



Third Session - Thirty-Fifth Legislature
of the
Legislative Assembly of Manitoba

STANDING COMMITTEE

on

LAW AMENDMENTS

39-40 Elizabeth II

*Chairperson
Mr. Jack Penner
Constituency of Emerson*



VOL. XLI No. 10 - 7 p.m., TUESDAY, JUNE 23, 1992



MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Fifth Legislature

Members, Constituencies and Political Affiliation

NAME	CONSTITUENCY	PARTY
ALCOCK, Reg	Osborne	Liberal
ASHTON, Steve	Thompson	NDP
BARRETT, Becky	Wellington	NDP
CARSTAIRS, Sharon	River Heights	Liberal
CERILLI, Marianne	Radisson	NDP
CHEEMA, Guizar	The Maples	Liberal
CHOMIAK, Dave	Kildonan	NDP
CONNERY, Edward	Portage la Prairie	PC
CUMMINGS, Glen, Hon.	Ste. Rose	PC
DACQUAY, Louise	Seine River	PC
DERKACH, Leonard, Hon.	Roblin-Russell	PC
DEWAR, Gregory	Selkirk	NDP
DOER, Gary	Concordia	NDP
DOWNEY, James, Hon.	Arthur-Virden	PC
DRIEDGER, Albert, Hon.	Steinbach	PC
DUCHARME, Gerry, Hon.	Riel	PC
EDWARDS, Paul	St. James	Liberal
ENNS, Harry, Hon.	Lakeside	PC
ERNST, Jim, Hon.	Charleswood	PC
EVANS, Clif	Interlake	NDP
EVANS, Leonard S.	Brandon East	NDP
FILMON, Gary, Hon.	Tuxedo	PC
FINDLAY, Glen, Hon.	Springfield	PC
FRIESEN, Jean	Woleseley	NDP
GAUDRY, Neil	St. Boniface	Liberal
GILLESHAMMER, Harold, Hon.	Minnedosa	PC
HARPER, Elijah	Rupertsland	NDP
HELWER, Edward R.	Gimli	PC
HICKES, George	Point Douglas	NDP
LAMOUREUX, Kevin	Inkster	Liberal
LATHLIN, Oscar	The Pas	NDP
LAURENDEAU, Marcel	St. Norbert	PC
MALOWAY, Jim	Elmwood	NDP
MANNES, Clayton, Hon.	Morris	PC
MARTINDALE, Doug	Burrows	NDP
McALPINE, Gerry	Sturgeon Creek	PC
McCRAE, James, Hon.	Brandon West	PC
McINTOSH, Linda, Hon.	Assiniboia	PC
MITCHELSON, Bonnie, Hon.	River East	PC
NEUFELD, Harold	Rossmere	PC
ORCHARD, Donald, Hon.	Pembina	PC
PENNER, Jack	Emerson	PC
PLOHMAN, John	Dauphin	NDP
PRAZNIK, Darren, Hon.	Lac du Bonnet	PC
REID, Daryl	Transcona	NDP
REIMER, Jack	Niakwa	PC
RENDER, Shirley	St. Vital	PC
ROCAN, Denis, Hon.	Gladstone	PC
ROSE, Bob	Turtle Mountain	PC
SANTOS, Conrad	Broadway	NDP
STEFANSON, Eric, Hon.	Kirkfield Park	PC
STORIE, Jerry	Flin Flon	NDP
SVEINSON, Ben	La Verendrye	PC
VODREY, Rosemary, Hon.	Fort Garry	PC
WASYLYCIA-LEIS, Judy	St. Johns	NDP
WOWCHUK, Rosann	Swan River	NDP

**LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON LAW AMENDMENTS**

Tuesday, June 23, 1992

TIME – 7 p.m.

LOCATION – Winnipeg, Manitoba

CHAIRPERSON – Mr. Jack Penner (Emerson)

ATTENDANCE 11 – QUORUM - 6

Members of the Committee present:

Hon. Messrs. Ducharme, Ernst, Gilleshammer,
McCrae

Mr. Ashton, Ms. Barrett, Ms. Friesen, Messrs.
Gaudry, Martindale, McAlpine, Penner

*Substitutions:

Mr. Storie for Mr. Ashton (1925)
Mr. Ashton for Ms. Friesen (1930)
Mr. Chomiak for Mr. Martindale (1930)
Mr. Reimer for Mr. Gilleshammer (2012)

APPEARING

Dave Chomiak, MLA for Kildonan
Paul Edwards, MLA for St. James

WITNESSES:

Marvin Samphir, City of Winnipeg Law
Department
Murray Blight, Private Citizen
Al McGregor, Winnipeg Police Association
Paul McKenna, Private Citizen
Jack Haasbeek, Private Citizen
Loren Reynolds, Commissioner of Protection,
Parks and Culture, The City of Winnipeg

MATTERS UNDER DISCUSSION:

Bill 86—The Provincial Police Amendment and
Consequential Amendments Act

Bill 87—The Law Enforcement Review
Amendment Act

* * *

Mr. Chairperson: Would the committee please come to order. This evening the committee will be considering six bills: Bill 86, The Provincial Police Amendment and Consequential Amendments Act; Bill 87, The Law Enforcement Review Amendment Act; Bill 93, The Mental Health Amendment Act; Bill

96, The Special Operating Agencies Financing Authority Act; Bill 98, The Manitoba Multiculturalism Act; Bill 101, The Statute Law Amendment Act.

As was previously agreed by the committee this morning, no further presentations will be accepted on Bills 78 and 97. Therefore, the committee will proceed to hear presenters registered to speak on Bills 86, 87 and 96.

Did the committee wish to introduce time limits? What is the will of the committee?

Some Honourable Members: No.

* (1910)

Mr. Chairperson: No time limits. Agreed.

Did the committee wish to hear presenters in order as listed?

Mr. Steve Ashton (Thompson): I am just wondering in terms of proceeding—

Mr. Chairperson: Before we proceed, I am going to ask that the people standing up against the wall move back to the tables please and also the people standing up against—

Mr. Ashton: If I might be of some assistance, Mr. Chairperson, I would suggest that we might want to make some exceptions. This is an extraordinary number of people. I cannot remember seeing this many people at a legislative committee, apart from maybe one other occasion in 10 years. I would first of all recommend that we make some effort to ease the congestion by allowing people to sit here, by leave.

I would also suggest that we also advise the members of the public, I know many people probably have never been to a legislative committee before, as to how they can register, procedures for doing that in case there are people who are not registered.

Mr. Chairperson: It will be done.

Mr. Ashton: Perhaps if we can then decide how we proceed, Mr. Chairperson.

Hon. James McCrae (Minister of Justice and Attorney General): Mr. Chairperson, I agree with the proposals made by the honourable member for Thompson. I cannot help but think that this group of all groups would tend to be rather orderly. Thank you, Mr. Chairperson.

Mr. Chairperson: Thank you, Mr. Minister. What I am going to propose to the committee is that I will read the list of presenters that we have received up to now, and then I am going to suggest to members of the group here that if there are those who would still like to register for presentations, that you do so with the Clerk and the Clerk's office.

Could I ask members or citizens in attendance that I am going to ask the Clerk's staff to circulate a paper, and I would ask you, if you want to make presentations, that you print your name and whether you are a private citizen or representing an organization on this piece of paper so that we can register you and so that we can have some indication as to who the presenters are and how many presenters we might in fact have. Is that agreed with the committee?

Some Honourable Members: Agreed.

Mr. Chairperson: Agreed.

Mr. Dave Chomlak (Kildonan): I wonder if the minister might just entertain an opening question.

Mr. Chairperson: Before we entertain opening questions, I am going to read the list of presenters that I have received so far.

The list is: Marvin Samphir, City of Winnipeg Law Department—and we will accept the presenters as I read them out in that order—Mr. Al McGregor, Winnipeg Police Association; Jack Haasbeek, private citizen; Jim Davidson, private citizen; Donald Delorme, private citizen; Brian Thompson, private citizen; Andy Monostori, private citizen; Roman Szczerba, private citizen; Norman Sparrow, private citizen; Ross McCriston, private citizen; Michael Ewatski, private citizen; Orien Brown, private citizen; Robert Gray, private citizen; Norman Burr, private citizen; Michael Rudyk, private citizen; Christopher Riddell, private citizen; and Fred Munroe, private citizen.

I will now entertain a question of the minister.

* (1915)

Mr. Chomlak: Mr. Chairperson, insofar as we were led to believe that there were discussions between

the Attorney General's department and representatives of the Police Association, I am wondering if the minister—we could save a lot of time and energy and probably do, in my opinion, the right thing, if the minister is prepared to withdraw Bills 86 and 87 at this time. [interjection]

Mr. Chairperson: I would ask that the same rules apply in committee that we normally apply in the House, in that we have the audience or the members of the public conduct themselves in a manner that is conducive to the rules and regulations of the House, and that responses from the audience are normally not accepted in the House.

The Chair will assume that the last response did not happen, and I would ask that the citizens conduct themselves in that manner.

Mr. McCrae: Mr. Chairperson, the honourable member's reaction comes as no surprise to me. I suppose it would be the first reaction and the reaction of the honourable member, and perhaps other members of his party would accept that if there are dissenting voices in respect to a particular initiative, the easiest thing to do would be to withdraw the initiative before us. I do not think that is an appropriate way or a responsible way for the honourable member, or for me, to discharge our duties to the public in this province.

The people of Manitoba are entitled to quality, professional policing. I think the honourable member would agree with me about that, and everyone else in this room would agree with me on that point. The people are entitled to an accountable law enforcement system in our province. I hope the honourable member would agree with me on that. The people are entitled to have a perception that there is an effective system for resolving disputes and a system that is seen to work towards the cause of ensuring that people's individual complaints are appropriately dealt with and also that there is an appropriate balance and that police and community relations are enhanced.

Now, it would be drawing a long bow tonight to suggest to the people in this room that by this bill those are the goals that could be achieved through this legislation. Nonetheless, we need very badly in this province to have the appropriate level of comfort, that our professional police authorities out there serving and protecting us every day and every night, that there is an appropriate level of comfort on

the part of the people of this province, that the balance is an appropriate one and that a dispute resolution system is there and is working effectively.

The honourable member will be aware of what is in the bill before us. He will also be aware that the reason for having public hearings and consultations to which he has referred, is so that we can have the benefit of input from people who have an interest in the legislation that we are bringing forward.

I can report to the honourable member that as a result of the courtesy of Mr. Al McGregor, who is legal counsel for the Winnipeg Police Association, we were made aware, in draft form, of some of the concerns of the Winnipeg Police Association to the actual draft legislation we have before us. As a result of knowing of those concerns, we have been working with the Winnipeg Police Association, and we have been looking at some of the aspects of this bill.

I can report to the honourable member, and other honourable members of this committee and everyone else here tonight that the government is agreeable to looking at some amendments on some of the issues that have been raised by the Winnipeg Police Association and others. For example, there is a question of restitution in this bill. This has been a cause of concern to the Winnipeg Police Association with regard to a respondent being ordered by a judge, under this legislation, to pay restitution to a complainant against whom a default has been found.

* (1920)

We have prepared draft amendments and have discussed the content of those amendments with the Winnipeg Police Association. We believe that these amendments will address, to a reasonable extent, the concerns that have been raised. Concerns have been expressed about police officers' notes and how those notes, if made public, might become a problem, not only—well, might become a problem with respect to the security of the public and the appropriateness of police officers in the conduct of their work. We have prepared amendments to deal with that—amendment or amendments.

The issue of compellability has been a problem for police officers. We have believed that compellability was appropriate. We have been working, however, with representatives of the Winnipeg Police Association, and we have moved

some distance, I believe, towards reconciling the differences there might be there. I leave it to Mr. McGregor to comment on what he thinks about the proposals that we will be bringing forward.

The issue of the publication of people's names, the issue of media coverage, of these default matters, these default hearings has been a concern. The honourable member will know, from having just agreed to the passage of legislation dealing with lawyers and how they are dealt with before the Law Society, that if there is no finding of fault, then why ought a police officer or a lawyer, for that matter, be subject to the glare of the media. So we are looking at proposing an amendment that would make that possible only upon a finding of fault.

In those areas we believe we have gone some distance and in a very reasonable way, without changing the need, to make this legislation more effective. We think that we have been reasonable and gone a considerable distance to alleviating some of the concerns raised with us by those people with whom we have been consulting.

