



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. 11 - 10 a.m., WEDNESDAY, JUNE 24, 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, Gulzar	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	Wolseley	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**

**Wednesday, June 24, 1992**

**TIME – 10 a.m.**

**LOCATION – Winnipeg, Manitoba**

**CHAIRPERSON – Mr. Jack Penner (Emerson)**

**ATTENDANCE - 9 – QUORUM - 6**

*Members of the Committee present:*

Hon. Messrs. Ducharme, Ernst, McCrae, Hon.  
Mrs. Mitchelson

Messrs. Chomiak, Gaudry, McAlpine, Penner,  
Reimer

**APPEARING:**

Conrad Santos, MLA for Broadway

Rosemary Vodrey, MLA for Fort Garry

Jerry Storie, MLA for Flin Flon

Clayton Manness, MLA for Morris

**MATTERS UNDER DISCUSSION:**

Bill 86—The Provincial Police Amendment and  
Consequential Amendments Act

Bill 87—The Law Enforcement Review  
Amendment Act

Bill 101—The Statute Law Amendment Act,  
1992

\* \* \*

**Mr. Chairperson:** Will the Standing Committee on Law Amendments please come to order. This morning the committee will be resuming consideration of three bills: Bill 86, The Provincial Police Amendment and Consequential Amendments Act; Bill 87, The Law Enforcement Review Amendment Act; and Bill 101, The Statute Law Amendment Act, 1992.

As was agreed by committee last night, the committee will proceed to consider the bills on a clause-by-clause basis. Does the committee wish to consider the bills in numerical order, or how do you want to proceed with them?

**An Honourable Member:** It is okay in numerical order.

**Mr. Chairperson:** Bills 86, 87 and 101. Agreed? Agreed.

**Bill 86—The Provincial Police Amendment  
and Consequential Amendments Act**

**Mr. Chairperson:** Did the minister responsible have an opening statement?

**Hon. James McCrae (Minister of Justice and Attorney General):** A very brief one, Mr. Chairperson. We have the amendments we discussed at our meeting last night before us. I am about to distribute them again to honourable members. We have one amendment to Bill 86 which we discussed last night and a series of amendments to Bill 87 which we also discussed last night. As we get going, I will be moving those amendments.

**Mr. Chairperson:** Thank you, Mr. Minister. Would the critic for the official opposition have an opening statement?

**Mr. Dave Chomiak (Kildonan):** No, Mr. Chairperson.

**Mr. Chairperson:** How about the second opposition? Do you have an opening statement? No opening statement. Thank you.

The bill will be considered clause by clause during the consideration of the bill. The title and the preamble are normally postponed until all other clauses have been considered in their proper order by the committee. We shall then proceed with the clause-by-clause consideration. What is the will of the committee? Do you want to go clause by clause or page by page?

**An Honourable Member:** Blocks.

\* (1005)

**Mr. Chairperson:** Blocks. Okay. We will then commence consideration of Clauses 1, 2, 3.

Clauses 1, 2 and 3—pass; Clauses 4 to 7—pass; Clauses 8 to 10(1)—pass.

Clauses 10(2) to 11(2). Shall the item pass?

**Mr. McCrae:** Mr. Chairperson, with respect to Clause 11(2), I move in the French and English languages,

THAT subsection 26(5) as set out in subsection 11(2) of the Bill be struck out and the following substituted:

**Right to appeal**

**26(5)** Where 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.

**[French version]**

Il est proposé que le paragraphe 26(5), énoncé au paragraphe 11(2) du projet de loi, soit remplacé par ce qui suit:

**Appel**

**26(5)** La personne qui est lésée par l'ordonnance ou la décision visée au paragraphe (4) ou qui est partie à une enquête connexe peut interjeter appel de l'ordonnance ou de la décision devant un juge provincial dans les 30 jours qui suivent la date à laquelle elle est rendue.

**Motion agreed to.**

**Mr. Chairperson:** Item 11(2), as amended—pass; 10(2) to 11(1)—pass; 11(3) to 11(5)—pass; 11(6) to 13—pass; 14(1) to 15—pass; Preamble—pass; Title—pass. Bill, as amended, be reported.

**Bill 87—The Law Enforcement Review  
Amendment Act**

**Mr. Chairperson:** Bill 87. Does the minister have an opening statement?

**Hon. James McCrae (Minister of Justice and Attorney General):** No, Mr. Chairperson.

**Mr. Chairperson:** Thank you. Do both the opposition parties have an opening statement? No.

The bill will be considered as we did the previous bill, on a section-by-section basis.

Clauses 1 to 2.

**Mr. McCrae:** Mr. Chairperson, I move, in the English and French languages,

THAT clause (d) in section 2 of the Bill be struck out and the following substituted:

(d) in the definition "member", by adding ", and includes any person employed as a peace officer by a law enforcement body that is designated by regulation" after "Manitoba".

**[French version]**

Il est proposé que l'alinéa d) de l'article 2 du projet de loi soit remplacé par ce qui suit:

(d) à la définition de "membre" ou "membre d'un service de police", par adjonction, après "comme un agent de la paix.", de "La présente définition vise toute personne qui travaille à titre d'agent de la paix pour un corps de police désigné par règlement.";

**Motion agreed to.**

\* (1010)

**Mr. Chairperson:** Clause 1—pass; Clause 2, as amended—pass; Clauses 3 to 5(1)—pass; Clauses 5(2)—

**Mr. McCrae:** I am sorry, Mr. Chairperson, I have an amendment to 5(1).

**Mr. Chairperson:** Okay, we will revert to 5(1) then. I understand there is an amendment.

**Mr. McCrae:** I move, in English and French,

THAT subsection 13(1), as set out in subsection 5(1) of the Bill, be amended by striking out "or" at the end of clause (a), by adding "or" at the end of clause (b), and by adding the following as clause (c):

(c) that there is insufficient evidence supporting the complaint to justify a public hearing;

**[French version]**

Il est proposé que le paragraphe 13(1), énoncé au paragraphe 5(1) du projet de loi, soit amendé par substitution, au point qui se trouve à la fin de l'alinéa b), d'un point-virgule et par adjonction, après l'alinéa b) de ce qui suit:

c) que la preuve étayant la plainte ne permet pas de justifier la tenue d'une audience publique.

