was a complaint against members of our vice squad by a visible minority group. That was dealt with by the Human Rights Commission - certainly an independent body - and I think it was determined that there was no wrong doing on the part of the police.

I'm not afraid of any examination. If we've done wrong, then, certainly, let it be dealt with. My greatest fear for this act is that the police officer is going to fear going out to do his duty. My greatest fears are with those groups of people - and you know them well - who will may hay out of this act.

MR. CHAIRMAN: Does the Member for St. Norbert still have some questions?

MR. G. MERCIER: No, that's fine. Thank you.

MR. CHAIRMAN: The Minister of Urban Affairs.

HON. E. KOSTYRA: Thank you, Mr. Chairman.

Chief Johnston, you indicated in your presentation that you would - I don't want to put words in your mouth - have second thoughts about sending out members of the Winnipeg Police Force in joint investigation or joint work with the RCMP if this bill was passed. Is that statement basically correct?

MR. K. JOHNSTON: That is correct, yes.

HON. E. KOSTYRA: I take it that your reasons for that is that this would set up a different process of review with respect to police actions that exist at the present time in the City of Winnipeg?

MR. K. JOHNSTON: Well, any allegations stemming from a joint force's operation against the police officers, if, for instance, we had 10 men out there, five were of Winnipeg and five were RCMP, if there were any allegations, my men will be dealt with by an independent body, while the RCMP would deal with their own men, and if that is not discrimination, I don't know what is.

HON. E. KOSTYRA: Are the processes of review with respect to actions of the RCMP and the Winnipeg City Police the same at the present time, or are there different methods of review in each of the police forces?

MR. K. JOHNSTON: Now, at the present time, before this bill, I deal with my own men and the RCMP deal with theirs.

HON. E. KOSTYRA: So at the present time there are different methods of review of police actions for the RCMP and the City of Winnipeg Police in cases where there is a joint investigation or joint activity between the two police forces?

MR. K. JOHNSTON: The difference being that they deal with theirs and I deal with mine, but neither party are dealt with by an independent body, as they would be.

HON. E. KOSTYRA: Thank you.

MR. CHAIRMAN: The Member for River Heights.

MR. W. STEEN: Mr. Johnston, it's been mentioned that both British Columbia and Alberta have similar legislation. Does the Vancouver Police Department have difficulty working with the RCMP within the Province of B.C., or the City of Calgary Police or Edmonton Police working with the RCMP under their legislation and in disciplining their men in the case of the example that you cited for the Minister of Urban Affairs?

MR. K. JOHNSTON: Well, under their legislation, it is a police act which covers everything. It's not just merely complaints against the police. The police act covers everything. The police act in Manitoba has been left

on one side, it virtually covers nothing, but in B.C. and Alberta, it covers everything - all police actions.

So, in trying to answer your question, Mr. Steen, no, they don't have difficulty, because they're not just dealing with complaints against the police; it's all police action.

MR. W. STEEN: So, if I understand correctly then the B.C. legislation refers to the RCMP as well as, for example, the City of Vancouver Police.

MR. K. JOHNSTON: No, they still have the RCMP Act.

MR. W. STEEN: But, their act is somewhat different than the one being proposed here in Bill 2, which would place - in Manitoba's case - your men under a different body when it comes to complaints, than the City of Vancouver department would be when it comes to joint work?

MR. K. JOHNSTON: Yes, they are.

MR. CHAIRMAN: The Attorney-General.

HON. R. PENNER: Well, I want to take you back, Chief Johnston, to an answer that you gave to the Minister of Urban Affairs. With respect, is it not the case that under existing legislation the citizen, if you can get that far, has recourse through the Winnipeg Police Commission to the Manitoba Police Commission which can deal with the matter? Right?

MR. K. JOHNSTON: Yes.

HON. R. PENNER: I would take the joint operation, could you just answer that question?

MR. K. JOHNSTON: I would first reply, Mr. Attorney-General, if you say, if he can get that far. It's a very simple procedure for him to get that far by writing a letter.

HON. R. PENNER: Fine. Let's assume he got that far. You have the joint operation. There's a complaint, right? In the one case, with respect to the City of Winnipeg police officer, it goes a certain route and may end up with the Manitoba Police Commission, right?

MR. K. JOHNSTON: Yes.

HON. R. PENNER: That is not the case with the RCMP. There is a difference.

MR. K. JOHNSTON: But we deal with him first.

HON. R. PENNER: It doesn't matter, but you're worried about a difference. There is a difference. Would you not admit that?

MR. K. JOHNSTON: Oh, yes, there is a difference, but at least it comes to us first.

MR. CHAIRMAN: The Member for St. Norbert.

MR. G. MERCIER: One further question, Chief Johnston, do you have any concerns over the way in

which the legislation would perhaps place above you the power of disciplinary power?

MR. K. JOHNSTON: Yes, I do, me and future chiefs.

MR. G. MERCIER: That's what I really meant to say, future chiefs.

MR. K. JOHNSTON: Certainly it would. I suppose police officers look upon the chief as a supreme power dealing with matters other than appealing against his decision. I don't think he will be looked upon now as anything more than another administrator.

MR. G. MERCIER: Okay, that's all.

MR. CHAIRMAN: The Minister of Economic Development.

HON. M. SMITH: Chief Johnston, you referred to the theory you have that should this legislation pass that you think you might be reluctant to send police out, or they might be reluctant to go out for fear they might be offending against some law of the province. Now you didn't specify an example of what you might be concerned about.

Perhaps I could just ask the other question too, since it's short. You also said that you anticipated, should this law go through, complaints from groups of people that we all know. I wondered if you could be more specific in both instances.

MR. K. JOHNSTON: Yes. I think well-known motorcycle gangs will make complaints against the police if they know well that nothing can happen to them because of their complaint. I would think that many semi-professional protestors will be making complaints against the police. I think we have only got to wait for this legislation to pass to see these groups of people come forward and make their complaints against the police.

MR. CHAIRMAN: The Member for Lakeside.

MR. H. ENNS: Mr. Chairman, through you to Chief Johnston, while no one argues the prerogative of the Attorney-General, any Attorney-General for that matter, for bringing in . . .

MR. K. JOHNSTON: I'm having some difficulty. I can't hear.

MR. H. ENNS: . . . legislation from time to time, but it's also practice, a good practice I suggest, to consult with those people that legislation is going to involve very very much. I can tell you, Chief Johnston, that as a former Minister of Agriculture, if I introduced agricultural legislation, one makes it your business to talk to those particular farmers that you're dealing with, or the legislation is going to be involved.

HON. R. PENNER: A point of order, Mr. Chairman.

MR. CHAIRMAN: Point of order.

HON. R. PENNER: Is it not the practice of the committee that we address questions to witnesses and not make speeches?

MR. CHAIRMAN: Yes, it is the practice of the committee to just ask questions.

MR. H. ENNS: I'm asking the question. As a former Minister of Natural Resources, when I passed laws having to do with the fishing industry in Manitoba, I generally made it my business to go out to Gimli and onto the lakes and talk to the fishermen with respect to regulations that I may impose upon them. My simple question to you, Chief Johnston, is: To what extent have you personally and/or any spokesperson for the Winnipeg Police Force been involved in consultation prior to the introduction of this bill?

MR. K. JOHNSTON: The Attorney-General has afforded me very opportunity to speak with him, to consult with him. I have no complaint against that.

HON. R. PENNER: I drop my point of order.

SOME HONOURABLE MEMBERS: Oh, oh!

MR. K. JOHNSTON: I would add, Sir, that I have taken the same stand all the way through. I have never shifted.

MR. H. ENNS: Thank you, Mr. Chairman.

MR. CHAIRMAN: The Minister of Economic Development.

HON. M. SMITH: Chief Johnston, I think you did answer the second question . . .

MR. K. JOHNSTON: The other half, I didn't get.

HON. M. SMITH: . . . but the first half was, you said that there would, as I understood it, laws of the province that I presume police wouldn't know about or would be concerned that they couldn't carry out their duties without possibly breaking them and be subject to some kind of discipline. I just wondered if you could give an example.

