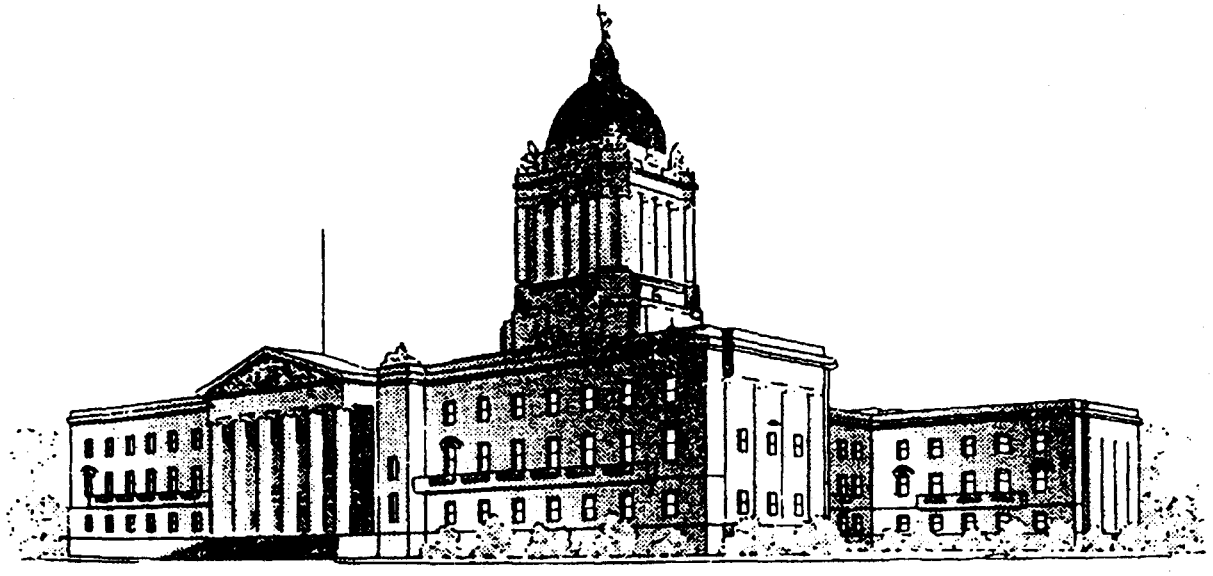
Third Session - Thirty-Sixth Legislature

of the

Legislative Assembly of Manitoba

Standing Committee on Law Amendments

Chairperson
Mr. Jack Penner
Constituency of Emerson



Vol. XLVII No. 6 - 10 a.m., Tuesday, June 24, 1997

MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Sixth Legislature

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LEGISLATIVE ASSEMBLY OF MANITOBA

THE STANDING COMMITTEE ON LAW AMENDMENTS

Tuesday, June 24, 1997

TIME – 10 a.m.

LOCATION – Winnipeg, Manitoba

CHAIRPERSON – Mr. Jack Penner (Emerson)

VICE-CHAIRPERSON–Mr. Peter Dyck (Pembina)

ATTENDANCE - 11 – QUORUM - 6

Members of the Committee present:

Hon. Messrs. Radcliffe, Reimer, Toews

Mr. Dyck, Ms. Friesen, Messrs. Helwer, Jennissen, Laurendeau, Mackintosh, Maloway, Penner

APPEARING:

Mr. Gary Kowalski, MLA for The Maples
Ms. Marianne Cerilli, MLA for Radisson

WITNESSES:

Bill 38–The Highway Traffic Amendment Act (2)

Ms. Dianna Bussey, Salvation Army Correctional and Justice Services

Bill 52–The Statute Law Amendment Act, 1997

Mr. Dave Lindsay, Private Citizen

Bill 56–The Family Maintenance Amendment Act

Ms. Rosella Dyck, Coalition of Custodial Parents of Manitoba

Bill 58–The Law Reform Commission Amendment Act

Major W. Loveless, Golden West Centennial Lodge

Ms. Susan Riley, Manitoba Association of Women and the Law
Ms. Patricia Ritchie, Ethics Committee, Grace General Hospital
Mr. Doug Finkbeiner, Law Society of Manitoba
Mr. Clifford Edwards, Manitoba Law Reform Commission
Mr. Garth Smorang, Manitoba Bar Association
Ms. Valerie Price, Manitoba Association for Rights and Liberties

WRITTEN SUBMISSIONS:

Ms. Rosella Dyck, Coalition of Custodial Parents of Manitoba

MATTERS UNDER DISCUSSION:

Bill 21, The Jury Amendment Act
Bill 33, The Executions Amendment and Consequential Amendments Act
Bill 38, The Highway Traffic Amendment Act (2)
Bill 52, The Statute Law Amendment Act, 1997
Bill 56, The Family Maintenance Amendment Act
Bill 58, The Law Reform Commission Amendment Act