So I answer in that way, but I also say to the honourable member, the easy way is to withdraw, and that is not always the right way. The people out there in this province need to know that there is an effective civilian oversight of police agencies and their members, and that is what this legislation is about. The first people who I suggest ought to support that ought to be police agencies and members of police forces themselves, who—if you look around this continent, you can see that there have been pretty significant problems in some urban centres in the past while.

I mean, I do not have to remind the honourable member about what happened in Los Angeles. I do not have to remind the honourable member about what happened in other American centres in the aftermath of the Los Angeles matter. I do not have to remind the honourable member about the reaction in places like Toronto. I do not have to remind the honourable member about things that have been happening in Montreal. I do not think I need to remind the honourable member about, indeed, things that have been happening right here in our own province.

So the public needs to know that there is effective civilian oversight. I know that there are people here tonight who immediately think they are being singled out, but that is not the case at all. If you look at

administrative law in other areas of endeavour in the public sector, the test for the admissibility or the test of evidence, that being a balance of probabilities which I know to be a concern to members of police forces. That is the test that is used in these administrative tribunals, not the test of beyond a reasonable doubt which is reserved for criminal courts. Police officers when complaints are made about them, if they are criminal complaints, they are dealt with in the criminal courts just like anybody else.

If there is a complaint about their activity or their behaviour that falls short of criminal allegations, then it becomes a noncriminal matter, a civil matter dealt with best in a tribunal like law enforcement review procedures that are set out in this bill before a judge, and the balance of probabilities is the appropriate test in that particular proceeding.

So those are the discussions we have been having. We think the amendments do go some distance toward alleviating the concerns raised with us. I know that it does not go all the way, but that is not a good enough reason to withdraw a bill. The honourable member's suggestion is just not responsible.

Mr. Chairperson: The committee will now move towards hearing presentations from the public.

Committee Substitution

Mr. Chairperson: Is there leave for the committee to consider committee changes. Leave? Leave granted. Proceed.

Mr. Chomlak: I move, that the composition of the committee change for Thompson (Mr. Ashton) for Flin Flon (Mr. Storie). [Agreed]

* (1925)

Point of Order

Mr. Paul Edwards (St. James): On a point of order. It is customary in the House amongst members that members are advised, at least as early as members of the public are advised, of changes in the law. Part of that is amendments to be proposed by the minister. He has indicated here tonight he is coming forward with amendments. At least, Mr. McGregor apparently has been advised of those. We certainly appreciate the amendments. It is clear this bill needs lots of amending.

Mr. Chairperson, I would ask the minister to share with committee members at this time those

amendments so that we might have the benefit of those amendments as we listen to the presenters.

Mr. Chairperson: The honourable member does not have a point of order. However, I will entertain the minister for a very short period of time.

Mr. McCrae: The honourable member for St. James is kind to remind me of customs around here, but he has it a little bit wrong. As a rule, we hear from the members of the public and as a result of hearing from them, amendments are prepared. I have seen the honourable member come in here with amendments, and the only time I get to see them is when he is moving them.

However, whatever amendments we have in a form that we can present, I will make them available. The minute they are ready to show to the honourable member, he can look at them.

* * *

Mr. Chairperson: I am now going to ask that Mr. Marvin Samphir come forward of the City of Winnipeg Law Department for his presentation. Mr. Samphir would you please come forward.

Point of Order

Mr. Ashton: Yes, Mr. Chairperson, we normally try and operate these committees fairly smoothly. I just wanted to ask—the minister is saying those amendments will be available tonight. It is a very legitimate point that is being raised by the member for St. James (Mr. Edwards). We normally do have those amendments made available in advance. I would just like to find out for the benefit of members of the committee and members of the public as to when those amendments will be officially available.

Mr. Chairperson: The honourable member does not have a point of order. Amendments are normally not made in advance of committee proceedings. I remind the honourable member of that.

Mr. Ashton: On a point of order. At the beginning of committees, we often discuss the functioning of committees. What I have asked is not out of order. I was asking as a matter of courtesy if the minister could indicate when those amendments will be available. That is all I asked. I would just ask if you would give the minister the opportunity to answer to that. All I am trying to do is get some idea of when we will know when those amendments are available.

Mr. Chairperson: The honourable member does not have a point of order. I will, however, ask the minister whether he wants to, at this time, propose any amendments.

* * *

Mr. McCrae: Mr. Chairperson, I do not wish, at this moment, to propose the amendments. I expect to be hearing from the first few presenters who are aware of the discussions that have been had. The amendments—

An Honourable Member: That is ridiculous.

Mr. Chairperson: Order.

Mr. McCrae: There is nothing ridiculous about what I am saying, Mr. Chairperson. The amendments are being prepared, and as soon as they are in my hands, I will share them with the honourable member, all of them.

Mr. Chairperson: I understand that the member, Mr. Chomiak, asking for leave before, was not a member of the committee. Therefore, I ask a member of the committee, Ms. Friesen, who has asked for it, to grant leave of the committee to make changes to committee. Is there leave?

Some Honourable Members: Leave.

Mr. Chairperson: Leave granted.

Committee Substitutions

Ms. Jean Friesen (Wolseley): Could I move that the composition of the Standing Committee on Law Amendments be amended as follows: the member for Thompson (Mr. Ashton) for the member for Wolseley (Ms. Friesen); and the member for Kildonan (Mr. Chomiak) for the member for Burrows (Mr. Martindale)? [Agreed]

* (1930)

* * *

Mr. Chairperson: Will Mr. Marvin Samphir please come forward? Mr. Samphir, will you please proceed? By the way, have you a copy of your presentation that you want to distribute?

Mr. Marvin Samphir (City of Winnipeg Law Department): No, we do not have a presentation, as such, to file with the committee. We will explain why in a moment.

Mr. Chairperson: Proceed, please.

Mr. Samphir: Mr. Chairperson, honourable minister, members of the committee, we speak this evening on behalf of the City of Winnipeg and the executive of the Winnipeg Police Department.

We are here to express, firstly, a concern that the City of Winnipeg has in reviewing the material, the two bills that are before you this evening, Bill 86 and Bill 87, in particular the concern of the city's Executive Policy Committee and the mayor with regard to the inadequate time that was given to the city and others who are interested in this legislation to prepare and to consider appropriate responses with regard to these two pieces of legislation.

I have heard what the minister had to say in response to a question of one of the members of the committee and, appreciating what the minister had to say, we point out without question these pieces of legislation do have implications, major ones we say, for the city and, in particular, the manner in which the Winnipeg Police Department will be affected as far as the discipline of police officers. It was initially, and still is, a concern of the executive of the police department and those of the city, that the legislation is moving in a direction which, if implemented without certain changes, is going to be viewed by the membership of the police department as not being fair.

The city is concerned that without appropriate time to consider the legislation and full participation of those who are affected by it, the operations of the police department, the role of the chief of police and, in particular, the fact that a new chief of police is yet to be appointed, is affected by the fact that this legislation is being considered at this time.

Mayor Norrie, in writing to the minister, requested—and we repeat that request—that in consideration of what has transpired, it could be in the best interests of all at this time to allow for the full input of the city, the Winnipeg Police Association, and other police departments that could be affected in Manitoba, that perhaps consideration be given to not proceeding with the two bills at this time.

We say that in spite of the comments made by you, Mr. Minister, just a few minutes ago. We appreciate—and I say that sincerely—the opportunity we had today to discuss with representatives of your department certain changes that were proposed to the bill, both bills for that matter. I think that there was a complete and full discussion, and I think the

position of both the city and the Winnipeg Police Association, which Mr. McGregor will speak to, was given to the officers of the Department of Justice.

Candidly, the changes are of assistance, and I think make the bills better bills. But, in the long run, they really still, in our view, impact on what we would suggest would be a problem of fairness as far as dealing with police officers.

I appreciate that Mr. McGregor has given you an extensive brief. There are two areas which I will address because of the changes which you proposed in regard to these areas. The first is the burden of proof, and the second is the compellability of the police officers as witnesses. I have not seen, with regard to compellability of police officers, the final wording of what is being proposed, so I am at some disadvantage in commenting on this section.

But, even as it is currently worded, as I understand from what Mr. Miki has told us, there still is an area which is being dealt with that, I suggest, is unnecessary. The fact that a judge is going to be directed or be permitted to draw certain inferences, if a police officer is not called, is unnecessary.

There are all sorts of hearings that are held in our courts, before arbitration panels, where inferences are drawn, where appropriate, by chairpersons, by judges, by chairmen, as a result of evidence not being called or witnesses not being called. Why is it necessary, in this case, in effect to treat the officers specially or in a special way? We leave you with that. I do not think any more comment need be made than that, because those of us who are familiar with arbitrations and the way the court process works, know that is a fact.

The second area is the area of the burden of proof. Again, I heard what was said by the honourable minister with regard to the burden of proof in civil matters. Well, in arbitral jurisprudence, in issues dealing with discipline, the burden of proof is not on a balance of probabilities when the penalty is severe punishment such as termination or a suspension without pay for a significant period of time. The rules of evidence, as we all know, adjust themselves according to the penalty. The employee who is being dealt with is dealt with in accordance with the severity of the penalty and, therefore, is given some benefit with regard to the evidence. So, again, why deal with the employees in this situation—police officers—in a special way?

* (1935)

I think that we all recognize, in the comments made by the minister, that changes are needed. But, we also must recognize that when we change legislation such as this, we should not become, I would suggest, trapped by the oftentimes swinging of that pendulum, where at one time people claim the legislation, in this case, is too soft on police officers, and then move it in the direction where it is unfair to police officers. I think the idea is to try to attain—and this is what the City of Winnipeg would like to see with respect to its employees, all its employees, and particularly the police officers who are being dealt with by this legislation—an area of fairness, that they not be dealt with differently than other employees are dealt with in similar circumstances.

My submission is limited to what I have told you here. These are concerns which the employer has with respect to the legislation. It is the view of the employer that if these changes could be accommodated, the legislation would be fairer and it would be legislation which the employer would, of course, feel comfortable with and be satisfied that in this situation, where discipline, where a penalty must be imposed as a result of the actions of police officers, they are being treated no differently than other employees.

Mr. McCrae: Mr. Samphir, thanks for coming and sharing your views with us. As I understand it, the concerns you are putting forward are in two areas, that being the issue of the burden of proof at a hearing, the second being that of compellability.

Mr. Samphir: That is correct.

Mr. McCrae: It will be helpful when we have the amendments. We can show them to you, as we can the members of this committee. I ask you: If a judge finds that it is appropriate to draw a certain conclusion by the silence of a police officer at one of these hearings, is it that you have some concern that judges will not be able to deal fairly and impartially in coming to that decision, whether to draw an inference or not?

Mr. Samphir: I feel comfortable that if the judges acting as the chairperson of the tribunals in this case are given the discretion, they will act appropriately. I am not concerned about that. My point is that they do not need to be told to draw the inference. I am sure they are capable of doing that.

Mr. McCrae: Mr. Chairperson, I think my amendment can give Mr. Samphir and those

supporting that point of view some comfort, as in the amendment, when it comes out, which I understand is very soon, you will be able to see that the judge will have that kind of discretion Mr. Samphir is referring to.

On the question of the burden of proof, I will ask you a very direct question. Do you agree, Mr. Samphir, that the idea here is to get at the truth?

Mr. Samphir: I would hope that any tribunal or any hearing held is conducted for that purpose.

Mr. McCrae: Then what, Mr. Samphir, is wrong with any test that allows the trier of this matter, this civil matter, this administrative matter, to get to the truth? What we are talking about is a different test for weighing evidence, a test that is used in the civil courts of this land. What is wrong with a test that will allow the trier, the hearer of these matters to come to the truth?

Mr. Samphir: I can answer your question this way. The burden of proof really does not, in my view anyway, assist in determining what is the truth or what is not the truth. The burden of proof, of course, is the weight of evidence that is necessary to determine whether or not someone should be penalized, what amount of evidence, what weight of evidence is necessary, what amount of fact is necessary to find someone guilty or find someone who should be dealt with in accordance with the legislation.

What I said to you in our submission is this. You do not need to tell the trier of fact what the burden of proof is or is not in a certain situation. There are all sorts of arbitrations under The Labour Relations Act, and The Labour Relations Act does not set out what the burden of proof is. It is something that has been developed over a course of time. As I indicated before, we often hear the term "balance of probabilities," but I would suggest to you that when it comes to a situation where an employee is faced with a termination, I am sure that the weight of evidence expected to be demonstrated by an employer to satisfy a termination is greater than balance of probabilities.