**Motion agreed to.**

**Mr. Chairperson:** Item 5(1), as amended—pass.

**Mr. McCrae:** I have another amendment to Section 5(2).

**Mr. Chalrperson:** It is the next clause we will be considering. There has been a request that we read it in French.

**Mr. McCrae:** I move, in the English and French languages

THAT section 5 of the Bill be amended by adding the following as subsection 5(2.1):

5(2.1) The following is added after subsection 13(4):

**Ban on publication**

**13(4.1)** Notwithstanding that all or part of a hearing under this section is public, the provincial judge hearing the matter shall, unless satisfied that such an order would be ineffectual,

(a) order that no person shall cause the respondent's name to be published in a newspaper or other periodical publication, or broadcast on radio or television, until the judge has determined the merits of the application;

(b) if the application is dismissed, order that the ban on publication of the respondent's name continue; and

(c) if the application is successful, order that the ban on publication of the respondent's name continue until the complaint has been disposed of in accordance with this Act.

**[French version]**

Il est proposé que l'article 5 du projet de loi soit amendé par adjonction, après le paragraphe 5(2), de ce qui suit:

5(2.1) Il est ajouté, après le paragraphe 13(4), ce qui suit:

**Interdiction de publication**

**13(4.1)** Même si une audience visée au présent article est publique en tout ou en partie, le juge provincial qui instruit l'affaire est tenu, à moins d'être convaincu que l'ordonnance rendue serait sans effet:

a) d'ordonner que soient interdites la publication dans les journaux ou dans d'autres périodiques et la diffusion à la radio ou à la télévision du nom du défendeur jusqu'à ce que le juge ait rendu sa décision sur le fond de la demande;

b) si la demande est rejetée, d'ordonner que se poursuive l'interdiction de publication du nom du défendeur;

c) si la demande est accueillie, d'ordonner que se poursuive l'interdiction de publication du nom du défendeur jusqu'à ce qu'une décision ait été rendue sur la plainte conformément à la présente loi.

**Motion agreed to.**

**Mr. Chalrperson:** Item 5(2), as amended—pass; 6(1) and 6(2)—pass; 7(1) to 7(3)—pass.

I understand there is an amendment to Item 8.

**Mr. McCrae:** I move, in English and French,

THAT Section 8 of the Bill be amended by renumbering it as subsection 8(1) and by adding the following as subsection 8(2)

8(2) Subsection 18(2) is repealed and the following is substituted:

**Question of privilege**

**18(2)** Where the Commissioner believes that a question of privilege arises in respect of any documents or statements in his or her possession, or that release of the information will unduly harm the interests of a third party, or would otherwise harm the interests of a third party, or would otherwise be contrary to the public interest, the Commissioner may deny access to such materials to any of the parties.

**Review by Court of Queen's Bench**

**18(3)** A decision of the Commissioner to grant or refuse access to material referred to in subsection (2) is reviewable on application to the Court of Queen's Bench.

**[French version]**

Il est proposé que l'article 8 du projet de loi soit amendé par substitution, à son numéro, du numéro de paragraphe 8(1) et par adjonction de ce qui suit

8(2) Le paragraphe 18(2) est remplacé par ce qui suit:

**Documents protégés**

**18(2)** Lorsqu'il est d'avis qu'un document ou qu'une déclaration en sa possession soulève une question de privilège ou que la communication des renseignements qui y sont contenus nuira de façon indue aux intérêts d'un tiers ou serait autrement contraire à l'intérêt public, le commissaire peut refuser à toute partie l'accès au document ou à la déclaration.

**Révision par la Cour du Banc de la Reine**

**18(3)** Toute décision que rend le commissaire sous

le régime du paragraphe (2) peut être révisée sur présentation d'une demande à la Cour du Banc de la Reine.

**Motion agreed to.**

**Mr. Chairperson:** Item 8, as amended—pass; Items 9 to 10(2)—pass; Items 11(1) to 11(7)—pass.

I understand there is an amendment to 11(8).

\* (1015)

**Mr. McCrae:** I move

THAT the proposed subsection 24(10), as set out in subsection 11(8) of the Bill, be struck out and the following substituted:

**Respondent not compellable**

**24(10)**The respondent is not compellable as a witness at a hearing before a provincial judge.

**[French version]**

Il est proposé que le paragraphe 24(10), énoncé au paragraphe 11(8) du projet de loi, soit remplacé par ce qui suit:

**Défendeur non contraignable**

**24(10)**Le défendeur ne peut être contraint de témoigner au cours d'une audience tenue par un juge provincial.

**Motion agreed to.**

**Mr. Chairperson:** Item 11(8)—pass; items 11(9) to 11(10)—pass.

I understand there is an amendment to 12.

**Mr. McCrae:** I move, in both languages, French and English

THAT the proposed section 25, as set out in section 12 of the Bill, be struck out and the following substituted:

**Ban on publication**

**25**Notwithstanding that all or part of a hearing is public, the provincial judge hearing the matter shall, unless satisfied that such an order would be ineffectual,

(a) order that no person shall cause the respondent's name to be published in a newspaper or other periodical publication, or broadcast on radio or television, until the judge has determined the merits of the complaint or the respondent admits having committed a disciplinary default; and

(b) if the complaint is dismissed, order that the ban on publication of the respondent's name continue.

**[French version]**

Il est proposé que l'article 25, énoncé à l'article 12 du projet de loi, soit remplacé par ce qui suit:

**Interdiction de publication**

**25**Même si une audience visée au présent article est publique en tout ou en partie, le juge provincial qui instruit l'affaire est tenu, à moins d'être convaincu que l'ordonnance rendue serait sans effet:

a) d'ordonner que soient interdites la publication dans les journaux ou dans d'autres périodiques et la diffusion à la télévision du nom du défendeur jusqu'à ce que le juge ait rendu sa décision sur le fond de la plainte ou que le défendeur ait avoué avoir commis une faute disciplinaire;

b) si la plainte est rejetée, d'ordonner que se poursuive l'interdiction de publication du nom du défendeur.

**Motion agreed to.**

**Mr. Chairperson:** Item 12, as amended—pass; 13 and 14(1)—pass; 14(2)—I understand there is going to be an amendment.

**Mr. McCrae:** I move, in French and English

THAT the proposed subsection 27(2), as set out in subsection 14(2) of the Bill, be amended by striking out "a balance of probabilities" and substituting "clear and convincing evidence".

**[French version]**

Il est proposé que le paragraphe 27(2), énoncé au paragraphe 14(2) du projet de loi, soit amendé par substitution, à "selon la prépondérance des probabilités", de "par une preuve claire et convaincante".