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Mr. Chairperson: Would the Committee on Law Amendments please come to order. This morning the committee will be considering Bill 21, The Jury Amendment Act; Bill 33, The Executions Amendment and Consequential Amendments Act; Bill 38, The Highway Traffic Amendment Act (2); Bill 42, The Provincial Court Amendment and Consequential Amendments Act; Bill 43, The Law Society Amendment Act; Bill 45, The Manitoba Evidence Amendment Act; Bill 46, The Criminal Injuries Compensation Amendment Act; Bill 52, The Statute Law Amendment Act, 1997; Bill 56, The Family Maintenance Amendment Act; Bill 58, The Law Reform Commission Amendment Act; and, Bill 60,

The Elderly and Infirm Persons' Housing Amendment Act.

To date we have had a number of persons who have registered to make presentation on the bills this morning, and I will now read aloud the list of names of persons who have registered.

On Bill 38, Dianna Bussey, The Salvation Army Correctional and Justice Services committee has registered; on Bill 52, Dave Lindsay, Private Citizen, has registered; on Bill 56, Rosella Dyck, Coalition of Custodial Parents has registered, and she has indicated that she needs to leave rather quickly. I am going to ask the committee a bit later whether we want to give consideration to Rosella Dyck.

Bill 58, Major W. Loveless, Executive Director, Golden West Centennial Lodge; Susan Riley, Manitoba Association of Women and the Law Inc.; Pat Ritchie, Chair of the Ethics Committee, Grace General Hospital; Doug Finkbeiner, Law Society of Manitoba; Cliff Edwards, Law Reform Commission; Garth Smorang, Manitoba Bar Association; Valerie Price, Manitoba Association for Rights and Liberties.

Those are the current list of presenters that have registered. What is the will of the committee? Do we want to give consideration to Rosella Dyck as the first presenter? She is not an out of towner, but she has indicated that she needs to leave rather quickly. Is it the will of the committee to hear her first? [agreed]

I will then ask that if there are any persons who are in the audience who want to make presentations who have not registered, make sure you register in the back, that you might be heard. For those who are here who have presentations for distribution, you can give them to the Clerk when you approach the Chair.

Does the committee want to use time limits for the presentations?

Mr. Peter Dyck (Pembina): Mr. Chairman, as we have had in other committees, I would suggest that we go to the 10-minute presentation and five-minute questions, again with some latitude for you as Chair to be able to use your discretion, but that would be my suggestion in order to assist everyone.

Mr. Chairperson: Is that agreed?

Mr. Gord Mackintosh (St. Johns): I know my experience has been, particularly when we are not dealing with general policy but dealing with sort of expert information that comes to us and even policy matters, that the five-minute question period is just not sufficient, and I think it is difficult for members to be put into the position of having to ask for leave to extend that. I was just wondering if the committee could go 10 and 10.

Mr. Chairperson: What we did yesterday, Mr. Mackintosh, I asked the indulgence of the committee and it worked fairly well. We set the time limits at 10 and five and allowed for further questioning if the need arose, and it sort of worked.

If that is the agreement of the committee, we will work on those principles again today, if you allow me that discretion. [agreed]

Bill 56–The Family Maintenance Amendment Act

Mr. Chairperson: We will then ask Rosella Dyck to come forward. She will be presenting on Bill 56, The Family Maintenance Amendment Act.

Ms. Dyck, have you copies for distribution? The Clerk will distribute. You may proceed with your presentation.

Ms. Rosella Dyck (Coalition of Custodial Parents of Manitoba): I certainly thank you for allowing me to speak first. I appreciate your consideration

I am speaking on behalf of the Coalition of Custodial Parents of Manitoba regarding Bill 56 amendments, The Family Maintenance Amendment Act. I would just like to point out that I do have a submission. I obviously cannot go through it in 10 minutes. I hope you will be able to go through that later.

I would like to point out, first of all, that the coalition has a few difficulties with Bill 56 amendments. Basically, our difficulties have to do with adopting the federal child support guidelines provincially, and the reason for that is, basically, that the federal child

support guidelines provide rather low support amounts, that, in fact, many people in the province of Manitoba will end up with lower child support orders under the federal child support guidelines, and the second reason is, basically, because of the treatment of medical expenses under the child support guidelines.

I would like to point out that 60 percent of custodial parents, custodial families, live in poverty as compared to 10 percent of noncustodial parents. I would like to point out that Manitoba has been known for most of this decade as the child poverty capital of Canada. I would like to point out that 41 percent of children, Canadian children, who live in poverty are children of separation and divorce.

I would also like to point out that 96 percent of children whom we consider to be from single parent families are actually children from relationships that have ended in separation or divorce, common law or legally married people.

I would like to also mention that Canada has signed a pact with the United Nations that should ensure the necessities of life to all Canadian children, a healthy environment to live in, nutritious food to eat, not slums to live in. More than 11,000 single custodial parents live in Manitoba. That is quite a few people we are talking about. The number of children involved, of course, are much more than that.