* (1940)

Mr. McCrae: Mr. Samphir, you are employed by the City of Winnipeg and very much involved with administrative and civil law matters. I think I am correct on that. Can you tell me any noncriminal matter that comes before judges or tribunals where

the test of proof is that of beyond a reasonable doubt other than the criminal courts?

Mr. Samphir: I can tell you this in answer to your question, that, again, when you deal with matters before tribunals, what is the burden of proof or is not the burden of proof really is not very often a question that comes into the minds or becomes a question of argument when you deal with the evidence. The analogous situation to what you are dealing with in this legislation would be a labour arbitration, where you find that employees can be subject to different penalties. Normally what happens is that where you have more severe penalties being requested by the employer you will find that the tribunal, the arbitrator, will place a stiffer onus, place a stiffer test, on the type of evidence being called by the employer to justify the more severe penalty. That is the best way I can describe it.

The reason for that is that in a situation, at least as far as I understand it, where an employer is requesting a severe penalty against an employee, the arbitrator expects that the employer will come forward with not just evidence in a balance of probabilities but will come forward with something more than that to satisfy the tribunal, the arbitrator, that the severe penalty should be imposed. So in that venue, where you have an arbitration, you will not get anyone saying that beyond a reasonable doubt is the test placed on the evidence. What you will find is, where there is discussion about the type of evidence that is called in the textbooks—which are very rarely, I would suggest, dealt with at these proceedings—you will see commentary that in those circumstances it is appropriate for the arbitrators to apply a test with regard to the evidence which is something greater than the balance of probabilities.

Mr. McCrae: Is it your concern, that in a hearing of one of these matters, that a judge, trained in the law, trained in weighing evidence, trained at resolving disputes—is it your concern that a judge in all of those circumstances is going to weigh the evidence by a balance of probabilities and come up with the wrong conclusion?

Mr. Samphir: That is not the concern. I cannot speculate on what the judge may or may not do.

Mr. Chomiak: Mr. Samphir, you indicated that you felt the city did not have proper time to adequately prepare to deal with this bill. Could you give me some idea of the time line with respect to your knowledge of the bill and the feedback and

interaction between the City of Winnipeg and the Attorney General's department?

Mr. Samphir: Our first discussions, at least that we had—involved representatives of the police department, Board of Commissioners and myself—was I believe the 9th of May, and that was within a very short period of time after receiving the legislation. If I am not wrong, we had received the legislation the day before although it had been promised some time earlier than that. I should say June not May, I am sorry.

Mr. Chomlak: June 9th. Can you indicate when you first heard any kind of proposals from the Justice department with respect to changes to the bill?

Mr. Samphir: If you mean changes with regard to amendments, that would be today.

Mr. Chomlak: Are you aware, Mr. Samphir, that if the bill passes tonight it is conceivable the bill could be law tomorrow?

Mr. Samphir: Yes.

Mr. Chomlak: Well, I am asking your opinion, Mr. Samphir. Do you not think that a longer period of time is necessary? If the bill is going to remain, you need a great deal more time in order to put in proper amendments in order to make it adequate.

Mr. Samphir: My answer is, with our submission we suggested that more time is necessary.

Mr. Chomlak: Thank you, Mr. Samphir. I am not going to deal with the two issues of burden, of proof and compellability because you were able to enlighten all of us in the committee with respect to the fact that this is not just a civil, or not just an administrative matter we are talking about. It is more akin to labour law. It is more akin to quite serious and onerous penalties. While the minister is quite insistent that it is not criminal law, it certainly is not simply administrative law. Would you agree, Mr. Samphir?

Mr. Samphir: My analogy, that I draw to this legislation, is definitely labour relations. It is not much different as far as I can see.

Mr. Chomlak: I just want to again reiterate the point that you made. You drew an analogy between labour law and the severity of penalties and the burden of proof and the applicable—could you maybe make that point again? Because I want to make it clear that we are not just simply dealing with straight, civil matters.

* (1950)

Mr. Samphir: Again, I do not want to repeat everything which I said. Again, I just draw the analogy that in arbitration, with regard to labour-related matters, the arbitrator normally exercises a discretion to expect that the weight of evidence is greater—or at least the onus placed on an employer is greater as far as the weight of evidence—where penalty imposed on an employee, or what is requested as far as a penalty imposed on an employee, is more severe, such as termination, lengthy suspensions without pay.

Mr. Chomlak: Can you indicate—I questioned it in the House about a week and a half ago—can you indicate to me what the mayor's letter to the minister requested and what the reply was to that request from the mayor?

Mr. Samphir: By memory only, I can do that. I believe the mayor requested that there be some delay in implementing the legislation.

Mr. Edwards: Mr. Chairperson, just to follow up on that point, I gather you are not in a position tonight to share with the members of the committee a copy of that correspondence from the mayor?

Mr. Samphir: No.

Mr. Edwards: I notice that there may be others who have copies of it. Perhaps at some point in tonight's proceedings we might have the benefit of that. It would be interesting to see specifically what he said.

You talk about the burden of proof. As you are, I am sure, aware, the Aboriginal Justice Inquiry report recommended moving to "clear and convincing" as a burden of proof. I think we often put too much stock in these words, what "balance of probabilities," what "beyond a reasonable doubt," what "clear and convincing" mean and what the difference is.

Would it be your preference to move to that terminology? Do you agree with that recommendation? Or is your suggestion simply to delete any reference to it and leave it for the normal course in administrative law, which has a fluctuating standard depending on the consequences? Is that your recommendation?

Mr. Samphir: My preference would be what you just described.

Mr. Edwards: With respect to the constitution of the panels—you have not mentioned that—I wonder

if you have any comments or the city has any concerns about moving to a provincial judge alone as the adjudicator, as opposed to a panel which, of course, was constituted of laypersons under the old Law Enforcement Review Act. Does the city have any concerns about the exclusion of laypersons in the new structure?

Mr. Samphir: No, we have made no comment on that, and we have no concerns. I might just indicate that—maybe it is appropriate right now—we had a number of other concerns which we are not raising at this time, mainly because, through discussions with the Department of Justice, they appear to be addressed and proposed changes or changes will be made.

Mr. Edwards: Mr. Samphir, just going back to my first point, would you be prepared—if you could get us a copy of that letter? I think it is very important. It does come from the mayor of this city. We have staff here who will get copies for the members if you are prepared to share it with us. Are you prepared to do that?

Mr. Samphir: Well, I will speak to Mr. Reynolds and see if we can make something available.

Mr. Edwards: Thank you very much.

Mr. Chairperson: Thank you, Mr. Samphir for your presentation. The committee next calls Mr. Al McGregor, Winnipeg Police Association. Mr. McGregor? Could you pull up to the table and take—

Mr. Al McGregor (Winnipeg Police Association): I will move up here, but I just wanted to bring something to your attention. In my past appearances before—

Mr. Chairperson: Could you—now, we will see if that mike works.

Mr. McGregor: From my past appearances before this committee, I have ascertained it seems to be normal to deal with people who are from outside the city. I understand that there are representatives here from the Brandon Police Association, who wish to address this committee. I would—

Mr. Chairperson: Well, thank you for bringing that to my—

Mr. McGregor: —respectively bow to their—

Mr. Chairperson: Thank you for bringing that to my attention, Mr. McGregor. I had no indication. I normally get an indication on my paper that there are out-of-city presenters. We normally ask the

indulgence of the presenters in allowing those that are from outside of the city to appear before the committee first.

If I could somehow have an indication of those that I had indicated were on my list before, how many there would be from outside of the city. I would be willing to indulge those first, if it meets with the approval of those that are appearing before the committee tonight.

Can I have, by show of hands, some indication of how many there are? There is one here I can see. Is there only one? Would it be the will of the committee to allow that person to come forward first? [Agreed]

Mr. Chairperson: With Mr. McGregor's appreciation then, I would ask that person come forward and identify himself.

Mr. Murray Blight (Private Citizen): Mr. Chairperson, Mr. Justice, my name is Murray Blight. I am a police officer with the Brandon City Police Association.

This was very short notice, receiving information about this meeting being called today. In fact, I responded to a call addressed to me about 1245 hours in regard to the bills, specifically 86 and 87. There has just been learned information brought to my attention that some of the particular areas in question have been addressed. What I have heard so far, through the Minister of Justice (Mr. McCrae), who is the representative from the city of Brandon, just west of the Perimeter, is that when it comes to fairness—and fairness is something that I can say, in almost 21 years of being a police officer, is that I would appreciate it.

I am sure the chief of police—and maybe he, as well, is more aware of what is transpiring with this act than I, which I will sometimes doubt in that respect at this point in time. We had a short conversation but, needless to say, is that what you brought to the attention of having a conversation with representation of the Winnipeg Police Association, fairness is where I would like to have seen, where we would have had an opportunity to share, to have some input. I know we are a small force, but I think we have respectable, we have knowledgeable people that might be able to or at least offer some information to your committee and for the involvement and what you are proposing to have in place.

As I say, to the concluding part of it, is that we are trying to get along in this world of ours, and the situation with not having any input is that I would certainly ask where consideration could be given. Thank you.

Mr. Chalrperson: Thank you, Mr. Blight. Before I let the minister proceed, I should just indicate to Mr. Blight that the short period of time of notice before appearing before committee is an historical fact of the procedure in this Legislature. I have appeared before these committees at least for a decade, and it has always been the practice, no matter which government was here, when a bill was passed before the House, that it come before the committee and can be done at very, very—normally it is done at very short notice, so to people outside that is somewhat of a surprise sometimes, but that is the normal procedure in this building.

Mr. McCrae: Mr. Blight, whom I usually refer to as Murray, you would be aware, as one who has demonstrated by your performance over many years as a police officer, that it has been a long-standing issue with police officers that governments moved in the direction of the Law Enforcement Review Agency in the first place, and the potential to move towards a stricter test for evidence coming before these hearings. You would acknowledge that perhaps even you and I, over the last four years that I have been Minister of Justice, have discussed matters related to the Law Enforcement Review Agency, would you not?

Mr. Blight: Mr. Minister, I can certainly say we have had discussion in respect to certain areas but not specifically about the bill referring to 86, 87.

Mr. McCrae: That is fair and I respect that, but do you think that further or more consultation—I mean, let us be quite honest about this situation we have here. The bill we are talking about imposes an evidentiary test that police officers in this province object to. Is that not correct?

* (2000)

Mr. Blight: That is correct in a certain manner, yes.

Mr. McCrae: Well, it is my understanding that in a certain manner, or any manner, the test of balance of probabilities is not on as far as police officers are concerned in this province.

Mr. Blight: Correct.

Mr. McCrae: So that being the fundamental issue about this bill, the other ones having been

addressed by us—and, as you will see through our amendments, have been addressed more or less to the liking of members of police organizations—the issue is that issue of the test of the balance of probabilities. The government has made a policy decision about that because it is felt that the people of Manitoba need to have the perception and the reality that there is an effective civilian oversight of police activity.

The government has made that decision, and may I ask you what it is that you could say to me over the next four years that would change my mind about that? I mean, it comes down to an honest difference of opinion, and I ask you, as I asked Mr. Samphir, is someone worried that a judge using this test of evidence is going to come to the wrong conclusion? If that is the case, then somebody should say that they are worried that a judge will come to the wrong conclusion. Then, of course, I will respond by saying, well, if that is the case we will have to throw out our whole civil justice system in this country.

Mr. Blight: Mr. Minister, the situation, though, is that it comes down to the fairness. I have already addressed that part of it where I feel we have had enough crises occur in our province over police officers, so that when it comes to fairness, the input of Winnipeg Police Association as well as Brandon City Police Association or any other municipal police associations, I feel input by us can no doubt help the situation when it comes and falls under the Law Enforcement Review Act. That is where I stand representing our association, rather than immediately passing and making the various amendments, is that input by all can make this proper.

Mr. McCrae: The Brandon City Police Association has, through its endeavours in the past number of years, shown itself to be an extremely responsible police association. The presenter and I both know the troubles that the City of Brandon and the police department there have experienced a few years ago and the very positive role that the Brandon Police Association played in the resolution of those problems. To that, and for that, and because of that, I regret that Mr. Blight feels that the consultation process as it involves the Brandon City Police department has been insufficient.

This bill was distributed to the public early this month. My department did undertake consultations with the executive part of the Brandon City Police.

If that kind of consultation was not had with the Brandon city police association, I regret that, because I have had personal consultation with the Winnipeg Police Association.

I must tell you, Murray, that it was my view that the Brandon City Police and also the Winnipeg City Police, are moving in the direction of improved police-community relations. You, of all people, Murray, know that, having been so closely involved in community relations with the Brandon City Police.