MR. K. JOHNSTON: I'll try and give the most simple ones, because I don't want to give all the tricks of the trade away. Mr. Mercier did say that our fellows speed from time to time but I think that's covered under The Highway Traffic Act anyway, but this legislation, I don't know whether that would override it. But certainly undercover men might use false identification for certain matters, so what Mr. Mercier brought up, certainly they would be committing offences under provincial laws. I would sincerely hope that if this act goes through our men wouldn't be subjected to prosecution for that type of offence.

HON. M. SMITH: Perhaps you'll forgive my ignorance. I assumed that police operated under some kind of authorization, otherwise, they would not be entitled to use false identification or false papers. Is that not correct?

MR. K. JOHNSTON: Depends what they use them for.

HON. M. SMITH: I see, and your point is that you would not want to rely on the judgment of a citizen group to understand the pressures and responsibilities of police?

MR. K. JOHNSTON: I don't think that anyone understands the pressures and problems of those constables unless they've been out there and seen it; and I again send my invitation to any one of you, go with them and see what happens before you make a decision. I will accommodate any member that wants to go with any of my men on a Friday or Saturday night. You don't know what the jungle's like until you've been in it.

MR. CHAIRMAN: Any other member who wishes to direct questions?

The Chair wishes to thank the Chief of Police of the City of Winnipeg.

MR. K. JOHNSTON: Thank you for your time. Thank you very much.

MR. CHAIRMAN: The next presenter will be Doug Buhr from the office of the City Solicitor, City of Winnipeg.

MR. D. BUHR: Thank you, Mr. Chairman.

Mr. Chairman, before proceeding I can't resist commenting on a remark made by the Attorney-General concerning the Toronto statistics, and pointing out that verbal abuse and incivility was the highest percentage of complaints. That's true, it's highest by one-tenth of one percent. I realize the old story about statistics, but assault was 47.7 percent; verbal abuse, incivility was 47.8. The Chairman of the Toronto project, Sydney Linden, is obviously not much of a statistician either because his comment is it the most common type of allegation was assault.

The other thing I would wish to point out to the committee, that of those complaints which went through their formal resolution process as opposed to informal resolution, 95 percent of them were dismissed for a variety of reasons. That's nevertheless the case.

Mr. Chairman, my remarks are predicated on the assumption that the government intends to enact legislation dealing with citizen complaints against police officers substantially within the framework set out in the bill. I'm going to try and avoid the policy or conceptual concerns which have been covered in the submissions of Councillor Ernst and the Police Chief and concentrate on the technical and mechanical concerns we have with the bill as it presently exists.

I would indicate that I have a copy of my remarks on the various sections for your legislative Counsel if that would be of any assistance to him. I have a limited number of copies, but I do have a couple.

My approach is based on the fact that if there is going to be new legislation, it's got to be workable. It's from the perspective of one who is involved in the administration and the legal areas covered by the proposed legislation.

The first observation I want to make is that the Act at present contains 44 sections. There are presently

16 pages of amendments which affect 31 of those 44 sections. Those amendments include the further amendments to 25 sections or subsections which were received last week.

These large number of amendments create doubt as to the final result. The message to me is that there is perhaps been needless haste and that the potential for trouble is large. Further and as you will see, we still have a great number of concerns remaining. The subject matter and subjects of this legislation warrant careful treatment. I do not mean that the present system is the best or that no changes are desirable, rather that the impact of any hasty or ill-considered changes can be lasting and have undesirable and I am sure unintended results for everyone.

In dealing with the individual sections of the act, in Section 1, the definition of member is not intended to include civilian staff. It refers to peace officers. Yet of the 184 civilian staff that the department employes, 56 are sworn in as peace officers and accordingly are going to fall within the scope of this act.

The next comment relates to subsection 3(3), which is the full-time appointment of the Commissioner. The Commissioner is full time. In 1981 out of approximately 400 calls for service every day, there were 219 complaints for the year from all sources. Approximately 55 percent of those were by the public and 10 of the complaints were in regard to civilian staff. The question is after the commissioner settles in, is there going to be enough volume to warrant a full-time Commissioner?

The next comment relates to Section 4. The Commissioner is established as an officer of the Manitoba Police Commission. Why?

The next comment relates to subsection 5(3.1) which is the section that the board is to include peace officers. Under subsection 5(1), the board is comprised of at least 7 people. By this subsection at least two persons must be or have been peace officers. It's my submission that the intent is unclear; i.e., the subsection states that at all times the membership shall include at least two peace officers. Does this mean that a disciplinary panel, which by subsection 5(4) can be three people, must have these two peace officers on it, or does it mean that neither of those two officers need be on a disciplinary panel? I suspect that it's probably the latter. If that's the case, what's the purpose of the amendment?

The next comment relates to subsections 7(3) and 7(5), which relate to the filing of complaints and the ability of the Commissioner to extend the time. If a complaint is received after 30 days, how does it get to the Commissioner. Must the chief or a member refer to the Commissioner? Must a complaint be taken after 30 days? The act right now states that you must file within 30 days.

The next subsection I wish to comment on is 8(2), which is a copy of the complaint to the respondent. This subsection requires notice as soon as is practical. This in effect means immediately. If a complaint clearly leads to criminal charges, for example, theft, possession of stolen goods, time is needed to investigate prior to notification, if for no other reason then to preserve evidence.

Subsection 8.1, no complaint by member. It's my submission that the drafting is awkward. For example, it talks about an act or omission which affects the

member while he is executing his duties. Can a complaint be filed if a member is not executing his duties? Does the word "act" refer to an alleged disciplinary default, or something else? It would be better, in my submission, if this section simply said that there shall be no complaint by one member against another.

Subsection 8.2(2) affected person must consent. This subsection states that within 14 days of the affected person receiving the notification from the Commissioner, he must file a written consent. Obviously, the Commissioner better make sure he has proof of receipts when he sends it out and when it was received.

Secondly, let's assume the affected person consents. Does he then become the complainant or is the complainant still the third party who filed the original complaint under 7(2)?

Section 9, Further particulars. The section assumes that particulars have been obtained. What if following a request no further particulars are provided? Is the complaint to then be deemed frivolous or vexatious? More importantly, the Commissioner can be directed, in terms of the conduct of the investigation, because the section provides at the request of the respondent.

The next subsection is 10(2), No complaint in Disciplinary Matters. There's no complaint by a member regarding the proper exercise of discipline by the chief. What is proper? The section appears to relate to discipline and yet the act relates only to private citizens. Why?

Subsection 11(2.2), Questions of privilege. The act does not spell out what is privileged or how it is to arise.

Subsection 11(3), Order to search and seize. The question is, what can be seized?

Subsection 11(4), Utilizing necessary resources and persons. This section allows the Commissioner to utilize resources and employ any persons he deems necessary for the prompt and thorough investigation of a complaint. Who pays the cost of investigation of a complaint by one police department of another and what happens, for whatever reason, one department refuses to investigate another?

Subsection 11(7), Report by Chief of Police. After the internal investigation, the Commissioner may thereafter deal with the complaint. Does that mean he's got a choice?

Subsection 12(1), The Commissioner not to act on certain complaints. The section reads, "After investigation, the Commissioner can decline to take further action if the subject matter of the complaint is frivolous or vexatious." What if it's patently obvious on receipt of the complaint that it's frivolous? Must there be an investigation? Previously, subsection (b) referred to a disciplinary default; now the reference is to "within the scope of Section 27." I don't know what the significance of that change is.

Subsections 12(3.1) and (3.2), Manitoba Police Commission to hear parties. This is where the Commissioner has dismissed a complaint as frivolous or vexatious, the complainant may appeal to the Manitoba Police Commission and the burden of proof is on the complainant. Presently the parties are the complainant and the member. If there's a complaint under 7(2) that is, by a third party, what happens if the Manitoba Police Commission, or indeed at any level,

who are the parties, the person directly affected, or the third party who filed the complaint? It is our submission that the person directly affected is going to have to be involved.