If you will look in my submission, you will note various titles. General response to Bill 56–and I will just go into that a little bit right now–again, we do not support adopting the federal child support guidelines, and we believe that Manitoba can do much, much better for her children. One of the reasons I say that is when you look at, for instance, the welfare rate in the province of Manitoba, you notice that a single person has an amount, approximately, of $6,000-and-some-odd a year. You will notice that when one child is added to the equation, that single person then receives almost $10,000 a year. So I would like to point out that the single custodial parent who is on welfare–not that there are very many of them, I might add; I think fewer and fewer all the time because most single custodial parents work full time–is expected to spend 37.5 percent of income on one child. Yet, under the federal child support guidelines the most even the highest income payer is expected to pay is less than 10 percent of income.

* (1010)

The single custodial parent on welfare has less than $10,000 a year for the parent and one child. However, under the federal child support guidelines a noncustodial parent making $10,000 is expected to pay perhaps a couple of hundred dollars a year in child support. How are children going to be properly looked after? Who is going to feed these children properly? Children cost a lot of money in our experience.

If you will notice, on page 6 of this submission we detail some of the problems that are inherent in the federal child support guidelines, being, as I was speaking of, inadequate support amounts. Another problem is that legal cost still requires more support orders and shareable expenses. I would like to point out that only about 66 percent of custodial parents have support orders. Many people do not have support orders simply because they cannot afford the legal costs involved. If the child support service that is suggested in Bill 56 amendments were to have a power to calculate original child support orders, that could greatly relieve that problem.

I would then like to point out again the inequitable sharing of health expenses. As I mentioned, medical expenses under the child support guidelines leave a lot to be desired. For some reason there is $100 deductible applied for these medical or health expenses per event or illness, whereas there is no deductible applied to any other shareable expenses. This deductible could prove to be rather expensive to the custodial parents. You know, if you just think about it, what if you have got a few children and one child needs glasses, so you spend $95 for a pair of glasses. That expense is not shareable because it is under $100. The child breaks the glasses six months later because they were cheap glasses and they do not last, and that is another $95, again not shareable because it is a new event. What if there are four children, and they all have shortsightedness because it is a hereditary condition? So you have got four kids going through how many pairs of glasses a year, all not shareable?

You have got how many children needing to have dental appointments every year? It does not cost $100 to get your teeth cleaned, but if you do not get them cleaned you will be paying down the road. Yet, each time you go to that dentist, that amount is not going to be shareable unless it is over $100. That could end up to be $1,000 or $2,000 or who knows how many dollars a year. I believe that, if nothing else, certainly a change could be made today to remove that $100 deductible to make the entire expense shareable.

Speaking of these special expenses, I have noticed, at least I cannot find and none of us could find within Bill 56 or the federal child support guidelines any indication regarding when these expenses would be claimable. Now, do we have to have all these expenses written into the original child support order in order to be claimable? If they are not there, tough luck, or can we go back to the child support service later on with our bills and say this is what we have spent? Could we share this, or what do we do? I find no indication regarding this. I would suggest that at least annually these matters should be reviewed so that some money could be reimbursed. I would also like to point out that for a lot of custodial parents–as you recall, so many of them live in poverty–trying to put out that money initially will be very difficult. Those expenses may never be spent simply because they do not have the money to spend and so the children will be suffering.

I do not know that I have much more time. How much time have I got?

Mr. Chairperson: One more minute.

Ms. Dyck: Okay. Again, there is more said in this submission. I do hope that you have time to read it. There are some recommendations regarding a child support service on page 9. On page 11 you will see a couple of alternative guideline models that we have developed. I would like to say that the Coalition of Custodial Parents would be more than pleased to meet with whoever is deciding these things and act as a consultation kind of service for you to explain, you know, how things are for so many custodial parents and how life could be improved for children of custodial parents.

I would like to point out at the very end here that you have here, today, the opportunity to improve, to really improve, the lives of many children if you go about this the right way. Guidelines can be a good thing if they supply adequate support amounts, but I hope that you do not just take the easy way out and simply adopt the federal child support guidelines as they are. I know that we can do much better for Manitoba children, and I also want to say that they are worth every effort. Thanks.

Mr. Chairperson: Thank you very much, Ms. Dyck. With the indulgence of the committee, I would ask that this whole presentation be recorded, that the record would show. Thank you.

Are there any questions? Mr. Mackintosh.

Mr. Gord Mackintosh (St. Johns): Thanks for your presentation, Ms. Dyck. I just want to note in public though that you are really distinguishing yourself in providing information and views to the Legislative Assembly on maintenance issues and going to great lengths to put the views of the association before us. I commend you for that. I have seen this pattern over the last three years, and I think it is making a difference. Has the association been consulted by the government in the wording or the principles contained in the act or the guidelines?