Maybe it is still my hope that police officers in this province will embrace the fact that because they are professional police officers, not unlike my friend Mr. Chomiak, who is a lawyer, a professional person, there is a higher responsibility on him, and there is a higher responsibility on you, as a police officer, to be accountable to the public as a police agency. It is a hard thing to look at as ordinary human beings, that there is that kind of a test.

But, even so, you talk about fairness—and I have said what I have said about consultation—but you talk about fairness and the hearing of these matters before a judge. I am having trouble understanding what is wrong with the test of evidence, which is the balance of probabilities test. No one has answered me yet that a judge is going to come to the wrong conclusions doing a fair balancing of the evidence before him or her, and remembering that the option to appeal matters is also there for people who feel aggrieved by those decisions.

I am having trouble because no one has answered and said, the provincial court of this province is incapable of coming to the right conclusions on a balance of probability after weighing all the evidence.

Mr. Blight: Mr. Minister, I do not want to belabour the issue. The only thing that comes to mind: I just hope it would not be a political—if any situation that did arise, that would, and, as in the situation we have had in the past, where people have sat around, listened to the particular cases, and come up with a decision that was right—I do not want it to become a political, and as I say—

Mr. McCrae: Judges are not political, as far as I know.

Mr. Blight: Well, we do not know about that. That is what we are trying to bring—and I am representing our association—bringing it to your attention that, by input by all, we can eliminate any of those possibilities.

Mr. Chairperson: Thank you very much, Mr. Blight.

Mr. Edwards: Mr. Blight, just very briefly, you did not mention this, but do you have any concerns, and do fellow officers in Brandon have any concerns, about moving from a system whereby lay people were adjudicating on these issues with the Law Enforcement Review Agency, to a judge alone? Do you feel more comfortable with that or less comfortable with that? And I guess as an adjunct to that question, do you have any thoughts on adding lay people to sit with a judge, combining the two in a new system?

Mr. Blight: Mr. Minister, and as well to my learned friend, again, not knowing, but from my own gut feeling, I would like to see people, like you say, the lay person, there with, and to be able to share their opinions, their expertise, and come up with a positive decision, not just leave it in the hands of one particular individual.

Mr. Edwards: With respect to the burden of proof—and I do not want to engage you, as the minister did, in some legalistic discussion. This is obviously not the place to be having that discussion. I think it would have been better had months ago in a consultation process which did not occur.

But, would you be comfortable, sir, with what Mr. Samphir recommended, which was simply deleting this reference to a standard of proof, leaving it to a judge, in the wisdom of the judge—and the minister has confidence, as do I, that they would be able to determine the correct standard—to the normal course of administrative law in employment matters, which has a standard, which fluctuates slightly based on the consequences?

Would that be acceptable, or more acceptable to you than a statement in law that it has to be the lowest standard, which is balance of probabilities?

Mr. Blight: I would agree with what you just last said, as the previous speaker. That would be the area that I would certainly give the confidence or yes to the decision.

Mr. Chomiak: Mr. Blight, can you indicate to me when you first became aware of the changes in Bills 86 and 87?

Mr. Blight: I was at a labour relations course in Saskatoon this past weekend, along with my fellow brothers from Winnipeg Police Association, and it was brought to my attention then. So, if I am looking

at the date, we are saying about the 12th or 13th. I do not have a calendar right in front of me, but that was when it was brought.

I was certainly—the fact of what involved the civilian population and, of course, the off duty, and I understand that has been rectified or cleared. That is when it was brought to my attention. It had been put in a direct order by way of our chief of police, and of course, amended. When looking at it with both Sergeant Brennan and myself and the chief of police, there were the gray areas that we just recently learned that had been ratified.

Mr. Chomlak: So you were made aware of these changes approximately 10 to 12 days ago?

Mr. Blight: Mr. Chairperson, it was probably within the week, a week ago today, in fact.

* (2010)

Mr. Chomlak: So a bill affecting your very livelihood and something that affects your day-to-day career, you were consulted, you were told about this bill about a week to 10 days ago?

Mr. Blight: As I have already addressed, when in Saskatoon, Saskatchewan, the amendments to The Law Enforcement Review Act were brought to my attention.

Mr. Chairperson: I want to remind members of the committee, as well as members that are going to be presenting, that we are discussing a bill, and I would like references made specifically to the bill or in reference to the bill.

Mr. Chomlak: One of the major concerns about the bill was lack of consultation and that is very evident in all aspects of this bill, Mr. Chairperson. We are addressing this issue in terms of the consultation question.

I will accept, although we disagree with a lot of the changes in the bill, the fact that provincial court judges do a good job. I will accept that fact. What I think the government and the minister is missing the point on is that it is the wrong test that is being applied. Would you agree, Mr. Blight?

Mr. Blight: As I have already said—and I get down to the heart of the matter—is having sufficient notice to share input, to share, that is to our livelihood. That is what my concern is, on behalf of our association, on behalf of myself and my fellow sisters and brothers of the municipal police agencies within the province of Manitoba, is that we

all have equal input, or be able to offer some advice, and make this, if this is the so-called changes to be, that it is done fairly, accurately, professionally and that it is addressed properly.

Mr. Chomlak: When were you made aware of the amendments that are being suggested by the minister tonight?

Mr. Blight: I wish I had brought it out of my briefcase because I had the direct order from the chief of police but, like I said, it was brought to the attention, from my learned friend, our vice-president, it was approximately about a week today that it was made known to our association membership.

Mr. Chairperson: Thank you, Mr. Blight, for your presentation.

Committee Substitution

Mr. Chairperson: Is there leave to make committee changes? [Agreed]

Hon. Gerald Ducharme (Minister of Government Services): The Standing Committee on Law Amendments be amended, Niakwa (Mr. Reimer) for Minnedosa (Mr. Gilleshammer). [Agreed]

* * *

Mr. Chairperson: I call again Mr. Al McGregor to make presentations to the committee.

An Honourable Member: Are there others? Somebody said three.

Mr. Chairperson: The only indication that I received before when I asked the question was one presenter from outside of the province. I have not yet heard of anybody else.

I should remind the people here that if there are those who still want to present, we had circulated lists amongst the general public out there, and there are lists at the back of the table with the Clerk that you can sign. So if you have not done so, if there are papers there that have names on them, please make sure that the Clerks over here at the front of the room have them, otherwise we cannot know who the presenters are.

Mr. McGregor, will you please present.

Mr. McGregor: Thank you, Mr. Chairperson. We have the required number of copies of submissions that we would wish to distribute to the members of the committee at this time. Unfortunately, some may not be relevant at this stage in time, depending

on what wording we do see. Our problem is that I am in the midst of making a submission and I may well have to change my position when I see the wording—

Point of Order

Mr. McCrae: Mr. Chairperson, for the benefit of—it may be that Mr. McGregor, who has prepared a very comprehensive presentation, has made reference to amendments that may flow to some extent from discussions in which he was involved earlier today. It may be that Mr. McGregor would not mind standing down for a few minutes, because I expect those amendments momentarily, and if he would like to give someone else an opportunity and then perhaps—if we did it that way it might give Mr. McGregor a better base from which to make his comments. It is a suggestion only; he is free to do as he pleases.

Mr. Chairperson: What is your wish, Mr. McGregor?

Mr. McGregor: I do not know if there are other individuals who wish to address matters at this stage in time.

Mr. Chairperson: Is it your wish to stand aside for a few minutes until the amendments are indicated to committee?

Mr. McGregor: I would prefer to see the amendments to know what wording I am addressing specifically. Discussions have taken place, but I would like to see the wording.

Mr. Chairperson: Thank you Mr. McGregor. I will then call Jack Haasbeek to come forward, please. Mr. Haasbeek.

Mr. McGregor: I would expect his position would be the same. He is the president of the Winnipeg Police Association.

Mr. Chairperson: I call again Mr. Haasbeek to the committee. If he is not around—

Point of Order

Mr. McCrae: I am wondering, Mr. Chairperson, on another point of order, if Mr. Haasbeek is the president of the organization represented by Mr. McGregor tonight, I wonder if in view of the fact that Mr. McGregor has some concerns which he will not be able to address appropriately until he looks at the wording of amendments that are momentarily

available, I wonder if it would be agreeable to recess the committee for a few minutes and then we could take it from there.

Mr. Chairperson: What is the will of the committee? Ten minutes? We will return in 10 minutes.

The committee took recess at 8:17 p.m.

After Recess

The committee resumed at 9:17 p.m.

Mr. Chairperson: Would the committee please come to order. I am going to ask Mr. McGregor to make his presentation.

Mr. McGregor: Thank you, Mr. Chairperson. At the outset, at the risk of being somewhat maudlin, a member indicated today to me that life, liberty and property is always at risk when the Legislature sits.

Bill 86 and Bill 87 prove that beyond a reasonable doubt or on any standard of proof one wishes to use, because the importance of this legislation becomes abundantly clear. You have seen the number of people who have attended here and show a very real concern. It is indeed a real concern, because what this series of amendments does is affect each and every one of these police officers for the rest of their lives.

* (2120)

Our very real concern, and it is a continuing concern—I thank the minister, for today at least, engaging and having people engage in discussions with us. I would have wished that those discussions had started much earlier, some months ago, and that we could have just appeared here tonight and dealt, I think, very quickly with specific issues. Unfortunately, that is not to be the case.

We, for example, are left not knowing what the position of our employer is going to be. Our employer, who dictates our position in life on a day-to-day basis, is not in the position, unfortunately, to present their position to you. It is very important that we know that particular position because, as I say, everything that we do is dictated by that employer.

Some questions have been raised, and I will deal with all of those questions and more, I am sure, as things develop. But I am not at all sure that this committee is fully aware of the contents of The Law Enforcement Review Act and what it means to each

and every officer. For example, I hear things like, let us just go the civil court route of proof and a balance of probabilities.

Our very firm position is now, and will remain, proof beyond a reasonable doubt. We start from the proposition that, as I always understood legislation, it was passed to meet a particular evil or wrong. I say to myself, what wrong are these amendments addressing? No wrong has been brought to our attention. No evil has been brought to our attention.

(Mr. Gerry McAlpine, Acting Chairperson, in the Chair)

Yet we appear here discussing the change of a standard of proof that has existed for some number of years since this legislation first came into effect. Why? I do not know why. I can only assume that the unspoken premise is that we need to get some convictions of police officers under this act.

I use the word "convictions" advisedly so, because if you review this legislation in full and understand this legislation in full, you will see that the penalties under this legislation are strangely, in our society, more difficult and harsher than the penalties handed out every day to the wrongdoers out there that these people pick up.

The penalties are greater. That is why you look at the greater standard of proof. Remember that standard of proof has existed for the past six years or so. I have heard nothing wrong with that standard of proof. Why change it? Look at the penalty section of the act, Section 30, dismissal of an individual. You are dealing with police officers here from the ranks. I am concerned about, at least, from constables up to staff sergeants. You start off with Section 30(a), dismissal, ballpark figure up to a \$50,000 penalty in the first year—a \$50,000 penalty.

This is why I believe Mr. Samphir, on behalf of the city, equated this process in part to arbitral jurisprudence because arbitrators have said quite clearly, when the livelihood of an individual is at stake and that individual stands to be punished—and this is certainly punishment; taking away a \$50,000 a year job is punishment—arbitrators have said that the degree of proof is sufficiently greater than the normal standard of proof for civil matters, and it is either at, or approaches closely, proof beyond a reasonable doubt.

(Mr. Chairperson in the Chair)

Look at the rest of those penalties—a reduction in rank. That has taken place among police officers.

That can amount to a penalty of up to \$15,000, somewhat important I think for these individuals and their families. The suspension without pay, up to a maximum of 30 days, could be between \$5,000 and \$6,500. The forfeiture of pay up to a maximum of 10 days pay can be up to around \$2,500. The same with the forfeiture of leave or days off.

What you are looking at is not the normal, simple penalties, because every day if you wander across the street and listen to the penalties handed down in courts, the penalties nowhere near approach these possible penalties, nowhere near approach these penalties. But our distinction is, we are not really dealing with a criminal matter, we are just dealing with internal discipline.

If we are dealing with internal discipline, I pose the question to you, why not then let the disciplinarian be the chief of police, whoever he might be? Give that individual the power and authority to deal with the setting of penalties. That is not new. In fact, most of North America has that in effect.

The minister spoke eloquently about things that have taken place in the United States with Rodney King and so on. Out of all of the cities in the United States there are only 32 cities that have any aspect of civilian review whatsoever. None of those cities, to my knowledge, has in this type of legislation a civilian review. None of those cities gives that entity the power to assess a penalty. It gives them the power to recommend a penalty.