**Motion agreed to.**

**Mr. Chairperson:** Item 14(2), as amended—pass; 14(3) to 15(2)—pass; 15(3) to 15(4)—pass. I understand there is an amendment to 16.

**Mr. McCrae:** I have two amendments to Clause 16. The first is the following, which I move in English and French,

THAT the proposed subsection 30(2), as set out in section 16 of the Bill, be amended by striking out everything after "loss" and substituting "of property

or damage to property sustained by the complainant as a result of the disciplinary default, if

(a) the amount of the loss or damage is readily ascertainable; and

(b) the provincial judge is satisfied that recovery would not be more appropriately dealt with by a civil action."

**[French version]**

Il est proposé que le paragraphe 30(2), énoncé à l'article 16 du projet de loi, soit amendé par substitution, au passage suivant "pertes", de "de biens ou des dommages subis par le plaignant par suite de la faute disciplinaire si:

a) le montant de la perte ou des dommages peut être facilement déterminé;

b) le juge provincial est convaincu que le recouvrement ne serait pas plus avantageux dans le cadre d'une action civile."

**Motion agreed to.**

**Mr. McCrae:** I move, in English and French,

THAT subsection 30(3), as set out in section 16 of the Bill, be amended by renumbering it as subsection 30(4), and

THAT the following be added as subsection 30(3):

**Right to Indemnification not affected**

**30(3)** Nothing in subsection (2) precludes the respondent from securing indemnification for the amount of any restitution ordered from his or her employer pursuant to a collective agreement or other legal obligation.

**[French version]**

Il est proposé que le paragraphe 30(3), énoncé à l'article 16 du projet de loi soit amendé par substitution, à son numéro, du numéro de paragraphe 30(4) et par adjonction, après le paragraphe (2), de ce qui suit:

**Droit à une indemnité**

**30(3)** Le paragraphe (2) n'a pas pour effet d'empêcher le défendeur d'obtenir auprès de son employeur, en vertu d'une convention collective ou de toute autre obligation légale, une indemnité correspondant au montant de la restitution qui doit être faite.

**Motion agreed to.**

**Mr. Chairperson:** Item 16, as amended by the previous two amendments—pass; 17(1) to 17(3)—pass; 18 to 23—pass; 24(1) to 25—pass.

**Mr. McCrae:** Mr. Chairperson, I move, in English and French,

THAT Legislative Counsel be authorized to change all section numbers and internal references necessary to carry out the amendments adopted by this committee.

**[French version]**

Il est proposé que le conseiller législatif soit autorisé à modifier les numéros d'article et les renvois internes de façon à donner effet aux amendements adoptés par le Comité.

**Motion agreed to.**

**Mr. Chairperson:** Preamble—pass; Title—pass. Bill as amended will be reported.

**Bill 101—The Statute Law  
Amendment Act, 1992**

**Mr. Chairperson:** The next item for consideration by the committee will be Bill 101. Does the minister responsible for Bill 101 have an opening statement?

**Hon. James McCrae (Minister of Justice and Attorney General):** Mr. Chairperson, I believe all honourable members are aware of the procedure under our Statute Law Amendment Act, which happens at each session. A number of bills are amended by virtue of this.

I believe I have made available to honourable members information relating to the changes that are here. This is something that comes to us from Legislative Counsel. It usually deals with matters dealing with spelling and grammatical errors that need correcting and sometimes repeals spent legislation and that type of thing, nonsubstantive in nature. Where it is substantive, in any way, we let honourable members know about it, and I believe that has been done.

**Mr. Chairperson:** Thank you. Does the honourable critic for the opposition have an opening statement?

**Mr. Dave Chomiak (Kildonan):** Yes, Mr. Chairperson. The minister is correct. We have been provided with information with respect to the changes in The Statute Law Amendment Act.

There is one amendment that we have some concern with, with respect to The Statute Law Amendment Act. It is with respect to the amendment under The Public Schools Act. I am just querying of the committee and the minister—page 13. I have some specific questions in that area.

I noted that the Minister of Education (Mrs. Vodrey) was in the committee last night. Will the Minister of Education be available to deal with queries with respect to these changes—unless the minister responsible for The Statute Law Amendment Act wishes to take questions in this area.

**Mr. McCrae:** I suppose it depends on what the questions are. I could try, with the help of legislative counsel, who is here with me, to answer the questions.

I understand one of my colleagues is going to attempt to try to find the Minister of Education. If the honourable member would prefer that, then maybe we could get started and leave this one to the last, or do whatever is necessary. If we cannot find the minister, then, Mr. Chairperson, I would attempt to try to answer the honourable member's questions.

\* (1020)

**Mr. Chairperson:** You want questions then, Mr. Chomiak, on Items 27(1) to 27(7)?

**Mr. Chomiak:** Yes.

**Mr. Chairperson:** Okay, if we can delete that portion, we can pass all the other sections if it is with the will.

I would like to know, first of all, whether the honourable member for the second party, the honourable critic, has an opening statement.

**Mr. Neil Gaudry (St. Boniface):** No, I do not.

**Mr. Chairperson:** Mr. Gaudry has no statement.

What we will do then is ask the question, shall items 1 to 26(3) pass?

**Mr. Conrad Santos (Broadway):** I have some questions of 17.1, page 7.

**Mr. Chairperson:** Mr. Santos, would you proceed with the questions?

**Mr. Santos:** It says, "Where an applicant who owns or has an interest in land in Manitoba receives legal aid, the executive director may register in the Land Titles Office a statement certifying that the applicant

has received legal aid and setting out the name of the applicant, the legal description of the land, and the society's address for service."

17.1(4) says, "From the time of its registration, a statement registered under subsection (2) binds and forms a lien and charge on the applicant's estate or interest in the land against which it is registered for an amount equal to the cost of the legal aid provided to the applicant, before and after the date of registration; but no such statement has the effect of severing a joint tenancy or affecting a right under The Dower Act."

The last statement, I would like some explanation.

**Mr. Chairperson:** It is under Clause 13(1), 17.1(4), Effect of registration is the title.

**Mr. McCrae:** What is the question?

**Mr. Santos:** The question is the effect on joint tenancy and the effect on the rights under The Dower Act.

**Mr. McCrae:** Mr. Chairperson, these provisions reflect a right that Legal Aid Manitoba has presently to register liens on real property held in Manitoba. The honourable member's question refers specifically to joint tenancy and The Dower Act. The point here is that we felt there was need to clarify the rights of the other party in a joint tenancy arrangement, and those rights are clarified by virtue of this section. [interjection]

There is a right to a life estate under The Homesteads or Dower Acts and this does not affect that right, the right to consent to a disposition and also the obligation not to dispose of homestead assets without the consent of the spouse.