Ms. Dyck: We have not been consulted provincially. We have been consulted for the federal child support guidelines, mainly in writing, of course, and mainly on our initiation. Provincially, no.

Mr. Mackintosh: One of the difficult things facing us is that we have enabling legislation here but no guidelines in front of us. The guidelines, as you know, will be brought in by regulation, and this committee will not have an opportunity to publicly review them. So I am wondering if it is your view that the government should set up some consultation process to ensure that the guidelines meet the needs of Manitobans in particular.

Ms. Dyck: Definitely, I do agree with that. It is very difficult for you to make this decision today, I would say, without actually seeing these guidelines in front of you, because you are adopting something–well, perhaps

you have read them; I do not really know. You may be adopting something you have no idea of. You need to read them, yes. I believe that Manitoba parents need to be consulted before guidelines are instituted.

Mr. Mackintosh: I take it though that the association is in favour of guidelines in principle.

Ms. Dyck: In principle.

Mr. Mackintosh: What I find very interesting is your views on the child support service and looking at the model of a tribunal. I take it then the association has been very dissatisfied with the kind of process that the court offers in dealing with maintenance enforcement and awarding orders. Is that correct?

Ms. Dyck: That is correct, yes. We have had a lot of difficulty with awarding of court orders. We have had a lot of difficulty with the entire court process. We find it very difficult to work with. We find the court process is very lengthy. It is very time consuming; it takes all our energy. We need this energy to look after our children, not for the courts. It is very expensive, yes.

* (1020)

Mr. Mackintosh: I like this concept. I think it should be developed for the purposes of today in dealing with the legislation. We have been advocating a maintenance enforcement advocate's office to assist people. It looks like this child support service might go a short step, although it looks like it is just calculating amounts. We are urging the government to make this an advocacy office, this child support service. For now, at least, would you see that of some benefit or do you see some problems with that?

Ms. Dyck: That sounds like a very good idea to me. If you will read, when you have more time to read this, you will notice I believe that we have also included not just recalculations but making up original orders and also an advocacy regarding various parts of the court process, and that would also include maintenance enforcement. We believe that maintenance enforcement should be responsible to this tribunal.

Hon. Vic Toews (Minister of Justice and Attorney General): Thank you very much for your presentation, and my department and I will take time to read some of your comments, those that you have not been able to express here today directly, but we certainly have your report.

You are aware of the purpose that Manitoba is bringing in these guidelines in order to establish a consistency between the Divorce Act and the maintenance act so that parents are not met with two different sets of laws regarding what might be one continuous process, that is, a different set of laws for the maintenance act, and then when the divorce occurs, a different set of laws for that. You are familiar with that issue?

Ms. Dyck: Yes, I am familiar with that, and I would just like to point out regarding that, actually most people when they separate can go under the Divorce Act as far as the support orders go as long as they have considered divorce, if divorce has been filed for, which has happened in most cases. Yes, I believe, there should be equal standards for any child who needs child support. I am just saying that I believe we can do a lot better than this for all Manitobans, whether they are under federal or provincial legislation.

Mr. Toews: As you are aware then, the tax situation is governed entirely by the federal laws and that the unmarried people cannot have access to the Divorce Act as you suggested, that married people might have access to the Divorce Act?

Ms. Dyck: Yes, definitely. However, I would like to point out, as I said, that many support orders will go down under the federal act and therefore perhaps they do not want to have access to it.

Mr. Chairperson: One final question, Mr. Toews.

Mr. Toews: You are aware as well that these guidelines contain an element of discretion for a judge, so that a judge looks at the guidelines and can vary that in appropriate circumstances, some of the circumstances that you met. In other words, this legislation is not fixed, and, indeed, has been described as setting a floor amount but not a ceiling amount.

Mr. Chairperson: With a final response, Ms. Dyck.

Ms. Dyck: Yes, I do understand that. The thing is that I do hope the judges really realize that is a floor amount. I really do question how they are going to apply that. They may take it as a ceiling. I suspect that they will. Definitely, it is just so hard to know what they will do with it, but I guess we do not really know that yet.

Mr. Chairperson: Thank you very much for your presentation, Ms. Dyck.

Mr. Mackintosh: I wonder if there would be agreement just to ask another question.

Mr. Chairperson: We have gone substantially over the time limit. What is the–agreed? [agreed]

Mr. Mackintosh: We have some amendments that we are going to propose to the committee on this bill. One of them is to require the court to not make a child support order in an amount that is less than set out in the guidelines. It is not in there right now, to be specific. Secondly, an amendment to require that the cost of raising the child be considered first and foremost and allow for automatic indexing of orders. I know you will not be here. I am just wondering if you have any thoughts on that. Are we off base on those three amendments at least or are we on?