If we have a problem here that might be part and parcel of the problem was when LERA first came into effect, taking that ultimate decision-making power out of the hands of the chief of police. I found that the disciplinary process in my time worked a hell of a lot better with the Winnipeg Police Commission in existence, and I noted here tonight that there are certain individuals who have served on that commission. I do not know. The problems were dealt with and were dealt with properly, and there were not the continuing problems that there seem to be today.

* (2130)

On this standard of proof, consider this act, because this act is totally unique because the penalty does not end with Section 30. Section 30 is the beginning of the penalty. No one can tell me that there is not a quasi-criminal aspect to this legislation, because what happens? You turn and look to Section 35: Disclosure of evidence that a

member may have committed a criminal offence. The matter then is turned over to the Attorney General with a view to prosecution of the offence.

Now that can take place after having imposed a \$50,000 penalty, \$50,000 in one year, but it can become a massive penalty as years go by. Now, when one does that through this hearing process, this is a very unique type of hearing process, and if it is set up so that it leads to the possibility of a criminal offence being laid, does that not lead one to the criminal standard of proof? Bluntly, if one looks at all of the law enforcement review legislation in the world and specifically in North America, you will find that none is as advanced as the legislation that presently exists.

I do not know, I once had a mechanic who clearly said to me, do not fix it if it ain't broken. You have right now probably the premier legislation in North America under this act. Tinkering with it will only harm it, and our very real problem on something like standard of proof is no one has seen fit to show us that there has been anything whatsoever wrong with that standard of proof to this point in time. That standard of proof has been used in various cases. I do not know. I do not look at the concept from the point of view of convictions or acquittals or whatever, but it is almost as if someone looks at this legislation from that aspect.

The legislation—and in the submission that I presented to you on Bill 87, you will see quite clearly on the first page of that presentation the number of complaints that have been accepted by the commissioner for investigation. That number of complaints in 1991 was at its lowest level ever in history. It has gone down. Why are we tinkering with something that, obviously from that I say, is working and working to the public benefit? Sixty-nine complaints. Keep in mind that Winnipeg had 265,783 calls for service, and flowing from that 69 complaints. Certainly we stick with the legislation in regard to standard of proof because it is of fundamental importance.

I have heard no rationale other than to say that normally in civil proceedings one uses a civil standard of proof. This, looking at Section 30 and the penalties that can be imposed, and looking at Section 35 and what can flow after the fact, shows that there is a criminal or quasi-criminal aspect to this particular legislation as it stands. That is the reason for that standard of proof. We want that standard of proof to remain. There is nothing wrong

with that standard of proof. Nobody has told us what is wrong with it. No one has presented any evil that is to be overcome.

I can tell you that I have seen people in front of the Law Enforcement Review Board attempting, and the Manitoba Police Commission attempting to utilize the acts to get an early parole. That was done by a one-armed robber who was involved in an armed bank holdup. That individual seems to have more rights than the individuals who effectively brought him to justice. Those individuals who brought him to justice could totally lose their jobs, could totally lose their livelihood, and the investigation that leads up to that—and keep in mind it is the investigation of the commissioner and then the investigation of the judge tacked onto that situation.

It is a continuing investigative process. Now that is why, because of that continuing nature, we cannot accept a standard of proof less than the criminal standard of proof, the proof beyond a reasonable doubt.

Life, liberty and property—it is Mr. Enns, by the way, the honourable member for Lakeside, I believe it is, who reminded me of that. I do not know. What we are effectively doing is, I think, a disservice to each and every one of these officers here. We are doing a disservice to society as a whole. We are doing a disservice to the city of Winnipeg and everyone else affected by this legislation.

* (2140)

I can understand, in this very busy year, that perhaps the normal consultations did not take place. I can understand that, but we cannot accept it when our very life existence is in the balance in this legislation.

A series of amendments has been drafted. Those amendments are a hell of a lot better than the original legislation, but they do not meet all of our concerns. There are still problems with various of these amendments and problems that should be addressed.

I do not know. When one looks at this situation, Bill 86, I wonder what happens with the appeal that we filed with the Manitoba police commission about the dismissal of a police officer? I do not think the Manitoba police commission is too interested in hearing that, even if they are given the authority to continue on to hear that. I doubt that they have much interest after being told that they are no longer

necessary and not needed. I doubt that they would be interested at all.

We attempted last year to ascertain where this process was going because back in 1988 a review was conducted. We put forward a submission, various other people put forward submissions back in 1988. Mr. McKenna, of my office, last year made a request for release of that material at that time.

What was released to us was the first part of the paper, some 88 pages as I recall it, dealing with discussions that were held with various agencies, such as the Winnipeg Police Association, the Law Enforcement Review Board, the Law Enforcement Review Agency, the commissioner and others. There were 11 pages of recommendations.

You will note from the material—I hope the page is disseminating to you at this point in time—that a request was made for all of the material and it was thought that we would receive all of that material. We did not receive those magic 11 pages where the recommendations were to come forth.

I do not know that I am going to engage in a legal debate at this point in time, but ultimately somebody made a decision that in late 1991, under The Freedom of Information Act, we could not have access to those recommendations. What should have taken place in late 1991, was a dissemination of those recommendations to all affected parties, the City of Winnipeg, the City of Brandon, all of the police associations affected, and all of the towns and municipalities affected, so that they could have addressed their minds to the particular issue. Unfortunately that was not done.

I do not know, I realize the position of the Legislature here, but I find it astounding that when a request is made by the representatives of 620,000 people of this province, a request to put this matter over, that that request is not immediately paid deference to, because I do not think it is a type of request that is a flimsy type of request. I think it is an honest request on behalf of the representatives of 620,000 people of this province so that they know how to deal with their employees.

Now, I noted the minister quickly grabbed a pen at that point in time, and I assume that I am going to be told that you are a representative of 950,000 or a million people, I do not know, it still says to me that 60 percent of the people, the representatives of 60 percent of the people want to look, and want more time to deal with this legislation so that they can

properly deal with their employees in regard to the legislation.

* (2150)

It is astounding to me that such a request would not be met, disturbing to me as well that—I do not know how it came about—the individuals from Brandon only became aware of the amended legislation a week ago today. How could they address their concerns? And they have concerns, and very real concerns.

I know, Mr. Minister, the difficulties that you went through with those individuals a couple of years ago, because I also happened to be involved in representing their interests because of a conflict on the part of their normal counsel. What you will find is the police associations in this province, given an opportunity, are very receptive to dealing with particular problems, but no one has told us the problem.

What I have given to you in our submissions—they are lengthy, I doubt that they are very eloquent—what I have given to you is suspicions as to what you may have been addressing or maybe wishing to address. I do not know. I do not know whether I will ever know whether I was right in the guesses that I made.

I wish that we had received those 18 pages of conclusions and recommendations last year on December 9, because I want to tell you, members of the committee, I doubt that we would be here this evening if those had been turned over at that time and some dialogue had commenced. I think that recent problems have shown in the United States, as you eloquently put it, Mr. Minister, but have also shown in Canada and particularly in Winnipeg, and you could have added Brandon to that, what has shown to be a given truth is simply this: that reasonable individuals engaged in a process of consultation can normally reach a conclusion. Unfortunately, although we tried this afternoon, and although I think I have some experience in that nebulous field called negotiations as do the members representing your department. I hardly think that three hours was enough when we are dealing with the lives of these people. Three hours is not enough to deal with the lives of these individuals.

I would have thought that flowing from the examples that were alluded to, the problems in Brandon, the problems in Winnipeg and so on, that

the best way to approach these problems is to have and open up the channels of dialogue and continuing communication to deal with each and every problem that arises because only by acting together can we all properly serve the citizens of this province.

In the course of my submission, I quoted a previous Attorney General, Roland Penner. I do not know that we agreed on a lot of things, but Mr. Penner and I certainly agreed upon this statement. It has to be a policy that everyone can live with. There is no point in bringing in a new law if you cannot get co-operation from everyone including the cop on the beat.

* (2200)

The only reason these individuals showed up this evening was to bring home to you dramatically, I think, the message that right now, unfortunately, that co-operation is not there. The legislation, as it exists, seems to pose a threat to individuals.

Everything that is unknown poses a threat to human beings. I understand that, but that is once again part and parcel of the dialogue process so that one can fully explain to individuals why certain changes are proposed to be put into effect.

The Winnipeg police force can accept change if it knows what is involved in that change and if there is some rationale behind the change that is put forward. Unfortunately, we do not see that in this legislation. The minister, I think, incorrectly referred to this legislation as being civilian oversight legislation. I do not think any other entities in the world would accept that this is now in any way civilian oversight because a judicial process is not civilian oversight.

The question is posed. My clients can accept that particular change, but I am not so sure that the citizens of Manitoba accept that particular change. Has anyone asked the citizens of Manitoba whether they want to move from a civilian oversight agency to one that is power driven by the courts? I think not. The reasons for our concern in simple terms—does one have to await the passage of legislation to determine the rationale behind the legislation? That is the unique position we are being placed in here. We come ready to address issues. Unfortunately, our employer is not prepared to address issues at this point in time.

This legislation, though it applies to various police forces across the province, if one looks at any of the

annual reports handed down by the Law Enforcement Review Agency, you will see that because of, I take it, the population, some 90 percent of the complaints are generated within the Winnipeg area. That is why I say that it is essential, not just a desirable thing, to learn what the position of the City of Winnipeg is on this particular matter.

As the day has developed, someone speculated out in the hallway that we are engaged in a pendulum sort of approach, and there was some suggestion that perhaps my clients had too many rights to begin with. I think that is a false assumption, but they had certain rights ingrained in the legislation and those rights are now proposed to be taken away from them without them knowing the reason. It is wrong, totally wrong. What will happen is that you will have a tilt in exactly the opposite way, and I beg anyone in this room to tell me whether they can safely say that society as a whole will accept that drastic change in the legislation. Because, if society will not accept it, you should not be thinking of passing that type of legislation. The only way that you will learn whether society accepts it, is taking part in a full discussion process with all affected parties—all of the parties. Otherwise, we are playing with the possibility of doing incalculable damage to the system.

I always thought that the purpose and intent of this legislation was the informal resolution of disputes. Mr. Minister, what your searchers and advisers—not the ones with you today, but the ones who did the study back in 1988—did not tell you was the massive number of cases that were settled amicably between members of the Winnipeg Police Association and members of the public—a massive number of cases.

Once again, the consultation process worked there, because I can tell you that certain of those cases I would rather have been on the other side if I had my choice. If I played life on a win-loss situation, I would rather have been on the other side, I suppose. But in case after case after case, we managed to reach a resolution which was acceptable.

I am not sure now that Bill 86 and Bill 87 will not tilt that balance and lead people away from a reasonable and rational resolution of disputes. Think for a moment, the legislation might improperly create more work in the legal field. I know, Mr. Minister, that is the last thing you want to take place and it is the last thing I want to take place, because

before I am a lawyer I am a human being. I feel very strongly about that interplay of thoughts and reaching a resolution.

It does not make headlines. The resolutions do not make headlines, but those resolutions make for long and everlasting understanding of other people's positions in life. I did not have much interest. I suppose I learned something, I think, about a 10-string guitar during the course of one of those resolutions, even though I do not intend to play the guitar.

When you handed down these amendments or put forward the amendments, as I recall it, you indicated two things: A more efficient method of handling these matters. I wonder where in the amendments there is any more efficiency in dealing with these disputes. I see it not. I am sure you will help me find it.

* (2210)

The other thing was something that my mother, who you know would say in her old English background, is something that is penny-wise and pound-foolish, because I do not see a great saving of costs in this procedure. Those were the two items that you were quoted on. Perhaps you gave other items. Those are the two I remember. A reduction of costs, an increased efficiency. This legislation does neither, so if the rationale for the amendments does not exist, the amendments should not exist.

It has always been a touchy matter, I suppose, when one deals with the concept of the RCMP. It is very difficult for officers to work side by side with other officers, work on the same projects in the city of Winnipeg, effect the self-same arrests and be subject to two different types of possible penalty. I know that the RCMP is a federal body. I keep hearing that no, the RCMP will not do this, will not do that, still the key that it can always be done in the contract that you enter into with the RCMP, so that The Law Enforcement Review Act covers all police officers in Manitoba. Do not make police officers into different categories, because, unfortunately, that is what we have in Manitoba. I am not casting aspersions at the RCMP or anything of that nature. All I am saying is that you have two entities that are dealt with in significantly different fashions.