Section 13, Evidence of internal disciplinary matter. If there is no action on a complaint, the Commissioner may forward it to the chief for possible internal discipline. I'm afraid that I cannot think of something that would not be covered by Section 27, the Discipline Code.

Subsection 14(1), Informal resolution of complaint. The Commissioner shall consult with all, but if the complaint is clearly of major and significant concern and it's obvious that there's absolutely no chance of informal resolution.

Subsection 15(3), Matters relevant to appropriate penalty. These comments, I should indicate, apply to subsection 16(5) as well. The recommendation as to penalty is based solely on two factors: (1) the severity of the default; and (2) the service record. This is contrary to all basics of labour relations where factors such as the following are considered in imposing a penalty: length of service, provocation, whether the act was on the spur of the moment or premeditated, the rehabilitative potential, deterrence, personal circumstances, state of mind, mitigating factors.

Subsection 15(6), Statement of facts. This section, Section 15, deals with a situation where the member admits guilt and there's an attempt to agree on a penalty. If there cannot be an agreement on the penalty, there's a recommendation by the Commissioner to the Law Enforcement Review Board for a hearing in terms of the penalty. The problem is that at that hearing the board is to hear submissions regarding penalty. The question is who submits, the complainant, the Commissioner?

The next section I want to deal with is subsection 16(1), Referral to board on merits. This subsection provides under subsection (b), where it is not possible to dispose of the complaint under Sections 14 or 15, the Commissioner shall refer the complaint to the board for a hearing on the merits. The reference to Section 15 should be deleted because Section 15 deals with the situation where the officer has admitted his guilt, and 15(5) clearly provides for a referral to the board for a hearing on penalty only.

16(2), provides for the Commissioner to forward notices of the alleged disciplinary default. It is our submission that copies of those alleged defaults should also be forwarded to the complainant who is, after all, going to have presumably the conduct of the matter before the Law Enforcement Review Board.

Subsection 16(3), speaks of the Commissioner preparing a written statement recommending one or more of the penalties set out in Section 28 to be the penalty which, in the Commissioner's opinion, the board should impose for each disciplinary default. I fail to see how you can recommend one or more penalties to be the maximum for each offence. I would suggest that the section should read that the Commissioner recommends a maximum penalty as the maximum penalty for each alleged default.

Subsection 16(5), I've already dealt with in my comments under 15(3).

The next one is 16(6), this the recommendation by the Manitoba Police Commission where they have

ordered a hearing on the merits by the Law Enforcement Review Board. The section states that the Manitoba Police Commission shall determine an appropriate penalty for each alleged disciplinary default and the Commissioner shall observe the requirements of subsection (3) as if the Commissioner had determined the appropriate penalty. The word "determined," that is, as if the Commissioner had determined the appropriate penalty, should probably be recommended because that's what the Commissioner does to the Law Enforcement Review Board.

Secondly, the Manitoba Police Commission to be consistent with what the Commissioner does should examine the respondent's service record before it recommends a penalty. But how do they get that information and from whom?

Finally, the reference in the 2nd last line should be to subsections (3) and (4), because subsection (4) states that where the Commissioner prepares a recommendation, he does not forward it to the board prior to the board making a determination as to guilt. There's no such provision where the Manitoba Police Commission has recommended a penalty.

The next subsection is 17(2), the question of privilege. This is privilege in terms of documents or statements. The act refers only to statements to the Commissioner and statements to the Commissioner in an attempt to resolve a complaint. The question is, what else can be privileged.

The next Section is 18, titled "Respondent entitled to remain silent" and it says that "The respondent is not bound to make any statement to the Commissioner, or to answer any question asked by the Commissioner or anyone employed by the Commissioner." What if a statement is made to an employee of the Commissioner? It speaks of not bound to make any statement to the Commissioner or bound to answer any question by anyone employed by him. Is it privileged for 19(1) which says "No statement made to the Commissioner." Also, if a complainant requests and the Commissioner refers the complaint to the police department internal investigation unit is that internal unit considered to be employed by the Commissioner? Does the Commissioner pay for employing the internal unit in the investigation?

Subsection 19(2) the heading is "Statements for purposes of resolution privileged." It says that statements of privilege for all purposes including an action arising out of the same facts. What kind of action? What does it include or exclude?

Subsection 20 is the Right to counsel. The subsection confirms the right to counsel at any stage including review by the Commissioner. What review? Unless it's Sections 14 and 15, and even then the wording I find awkward.

Subsection 22(2) talks about the parties to the hearing before the Law Enforcement Review Board. The section is curiously worded; it says, "The Board may add other parties to the hearing" . . . "and may receive submissions from such other persons as it sees fit." The obvious implication is that these other persons may not be parties, yet they can make submissions. Further, will those who are parties get an opportunity to see and comment on their submissions?

Subsection 23(6) talks about the right to participate in hearings before the Law Enforcement Review Board.

It says that at every board hearing the parties may be present. Is it possible that a hearing could proceed in the absence of the complainant? By subsection 23(8) a hearing can proceed in certain circumstances in the absence of the member. Secondly, why would affidavit evidence be allowed?

Subsection 23(7.1) where complainant ineligible for Legal Aid. If the complainant is ineligible for Legal Aid, the Commissioner may recommend that the Minister appoint counsel. What does this say for the eligibility requirements for Legal Aid? Police officers are put in the unique category of being singled out for special vulnerability.

Subsection 25(2) Standard of proof. The subsection establishes the criminal standard of proof beyond a reasonable doubt. Yet, by the same act, Sections 32 and 33(2) once a criminal charge is laid, the act no longer applies unless the charge is stayed or there is no disposition on the merits. More importantly, why a criminal standard of proof in a civil matter? It's contrary to that imposed in the civil courts, labour relations tribunals, and other disciplinary tribunals, for example, the Law Society and the medical profession. In my submission it's simply not justified or rational.

Subsection 25(3) talks about the board providing reasons for its decisions. It says "At the request of any party or the Minister, the Board will provide written reasons . . ." Why at the request of the Minister? How does the police department obtain reasons so the standards of behaviour are common? We would suggest that any reasons would be instructive not only for the department, but for the Winnipeg Police Commission and the Manitoba Police Commission, as well as the Commissioner.

Subsection 26(1) Ordering of penalty. Before the board orders a penalty, it's to hear details of the service record. How does the board get those details? Do they get them from the respondent, Commissioner, the chief, complainant, who?

Subsection 26(2.1) Maximum penalty. The Board may order as the maximum penalty that recommended by the Commissioner or a lesser one. Is it intentional that the board cannot disagree with the Commissioner's recommendation and order a greater penalty than the one recommended? Does this subsection conflict with 26(1) which speaks of the board ordering one or more of the penalties set out in Section 28?

Section 27, this is the Discipline Code section. The code, it says, "A member commits a disciplinary default where he affects the complainant or any other person by means of any of the following acts or omissions arising out of or in the execution of his duties. It presupposes that a default can be committed only on duty and not on his own time. In contrast, I can refer you to a couple of Winnipeg Police Department regulations which speak of where a member is on or off duty.

Section 28 is the penalty section. Penalties are set out in diminishing order of seriousness, subsection (d) which deals with suspensions. The question is do suspensions with pay have to be for more than 10 days because suspension is more serious than (e) which is forfeiture of pay up to a maximum of 10 days.

Subsection 29(1) deals with the question of appeal. There's no appeal on the merits. Members and civil employees dealt with internally have the opportunity to appeal from the Chief to the Winnipeg Police

Commission, and from the Winnipeg Police Commission to the Manitoba Police Commission. Different hearings, different charges, different penalties, different opportunities, and different standards of proof, a final determination, all of which could be on the same facts.