**Mr. Santos:** So if the lien is attached to any piece of real estate and that is part of the life estate of the spouse that is surviving, the lien will be no lien?

**Mr. McCrae:** The fact that a person dies does not remove the lien from the property which is then held in a life estate capacity by the other spouse. The death of one spouse does not remove the lien.

**Mr. Santos:** I thought that this is an exception to the attachment of the lien because no such a statement has the effect.

**Mr. McCrae:** The homestead property is the right of the surviving spouse for the duration of his or her life regardless of a lien being on the property. That is the way The Homesteads or Dower Acts work.

**Mr. Santos:** What I want to clarify is whether the lien that is attached to one of those portions of the estate that is passed on to the surviving spouse is still considered a lien.

**Mr. McCrae:** Yes.

**Mr. Santos:** Therefore, it affects the rights of the spouse, because otherwise he or she would have inherited something without a lien, were it not for this provision.

**Mr. McCrae:** The honourable member is right. A lien on a piece of property in which you have an interest does affect you, and it affects a surviving spouse. The fact that one spouse passes away does not remove the lien. I mean, that is not the way things work. The lien does not have to be paid unless it is the wish to dispose of the property.

**Mr. Santos:** By definition, the lien is like a barnacle. It is attached to your right.

**Mr. McCrae:** I am not a seafaring type, so I am not going to comment. But it is stuck on there, if that is what the honourable member means.

**Mr. Santos:** What I am saying is that phrase, "no such statement has the effect . . ." of "affecting a right under The Dower Act," does not mean what it says, because it has the effect of staying there.

**Mr. McCrae:** Mr. Chairperson, the honourable member is absolutely right. It is a clarification. The lien does not go away just because one of the spouses passes away leaving the homestead property to the other spouse through the homestead rules. The lien does not disappear. There is no way that we would legislate a thing like that, in any event.

**Mr. Santos:** Mr. Chairperson, that is what a lien is. It is what they call real rights as distinguished from a personal right of the lien holder, regardless of whether the relationship stays where the property is attached, as I said, like a barnacle.

This provision is saying that it has no effect under any right under The Dower Act.

**Mr. McCrae:** Mr. Chairperson, I have said a number of times, yes. The honourable member, I believe, has that right. The lien stays there.

**Mr. Chomlak:** I have just a quick question in this area. It is a substantive question. I think I know the answer, but just for the record—substantive in the sense that it is not dealing with a technical change in the law. It is substantive in terms of what the

rights are of Legal Aid. That is the reason I am making the use of the word substantive.

My question is—actually I have two questions. Presumably, Legal Aid would not invoke its right to lien unless the payer essentially fell into arrears. Of course that is the case. It is not a matter of course for Legal Aid to be issuing liens upon the issuance of a Legal Aid certificate, even where a substantial bill might be incurred. I would hope not.

**Mr. McCrae:** Is the honourable member asking under what circumstances a lien would be filed, or is he asking under what circumstances would Legal Aid actually take—

**Mr. Chomlak:** For clarification, I am asking under what circumstances would the lien be filed.

\* (1030)

**Mr. McCrae:** I do not have Legal Aid staff with me to help, but I do not know that that is done routinely. I believe that Legal Aid does have some discretion with the board and the staff in these areas. Legal Aid is, by definition, there to help poor people, and Legal Aid is not about to start operating against that type of a mandate.

**Mr. Chomlak:** My second question. I am wondering if the minister can tell me if he knows of any other—because it is an interesting issue—government department that has the right to issue. Because once notification goes on title, I mean, effectively, it is a public document, public record that will say: This individual, this person—by virtue of their income levels—is receiving Legal Aid.

It is an interesting point and I am not—

**An Honourable Member:** Or has received.

**Mr. Chomlak:** Or has received Legal Aid—and I am not going to get into the merits at this point, but is the minister aware of other government departments or agencies that have that same right?

**Mr. McCrae:** It seems to me that, in the area of social allowances, that is also the case.

**Mr. Santos:** If the person who invoked the service of Legal Aid did not pay that obligation, and it is not registered at the time of his death—I mean, the lien—it was there, but it is not registered in the Land Titles Office, after his death can the government through the Legal Aid or any other agency still register that lien?

**Mr. McCrae:** It is my advice that the applicant—that the lien must be filed against a person who is living,

that the successors to that person ought not to be responsible.

**Mr. Santos:** So that the surviving spouse, who had no information about this thing, may just be surprised five years, 10 years, or any number of years that pass, that there is such a lien, when he or she had no information at all that there is such an obligation left by the deceased. I thought death cleans everything.

**Mr. McCrae:** That is possible, but the lien can only be filed prior to the person's death in the first place.

**Mr. Santos:** If the lien has not been filed, and the point of that has arrived, does the right to file it prescribe—or is there still a right to file it?

**Mr. McCrae:** It is my understanding that right does not exist.

**Mr. Santos:** It is a personal obligation that has not been transformed into a real obligation.

**Mr. McCrae:** There is an obligation when it is not met. A lien can be filed, but if the person has passed away, my advice or understanding is that a lien cannot be filed after that happens.

But a lien once filed, as you say, the surviving spouse could at some subsequent date learn that there is a lien on the property placed there by Legal Aid Manitoba. That is correct.

**Mr. Santos:** If that is the intention, then there should be some change in this. But when you read the statement, any person who had a fair knowledge of the English language will think that no such statement, which is already filed, a statement of lien, if you read it after "or," has the effect of affecting a right under The Dower Act.

**Mr. McCrae:** I do not know what more I can say to the honourable member. If he is not comfortable with the clarification here, that really does not have much to do with his questions. If he is not comfortable with what we have here, we can remove this part from the bill. We have done that before; there is no particular reason for us to do it, but if the honourable member has a problem, that he wants to see that happen, then let him say so.

What he is concerned about is already in existence, and has nothing to do with this section in this statute law amendment bill.