Have The Provincial Police Act cover all officers. Mr. Minister, if there was a cry for change out there, the material that was prepared in 1988 showed

where that cry for change really came from. That cry for change came from the Manitoba Police Commission, as I recall it, that suggested, and rightly so, that The Provincial Police Act was at least efficient or at least extensive of police acts across this country, and I suspect it is. I look at what has taken place in Ontario, and I say to myself, if you are going to choose one section from Ontario—and that is exactly what is done in Bill 86.

The major amendment that you propose in Bill 86 is taken word for word from the Ontario statute. Nothing wrong with that because it makes sense, and, yes, if you are going to be the focal point of complaints, you must have some power to address those complaints and those problems. I recognize that and my clients recognize that, but why, instead of taking what I have labeled as a band-aid approach to The Law Enforcement Review Act, do we not tonight start on a process of looking at all of the statutes involving police officers in Manitoba and update them to some modern milieu? Why should we remain behind? That is where you would be doing the greatest good for the citizens of this province, and they would recognize that, because as I have said in Bill 86, why not put in the same declaration of principles that exists in Ontario? The Winnipeg Police Association can accept that declaration of principles. I suspect our employer can accept those principles. I suspect the citizens of this province would welcome those principles.

What are those principles? On page 3 of the written submission that we put forward on Bill 86, and they both tie together and they are inextricably tied together. Look at them. "1. The need to ensure the safety and security of all persons and properties in Manitoba. 2. The important of safeguarding the fundamental rights guaranteed by the Canadian Charter of Rights and Freedoms and the Human Rights Code."

Yes, we will abide by those. Extend those same rights to us. Do not take away existing rights from us that are proposed by the legislation. The third thing, and once again we are in agreement with this: "The need for co-operation between the providers of police services and the communities they serve." Yes, let us do it. Why have we not started that process? "The importance of respect for victims of crime and understanding of their needs." Again.

Then the fifth one, one that is very apropos, the Winnipeg situation, "The need for sensitivity to the pluralistic, multiracial and multicultural character of

Manitoba society." The sixth one, "The need to ensure that police forces are representative of the communities they serve." All of those things we should be working towards.

You took Section 21.1(1) and took it directly out of the Ontario act, word for word. As I say, there is nothing wrong with doing that. Logic should enter into the equation at all times, and those seem logical. But in essence the whole of the Ontario act is more logical and more reasonable and more rational than what we have dealing with our working lives.

* (2220)

Strangely, the Ontario police act provides for things like employment equity plans and everyone is surprised that, everyone thinks that this was a Bob Rae type statute. It was not, it was put into effect by his predecessors.

An issue which has been of continuing concern to members of the City of Winnipeg Police is the concept of suspensions. Those suspensions continue to take place under the legislation that exists. What we would ask you to do is look at the Ontario legislation again. Ontario only suspends a person without pay after they have been convicted of an offence. We are somewhat behind in that context, because we suspend people before there has been a judicial finding.

A simple case took place a couple of months ago, a complaint of a 15-year-old. It was resolved by that 15-year-old being taken by the respondent officers on a ride-along so that he could see what was involved in their work. Unfortunately, I doubt that enough of the members of this committee have taken those ride-alongs. I do not know that you will reach the same conclusion that 15-year-old reached, but that 15-year old now wants to become a police officer. That 15-year-old hated police officers before it was informally resolved that way. Success after success after success with this bill.

I see no lasting failures. I hear transitory complaints, but that is all, and from that we would propose to change by amendment this very important legislation. The standard of proof, even the Ontario legislation is better where you have proof by clear and convincing evidence.

You know, the very report that was presented to you, Mr. Minister, at the time on standard of proof, the 1988 recommendations came forward, and I quote: The standard of proof would probably be

less important if you had a proper investigative arm, legal representation on the side of the complainant and a fairer process.

It does not say change the standard of proof. That was a study conducted by research people on your behalf. I would assume that type of finding is in some way meaningful. It should be. Put in place those other elements, but do not change the standard of proof. As I say, even Ontario has maintained proof by clear and convincing evidence, clearly a higher standard of proof than proof on a balance of probabilities.

The previous commissioner made this statement in his report to your research people. In fact, it is the complaint process itself that is most defective in modifying police conduct. A disciplinary process which depends on the meting out of penalties is of questionable value. Police officers are not criminals whose wrongful acts have to be detected and punished for their own improvement in the deterrence of their colleagues.

Police officers are grown men and women trying to do a job. They are prone to losing their temper or exceeding their authority in attempting to do their job more effectively. Their attitude may be corrupted by the formidable power which they wield. They may be unduly influenced by the negative aspects of non sequitur which is quite inconsistent with current community values. Each substantial complaint may serve as a case study to contrast current community perceptions and values with traditional police attitudes.

* (2230)

I am told by a staff sergeant that in the current training program very heavy emphasis is placed on the existence and impact of LERA and the need to abandon traditional police reliance on physical force and street justice. He claims to be convinced that there has been a noticeable effect over the last three years. That, I think, is shown in the annual report of 1991 where you have a significant drop of complaints.

It is strange that in a period of time when we have a drop in complaints that one is changing legislation. One could in those circumstances quite clearly justify putting matters off until at least the next session to see what is taking place in regard to the complaint procedures. Is there going to be a continuing downturn or is it going to change? But while it is going down, why change the legislation?

Mr. Chairperson: Are you finished, Mr. McGregor?

Mr. McGregor: Just getting well started, Mr. Chairperson, or attempting to.

Mr. McCrae: When Gladys told you to talk slowly, did she not also say at the same time, be brief? You told me outside that your mom, whom I have known quite well and worked with, told you that as a lawyer you would be wise to speak slowly, and you have done that. But she did not add, and be brief? No?

Mr. McGregor: I know what her view would be on this legislation, Mr. Minister. I mean, we may as well amplify it and say that at one point in time she was your employer, I guess.

Mr. McCrae: In those days we were colleagues.

Mr. McGregor: Certainly, my mother made a lot of good sense and still does. Let me suggest that she would come here tonight and would be, I suspect, even more outspoken than I am on this particular point, that you do not take something that exists and works and change it. You do not do that; you just do not.

Noted, that on that concept of standard of proof, I am not so sure that they were directed to look at it, but the Aboriginal Justice Inquiry put forward the same standard of proof as Ontario, the clear and convincing evidence one.

Looking at certain of the amendments that have been proposed, as I said before, certain of them are acceptable, certain of them would be better if one had followed our suggestions.

I still have great difficulty with the section that deals with restitution, where the judge can order a member to make restitution. The problem with that and the problem with the amendment is simply this: Not every place has the same legislation applicable to them. We have The City of Winnipeg Act, and I suspect that there is a section in The City of Winnipeg Act that we can rely upon.

(Mr. Gerry McAlpine, Acting Chairperson, in the Chair)

Other people do not have The City of Winnipeg Act applying to them, so I am not so sure that we have not just created a situation whereby different people are treated in different fashions again. Because the employer should be the entity that is responsible for restitution, not the individuals. At general common law, the employer would be responsible.

What I find particularly repugnant in a statute of this nature is even the amended version, on the question of compellability, 24(10): The respondent is not compellable as a witness at a hearing before a provincial judge, but the provincial judge may draw where appropriate an adverse inference from the failure of a respondent to give evidence during a hearing.

Why is there a need for that in the legislation? It is totally repugnant to anyone, either in the field of law or outside the field of law. If we are going to put faith in the provincial judges, let them make their decision, but take out those words about drawing an adverse inference from the failure of a respondent to give evidence during a hearing.

I do not know. I would strike that right out. If you struck that out and maintained the standard of proof that has existed without problems for the last six years, I suspect that you would get some support for your position from the Winnipeg Police Association. I know that you would get some support, because those are two of the very key areas. That is not to downplay the other areas.

On that question of restitution, why in Bill 86 do you allow an assessment of costs to be made but not an assessment in costs in Bill 87? If you complained under The Provincial Police Act to a police commission, an assessment of costs can be made. Here you have no assessment of costs. Let me tell you that there have been numerous occasions where assessments of costs should have been made to complainants against complainants because complainants appeared, or pardon me, refused to appear. They made a complaint which set up an extensive search, an extensive investigation at great costs to the City of Winnipeg because the matter involved the party that was broken up one night.

* (2240)

I think there were some 10 City of Winnipeg police officers who had to be witnesses at the hearing. They all showed up. I do not apologize to the City of Winnipeg, most of them were on their days off, and the City of Winnipeg was subjected to large payments of overtime. The complainant chose not to show up. Then the complainant wrote a letter wanting to resurrect matters and wanting to appeal matters, and it went on and on and on like that.

Finally, Mr. McKenna went forward, as I recall it, and got an order in small debts court against the

individual. It was ultimately settled out of court, but why do we have to start on that sort of silly process? The judge hearing the matter should have the right to make an assessment of costs. We do not live in fear of that assessment. Certain complainants will, the individual who was seeking to have his parole term lessened, the individual who was putting forward the complaint but never appeared. Those types of individuals.

There should be an assessment of costs. The individual never even advised the commissioner that he was not showing up for a scheduled three-day hearing. He had his lawyer appear, and when the hearing was starting, the lawyer said, my client is not here. He is in Edmonton, he cannot come, and he wanted other dates. Of course, all of the police officers were present.

Give the court the power to award costs so that they can cover such circumstances and dissuade individuals in such circumstances.

Mr. Acting Chairperson, I wish the honourable minister would return, because I could give this speech in these terms: Withdraw this legislation. Have a further look at it with all of the parties involved, and we will end up at this table probably not in a confrontational mode. We will end up with something that is acceptable to you, to you, to you, to us and all citizens out there.

Right now, you have something that is not acceptable to my clients. The City of Winnipeg is not in a position to say whether it is acceptable to them as yet. They ought to be given that opportunity. Withdraw it, and particularly look at things like the standard of proof and try and demonstrate—because I suggest it cannot be demonstrated—that problems have ever been created by that standard of proof.

Withdraw that question of restitution by an individual officer, if you feel that you need restitution put it where it belongs, with the employer in the first instance. Deal with the suggestion, the question of compellability in the fashion in which I have outlined. Having said that, I can deal with any of your questions.

Thank you, Mr. Chairperson.

Mr. Chomlak: Thank you for your presentation, Mr. McGregor. I am persuaded. We went into this, I think, with relatively similar aims. That is, to go back to the table with this bill and to deal with all interested parties and to come back with a bill that is as a result

of consultations with all parties and that could make the present situation work better. I think you made a point that has not been made before, and that is, what were the evils and what were the difficulties that this bill is attempting to fix? That has never been clearly enunciated to us, either in the House, nor have we heard it here today from the minister as to what he is trying to do with respect to this particular amendment. It seemed to come out of nowhere.

A lot of amendments—and I will give the minister credit—brought in the Legislature this year were a result of recommendations from the Law Reform Commission. We have been very co-operative and passed, I would say, the vast majority, because there is a rationale and there is a basis. We knew where they were coming from and there was a substantive discussion prior to the introduction of the legislation. This came out of nowhere and we, like you, are looking for the rationale and the reasons behind these changes.

To get to my question. I am very, actually, concerned about this information you have tabled with us, with respect. If I understand it correctly, you requested from the department their working papers and their recommendations, and the recommendations were refused. Can you enunciate what the reasons were for the refusal? I am not clear.

* (2250)

Mr. McGregor: Just the material that you have in front of you. Perhaps Mr. McKenna could address that issue since he was dealing directly with it, with the authority of the Chairperson.

Mr. Paul McKenna (Private Citizen): We were told that because these were recommendations being made directly to the minister and not the findings of the research group, that because they were recommendations only that we would not have access to them. In other words, we were not allowed to see what the input was being made directly to the minister on this point.

Mr. Chomlak: So we have no way of knowing whether or not those recommendations are what ultimately has occurred in terms of this legislation. We can only speculate.

Mr. McGregor: That is right. We have never seen those 11 pages of recommendations, and I do not know whether you have seen them or not.

Mr. Chomlak: Mr. McGregor, I want to go through some of the points made in your written presentation, and I am starting on page 6.

Mr. McGregor: Yes.

Mr. Chomlak: The first question is referenced to the—and you made reference to this in your oral comments—and that is the question of—and I think you made the point quite forcefully and eloquently that it is very difficult to have two regimes of police working side by side and yet have different rules applying to each of those regimes, that is, the RCMP and the city police. You made a recommendation that perhaps we should go back to the drawing board and look at a general act or acts that would deal with all police forces in the province of Manitoba. Is that correct?