Section 29(4) speaks of the court being able to add other parties on an appeal. It says that "Upon application, the Commissioner or the board, or both, may be joined as parties to the appeal." Well, the board has status on the issue of their jurisdiction, and there are appeals only on jurisdiction or on law alone as a right. So, why would they have to apply? If the appeal is on a question of law alone, why should the board be able to apply? No other such board has that right. Also, why should the Commissioner have the right to apply? What status or input can he have as he does not prosecute or defend, but only recommends penalty and investigates?

Subsection 29(5), this is counsel for the appeal for the complainant. What happened to the Legal Aid representation provided earlier, if any, or private counsel. What is intended? Why is it at the request of the Commissioner?

Section 30 deals with the service record and will result in two records, one for this act and one for internal purposes. The department may have other regulations respecting content internally, especially where civilian members are concerned. Fundamental injustice created by this section is contained in subsection (3) and relates to everyone having a clean record, which results in the squeaky-clean member, a man with exemplary service, being treated exactly the same as the officer who, in the very recent past, has had a terrible history of offences.

Subsection 30(5) speaks of expunging the service record and it speaks of expunging the entry of default under this act. Is the effect to leave internal entries on the record? If internal record entries are wiped out, the effect is inconsistent treatment when someone is dealt with internally, especially vis-a-vis civilian members, so our submission that you should not wipe out internal disciplinary entries.

Section 31 is technical and legislative counsel has an amendment. Section 32 deals with the effect of a criminal charge. It provides that, where a member has been charged criminally, nothing more happens under the act unless there is a stay of proceedings entered or the charges otherwise not disposed of on its merits. In the 5th line, the words "criminal offence" should read, "disciplinary default."

The larger question is: How does the police department suspend, pending the result of the criminal charge, if the situation is serious enough? If the criminal charge is stayed or not disposed of on the merits, would it be too late in time for the Commissioner to start or continue investigations regarding the complaint under the act.

I point out to you that in Toronto they now, even where a member is charged criminally, they continue the investigation under their act. They may not release any of the information they get pending the result of the criminal charge, but they continue the investigation; the concern being that months down the road it's often too late to start again. Does criminal offence - I assume it doesn't - but what about such quasi criminal offences as, for example, under The Highway Traffic Act, The Liquor Control Act or a by-law conviction?

Subsection 33(1) - Disclosure for Possible Criminal Offence. That section talks about where a matter before the Commissioner or the board discloses evidence that a member may have committed a criminal offence, the Commissioner of the board reports it to the Attorney-General for the possible laying of charges. Does the word "matter" in the first line mean a complaint or an investigation thereof or a hearing or all of these?

Subsection 33(3) talks about an objection conclusively deemed. It says, "Where a member who testifies before the board is subsequently charged with a criminal offence, the member shall be conclusively deemed to have objected to answering every question."

In the second line, the words "legal proceeding," what is the nature of a legal proceeding? Are we talking about a civil action? Are we talking about a private prosecution? Are we talking about complaints under The Human Rights Act?

Constitutionally, I have some doubts that the provincial legislation can deal with the admissibility of evidence in a criminal trial. It's governed by The Canada Evidence Act, which is federal jurisdiction. Interestingly, the proposed bill does not extend this protection to a member who is subsequently sued civilly.

Section 34, which is Prosecution for Offence. It says, "No investigation, hearing or disciplinary action under this act precludes the subsequent prosecution of a member for an offence." Subsequent prosecution for what kind of offence? Presumably, it would be by the Crown for a criminal offence only, but that's left out.

Subsection 34.1(3) - Effective Completion of Internal Proceedings. This section basically says that even where internal charges have been laid and they've proceeded to a result and everything else, it doesn't stop this act from kicking in again. What happens to a member, and in the situation where he's found guilty, the penalty has been imposed internally? Are you not exposing people to double jeopardy?

Subsection 34.2 - Internal Disciplinary Proceedings not Involving Citizens. It says, "This act does not apply to matters of internal police discipline, which do not involve members of the public." I would suggest that the word "involve" is a poor choice of words, doesn't define the intent of this act at all.

Section 36 speaks of the act prevailing over any collective agreement. It's our submission that it's not abundantly clear that there can be no agreement or arbitration proceedings following imposition of a penalty. That is, the provisions may not conflict, but may be deemed to only supplement one another. It's our submission that there should not and cannot be another process to adjudicate complaints.

Finally, the act makes no provision at all for suspensions, during and or pending the complaint and investigation. The act at present negates or terminates all internal processes. The complaint or information prior to the complaint or criminal charge may reveal evidence, for example, of theft, murder, bribery and there has to be some provision that it could at least have been dealt with internally.

Thank you, Mr. Chairman.

MR. CHAIRMAN: The Member for St. Norbert.

MR. G. MERCIER: Mr. Buhr, are you sure you didn't miss anything?

MR. D. BUHR: I apologize for the length, Mr. Chairman. The short answer is, I hope I didn't. This is pretty important legislation.

MR. G. MERCIER: Right. On your last point, do you have any draft proposals dealing with suspensions?

MR. D. BUHR: Yes, Mr. Chairman, that was submitted some time ago.

MR. CHAIRMAN: The Attorney-General.

HON. R. PENNER: Just two points, Mr. Buhr. First of all, your submission will be reviewed very carefully by legislative counsel with respect to points that you've made from time to time in the submission that deal with drafting problems and possible ambiguities.

The only other point is, just to use a specific example, when you deal on Page 12 of your submission with Section 32, you ask a question - there are many questions asked in your submission - does a criminal offence include such quasi criminal offences, Highway Traffic Act, Liquor Control Act, by-law conviction? It's just a question, Mr. Buhr, of drafting. Criminal offence means criminal offence, and you would not normally say, when a member has been charged with a criminal offence, by which we don't mean quasi criminal offence. I think the words are quite . . .

MR. D. BUHR: I appreciate that, Mr. Attorney-General. My question, I suppose, should more properly have been framed: should it include such quasi criminal offences as that?

HON. R. PENNER: Just in response to that. No. By design, that's why the amendment is there, to make it clear that it's a criminal offence that is referred to in this section and not a quasi kind of offence.

MR. D. BUHR: Thank you very much.

MR. CHAIRMAN: Thank you, Mr. Buhr.

The Chair calls upon Mr. McGregor of Simkin and Gallagher.

MR. A. MCGREGOR: Thank you, Mr. Chairman. Mr. Attorney-General, members of the committee, I appear as counsel for the Winnipeg Police Association, probably the largest affected group vis-a-vis this legislation. In addition, I also appear on behalf of the Manitoba Police Association who represent police forces: Winnipeg, Brandon, Winkler, East St. Paul, Winnipegosis, Somerset, Lac du Bonnet, La Broquerie and the University of Manitoba Police. That will become significant as things develop as I go on. I don't propose to be as lengthy as certain of the submissions have been prior to mine. Much of what I am thinking of is in submissions that we have already placed before various Attorneys-General. We agree that it's wrong to have legislation that applies to one force or a group of forces and does not apply to the RCMP. We agree with that statement. We also agree that, at least in Winnipeg, with The City of Winnipeg Act and regulations and by-laws flowing thereunder and The Manitoba Police Act that there is sufficient legislation to handle

the particular problems. We agree with those statements that have been made by various people who appeared before me tonight, but in having listened to what they've had to say I think that we also take, and my clients take, a very pragmatic viewpoint.

This legislation, of course, did not have its genesis with this particular government. It had its genesis, as I recall it, in the previous government when Mr. Mercier was the Attorney-General. We, through the Winnipeg Police Association, have over a period of time had very extensive and intensive input into this legislation, so I think it is time that we have to be very pragmatic about the legislation.

I think it was a somewhat famous diplomat that corrected an interviewer one time by saying politics is about power; it has nothing to do with character. So I predicate my remarks on that. I want to get down to something that is very pragmatic and that is certain of the basic concepts of this legislation.

Mr. Wickdahl is here with me and he will provide to you copies of a proposal which we put forward as proposed legislation on June 30th of this year, and we had an extensive meeting with the Attorney-General and representatives of his office at that time, a meeting which led, I believe, to numerous amendments that are before us tonight. We certainly thank the Attorney-General for allowing us to have the input into putting those amendments before you. We have certain problems with certain of those amendments and we just wish to highlight certain things that we brought forward.