**Mr. Santos:** Why cannot the law simply say: Once filed, the lien will be a burden on the estate, that is it.

**Mr. McCrae:** That is already the case. That is already the law in Manitoba, that it is a burden on the estate.

**Mr. Santos:** Surplus statement, then, is not necessary, because it says nothing, it only misleads.

**Mr. McCrae:** How does it mislead?

**Mr. Santos:** If I read it and I am the surviving spouse, ahh, no such lien has any effect or affecting a right under The Dower Act. I have a right under The Dower Act, it should not have affected it, but you said the lien stays there.

**Mr. McCrae:** What this does is states the obvious. It makes it clear and it provides protection for surviving spouses, I suggest to you, by making it clear that nothing in these liens have any adverse effect on a person's formerly-called dower right to be able to have a life interest in the estate. Nothing affects the surviving spouse's rights that exist. This is a statement that underlines the fact that spouses have rights.

**Mr. Santos:** That is true, but the right to a life estate includes a portion of that life estate, something which has a lien on it.

**Mr. McCrae:** Yes, again, Mr. Chairperson.

**Mr. Santos:** Therefore, it affects the right and there is such a burden.

**Mr. McCrae:** Yes, it is a burden and I have said that four or five, perhaps six times now, Mr. Chairperson.

**Mr. Santos:** Mr. Chairperson, all I am saying is that the law should say so, that it will be a burden on the right to a life estate which is not in any way affected, in any other way, other than this burden.

**Mr. Chairperson:** Shall we go back to consider The Public Schools Act, 27(1) to 27(7)?

**Mr. Chomlak:** I thank the Justice minister (Mr. McCrae) and the Minister of Education (Mrs. Vodrey) for attending in order to deal with some of my specific questions with regard to this particular—and the Minister of Urban Affairs (Mr. Ernst) for very diligently slipping out and quickly bringing the minister to committee.

I would like to start out by asking the minister if she could—I think that this particular amendment in the statute law amendment is a fairly substantive change. That is my reading of this particular amendment. I do not think it is frankly appropriate

to be in The Statute Law Amendment Act and at the onset, I want to make that clear.

I wonder if the minister can outline for me what the present law is in respect to this section, because if one looks in the amended statutes of Manitoba, I believe, Section 60(5)(f), states: to be proclaimed.

**Hon. Rosemary Vodrey (Minister of Education and Training):** Yes, that section has not been proclaimed because, following the passing of that bill with that section, it became evident that section was unclear. The effect of that section, had it been proclaimed, would have been to disallow any private school from obtaining grants. That section was not proclaimed and this amendment was placed in the statute law amendments to clarify that unclear section that was passed with the act.

\* (1040)

**Mr. Chomiak:** Madam Chairperson—Mr. Chairperson, the minister indicated that the section was unclear. I am somewhat familiar with the genesis of what was old Bill 59 and the subsequent amendments that were brought in with respect to that particular subsection, but the point is that at present private schools are receiving funding from the government. Is that not correct?

**Mr. Chairperson:** I am going, Mr. Chomiak, for a haircut as soon as we finish the committee.

**Mrs. Vodrey:** Mr. Chairperson, yes, some of the private schools are receiving grants at this time.

**Mr. Chomiak:** And they are receiving grants by virtue of Sections (a) to (e) under 60(5). Correct?

**Mrs. Vodrey:** Yes, that is correct.

**Mr. Chomiak:** Can the minister indicate for me specifically what this new subsection, point by point, does?

**Mrs. Vodrey:** Mr. Chairperson, the new subsection is an effort to clarify a system of accountability for private schools or independent schools to receive grants. What it does is says that under the proposed legislation in (i) of Section (f) that private schools that are currently receiving grants at the time that this act or this subsection comes into force can continue to receive those grants provided they meet the other elements of accountability; (ii) talks about those independent schools which are currently acting as schools at the time that this act has been proclaimed and that those schools will continue as schools meeting the elements of

accountability for at least two years, and then those schools will be eligible for grants provided they meet the other issues of accountability within the act; (iii) focuses on where the school is not yet operating, and for any new schools not yet operating there is a waiting period required of three years of operation before those schools can begin to receive grants.

**Mr. Chomiak:** Does the subsection (i) under (f) stand alone, or is it conjunctive with subsection (ii) or subsection (iii), because the minister will note there is an "or" between subsection (ii) and subsection (iii). My question is: Are we talking about an "or" between subsection (i) and subsection (ii) or not?

**Mrs. Vodrey:** Mr. Chairperson, we are talking about an "or" between that subsection, and my understanding in a discussion with the legal drafters is that when there is a sequencing—by way of example, people with brown eyes, green eyes or blue eyes—the "or" is understood with the comma. Therefore, you can read into at the end of subsection (i) or in place of that comma.

**Mr. Chomiak:** Mr. Chairperson, I am aware of that as someone who has studied, albeit in a very limited sense, drafting of legislation and the like and I have been around a little bit. I do not think that it is clear. I would certainly recommend—in fact, I took this subsection and showed it to a number of lay people, all of whom concluded that it was probably conjunctive and there was no "or" there by virtue of the fact that there was a comma. I think there is an argument to be made when this is read that "or" should be inserted in there to indicate that (i), (ii) and (iii) stand alone.

**Mrs. Vodrey:** Mr. Chairperson, I am informed that all the statutes of Manitoba are listed in this particular style and framework. I am not sure why the member would feel it would be important to deviate from other statutes in Manitoba.

**Mr. Chomiak:** I think it is important because—firstly, the minister knows, and I made a major issue of this at Estimates, that the province failed to—in fact was in contravention of provincial law in terms of the publication of statutes providing funding to private schools and, in fact, was providing tens of millions of dollars without appropriate authorities in terms of the regulations published and announced.

I am raising the issue, also, because this section has been confusing and has not been proclaimed, and the minister indicates that it was not clarified. I

am raising it because, in theory, all of the issues aside that have arisen about private schools, there is an amendment that has come through statute law amendments that deals with expenditures of tens of millions of dollars, and it is not entirely clear. One almost gets the impression it was put through for a variety of reasons. I am just not entirely clear as to what the purpose was in the first instance. It has certainly raised a good deal of public discussion around this particular matter, and now it has come to statute law amendment.

I think it should have stood alone on its own separate bill and been debated in a separate sense. In principle, I think the matter should have come through on a separate bill. That is one of the major reasons why I am making an issue of it at this point.

I have further questions. The minister may want to comment.

**Mrs. Vodrey:** Mr. Chairperson, I do not really have any difficulty, if the member feels that it would provide a clarification, to provide the amendment and put "or" in, in place of the comma, if that would clarify, for the members of the public and for the other parties, the intention.