Mr. McGregor: That is correct, Mr. Chomiak.

Mr. Chomlak: Just with regard to your knowledge of labour law and law in general, do you think that is basically under our jurisdiction as a province to be able to do that?

Mr. McGregor: You can enter contracts on the basis that the entities would accede to your jurisdiction in that area. The RCMP can take the position that they are only subject to federal jurisdiction, but if you enter into a contract with them you can take a strong position that they are going to be subject to your rules if they are going to have a contract with you.

Mr. Chomlak: Mr. Chairperson, actually I agree with that interpretation, and it strikes me that it might be something we should pursue, particularly because administration of the law is basically within the constitutional jurisdiction of the province. Is that not correct?

Mr. McGregor: That is absolutely correct, yes.

Mr. Chomlak: On page 8, Mr. McGregor, you make a point that I think is fundamental. You emphasize to the minister in your comments that he should not forget this point, and I wonder if you might just expand on it a little bit more. On page 8 of your presentation you say: no longer will resolution be foremost. I think that is something that has been lost in the entire process, and we have not heard that from the minister. I am wondering if you might elaborate on that a little bit more.

Mr. McGregor: I think the written portion and the oral submission, I have tried to make the point that with these changes I would predict that you are

going to have more matters go directly to the court process for dealings there than an amicable resolution of disputes, because people will see changes and think, well okay, let us go there and see what happens.

Mr. Chomlak: Further, Mr. McGregor, it ties in, I think, with another point you made, when you made reference to the minister indicating when the legislation was brought down, its two purposes. I recall as well the two purposes were reduction of costs and increased efficiency, and it seems to me that went right in the face, that very point that you just made will run right in the face of reducing costs and increased efficiency, because we will have more adjudication and we will have increased costs. Would you agree with that?

Mr. McGregor: I think I made that point quite some time ago in my submission, and that was my analogy, quoting my mother, penny-wise and pound-foolish in this prospect, because you are going to end up spending more money than you ever spent before.

Mr. Chomlak: Another concern that was brought to my attention today—and I will be honest I did not pick it up in the legislation in my review in my reading of it—was the expansive nature of it and the fact that the legislation LERA, as we know it, deals, you can correct me if I am wrong, basically with police officers. You make this point in your written submission, the amendment will include civilian staff members, secretaries, clerks, mechanics, caretakers, dispatch operators, storekeepers, technicians, police communication operators, physical fitness co-ordinators, monitor transcribers, system and procedure analysts and others, and I got calls today in our office from people who occupy those positions who are gravely concerned. Am I correct in assuming—and the way I am reading it that is right, it would be expanded to include all of those people. Is that not the case?

Mr. McGregor: The way it stands, yes. The proposed amendment I would hope would take that away.

Mr. Chomlak: Thank you, Mr. McGregor.

Mr. McGregor: As I note, it is just a proposed amendment. We have no way of knowing whether it is going to come forward.

Mr. Chomlak: One of the areas that we strongly objected to with respect to this particular

amendment, we felt that adjudication should not be undertaken by provincial court judges. We felt that it was a step backward from a move towards more civilian participation, although the minister kept reminding me in the House that judges were civilians. Nonetheless, we thought it was a step backward because more jurisdictions are going toward civilian type of organizations. Also, we were concerned about the fact of the formality of hearings and the fact that an appearance in front of a judge would make the hearings more formal and with all of the formal legal trappings. That was a concern of ours, as well as the question of bias which you raised in your presentation. I wonder if you might comment on those points and particularly on the bias point.

Mr. McGregor: Well, just let me give you an example. Although I suppose for a period of time it was much to my chagrin one of the chair people of the Law Enforcement Review Board used to, and they still do, bend over backward to assist individuals in putting forward their cases. I have literally had cases where there was no identification whatsoever and the chairperson would say, Mr. McGregor, you are going to admit to the board, are you not, that the officer sitting with you is Officer X and that officer is properly identified, and I have agreed to that at that point in time. So certainly the boards have done everything and bent over backward to help people in presenting their presentations, presenting their cases.

Mr. Chomlak: Your point was well made, Mr. McGregor, with respect to the penalty section and some of the onerous burdens, and you made the point or implied the point of almost double jeopardy in terms of the penalty section could lead to fairly onerous burden and ultimately could lead to criminal prosecution. Of course, there is also a third line. There is the internal discipline as well. If I could put it in these terms, is there not triple jeopardy applying?

* (2300)

Mr. McGregor: Yes, that frequently would take place, because even if individuals are found not guilty under this legislation, they can be prosecuted under the regulations of the City of Winnipeg police force.

Mr. Edwards: Mr. Chairperson, specifically on the proposed amendment of the minister, with respect to compellability, the comments of the presenter, Mr.

McGregor, on the addition therein, and the new proposed 24(10)—I am referring to the words "but the provincial judge may draw, where appropriate, an adverse inference from the failure of a respondent to give evidence during a hearing."

When I first read that, it is repugnant because it is just useless. It is not very kind to judges, in the sense that it tells them what, obviously, they already know: that where appropriate—and there are rules and certain situations where it becomes appropriate to draw an adverse inference, and certain where it is not appropriate to draw an adverse inference.

So I saw that as just unnecessary. Therefore, we should, as legislators, seek not to put into law things that are unnecessary and thereby, perhaps, confusing. Does the presenter suggest that it is more than that, that it is a negative influence, that there is a danger in it beyond the fact that it is just superfluous and unnecessary?

Mr. McGregor: If I were an individual affected by this act, I would be totally concerned by the fact that—I would conclude that, if I do not give evidence here, an adverse inference is going to be drawn against me. I would assume that individuals reading that section would reach that conclusion.

Mr. Edwards: I take that point, with respect to someone reading and making a decision as to whether or not one was prepared to testify. My question, a supplementary question then, with this presenter's experience, that statement, that a provincial judge "may draw, where appropriate, an adverse inference from the failure of a respondent to give evidence during a hearing," is nothing more than a statement of fact which exists already, without that in there.

Mr. McGregor: Mr. Edwards, I think it is probably an insult to the judge and a creation of fear in the mind of a respondent. It has those two problems, especially when, as I said before, you go on to Section 35 of this act where you have the possibility of criminal charges, that adverse inference could lead to criminal charges, I suppose.

Mr. Edwards: I do not catch the last point. The adverse inference which a judge might draw, you are saying it might lead to criminal charges in the sense that the adverse inference might lead to a finding of guilt on the part of the officer? Is that what is being suggested?

Mr. McGregor: What you have to do is take a look at Section 29 of the act and look at the charges. So many of the charges, although they are entitled "Discipline Code" are really, in reality, synonymous with criminal charges. For example, "... making an arrest without reasonable or probable grounds ..." is a charge that can be laid against an individual under the Criminal Code; "... unnecessary violence or excessive force ..." the same thing. I do not think "... being discourteous or uncivil ..." is applicable. You go down to the Discrimination section, the (d) portion: "... failing to exercise discretion or restraint in the use and care of firearms ..."; there is a section in the Criminal Code dealing with that very fact; "... damaging property ...": there is a section in the Criminal Code dealing with that as well. It is so tied in to—so many of these things are, in essence, if an individual is found guilty of these things, it ipso facto has to lead to Section 35.

Mr. Conrad Santos (Broadway): One concern here is the standard of proof. They would rather prepare a higher standard of proof, as in Ontario, in a civil proceeding like this, but not the criminal standard of proof of guilt beyond reasonable doubt. Is that correct, Mr. McGregor?

Mr. McGregor: When you say "they," Mr. Santos, I do not know—

Mr. Santos: The Police Association.

Mr. McGregor: The Police Association would wish to maintain the standard of proof that is in the statute right now because it has not been demonstrated to us that there is anything wrong with that standard of proof. What I did was point out to you the possibility of the Ontario standard of proof, which is a higher standard of proof, in my view, than the civil standard of proof.

Mr. Santos: Are these not both, civil standard proof, clear and convincing evidence, and balance of probabilities, although one of them is at the higher level than mere balance of probabilities?

Mr. McGregor: I do not know. I think that if you got two lawyers to debate that issue, it would take several days.

Mr. Santos: Since you are a lawyer, Mr. McGregor, may you clarify to me what the difference is?

Mr. McGregor: I say the Ontario standard is a higher standard and is approaching the criminal standard.

Mr. Santos: But it is not the same as the criminal standard of proof?

Mr. McGregor: Slightly less, in my view.

Mr. Santos: So it is just a matter of degree, but they are both civil law standards of proof?

Mr. McGregor: They are both noncriminal.

Mr. Santos: Noncriminal, I mean civil, noncriminal.

Mr. McGregor: I do not know that the Ontario standard is considered a civil standard of proof.

Mr. Santos: The only thing that I am familiar with in terms of criminal law is the proof beyond reasonable doubt; that is the highest possible level that is required in order to convict a person of a crime. Is that correct?

Mr. McGregor: That is the highest standard of proof that I am aware of in the Canadian system, yes.

Mr. Santos: Since the proceeding here for disciplinary action under the provincial Law Enforcement Review Act and The Provincial Police Act, they are not criminal procedures are they in either of these two systems?

Mr. McGregor: As I tried to explain before, following up what Mr. Samphir had to say, dealing with the employment status of an individual, most arbitrators lean very heavily towards the criminal standard of proof. If you are going to draw a line between the civil standard of proof and the criminal standard of proof, they are going to be closer to the criminal standard of proof than they are to the civil standard of proof.

There is case after case that makes that point in labour relations law. If you are dealing with the person's employment, I suggest that one has to deal with that field of law.

Mr. Santos: Because the consequences are so grave, it could involve the deprivation of their livelihood, you are implying that they are bordering the criminal realm of activity?

* (2310)

Mr. McGregor: That is correct, Mr. Santos, and that is why the criminal standard of proof was put into this act in the first place, and that is why it has existed there for the last six years.

Mr. Santos: In your opinion, that has worked perfectly well in the past six years?

Mr. McGregor: I have heard nothing that it has not. No one has come forward and said that there is a problem here, that there is some evil that has to be cured.

Mr. Santos: But that evil to be cured is again in the realm of criminal law. If there is an evil to be cured that kind of standard of criterion is applicable in the realm of criminal law and criminal procedure, not in the realm of civil proceedings. Is that correct?

Mr. McGregor: Well, as I have tried to outline to you as one goes through this act—and Mr. Santos, with respect, you may not have been present at the time—you go through it step by step by step, and you ultimately end up with Section 35 which is specifically dealing with criminal charges.

It is a hybrid type of legislation, and coupled before with the suggested compellability of a witness, I was reminded of the situation in continental Europe where police officers using the inquisitorial approach can summon in witnesses and demand that they tell them what the case is all about.

(Mr. Chairperson in the Chair)

Now, there has been some modification of that, I hope in part certain of the remarks that we put forward in our written submission. But you still have this hybrid with the criminal law overtones. I know of no other legislation that melds these two together so closely. It is called internal disciplinary procedure, but it is really not just restricted to an internal disciplinary procedure.

It has effects outside of the internal effect as put there by Section 35, because Section 35 is a mandatory action on behalf of the commission and the commissioner that they must pursue if there is anything suggestive of a criminal act that has taken place.

Mr. Santos: I suppose that these disciplinary quasi-criminal kind of matters bordering on the criminal law is there for strictness because the police organization in any society, as the arm of the state with the power of coercion at their use is charged with the protection of life and property of citizens, and therefore they should be held accountable to higher standards of performance.

Mr. McGregor: They are being held subject to a higher standard of performance. But, you know, I look at Section 30 and I do not know if something like being discourteous or uncivil is something that

a judge is going to be totally interested in handling. I mean, it is wrong for someone to be discourteous or uncivil, but I am not so sure that judges are going to sit there happily and listen to those types of cases.

Mr. Santos: I suppose it depends from case to case, but when such discourtesy is coming from a person in authority that takes the aura of the symbol of sovereignty in dealing with the lowly citizens. It could amount to harassment and other kinds of negative connotations.

Mr. McGregor: We are not in disagreement, Mr. Santos, on that point. My point that I am making there is that I think that you are going to find it difficult to have judges really address those issues. That is where I am coming from there, and keep in mind that Deputy Chief Gallagher, who is sitting behind you, comes equipped with a book of regulations dealing with hundreds of charges that can be laid against police officers internally each and every day, and they are used.

Mr. Santos: We should not forget, Mr. Chairperson, that the police organization of any government, any society, any civilized society, is a kind of a military, if not a quasi-military organization, where enforced discipline and hierarchical authority is the rule and the norm in order to contain their possible behaviour, because as I said, they carry all the arms and the power of the state.