I look at the title of this committee, it's entitled "Standing Committee on Industrial Relations." That in itself seems inconsistent with portions of this legislation which would not foster and, indeed, would practically do away with the position of a certified bargaining agent. The material that is in front of you - I'm not going to read, you're all capable of reading it - I would point out that the amendments that we proposed at that time are basically the items that are underlined. There's no need to read all of the items.

Just dealing then with certain of the sections, Section 5, we appreciate the fact that there should be two police officers appointed to the board. Unfortunately, there is a failure from our point of view in the legislation where we deal with the question of a quorum. The quorum should have in each and every instance representation by one police individual, one member who is fully aware and knowledgeable as to what is taking place. That is why we suggested that quorum. We would assume that in practice that is what will happen, but since this legislation goes so far we would ask - and since this is Law Amendments Committee - that you consider very strongly an amendment that would provide for a quorum that would have the inclusion of police officers and also a procedure for dealing with complaints that might be made against chiefs of police throughout this province. We have drafted legislation in 5(6) that provides a procedure to follow that.

We've already dealt with the question of third party complaint, and I think that our concerns have been by and large recognized and I need go no further into them. The extension of time of a complaint, the same remarks apply, but we come back to that very fundamental point and that is our position, the Winnipeg

Police Association position, as a certified bargaining agent. I would say at law there is an obligation on us to take procedures on behalf of our membership. There is a duty of fair representation which is growing in the law, and soon will overwhelm us to the extent that we would have this legislation in existence and civil law as it is handed down throughout this country - and it is being handed down in ever growing cases - will show and demonstrate that this procedure, as projected by this act, neglects that duty of fair representation. It seems infinitely wrong to me for any government, even moreso for this government, to consider taking away that right, that duty, that obligation that is placed upon us.

We should have the right to take part in all proceedings, and it should be written right into the act. I know that we can apply to the board to take part, but that is not sufficient. The obligation should be placed upon us by the act. It's not just a duty to our membership, it's an obligation to our membership, and we say place it upon us in the act. Do not denude us by taking away our powers as certified bargaining agents.

During the course of various submissions, we have taken a very strong position on the question of the ability of the Commissioner, and indeed, the board to assess costs against a complainant. That is not put there lightly, and is not meant to prevent any individual from lodging a complaint. It is there to deal with and stop frivolous and vexatious complaints which we fear will come forth. We fear that they will come forth and when one deals with the Manitoba Police Association - the Attorney-General I'm sure will forgive me, but I gave second thought to certain things that I had previously stated to him - we are under this act placed in a unique situation. The situation is this. A complainant will be represented by legal counsel, possibly paid for by the citizens of this province. The Commission, Commissioner, has the right to legal counsel as well, also paid for by the citizens of this province, so does the board have the right to legal counsel paid for by the citizens of this province. There is only one individual in the whole equation who does not have that right, that untrammelled right, and that is the individual police officer.

I have heard much about the fears of individual police officers, but that is where the fear really comes from. Am I going to be properly protected, or am I going to be up against a group of people who are presenting a proper case, and on the other hand, my bargaining agent is not guaranteed the right to protect me, not guaranteed at all, not directed to provide that protection, and that should be done? That is where the fear is, gentlemen, and that is because we have gone through situations where there have been procedures before. Mr. Oliphant, I note is here. He was engaged in a commission of inquiry which led to at least one police officer, who was the subject matter of that inquiry, going around cap in hand begging for money to pay for his mortgage, to make his very mortgage payments. That is what we do not want to see happen again in the future. We want to stop it and that is why we have built into our amendments that there is guaranteed coverage on a legal basis by the employer, the municipality involved, in this particular matter.

Right to counsel, I've dealt with in Section 20.2 of the material that is in front of you. I'm not going to repeat it. The employer is the proper body to provide counsel for the individual police officer. The citizens of this province should be paying for that, just as they are paying for the complaints and the hearing of such complaints. I ask you to look at it in that light.

I've looked at the question of the in-camera hearing, and I appreciate the attempts made by the Department of the Attorney-General to reach a stage where there is some coverage to prevent these hearings from being Salem witch hunts, public circuses of a sort. I ask you to look at Section 23(10), the proposed amendment. Unfortunately, it does not go far enough, because flowing from 23(10), you go down to 23(1), the ban on publication, the super ban on publication, but if you read it, gentlemen, at the end of that hearing, even if the individual is found - I use the words advisedly - to be not guilty, that individual's name can then be splashed across the newspapers. I do not think that was the intent of this legislation, but it is worded in such a fashion that that could happen. I think that creates a great deal of concern to us.

We note, just in passing, that the appeal procedure is restricted more so than it is presently, but I make no comment on that. I have pushed forward our position on numerous occasions on that particular point, but once again I stress that the certified bargaining agent should be a party at each and every stage of the proceedings.

I look at Section 34. Unfortunately, this act leaves it open to take other proceedings, no matter what the findings of this board might be, to my mind, to our mind, totally wrong, because you go - your famous Section 35, allowing civil remedies; 36, Act to prevail over collective agreement, something new in the field of labour relations; Act to prevail over other acts; a wonderful worded section but, gentlemen, I say first of all, those of you who are aware of The Labour Relations Act, if there are complaints under The Labour Relations Act, to take procedures against an employer or other individuals for violations of The Labour Relations Act, they forfeit other rights, and I ask you to look at The Labour Relations Act sections. I have put them in as 34(2) and 34(3). The very same sections, 22(8) and 22(9) exist in The Labour Relations Act of this province. It is seemingly somewhat foolish, isn't it, to set one standard of labour relations to one group, and that's all of the workers in the province, and then cut off some 1,200 to 1,300 workers and put another standard in and allow them to be subject to other disciplines - wrong - and I would put forward to you two sections which I would ask for your consideration.

Forfeiture of rights. Those were not put before you in our previous submissions to the Attorney-General and I would ask them to be considered, but as an alternative, a matter of concern to us is this particular section could be placed in the act. Pardon me, it is included in there.

This other section could be placed in the act, the section which simply reads, "Where a person proceeds, under this act, to seek redress for an alleged disciplinary default and the matter is dealt with on its merits, he forfeits all rights and claims arising out of and shall not bring any action, suit or proceeding in respect of the act or event under any other provincial statute."

What I am saying there quite simply, gentlemen, comes down to this: If there is a complaint against the police officer under The Law Enforcement Review Act and he is found, once again, not guilty of that substantive offence, after having heard the evidence, the board finds him not guilty, we don't want the complainant to run then to the Human Rights Commission or some other provincial agency. We think there should be an end to litigation and that is the reason for putting forward that question. An individual should not be allowed to play a chess game and move from point to point to point to get their best remedy if they're not satisfied with what the Law Enforcement Review Commission decides.

Gentlemen, I say to you in all seriousness, do not do away with the position of the collective bargaining agent. Rewrite the act in that regard so that the collective bargaining agent has not only a right but an obligation to represent everyone.

Secondly, put a disincentive in the act from the making of frivolous complaints. That will not stop complaints of merit. We fear not any complaint of merit; we fear only frivolous and vexatious complaints.

Provide, under this act, that a police officer be treated like every other human being and every other citizen under this act. Provide him, through his municipality, with proper legal advice so that he can meet head on the legal advice that you will be providing for the complainant.

We do not wish to go further on the legislation. I started by saying we don't think it is necessary; we think that sufficient legislation exists, but we ask not only the changes that we have managed to attain to this point in time, but we seriously ask that those further changes be looked at. That will go a long way to satisfying the mind of the individual police officer, the police officer on the beat. That will go a long way, Mr. Attorney-General, to meeting the points of a couple of years ago when I believe it was yourself who indicated that you did not wish to have legislation passed that would not be favourable to an individual policeman on the beat.

Thank you gentlemen. I'm open to questions.