Ms. Dyck: I would definitely agree with you. The cost of looking after the children should definitely be the first factor and the foremost factor that is looked at, and that is really not inherent in these guidelines. They are based on some strange kind of a formula that seems to recognize that children cost hardly anything if you have no money. That does not make sense to me. As far as automatic indexing goes, definitely. The only variation that I can see happening with these guidelines is that they will be very down because the noncustodial parent's income goes down, but for some reason they do not get varied up if–well, of course, they can get varied up I guess if his income goes up or her income.

However, I guess the point I am trying to make here is that perhaps the cost of living goes up, so the noncustodial parent has less disposable income. So the support amount goes down, but the cost of living also goes up for the custodial parent and for the child, and yet their support order goes down. They do not get more money, they get less money. There should be an automatic indexing.

Mr. Chairperson: Thank you very much, Ms. Dyck, for your presentation.

Bill 38–The Highway Traffic Amendment Act (2)

Mr. Chairperson: I call next Dianna Bussey on Bill 38, The Highway Traffic Amendment Act. Have you a presentation for distribution? You may proceed.

Ms. Dianna Bussey (Salvation Army Correctional and Justice Services): Yes, I do.

Good morning, and I thank you for this opportunity this morning. My name is Dianna Bussey, and I work for the Salvation Army Correctional and Justice Services. I am here this morning in regards to the johns school program as well as its relation to Bill 38. I have included with the copy of my submission our statistics for also another diversion program already operating in Winnipeg, so you can have a bit of an idea of our success with that.

It is my understanding that there is some controversy over the impending johns school program due to concerns of its ability to reform its participants. I hope to be able to eliminate those concerns and hopefully answer some questions as well.

We, The Salvation Army Corrections in Winnipeg, were approached by the Winnipeg city police to administer the johns school due to our current involvement already in diversion with the positive lifestyle program, as well as the Salvation Army's administration of the johns school program in Toronto already. The johns school would actually be a natural next step for our programming to take because of the many needed resources already being in place and the expertise already being in place.

I and my colleagues feel that the Winnipeg johns school, as in Toronto, would effectively and efficiently address the demand for government and society to deal with those charged with the offence of communication for the purpose of prostitution. We do not consider the johns school to be at all lenient in comparison to a

judicial sentence. It is our belief that by attending the johns school, participants are actually choosing a much more demanding route. It is the johns school's objective to assist the offenders to realistically face the consequences of their behaviour, to understand the possible relationship between the offence and emotional difficulties and to take responsibility for their actions. With the johns school, offenders can receive the kind of assistance they need to address the root cause of their behaviour, and as a result, they are no longer prone to repeat the offence.

The eligible offender will be given the opportunity to participate in the johns school at the time of the arrest. To be eligible, the offender will not have had a recent related record and must be an adult. The potential participant will then meet for an intake interview with the Salvation Army where further details will be given and a negotiated fee of between $200 and $400 will be reached. This fee will be based upon the individual's economic status. The date of the school will be given and then the agreement signed, and that is in the first interview.

The johns school itself will be eight hours in duration and will be presided over by the Winnipeg city police. Included will be discussions and speakers from the Crown Attorney's office, Public Health, Addictions Foundation of Manitoba and the community. An ex-john will speak, as well as two or three ex-prostitutes. The offenders will be expected to participate in the group, speaking, and, as well, they will be meeting within small groups concerning a variety of topics and personal issues. It will not be an easy day for them, and I really stress that.

The Salvation Army will meet with the offenders on a one-to-one basis then for an exit interview, and follow-up contact will be made again three months following the date of the school. If during these interviews, we find the offender to need further assistance in some area, perhaps addictions or something like that, we will meet with them and make the appropriate referral.

After successful completion of the program, the participant, the offender, will then have their criminal charge resolved and will not have to attend court as the charge will not be laid.

The funds collected from the offenders will mainly be used to finance programming for prostitutes who wish to alter their lifestyles. A portion of the funds will then also be used for the Salvation Army's administration of the program.

Should the offender, after enrolling in the program, not attend the school or fail to meet some of the criteria or the conditions, the Registrar of Motor Vehicles will suspend or cancel their driver's licence. If the offender is found to be operating a motor vehicle while suspended, they can be charged with driving while suspended and the vehicle be subject to seizure and impoundment.

* (1030)

If the offender is found to again be frequenting a known prostitution area, program involvement will be terminated, and charges then will be laid. They will no longer be eligible for the program.

The johns school here in Winnipeg has been closely modelled on the same program in Toronto which is meeting with great success. They have had over 500 johns complete the program, and after a year and a half of operation, their recidivism rate is still zero. They have had no incidents of recidivism.

The Winnipeg johns school is not an untested program. Similar programs were closely examined in Edmonton, Alberta and San Francisco. The Toronto program was actually modelled on the San Francisco program. We believe that we have the added advantage of being able to build on these similar programs but then also to learn what did not work for those cities, and we feel that the johns school program will address the needs of the community to do more to prevent crime.

That is my submission. I am open to questions.