Again, the placement of this particular amendment was placed in statute law amendments because, as I explained to the member, the bill in which this had apparently been included and covered off has already been passed by the Legislature. This was an attempt at clarification to make sure that it was clear how independent schools—and in what order and number of years of operation—would be eligible to collect grants, provided they met the other terms of accountability.

**Mr. Chomlak:** Mr. Chairperson, with respect to subsection (f) that had not been proclaimed, did it specifically indicate that private schools who had received one or more grants before the clause came into force would be eligible to receive grants?

**Mr. Chairperson:** I would like to ask the members of the committee to retain order, please.

**Mrs. Vodrey:** Mr. Chairperson, subsection (f), the way that it would be interpreted would say that private schools were to be in operation for three years from the time of this passing until they could collect grants. In fact, that was not the effect that was intended, therefore the clarification required through this statute law amendment.

**Mr. Chomlak:** So the clarification with respect to the three years was that the previous not-yet-proclaimed law said that any private school could receive funds if it had been in operation for three years.

**Mrs. Vodrey:** I am sorry, could you repeat your question again?

**Mr. Chomlak:** I am trying to clarify what the minister said to me, actually. I obviously did not make it clear.

The previous act, not yet proclaimed, indicated that private schools that had been in operation for three years would be eligible for grants.

**Mrs. Vodrey:** The section said that the private school has been in operation for a period of three years, prior to receiving a grant under this subsection, and has complied with Clauses A through C for each of those years.

**Mr. Chomlak:** So this is a substantive change, because the previous law said it had to be three years in existence and had to receive the grant.

This new one, the minister has indicated this morning, in subsection 1, simply says that private school has received one or more grants under this subsection. So it is a substantive change.

Will the minister indicate yes or no?

\* (1050)

**Mrs. Vodrey:** We would argue that it is not a substantive change. We have private schools which have been in operation and have been receiving the grant, and are now complying with the rules of accountability. We are also, in this particular act, trying to look at those schools which are in operation and have been unfunded private schools, and the term of waiting that those schools will be required before they can collect a grant. Then we are also trying to look at schools which are not yet formed, and how many years those schools should be in operation in order to begin collecting the grant.

**Mr. Chomlak:** But the point is, the minister indicated earlier that this amendment was brought in to clarify the law. This amendment was brought in to change the law.

It is unfortunate—and maybe I will just make a statement—that this happens to be an area that is politically sensitive, and I do not want to crank up the rhetoric on this. On principle—and it could have

been any change to The Public Schools Act—on principle, it seems to me that this changes the law. It does not clarify the law.

If it changes the law and does not clarify the law, it should be subject to a separate bill that allows us to debate it on that issue. At that point, we can deal with all of it. But, in terms of straight principle, I cannot see how we can support something like this, that is a substantive change in the law, that comes through statute law amendment. I have a real difficulty with that, and I am going to have to be convinced otherwise.

**Mrs. Vodrey:** This part of the act was passed by the Legislature. It was not proclaimed; it was therefore not law. This is an effort to clarify this segment and the sections in order to provide that understanding in clarification for this to then become law.

**Mr. Chomiak:** The minister makes my point again. Then, if it is not law, this is new law; then it should not be subject to statute law amendment if you are bringing it in.

Mr. Chairperson, the minister cannot have it three separate ways. Is it clarification? Is it new law? Or, is it the—well, two ways at least, perhaps three.

**Mrs. Vodrey:** I think that it is important for me to restate the position that we have taken, that this is a clarification, that this clarification is necessary. It is necessary for the schools that are currently collecting the grants. It is necessary for those schools that wish to be considered for grants, those schools which are operating and wish to make applications, so that their waiting period may begin and their accountability can be noted.

It is also, I think, necessary for the clarification for any schools which will be formed and which also need to begin looking at their time period.

**Mr. Chomiak:** That is all well and good. That can be debated, and we can debate it all morning. We can debate over in the session.

When the Minister of Justice (Mr. McCrae) brought—in his opening remarks, he indicated that The Statute Law Amendment Act was clarification and was dealing with legalistic matters and wording changes.

This, the minister has already indicated this morning, is a substantive change in the law. It is not clarification. The minister has indicated that it is new law. There are new criteria by virtue of this

amendment that qualifies schools for funding. I am not debating the merits of that. I want to make that clear. I am not debating the merits. The point is that it allows for new rights. It allows for perhaps taking away of rights. I do not know. Therefore, it should not be subject to statute law amendment. It should be a product of its own bill to stand alone and allow us to debate it on that basis in the Legislature. Otherwise, it runs contrary to almost everything that we have done in statute law amendment.

**Mr. Chairperson:** In order for the process to proceed and that we do not stall here all morning, would it be possible that we consider all the other sections of The Statute Law Amendment Act and then, before we pass the act, go back to consideration of this part of the bill?

**Mr. Jerry Storie (Flin Flon):** Mr. Chairperson, I have no problem with that. Unfortunately, I am not a member of this committee and I have other responsibilities. I would like to make some comments on this section briefly before we take the recess, because I will not be able to be back for the continuing debate.

**Mr. Chairperson:** By all means, Mr. Storie. Proceed.

**Mr. Storie:** Mr. Chairperson, I just wanted to make two comments: No. 1, I agree with my colleague the member for Kildonan (Mr. Chomiak) who I think quite rightly has identified that this is a more substantive change than would normally come before the committee of statute law amendments. This is changing the law. I may agree with the minister that the original intent, at least the minister's intent, of Section (f) previously may be covered in some way by this amendment. It may be a clarification, but rightly or wrongly that section is being interpreted differently. Therefore, this amendment changes the law, and that change will mean a substantial amount of taxpayers' dollars will be provided to schools which otherwise would not be.

Normally, when we do these kinds of statute law amendments, we are not dealing with, I guess, changes in the law per se. We are just trying to add words to clarify them or to change words to clarify them. That is not happening here, No. 1.

Number 2, I guess if you are sitting in our shoes, in opposition, you would be quite suspicious of this appearing in statute law amendment. Statute law amendment is normally not attended by outside

groups. Because the changes are minor in nature there are seldom, if ever, briefs presented to the committee.

\* (1100)

I know, for example, the Manitoba Teachers' Society has concerns about this section and the government's intention in this whole area. It leads one to wonder whether, in fact, the department and the minister did not contemplate at some point bringing an amendment into The Public Schools Act, as should have been done, and decided that perhaps it would be easier, in the public relations sense, to do it in statute law amendment, because it does reopen a very serious debate, a debate which certainly stakeholders in the public education system have tended to side not with the government but with the opposition, in terms of the utility and the necessity of providing increasing funding to private schools.