MR. CHAIRMAN: The Attorney-General.

HON. R. PENNER: Two or three questions, very briefly. Section 36 in the collective agreement - am I not right in my understanding that the collective bargaining agreement presently in force between the association and the city does not contain any references to the citizens' complaints.

MR. A. MCGREGOR: Not to citizen complaints, it has dealt in part with disciplinary matters in that we have grieved certain items that were considered to be disciplinary matters by the Chief of Police and an arbitration board allowed us to do that. We had an argument on the question of jurisdiction but it is a wide grievance procedure admittedly.

HON. R. PENNER: Section 36 says "Where there is conflict between this act or the regulations hereunder and any collective agreement in force in the province, this act prevails." Would you not agree that what, in

fact, Section 36 does is prevent double jeopardy by saying that this act prevailing with respect to that particular question does not allow an additional clause or a clause in the collective agreement that would deal with the discipline function.

MR. A. MCGREGOR: If that is, in fact, the way it is intended, yes.

HON. R. PENNER: Secondly, with respect to The Human Rights Act. The Human Rights Act, as I understand it, deals with discrimination with respect to accommodation and employment primarily. You use The Human Rights Act as an example where it might be possible for a complainant having lost, let us say, in the law enforcement review process to go to The Human Rights Act. Can you give me an example of how that could happen. How could there be something which has to amount to discrimination on the count of accommodation or employment that becomes the subject of a complaint under The Law Enforcement Review Act?

MR. A. MCGREGOR: It's not on the question of employment per se. I think you're well aware of the existence of an Alberta case, I believe it was an Alberta case, where police officers stopped individuals for some offence on the highway, I believe speeding and a complaint was made under The Human Rights Act. Their rights were being violated, I believe, on the basis of race, ethnic slur.

HON. R. PENNER: That was in Saskatchewan but that doesn't matter . . .

MR. A. MCGREGOR: Sorry, I had the wrong province.

HON. R. PENNER: . . . but that dealt with particular provisions in the Saskatchewan legislation which aren't in our legislation.

Finally . . .

MR. A. MCGREGOR: If I could expand just on that one point. You heard the Chief of Police make reference to a complain under The Human Rights Act which did take place here and it was an allegation of police acting contrary to the ethnic background of a certain group in effecting a raid on a certain club room in the City of Winnipeg. What I was getting at here is there is nothing that would stop a complaint of that nature under The Law Enforcement Review Act and there was nothing to stop that complaint under The Human Rights Commission Act so with both of the pieces of legislation in effect one could take both routes and that's what I wanted to stop. And that last piece of paper I handed out to you, Mr. Attorney-General, does nothing more than that. It does not prevent civil proceedings which you have written in, it simply prevents people from taking complaints after the merit of the matter has been dealt with before this particular body and that was the reason for putting it forward. I'm sorry I interrupted a question.

HON. R. PENNER: The particular example to which you refer, that is Chief Johnston's example is one in

which, in fact, the complainants went both routes under the existing law. Went through internal investigation and Human Rights so that happens now.

MR. A. MCGREGOR: That might be true. As you have said many times in the past two wrongs don't make a right and I don't . . .

HON. R. PENNER: Gee, I wish I would have thought of that.

MR. A. MCGREGOR: I know that you didn't think of it, Mr. Attorney-General but you certainly have used that phraseology to me in the past.

HON. R. PENNER: It's not the first time my own words have come back to haunt me.

Finally, the duty . . .

MR. A. MCGREGOR: Are my words coming back to haunt me now?

HON. R. PENNER: Yes, they are. I've heard you say many times with respect to the duty of fair representation surely that applies, does it not, whether at common law or under those statutes such as Ontario and Canada which have statutory duty of fair representation to the duty with respect to the particular union function of grievance arbitration where a union, since it has exclusive representation and the exclusive right to take a grievance to arbitration cannot deny an employee that path on any discriminatory basis.

MR. A. MCGREGOR: I think the Canada Board has gone further than that but in any event as I said in my remarks earlier on it was of some significance and it was a matter I had rethought after our last meeting. The Manitoba Police Association and the various small groups that I referred to, the various small police forces, perhaps only one of those groups to my knowledge has a certified bargaining agent representing them. So they're individuals who stand alone. They might be one or two-man forces and that becomes of concern to me because I say that that particular municipality as an employer should be providing that individual with legal counsel.

MR. CHAIRMAN: The Member for St. Norbert.

MR. G. MERCIER: Mr. McGregor, you referred to discussions having commenced under the previous government under the Police Commission, there never was a bill on which there was consensus which was approved by me at that time as Attorney-General.

I have a couple of questions for you, Mr. McGregor. Can you describe now under the collective agreement with the City of Winnipeg the instances where the employer, the City of Winnipeg, is required to pay legal costs related to your client?

MR. A. MCGREGOR: Yes, there are in fact two separate clauses whereby the City of Winnipeg is required to pay reasonable legal costs and one is in regard to criminal charges and the second one is in regard to civil proceedings against an individual and in both

instances it's provided that their actions do not exceed the normal course of conduct, exceed proper conduct. An arbitration board has made a finding that does not go so far as to cover appearances in front of the Manitoba Police Commission, because we did attempt that in a case which Mr. Oliphant and his confrere would be infinitely well aware of. An attempt was made and the arbitration board chaired by Mr. Freedman said that, no, it did not fall within the purview of those two sections.

MR. CHAIRMAN: The Member for St. Norbert.

MR. G. MERCIER: Mr. McGregor, are you concerned or have you given up the fight with respect to Section 11(5) Internal investigations, and by whom they are done?

MR. A. MCGREGOR: Well, 11(5), because of my position I've had numerous occasions to be in a sort of confrontation situation or position with members of the Internal Investigation Unit of the City of Winnipeg Police Department. I found them to be, from my point of view, very difficult to deal with. From an outsider's point of view, they would be found to be very fair and reasonable.

I think on that point I would have to agree with the chief when he said, certainly they have made mistakes in the past, there's no doubt about that. Any group that you put together, ever a group under this new proposed legislation, will make mistakes.

MR. G. MERCIER: There's one other question, Mr. McGregor. The discipline code, do you propose . . .

MR. A. MCGREGOR: Section 27?

MR. G. MERCIER: Section 27, you propose a little amendment. Do you not have more concerns with respect to other sections or subsections?

MR. A. MCGREGOR: Well, one can make certain remarks. Initially, Section 27, I jotted in tonight before coming here the word "either." A member commits a disciplinary default where he affects "either" the complainant or any other person intentionally by means of that.

Then, you go into 27(1)(a), it to my knowledge is a criminal offence to make an arrest without reasonable or probable grounds. That, I assume, if a charge were laid on that, it is indeed a criminal offence.

MR. CHAIRMAN: Any other members? The Minister of Urban Affairs.

HON. E. KOSTYRA: Thank you, Mr. Chairman. Just a couple of questions, Mr. McGregor. You indicated one of the amendments that you would like added to the act was the section dealing with frivolous and vexatious complaints, and that section also deals with complaints that would be determined do not fall under the mandate of this act. In that case, you would like the costs to be borne by the complainant?

MR. A. MCGREGOR: That is correct. The same as the system of our system of justice is, the right to assess costs against an individual.

HON. E. KOSTYRA: You also suggest that the costs of legal counsel for the respondent should be paid by the employing authority?

MR. A. MCGREGOR: Yes.

HON. E. KOSTYRA: Would that be true whether or not the complaint against the respondent is found to be true or dismissed, that in both cases the costs would have to be borne by the public?

MR. A. MCGREGOR: I think it would, if one used the similar wording which is in our collective agreement - unfortunately I don't have a copy with me - the words are provided the individual is not negligent or in total disregard of his functions or duties. There is a protection that if someone did violate it, the employing authority would not be subject to paying out costs.

HON. E. KOSTYRA: Don't you think, Mr. McGregor, there's a contradiction in the position you're advancing with respect to a complainant, and with respect to respondent in the matter of the costs associated with the proceedings?