Mr. Chairperson: Thank you for your presentation, Ms. Bussey, and we apologize for the noise out there, but there are some people who are having to do their jobs. Of course, the Minister of Government Services (Mr. Pitura) here, he might want to go talk to them that they might just delay just a bit.

Floor Comment: He is not here.

Mr. Chairperson: He is not here, sorry.

Hon. Vic Toews (Minister of Justice and Attorney General): Thank you very much for your very impressive presentation. I note with quite interest the issue in respect of the recidivism rate being zero in Toronto where this program is being used. I note that the johns school for the johns is not simply a one-day seminar but indeed there is an, I assume, an interview that occurs before they enter the school, and then an exit interview and follow-up interviews with related programs. Is that correct?

Ms. Bussey: Yes, there will be a minimum of four meetings per john. The john will have to attend a minimum of four meetings and that does not include their arrest.

Mr. Toews: The other interesting development that the Salvation Army has in respect of this program is the program in respect of getting the prostitutes off the street, offering them in the words of your program here, a positive lifestyle. Could you talk a little bit about that and give the committee some information as to what occurs here and how many meetings would occur with the prostitutes as well?

Ms. Bussey: The positive lifestyle program is actually a separate program from the johns school or what we have in mind for the prostitutes. The positive lifestyle program is a program for mainly first-time offenders of nonviolent offences. Probably about 95 percent of the clientele for the positive lifestyle program are shoplifters, and what entails for them is they attend approximately seven meetings, the first and the last being an intake meeting and then an exit interview. The five meetings in the middle are done in a group of 12 other people in the same situation. They meet once a week for two hours for five weeks and they go over things like life skills. We believe most of these people would not have got involved in crime had there not been some sort of a problem or issue at the time, so we go over topics with them like stress management, problem-solving, assertiveness and those things.

Because of the criteria for entering the positive lifestyle program has been nonviolent offences, we have had a few prostitutes and johns go through the positive lifestyle program, but the program itself, the prostitutes and the johns would probably be better assisted if we had a program specifically for them.

Mr. Gord Mackintosh (St. Johns): Thank you very much for your presentation. We certainly applaud the objectives of the program. I note the description says that this program is not for repeaters, and I am just wondering why that is.

Ms. Bussey: Before we decided to start the program, we were just looking for first time offenders. It is not saying that we do not just want to say first time offenders because if they have some unrelated charge 10 years ago, they should still get to take the program. But if they do have a prior recent communication for the purpose of prostitution offence, right now, we are not going to be taking those people just because we need to start on added days. Maybe in a year or two, we can open it up further to those people.

Mr. Mackintosh: Is that how the Toronto program works as well, or do they accept repeaters?

Ms. Bussey: The Toronto program actually is solely for first time offenders. They have such numbers that that is what they can deal with.

Mr. Mackintosh: I guess that may explain why there is no relapse for those who are attending the Toronto program. I was just wondering, just looking at the logic of the program if in fact it is a more rigorous or tougher or more meaningful program, I am wondering why it is restricted then to first-time offenders when the real problem, well, not the real problem, but a more challenging problem are the repeaters. You might want to comment on that.

My other question is what about those who solicit child prostitutes? Are they dealt with in this program, and if so, is there a special part of the program that deals with that certainly more heinous crime?

Ms. Bussey: With regard to the repeat offenders, I think that is something–you are definitely right, I would agree with you, we do need to be looking at that. It was a decision that was made that we would just start small

and work up from there. Let us get the machine finely tuned and then go from there.

With the people who are soliciting child prostitutes, I am not absolutely positive about this, but I do not believe that they would be allowed into the program at this point as it is.

Mr. Mackintosh: Would you support this kind of a program tailored for those who solicit child prostitutes in addition and on top of other sanctions available at law?

Ms. Bussey: Yes, I would. I think it could be tailored further to assist those people.

Mr. Chairperson: Mr. Mackintosh, for a final question.

Mr. Mackintosh: My final question is, knowing how difficult this challenge is–I mean, you are familiar with the neighbourhoods that are trying to deal with this and the harm that is done to individuals–I wonder if you and your organization would favour the seizure and forfeiture of vehicles of johns through a legislative route.

Ms. Bussey: Pardon me?

Mr. Mackintosh: Would you or your organization favour, in addition to the other sanctions, including this program, the seizure and forfeiture of vehicles used to solicit prostitutes?

Ms. Bussey: I would favour it if they–as I said in the submission, yes, if they do not comply with the program. You are asking on top of the program?

Mr. Mackintosh: Yes.

Ms. Bussey: I would wonder really what the benefit of that would be. You are hurting the entire family if there are children involved and a wife. I really do not think that financial issues or maybe possibly even their vehicle is really going to do a lot of good. They need to really understand why they have done what they have and take a serious look at it from there. I just wonder about the validity of it.