What we are doing here is not protecting the status quo. We are not protecting the historic right of denominational schools. We are not protecting constitutional rights. What we are doing is creating new rights. We are creating the right for any group in this province to be funded, if the government has its way, up to 80 percent of what the public school system is.

Whether the minister will concede it at this point or not, we are going to see a proliferation of private schools, schools with their own agendas. We are going to see a diminishing of the role of the public school at a time when we all agree that finding some common bonds that bind us together is extremely important.

I fundamentally disagree with this approach. Quite frankly, if we can agree here that this is a more substantive change than it first appeared, I would be more than happy to see the status quo maintained, this section of the statute law amendment bill withdrawn, and the minister attempt, in some future session or perhaps even in this session, if the government wishes, to proceed with amendments to The Public Schools Act, and do it in a public way and deal with their full intentions in an open and democratic way. Thank you, Mr. Chairperson.

**Mrs. Vodrey:** Mr. Chairperson, I am happy to take a moment to respond to the comments of the member. I think there are a few points to be raised. I think one of the first is to challenge his assumption that most people do not agree with this, because I

do not think that is the interpretation of our government. Again, our government has made a commitment, because we do believe the people of Manitoba do have the right to choose, and that is the basis of our bringing forward the legislation.

I would challenge some of the assumptions that were made by the member regarding people believing that this is the right way to go or not, because certainly we have information on the other side which says that this is an important movement for the people of Manitoba.

**Hon. Clayton Manness (Minister of Finance):** Mr. Chairperson, I would just like to comment with respect to the process of drawing up statute law amendment acts.

**Mr. Chairperson:** Could you wait just a minute, Mr. Manness? Your microphone does not seem to be picking up.

**Mr. Manness:** What I am going to say certainly is not going to come as anything new to the member for Flin Flon (Mr. Storie), but when we draft the statute law amendment acts, there are times, of course, when items which may be construed as being a little bit more than housekeeping, but yet, maybe not substantive in themselves, come forward and a judgment call is made.

In this case, we sensed that this was a little bit more than housekeeping but in itself was not a substantive bill. As the member says, I am led to believe this has not been proclaimed, this particular section is not law as such, yet there was a clarity that we wanted to provide to this particular section and include it within the statute law amendment, not to do an end run on the Legislature, not to do an end run in any respect on The Public Schools Act.

I can understand the sensitivity. I think it is fair debate. Let me say, from time to time, greater clarity is always needed with respect to some certain parts of bills that are law and yet not proclaimed, and this is one of them.

We are not out to see a proliferation, I can say in all honesty, of private schools that is going to do away with the public school system that is in place. There is no percentage in that type of activity. Yet there are obviously situations where groups in society want to organize their affairs and would like to avail themselves of an opportunity to, in a private fashion, set up in institutional learning.

Philosophically, we do not have to tell each other where we stand on that. We know. There is a great philosophical difference between the NDP and the Conservative Party with respect to funding to private schools. That is a matter of the record for many, many years.

But I ask the member for Flin Flon not to read into this any Draconian plot, other than to give greater clarity to what exists now in an unclear fashion.

**Mr. Santos:** As I understand it, the honourable Minister of Education (Mrs. Vodrey) tried to explain that there is an unproclaimed law. In substance, the law is saying the school has to be in existence three years before it qualifies for any grant. Maybe for the purpose of record, we might want to hear what that unproclaimed law is saying. Can the minister state for the record what the law says, the law that was unproclaimed?

**Mrs. Vodrey:** The effect of the law, as it has been written here, is to say that no private school is eligible for funding and that all private schools must wait for that three-year period. That was the area in which clarification was needed. The clarification comes in the three parts that we have provided in the amendment to The Public Schools Act: (i) to say that private schools that have been receiving grants at the time this clause will be passed will be eligible to continue to receive those grants, provided they meet the areas of accountability; (ii) schools which already are operating and that wish to receive grants will need to operate two additional years and then, provided they are eligible—

**Mr. Chairperson:** Excuse me, Madam Minister. If there are members of the committee or other members that have items to discuss, could they please move from the table? Thank you. Would you proceed please.

**Mrs. Vodrey:** Those schools that are already in operation and that wish to receive funds will need to operate two additional years, those schools which are operating but are unfunded schools. Let me make that point clear. Those are the schools (ii) addresses. Some of those schools which are currently operating and are unfunded do not wish to receive funds because they do not wish to be accountable under the guidelines that have been set up. But those schools that do wish to receive funds, that are currently unfunded, would then need to operate two additional years.

Then (iii) deals with those schools which are not yet formed, but schools which will be formed will need to be in operation for three years following the passage of this clause before they can then apply to receive grants.

**Mr. Santos:** Mr. Chairperson, in the presence of that unproclaimed law, factually, has there been a school that has been receiving a grant now that was not in existence for more than three years?

**Mrs. Vodrey:** Mr. Chairperson, no, there has not been a school that has not been in existence for three years and is currently receiving funds.

**Mr. Santos:** Mr. Chairperson, factually, has there been any school which is not yet in existence for at least one year complete that wants to receive a grant?

\* (1110)

**Mrs. Vodrey:** Mr. Chairperson, there is one school which will be completing its first year of operation that would like to apply for a grant and will fall into category No. 2, a school which will be completing its first year of operation by the time this is passed and which will need to wait the additional two years according to Clause 2.

**Mr. Santos:** Mr. Chairperson, so, in effect, the clarification is changing the three-year pre-existence of a school into less than three years.

**Mrs. Vodrey:** Mr. Chairperson, there were schools that at the time the initial bill was passed believed that they were falling into the three-year category which was stated in the original (f) section, that one school in particular in which we have understanding would like to apply for grants has therefore completed what they would consider to be one of those three years and, therefore, according to (ii), will be required to complete two additional years and will have, in fact, been in existence for three years at the time that they will be applying for a grant.

**Mr. Santos:** Mr. Chairperson, in the absence then of this amendment, that same school that the minister is speaking of will not even be eligible to file the application unless three years have expired, but because of this amendment it will be able to do so and will have that right that previously did not exist before.