MR. A. MCGREGOR: I don't know how.

HON. E. KOSTYRA: Well, let me expand a bit further. You're suggesting that in a case where a person files a complaint, if they're frivolous or if they don't fall within the purview of the act, that the costs should be associated against the person making the complaint.

MR. A. MCGREGOR: Certainly. I would go one step further and if it is not clear there, I would say this, that if costs should be assessed against the respondent, they should also be assessed against the complainant if they're taking a frivolous or vexatious position, or indeed, with the inclusion, my suggested inclusion of the certified bargaining agent, if the certified bargaining agent is taking a totally improper position, costs should be allowed to be assessed against the certified bargaining agent as well to be reasonable right across the board, so that people are not unreasonable or vexatious.

HON. E. KOSTYRA: Thank you.

MR. CHAIRMAN: No other member of the committee wish to make a question? We wish to thank you, Mr. McGregor.

The Attorney-General.

HON. R. PENNER: In view of the hour, Mr. Chairperson, I'd like to make a proposal - I realize there's four or five people here still wishing to be heard. It would be roughly about an hour and 15 minutes to an hour-and-a-half to encompass them - and that would be for committee to rise till 11:00 a.m. tomorrow. I would suggest you might want to ask those people whether there is any of them who can't come to the committee tomorrow morning. If we met at 11, we could dispose of all of the briefs. — (Interjection) — There are two who can't. Well, perhaps we should hear those two.

MR. CHAIRMAN: Those two that cannot come, probably we can hear them tonight.

A MEMBER: I take it then that the committee will resume here tomorrow morning at 11 o'clock?

HON. R. PENNER: In Room 254, that's the big committee room just the other side of the centre.

MR. CHAIRMAN: Will you please identify yourself.

MR. G. MARSHALL: Thank you, Mr. Chairman. Mr. Chairman, my name is George Marshall. I appear as a citizen. I think I'm No. 10. I speak in support of Bill 2.

As a way of background, Mr. Chairman, I've been a school trustee in the Transcona-Springfield School Division since 1969. I was for five years prior to Unity, a city councillor in the City of Transcona, from 1966 to 1971. I was concurrently for five years a member of the Police Fire Committee in the City of Transcona. It was during that period that the present Public Safety Building was built and it presently serves District 4. I relate these events, not to cite any particular achievements of my own, but simply to confirm that I do not have an anti-police background. In fact, I have had some involvement in catering to the needs of law enforcement.

I intend to attempt to demonstrate why in my opinion at least an independent Commission is necessary. I do not intend to deal with personality unless I can be complimentary or very nearly so. I would like to recite a personal incident.

On June 5th, 1982, after discourtesy at a four-way stop sign, my sons were followed to a point of destination and were apprehended by two police officers in street clothes. After flashing their badge and questioning the driver, one of my sons was knocked to the pavement after being hit in the temple. My other son was placed in a neck lock so he couldn't help his brother. Neither of my sons were driving the car. My youngest son has a cable in his back as a result of an operation to correct the deformity of scoliosis so that he might walk erect. The understanding of our family is from medical authorities that if it comes unstuck it can't be fixed.

I wrote a letter to Mr. Eldon Ross a citizen member of the Winnipeg Police Commission and I'm thankful to Mr. Ross for his counsel and direction. I wrote to him as a school trustee and I said, "Dear Sir: Please arrange to place before your colleagues this request to appear before them today, June 9th, 1982, which I understand requires a waiving of the rules. My purpose for appearing is to share with Commission members my concern for the rising and disproportionate use of force particularly by newer police officers against the youth and young people in our communities."

I also phoned the Attorney-General's Department and was advised that he was completely tied up with preparing for the withdrawal of police services due to a potential strike which was imminent.

I also phoned Deputy Mayor, Jim Ernst who was here earlier. I respect Jim and I was concerned about a number of incidences and he indicated to me that it was a question of group dynamics and I accepted that. I do say though that city council is a citizen's chamber, a place where the business of the people of Winnipeg is conducted and that sanctity should not be upset.

I will place for your general interest some of the questions I posed to the Police Commission. When a policeman flashes his badge, the citizen, certainly the vast majority of them is helpless before the law. The use of excessive force in this situation is not an act of bravery or even an act of duty. It is an act of cowardice. The strength of the law comes from the respect to trust and the obedience to the law and the police force which comes from the citizens themselves.

I stated as a school trustee that the new generation will make its own judgment and develop its own perceptions about the law and the police force. Again I asked, how do I teach respect for the law if the symbol of behaviour from the law is that violence is all right, that violence is sanctioned. If those charged with upholding the law in the name of the law break the law then the whole process comes unstuck. We no longer have a force accountable to the citizens. We have something else, a force accountable only to itself, that does its own thing, that satisfies its own interest.

A word about my experience with the process. If you phone with a complaint, you either have a complaint or you do not. If you don't, that's the end of it. If you do, two things happen immediately. First, the complaint is reduced to an incident. You are no longer challenging the operation, the methodology and the accountability of the police force. In this sense, the police force is very much outside of the argument.

Secondly, as an incident, the matter is initially handled by internal investigations. In this sense, the police force is very much inside the argument. Since the nature of a bureaucracy is to be self-serving, what happens to accountability to the citizen in this process? The victim has two choices. Go to court, which is a challenge to an individual and not to the police force or follow the process, a process in which our experience is and was that the victim feels guilty until he can prove to his antagonists - he feels they're antagonists - the police, that he is innocent. This represents at best a compromise to both the democratic and judicial processes. The broader and more important question is whether in a free society a public body can function accountable only to itself. There is a need for a more objective way, a less protective way, based on impartial and unbiased grounds.

I pursued the complaint to express concern for increased violence amongst police officers with our youth and I ended up concerned with the process and accountability to the citizens. I received this response from the Winnipeg Police Commission. Mr. Marshall, "Dear Sir:" - this is the 21st of July of last year. "The Winnipeg Police Commission at its meeting of July the 20th, 1982 again considered the concerns expressed by you at its meeting of June 24th, 1982 for what you consider to be the rising and disproportionate use of force by police officers.

"The Commission received your communication as information and I am instructed to advise you that your concerns have been forwarded by the Chief of Police to the Crime Prevention Branch at the Winnipeg Police Department." Signed, R.B. Hayes, Secretary.

There doesn't seem to be a problem with the citizen as the object when the citizen is in offence of the law, with that citizen being brought into account. There seems to be a problem with the citizen as the subject, and by the subject, I mean the citizen who is the reason

why the law enforcement agency was created in the first place, the citizenry as a whole, to whom the law enforcement agency must ultimately be accountable.

I'm in agreement with some of the comments attributed to the Attorney-General and to the Winnipeg Sun - and I'm not always in agreement with the press or with Attorneys-General. From the Winnipeg Sun, "If the Winnipeg Police Force record is tarnished, as the RCMPs has been, it won't be because the public or the news media kept too close an eye on it. It will be because the majority of us decided that the activities of a group of public servants are none of the public's business."

Attributed to the Attorney-General: "The idea of police departments investigating themselves is contrary to the principle of fairness and natural justice."

Again the Attorney-General: "You cannot regulate and adjudicate at the same time." Again the Attorney-General: "The notion that a body should investigate itself is contrary to the principle of fairness and natural justice." Again the Attorney-General: "The police should have nothing to fear of justice being done within their own department, as it is done in the rest of society."

The Winnipeg Sun: "Fair and equitable systems must be established to ensure that rare cases of alleged police abuse are dealt with expeditiously and in full public view. Anything less will tend to arouse suspicion and distrust."

On the matter of amendments, which is the purpose of committee, I appreciate the Attorney-General's flexibility. I have some concern though - and by the way, I'll be arguing against the government on another issue, in another capacity, in another place - the inclusion within the act which calls for at least one police officer to be included in the panels from which members of the new boards are chosen. It makes sense to me that someone from there with that kind of expertise should very well be part of the deliberations and part of the consensus, but if they are from the group, then we're back to two hats, and I wonder if there's really need for more than one.