Mr. McGregor: Mr. Santos, my position has been consistent, that we have an act that specifically says that the standard of proof shall be proof beyond a reasonable doubt. I remember when that act was passed, and I remember the positions that were put forward, and it was passed and everyone accepted that. Since that point in time I have not seen the problem with that standard of proof, and so I make the very simple point, do we simply legislate to legislate? Legislate as an end, or as a means to something? Because, if we are changing something that has not been shown to be wrong, we are not legislating properly. Are we?

Mr. Santos: I cannot answer that. That is for the government to answer. The government's rationalization is—

Mr. McGregor: Perhaps the government might wish to answer that point. I do not know.

Mr. Santos: The rationalization is reduction of cost, and efficiency. While they may be separated, I think they are pointing to the same conceptual idea.

The definition of efficiency is simply a relationship between what you put in, the input, and the output. Given two alternative courses of action, two different ways of doing the same thing, A and B, and an outcome, that kind of alternative which gives the same input, A and B, that level of output which is higher is the most efficient. In the same vein, if you turn it around, if there is the same output or whatever, and there are two different levels of input, the one which takes the least input is the most efficient. So by definition, the most efficient alternative is also the least costly. Correct?

Mr. McGregor: I did not quite catch the last part—the least costly.

Mr. Santos: Well, alternative A, alternative B: they ask for the same level of input, but one of them produces a higher level of output. That one is the most efficient.

* (2320)

Mr. McGregor: I am not so sure that I can equate to that except in a general philosophical way and that is this: if you have a civilian review agency like you have now, they take something from the process and give it back to society I suppose, and you are serving society in that way. I mean, I do not see that this legislation will increase output. It may increase work, but I do not see it increasing rational output that is helpful to anyone except, I suppose, lawyers, and God bless us all.

Mr. Santos: If it increased the opportunity for lawyers to increase their income by more cases, would that be more increase in output? Is that efficient?

Mr. McGregor: Bluntly, as a human being, no.

Mr. Santos: Except to the lawyers.

Mr. McGregor: Except on a pure greed basis, I suppose.

Mr. Santos: So what is efficient here and what is least costly in terms of the political process, in terms of political institutions, should not be judged on the basis of particular individual's perspective but from the perspective of the entire society. Is that correct?

Mr. McGregor: The entire society has to look at it.

Mr. Santos: The interests of all.

Mr. McGregor: That is true.

Mr. Santos: Now, I come—

Mr. McGregor: So changing from a—

Mr. Chairperson: I am going to interject here just a wee bit. Until any of the speakers or any of the presenters or debaters are going to recognize the Chair, there will be no recording of either of the comments being made. So I would ask the presenters to address the Chair before recognition is going to be made on either side.

Mr. Santos: Relevance. The only technical objection I could say about the old system is that they try to impose a higher standard of proof, of doubt, reasonable, of criminal standard of proof because it wants to protect—I mean, the system that we create wants to give more protection to the police officer, like any other citizen.

Mr. McGregor: Mr. Santos, no I think not. You will remember that legislation was passed by, as I recall it, an NDP government, and I think that Roland Penner has had a long-standing tradition of civil rights and liberties and concerns of the nature that you are outlining. He was the Attorney General at the time who shepherded that bill through the House.

Mr. Santos: Mr. Chairperson, but that was the concession that was granted so that the law can go through.

Mr. McGregor: Concession that was granted so the law can go through? No, I think not. I think thought was given to what should be the proper standard of proof. I would give the government of the day credit for looking at things and making a determination as to what should be the proper standard of proof. In the intervening years leading up to the present time, they have been proven to have been correct. The government has not shown me that that government and this legislation is wrong.

Mr. Santos: When the activities of any citizen, whether they are inside the police force or outside the police force, borders on the criminal or quasi-criminal, to my mind the correct principle to apply is the standard of proof of the criminal procedure which was the law then and is the law now being changed by this amendment. I have no quarrel with that.

Another thing that bothers me is what you propose, which I have not seen in our city, the one that deals with an employment equity plan.

Mr. McGregor: No claim of authorship straight from the Ontario police act.

Mr. Santos: Mr. Chairperson, I would like to see this kind of policy adopted in this province. The employment equity plan, as it is now in the system in Ontario, and with the police association, would like to put it into the system. I have no more questions.

Mr. Chairperson: Thank you, Mr. Santos. Are there any other questions of Mr. McGregor? If not, thank you Mr. McGregor for your presentation.

I will now call Mr. Jack Haasbeek? Mr. Haasbeek, would you proceed?

Mr. Jack Haasbeek (Private Citizen): Mr. Chairperson, I wonder if it would be appropriate at this time to ask for a very short recess?

Mr. Chairperson: What is the will of committee? Are you willing to recess for five minutes? Five-minute recess, thank you.

* * *

The committee took recess at 11:26 p.m.

After Recess

The committee resumed at 12:03 a.m.

Mr. Chairperson: Would the committee please come to order. We recessed the committee when we had Mr. Haasbeek up to make a presentation.

Mr. Haasbeek: Mr. Chairman—or Mr. Chairperson, Mr. Minister, and committee members—

Mr. Chairperson: By the way, Chairman is quite acceptable to me.

Mr. Haasbeek: It may be to you. My presentation tonight will be brief, prior to three o'clock. Through the process of opening the lines of communication with the honourable minister and addressing the concerns within Bills 86 and 87 and the consultation process we have come to agreement on amendments through the proposed legislation by the government.

The amendments, I believe, are amendments that both sides can certainly live with, that both sides can identify with and relate to in such a fashion that The Law Enforcement Review Act will be an act that will have substance, that is workable, that is a credit to the province of Manitoba.

Having said that, the Winnipeg police association is going to support the government in regard to the amendments to the amendments on Bills 86 and 87. We want to thank you for your time and your consideration. The hour is late. The opposition

parties took part in this. I think one thing that we have learned in speaking with the honourable minister is that we are approachable, he is approachable. In the future, the lines of communication are going to be opened to such an extent that things can only get better. I do not see it any other way, other than The LER Act will get better and the co-operation between the Winnipeg police association, hopefully the Winnipeg Police Department executive and the senior officers association.

I think I speak on behalf of the Manitoba police association which includes Brandon and all the smaller, little departments. We appreciate this opportunity to take part in the government process and the parliamentary process. I already said thanks to the opposition party.

Thank you very much.

Mr. Chairperson: Thank you, Mr. Haasbeek.

Mr. McCrae: Mr. Chairperson, Mr. Haasbeek, I thank you for your presentation which, at this particular hour, helps everybody in the sense that the very, very patient members of this committee and the very, very patient people who have joined us tonight can perhaps seek an end to this particular process. I just want to thank you and your association and your council for the way that matters have been conducted.

In addition to the amendments that were discussed earlier today by members of my department and your council and the ones we set out earlier, there are two further areas of amendment. I believe it will not be the will of the committee to actually go clause-by-clause tonight and do that. So it may be of interest to you to have someone here tomorrow at the committee to observe, as we do put the amendments through.

Just for your information, we have talked about the matter of compellability of witnesses. For this particular go-around, the government is prepared to allow noncompellability to continue, although we talked about possible future changes to the regime, and no doubt we will have plenty of opportunity to discuss that, but we are not going to proceed with the compellability aspect.

The other aspect is the part of the bill that I found the most difficult in these discussions that we have had, and that has to do with this burden of proof being that of the beyond a reasonable doubt. Then the other one was the one we were proposing

initially, the one that deals with the balance of probabilities. We have accepted the language of the Aboriginal Justice Inquiry which deals with "clear and convincing" being the test of the evidence to be used by the judge in arriving at conclusions here.

So I think what we have is something where you and we win in that situation. These were some of the concerns of the City of Winnipeg. I have had an indication from Mr. Reynolds, the Commissioner of Parks, Protection and Culture, that he would like to make a brief comment before we are done tonight, too.

There is another amendment that you should be aware of, Mr. Haasbeek, that we are proposing. I do not know if we discussed it—perhaps department staff did—but it has to do with the right to appeal. The amendment talks about where, and I will read it: for an order or determination is made by a police commission respecting the conduct of a member of a police force or any matter relating to the maintenance and operation of the police force, any person who is aggrieved by the order or determination or who is a party to any related inquiry or investigation, may within 30 days after the date of the order or determination appeal the order or determination to a provincial judge.

I understand that has been the subject of discussions earlier between the staff of my department and your council. That has to do with The Provincial Police Amendment Act, Bill 86, so that you are aware of that. I do thank you very much, Mr. Haasbeek, for your comments.

Sometimes legislative arrangements are hard to arrive at, but I think we both agree that the people of Manitoba will be served better by this new regime. Also, it deals with everybody more fairly and I appreciate your comments. Thank you.

Mr. Chairperson: Thank you, Mr. Minister.

* (0010)

Mr. Chomiak: Thank you, Mr. Chairperson, I will also, like the minister, keep my comments brief. I have not seen the actual text of all of the amendments. I have had most of them conveyed to me. We are quite pleased with the amendments that are before us.

They do not go all of the way, but life is not like that. I am very appreciative of the fact that the process works and that when the public does make presentation and we have an opportunity to hear the

public and to hear some of their concerns, we are able to reflect some of that in terms of our legislation. I want to basically commend all of the presenters and all of those who came out and all of those who provided input to a process that seems to work.

Mr. Chairperson: Thank you, Mr. Chomiak.

Mr. Edwards: Mr. Chairperson, thank you very much. Very briefly, I too am pleased that an amicable resolution has been struck between the Police Association and the minister. I do not think the process worked particularly well this time. I think that, in fact, these decisions, these compromises, I would prefer—and I know the minister made the comment that the new channels of communication—or the presenter did—have been opened up.

I am very encouraged by that. That to me is probably a greater achievement than anything else tonight, that we can avoid this type of problem in the future by having a consultation process which is done early, done thoroughly, with the interested parties. So I hope that is the way of the future.

I want to congratulate the Police Association and their representatives here tonight, because I think they learned very late of these amendments in any substance. They came forward very quickly and very persuasively, both in substance, in terms of their presentations, and in numbers. I think that was the decisive factor in coming to a resolution here tonight. The show of support for the position of the police in this community was overwhelming, and so I simply want to put on the record that was a critical factor. I look forward to not having to go through this type of event again.

Thank you, Mr. Chairperson.

Mr. Chairperson: Thank you, Mr. Edwards. I understand that Commissioner Reynolds would like to make a short presentation.

Mr. Loren Reynolds (Commissioner of Protection, Parks and Culture, The City of Winnipeg): Mr. Chairperson, Mr. Minister, members of the committee, first of all, thanks for giving me this opportunity. I am here representing the city in terms of requesting a clarification. I see no problem at all with these amendments. There were five major issues that we brought to the table earlier today. Those issues have been resolved, although we have not seen the last two modifications to two of our issues. As far as we are concerned, we find the amendments that have been

made through discussion/negotiation tonight very acceptable.

I would like to express our appreciation to the minister, his staff and all members sitting at the table for this kind of considerate co-operation. I think it is not an understatement to say that had this bill gone through without some of these changes, we would have had difficult times ahead. It is most appreciated that we can get this kind of co-operation and reach a resolution where both parties give, and we end up with legislation that will, I think, serve the needs of Manitobans and the members who are involved. So thank you for the opportunity, Mr. Chairperson.

Mr. Chairperson: Thank you very much, Mr. Reynolds. I would like to, on behalf of the committee members and especially as Chair of the committee, commend the Winnipeg Police Association and the membership, plus all the people that presented here today and appeared here for the professional way and manner in that they conducted themselves. One as Chair is somewhat skeptical sometimes when even just the committee considers bills, but when one sees a room full of people, one

wonders sometimes what kind of reaction one is going to get.

I must say that I have been very pleased at the way the members of the association conducted themselves today. Thank you very much for your participation.

What is the will of the committee now? Do you want to consider—I should ask, by the way, whether there are any other presentations to be made at this time? We still have a list of 17 presenters on the one bill and 18 presenters on the other listed. Are these presenters going to appear or do they want to appear before the committee?

Is there anyone in the room that wants to present to the committee? No?

Mr. McGregor: No, they do not wish to appear.

Mr. Chairperson: Thank you, Mr. McGregor. What is the will of the committee then? Committee rise?

Committee rise, with the understanding that this committee will reconvene tomorrow at 10 a.m. to consider clause by clause.

COMMITTEE ROSE AT: 12:16 a.m.