**Mrs. Vodrey:** Mr. Chairperson, if this amendment did not occur and the bill was proclaimed as written previously, it would require that school to wait an additional three years and its one year of functioning

would not be counted. Under the clarification, we have allowed for under (ii) a method to account for that school's year of operation and to request that it operate two additional years before it requests funding.

**Mr. Santos:** Mr. Chairperson, in other words, a right that was not there before is now being created for this particular school.

**Mrs. Vodrey:** Mr. Chairperson, it was always the intent that the school be in operation three years and then be eligible to apply for grants. So this particular amendment is clarifying who may become eligible and after what time period they will be eligible.

**Mr. Santos:** Mr. Chairperson, there is a change of circumstances here. Under the unproclaimed law, that particular school is not even eligible. But because of this particular amendment, if passed, it will become eligible.

How can that be a clarification when a right that did not exist before will now be in existence? That is the creation of a new substantive right, and therefore this amendment is not a mere technical or clarificatory amendment. It is substantive in the sense that it legitimizes something which is not legitimate. It legalizes something which is not legal.

**Mrs. Vodrey:** Mr. Chairperson, the previous Section (f), had that been proclaimed, would have required all schools to wait three years. It is my understanding the intent was that if schools had been in existence three years and complied with the rules of accountability, that those schools then would be eligible for grants. This also clarifies for those schools which, at the time that bill was passed, came into existence expecting the three-year waiting period, it will give acknowledgement to that—in the case of one school in particular—it is one year of existence requiring it to wait the additional two years, three years having been the required waiting period. It also says to any new school that wishes to be formed and become a funded private school that it must wait the three-year period, which was the original intent.

**Mr. Chairperson:** This debate appears to be going around in one tight little circle, and it does not seem to be going anywhere. I think there has been a significant amount of clarification from both sides making both issues. I think we understand each other from both points. I am wondering how much longer we want to continue the cross-examination of the same issue.

**Mr. Santos:** Mr. Chairperson, the issue in this particular instance is whether or not this amendment is substantive. If it is creating something which was not there before, then it is substantive. If it is substantive, it has no place in The Statute Law Amendment Act. It has to be a substantive, independent amendment.

**Mr. Chairperson:** I would welcome, Mr. Santos, the question to be put to the committee as to whether this is a substantive motion and therefore either a motion of removal or a motion of acceptance of this portion of the act. It appears to me we are debating a theoretical question, and it will not be resolved unless we put it to the question.

**Mr. Santos:** Mr. Chairperson, this is not theoretical. It is creating an exception to the three-year rule because of the fact that this particular school has already been in existence for one year and recognizing that one year as a period legitimately to be counted in making that school eligible, which otherwise would not be eligible.

**Mrs. Vodrey:** Mr. Chairperson, the member asked me if there was a school which had been in existence for under or about a year. I answered, yes, there is a school which was formed believing in the three-year time period. There are other schools which have been in existence for one year or over as well. There are schools which are not yet formed.

When the original bill was passed, the intention was to say, at the time of the passage of that bill, schools then would need to wait the three-year period.

We have recognized that it has taken approximately one year in order to bring forward the clarification for those schools which are currently in existence. Therefore, to acknowledge that one year, we have said in (ii) that those schools which have been currently in existence at the time that this clause is passed and will have been in existence two additional years, will then be able to apply at the end of two years, but in fact those schools will have been operating three years or more.

Number (iii) says that for a school which has not yet been formed and wishes to become formed and wishes to become funded, then that school will fall into the three-year waiting period.

**Mr. Chairperson:** Could we continue then now to the clause-by-clause consideration or did you want

to accept, as the motion was put before, Items 1 to 42(17)?

**An Honourable Member:** No.

**Mr. Chairperson:** If that is not the case, can we move then toward accepting Items 1 to 26(3)—pass; can we move then to pass Public Utilities Board 28 to 42(17)—pass.

**Mr. Chomiak:** I have to apologize; I was not in committee the last few minutes and I do not know if there were any developments other than prior to when I had left. We are into discussion, it is indicated; then I go back to the concerns that I raised. They have not changed and I have not been convinced otherwise on the matter, and I am wondering if the minister has any further information for us.

\* (1120)

**Mrs. Vodrey:** I think just to update the member, in the first instance, I will be proposing an amendment to deal with the "or" which the member raised, as a method of clarification.

The issue of whether this is a substantive amendment or an issue of clarification has been debated while the member has been out. At this point, our position remains that this is an issue of clarification, an issue that will clarify, schools which came into existence at the time that the original bill was passed, or which had been in existence before that and which wished to become funded schools will fall into subsection (ii); those schools that have not yet been formed will fall into the three-year waiting period which was the intent of the original bill.

**Mr. Chomiak:** I want to indicate I appreciate the fact the minister will bring in that clarification of "or." I still have, on principle, difficulty with this section because—and I am not debating. I will again reiterate, I am not debating the merits of the issue. That can be left to another time. I believe that it is a substantive change and should be subject to a separate bill in the Legislature.

**Mr. Chairperson:** Are we prepared now to accept and adopt 27(1) to 27(7)?

**Mrs. Vodrey:** Mr. Chairperson, I have an amendment to make to 27(4), 60(5)(f)(i).

**Mr. Chairperson:** Just a minute, I think what has to happen here is that the minister responsible for the law amendment act has to make the amendment.

**Mr. McCrae:** I move, in English and French,

THAT the English version of Clause 60(5)(f), as set out in subsection 27(4) of the Bill, be amended by adding "or" at the end of subclause (i).

**[French version]**

Il est proposé que la version anglaise de l'alinéa 60(5)f), énoncé au paragraphe 27(4) du projet de loi, soit amendée par adjonction, à la fin du sous-alinéa (i), de "a".

**Motion agreed to.**

**Mr. Chairperson:** Item 27(4), as amended—pass; 27(i), 27(ii), 27(iii)—pass; 27(5), 27(6), 27(7)—pass.

Preamble—pass; Title—pass; Table of Contents—pass; Bill, as amended, be reported.

Thank you to all members of the committee. Thank you very, very much for the co-operation and the diligence that you have displayed over the last couple of days. I thank you for your indulgence.

**Mr. McCrae:** Mr. Chairperson, I join you in thanking the members of this committee for their patience. We had a difficult go around with this committee this session.

Mr. Chairperson, if I may say so, your handling of the public and the members of this committee is fair and firm and effective. Thank you, Mr. Chairperson.

**Mr. Chairperson:** Thank you, Mr. Minister. Committee rise.

**COMMITTEE ROSE AT: 11:26 a.m.**