I'm pleased though that the principle of the bill is still intact. My complaint is not with the actors. My complaint is not with the people of the police force, many of whom I know, in their terrible task. My complaint is with the process. As a citizen I'm offended when a public body, any public body accountable to the public, somehow wants to be accountable only to itself. This is foreign to my understanding of both the democratic process and accountability to the public.

MR. CHAIRMAN: The Member for St. Norbert.

MR. G. MERCIER: Mr. Marshall, was there a specific complaint with respect to this incident involving your sons and, if so, was it investigated, or did you just make a general complaint?

MR. G. MARSHALL: I did not proceed on the basis as if it was an individual complaint. However, the incidence did arise as a result of Autopac and there was an investigation in due course. I don't know who the principals were; I made no effort to find out, because that was not my purpose. It seems to me that those

particular individuals, if they curb their excesses, may very well be better off to society and to themselves within the police force. That's not my point. As a school trustee, when I saw the problem - and that's not the only incident, it's the most prominent one obviously - I thought I should bring it to their attention. Having brought it to their attention, I became concerned with the process.

MR. G. MERCIER: Mr. Marshall, you say you became concerned with the process and I understand your concerns. Trying to look at this objectively, I'm just wondering how you can criticize the internal investigation of an incident when you made no requests that the specific incident be investigated.

MR. G. MARSHALL: My complaint is with the nature of the process. It's offensive to me that a body should be accountable, essentially, only to itself, it should investigate only itself. Quite apart from the incident, to me that's irrational; to me that flies in the face of the nature of public accountability. That's not challenging the people or the actors. It's simply saying that kind of process, it seems to me, is inadequate.

MR. CHAIRMAN: The Minister of Housing.

HON. J. STORIE: Mr. Marshall, I think you've presented a very eloquent case for the legislation before us and I thank you for that. I assume that you were here during many of the briefs that were presented and one of the concerns that was expressed, I think, in virtually every case, was the concern about frivolous and vexatious complaints being filed by individuals.

Perhaps you could just comment on whether you see that as being a problem, and relate it specifically to your experience as a trustee, as to whether frivolous and vexatious complaints from the public against school teachers were a problem, and whether you see this kind of problem existing in this legislation.

MR. CHAIRMAN: Mr. Marshall.

MR. G. MARSHALL: Thank you, Mr. Chairman. The nature of a statute is that it can be changed. The Unity Act itself was an extraordinary piece of legislation to which there was much complaint. There may very well be a need to adjust to what is vexatious. That could become a valid complaint and I think it should be catered to. But I'm supportive of the principle of the bill, and the principle of the bill is more important than any vexatiousness, which I'm sure rational people will cater to and deal with.

MR. CHAIRMAN: Thank you, Mr. Marshall.
Ms. Judy Elliott, Law Union of Manitoba.

MS. J. ELLIOTT: Good evening, Mr. Chairman and members of the committee. I'll try to make my submission fairly brief, given the hour. I also have copies prepared for the members of the committee.

The Law Union of Manitoba supports this legislation. We feel that it's long overdue and we welcome the spirit of the legislation. We have a number of concerns about recent proposed amendments to the legislation,

however, and I'd like to raise approximately five concerns briefly this evening.

Firstly, the proposed amendment to Section 7 in regard to the time for filing of complaints, the complaints are to be filed not later than 30 days after the subject matter on which the complaint arises and the only exception to that is where the Commissioner feels that there was no reasonable opportunity to make the complaint prior to that date.

We would submit that this narrows to too great an extent the time period in that there may well be persons who realistically will not make a complaint within that period, but will have a valid complaint. These might be persons who aren't aware of the procedures to follow, who might not have received legal advice or the correct advice; they might be persons who are in custody and who can't realistically make the complaint prior to that time or they may be persons - and this is probably the biggest group who have criminal charges which are not disposed of within a 30-day period and their lawyers may wish to consider the police reports before giving them advice. They may be facing a trial where the same persons about who they wish to make a complaint may be the witnesses at that trial.

For these reasons we would submit that either the time period should be extended or that the discretion of the Commissioner should be a wider discretion perhaps, an unfettered discretion to allow filing of the complaint outside the time period that's provided in the act.

Secondly, we take exception to the proposed amendment to Section 15 contained in Section 15(3) that provides that the only considerations that the Commissioner can take into account on the recommendation of a penalty on the finding of a disciplinary default would be the severity of the offence and the contents of the respondent's service record. Now, as has been alluded to earlier the service record will be wiped clean at the proclamation of this act under the amendment contained in Section 30(3) and therefore you might have a member who had had previously a number of disciplinary offences who would be in the same situation as a member who had had an exemplary record previously. We don't see any reason for this clean-slate amendment and we would urge that that amendment not be passed.

Thirdly, we take exception to the standard of proof as provided in the amendment to Section 25(2) which suggests that the board shall dismiss a complaint unless it is established beyond a reasonable doubt. As the counsel for the city stated, this is a civil piece of legislation akin to labour legislation or akin to civil proceeding and we not feel that the criminal standard of proof should be the relevant one. Firstly we're not talking about criminal sanctions here, we're talking about at the worst dismissal. If we're talking about criminal sanctions the legislation itself would be unconstitutional.

Also, we feel that this places an unrealistic burden on a complainant. We will have complainants who are of low social standing, we will have respondents who are police officers and almost by virtue of their office, their word against that of a complainant where it's only those two persons that are involved, a reasonable doubt may be raised simply by virtue of the fact that the respondent is a police officer. We would urge that that

be carefully reconsidered and we feel that the civil standard is the appropriate standard.

Finally, we don't agree with the proposed amendment concerning the composition of the board. We feel that this act is meant to provide for independent civilian review of police conduct and we do not believe it is within the spirit of the act to have police members on the board.

In summary, we support the act and we hope that the act in some form will be passed as soon as possible. As lawyers we do not have a good deal of faith in the present system which we find to be unsatisfactory. It's lengthy, it has a number of points at which persons are deterred. When I heard some of the comments earlier about investigation by the police force, the thing that comes to my mind as a defence lawyer is asking a client, when he says that there's been some allegation of police misconduct and well, did you report it? Well, I was told that I might get charged with mischief. I don't know where this comes from but I've heard it a number of times. People seem to be told that they could be charged with public mischief and they get the impression that this is what's going to happen if they can't establish their complaint. They don't understand that this is something that might happen if it can be proven that they're lying but this seems to be a fear that's put into people and they don't pursue complaints against the police.

Those will be my remarks at this time.

HON. R. PENNER: Ms. Elliott, would you not agree that the persons charged with criminal offences still in custody are more likely to be able to get advice as to their rights such as the rights under LERA than those who might not be in custody and not charged and not have legal representation?

MS. J. ELLIOTT: That's correct, I think that they certainly have more accessibility to legal advice. I don't

know whether the average lawyer would recommend that they file a complaint at that point.

HON. R. PENNER: The worry being that it might adversely affect the quality of evidence to be given by the police person on the subject of complaint.

MS. J. ELLIOTT: Perhaps for that reason or because the lawyer might not be aware of the protections in the act against self-incrimination, that kind of thing.

HON. R. PENNER: Would you suggest an amendment to the extended time which would allow an extended time where some of the same amount, let's say six months, maximum six months, where the complainant is charged. Is that the thrust of what you are suggesting?

MS. J. ELLIOTT: That would be an improvement. I don't know if it would cover all situations. It might not cover people who are not charged but who get bad advice from social agencies and don't get to a Legal Aid office or something on time but it would certainly cover a number of situations over which we have concern.

HON. R. PENNER: You would agree, would you not, that it is also a concern for the police officer to go on indefinitely wondering whether or not they are going to be subject to a disciplinary action?

Those are my questions, thank you very much.

MR. CHAIRMAN: What is the pleasure of the committee?

HON. R. PENNER: Committee rise.

MR. CHAIRMAN: Thank you, Ms. Elliott.
Committee rise.