Mr. Mackintosh: Just one final follow-up then–

Mr. Chairperson: One final one?

Mr. Mackintosh: Yes.

Mr. Chairperson: Thank you, Mr. Mackintosh. Go ahead.

Mr. Mackintosh: You may be aware that in the election campaign the government campaigned on the seizure and forfeiture of vehicles used by johns. Was your organization consulted at all in leading up to that election campaign promise, or were you involved in the research that led to that promise at all?

Ms. Bussey: I do not believe so.

Mr. Chairperson: Thank you very much, Ms. Bussey, for your presentation.

Bill 52–The Statute Law Amendment Act, 1997

Mr. Chairperson: I call next on Bill 52, Dave Lindsay. Mr. Dave Lindsay, have you a presentation for distribution?

* (1040)

Mr. Dave Lindsay (Private Citizen): No, I do not; strictly oral.

Mr. Chairperson: You may proceed. Welcome to the committee.

Mr. Lindsay: Good morning. My name is Dave Lindsay and I am a private citizen. First of all, I will apologize for my attire. I got off a six-dollar-an-hour graveyard shift to come here today, and I came here directly from work.

Many of you will have read the article in the Winnipeg Free Press on Sunday regarding the issue of The Law Fees Act, Section 9, in forma pauperis which was written by Mr. Paul Wiecek regarding my case with the government of Manitoba.

Section 9 upholds the common law and fundamental right of all Manitobans not to be denied justice strictly on the basis of their indigency. Under common law, it is illegal to sell justice in the first place. As a Crown attorney, Mr. Toews, you are well aware of that. Your government continually has set a fee structure that places it out of the reach of every indigent in this province. You have cut back and cut back and cut back at Legal Aid. You are now imposing a $25 fee that welfare recipients must pay who are already living below the poverty line. I do not see any of your business associates paying $25.

This common law right is to prevent what your government is doing. In a similar fashion, the common law makes sure that all taxes are voluntary to prevent governments such as yours from taking everybody's money away off them.

The Legal Aid cutbacks that you have put in–go ahead, smile–the Legal Aid cutbacks that you have had are absolutely disgusting. Your activities in regard to The Law Fees Act are worse. I made an application under that act which is still law today. It has not passed and has not got Royal Assent. It is still law. Your government refused to acknowledge it. The act itself, as a Crown attorney, you are aware of it. The act itself governs supreme.

The authority for issuing a certificate in forma pauperis, which your government and the Attorney General's department has agreed I met the requirements for, rests on you. The authority is in the act. You do not need regulations to issue such a certificate. In such a scenario, what your government is saying, is because there are no regulations, our government is not going to obey the law. The regulations were deleted, I believe, in Order-in-Council a number of years ago when legal aid was brought in which was much more generous at that time and very few people were denied its benefits. That is not the case today.

Your government, Mr. Toews, if it were to follow your advice, could delete all regulations from all its acts and then not obey them simply because there are no regulations having the law valid on the books at the present time, which is what your government has done to me. I had a criminal record for (a) an offence that I was not guilty of, and (b) in the face of constitutional violations by the City of Winnipeg police officers which a Queen's Bench justice has admitted, if based on my statement in court was true, would have given me solid legal grounds for a dismissal of my conviction.

However, she could not issue a hundred percent definitive statement on that because she did not have the transcripts. I could not get the transcripts because I do not have $420. I tried. I put a hundred and fifty bucks down on them, and I tried to get those. I was denied my appeal, my right to appeal, a legal right to appeal was denied because I could not afford them. As a Crown, you are aware it is against the law to charge a person in the exercise of a right, and I have been denied that. I am now saddled with a criminal conviction which is on leave to the Supreme Court or leave to appeal. If that is denied, and thanks to your corruption, I am stuck with a criminal record.

How would anybody here feel if you got charged with an offence and went to an appeal, you were indigent, and you go to a section of the law that says, here is your way out, you can have your fees paid and you can get your appeal in and you can have justice, and the government says, sorry, we are not going to obey it? What recourse do you have? Mine was to go to the courts. A Queen's Bench justice, Justice Steel, said that you had to have merit to your case. How can a determination of merit for an appeal be made when they do not have the transcripts to get the information to make an appeal off of? The appeal in my case was $420–$415 for transcripts. You can see the vicious circle that makes.

Now, Mr. Toews, not everybody, in fact very, very few people have the ability that I have to go and research this information. I have been given a lot of credit by numerous lawyers and justices from Queen's Bench and the Court of Appeal on my research capabilities and, specifically, in finding this section of the act that your government has refused to uphold. The fact that you are now passing an amendment will further solidify your government as one who defies its own laws. The Law Fees Act is still valid. You are taking that away.

What is an indigent to do now because legal aid determines that there is no merit to the appeal or they are not going to jail? Sorry, we are not going to give

you legal aid. Right off the bat he is out $25, especially if he is on welfare or making, in my case, a $6 an hour job. So then he represents himself.

Ninety-nine percent of the people go into that situation without my capabilities to do any research. They are then at the mercy of Crown attorneys, the justice system and the judges. I have seen the corruption involved in that system already.

In conclusion, I am going to tell you right to your face, the act and the amendment you are passing today, Mr. Toews, you are destroying and taking away a fundamental right of all Manitobans. It is outside your authority and jurisdiction to do so. All that act did is specifically protect indigents. If the rich are foolish enough to go and pay their $100, $120 for claims and all their appeal costs, et cetera, and transcripts, in the face of the fact that common law states that it is illegal to sell justice, that is their business. If they have the money, they can go and pay for it. I would not, if I was rich enough to begin with. However, I am not.

Your government has agreed that I met the requirements for pauper status under the act. You have violated that, and now you are taking away the person's last common law rights. In my opinion, Mr. Toews, you are a criminal, and I say that right to your face right now. I ask you, how would you feel having a record knowing you cannot get an appeal, which is your legal right, simply because you do not have the damn money? Not a nice feeling, is it? I have to live with that. How many outside agencies, how many government agencies will look at that in the future?

By coincidence, I met the lawyer who represented me that time and I mentioned to him why he did not bring up certain cases at that case, which was one of the bases of my appeal. First time I have ever seen a lawyer fall silent. He now realized what I knew now that I did not know then.

In conclusion, Mr. Toews, what is your justification for breaking the law? Except for any questions, that is all I have to say.

Mr. Chairperson: Thank you, Mr. Lindsay, for your presentation. Are there any questions?

Mr. Gord Mackintosh (St. Johns): This change to the law comes in a bill that is called The Statute Law Amendment Act, Mr. Lindsay, and that legislation historically is to correct drafting errors and include or make technical amendments to a number of bills. So this Section 10 here in regards to The Law Fees Act, and the Department of Justice says that this amendment repeals a section of the act that provides for in forma pauperis certificates that were rendered obsolete by the establishment of the Legal Aid Services system in Manitoba.

Now, I took that argument and I went further. Legal Aid, as far as I know, does not cover all kinds of actions and all kinds of legal proceedings. In fact, legal aid can be denied for a number of different reasons, even when the type of proceeding criteria are met. As well, people sometimes represent themselves, but I am just wondering if you could comment on the rationale given by the government that since you have got legal aid, you do not need this.

Mr. Lindsay: The rationale by the government was that Legal Aid was brought in and, ever since then, the section in forma pauperis has no longer been used. They also brought up the reason that there were no regulations on who is to issue a certificate.

Well, as I had mentioned already, the fact that there are no regulations is irrelevant. The Manitoba Interpretation Act, Section 12 specifically mandates that the government of Manitoba give the act its broadest meaning that best assures the attainment of its goals. The government's position so far has been to deny that and to simply state that Legal Aid is the method of application for an indigent. As you have mentioned, Legal Aid denies a lot of appeals based on merit, and that determination is made by the government, Legal Aid; they determine whether you have merit to your case or not, and numerous other reasons.

You may be denied if you are $10 over their limit. In my case, I was indigent at the time; I was on social services. I am now working at $6 an hour, and I am still being denied legal aid on another issue. I do not know how I am going to pay the lawyer for it. I do not have a choice but to have a lawyer; it is a complicated Queen's Bench issue. I really do not know. I have had

to put my house up for sale for part of that reason, to cover expected legal fees that are coming up, and the position by the government that Legal Aid is there is pure nonsense because Legal Aid does not cover every appeal. Many, many people who are financially in debt or are making minimum wage or have part-time work cannot afford their fees; Legal Aid will not cover them and, as such, they have to represent themselves.

* (1050)

The other impediment is the library. Very few people know about it, and the government has restricted hours to only the days, so a person who is on minimum wage and is working day shift cannot even get in there in the evenings now unless you are a member of the Law Society. So the fact that the government has stated that Legal Aid is an option and the only option is, as far as I am concerned, simply criminal because it still denies justice to thousands of Manitobans on a yearly basis.

Mr. Chairperson: Any further questions? If not, thank you, Mr. Lindsay, for your presentation.

Bill 58–The Law Reform Commission Amendment Act

Mr. Chairperson: The first presenter is Major W. Loveless, executive director, Golden West Centennial Lodge. Mr. Loveless, have you a presentation for distribution? Thank you very much. You may proceed.

Mr. W. Loveless (Golden West Centennial Lodge): Thank you for listening to us today. I appear today on behalf of the Golden West Centennial Lodge as its executive director and with the support of my senior managers, also with the endorsement of both the ethics committee of the board of management and also the board of management of the Grace Hospital Golden West Centennial Lodge.

I go on record as saying that we are not in favour of any amendments to The Law Reform Commission Act. In 1992, Golden West Centennial Lodge identified, through ongoing daily experience with the frail elderly, a need to examine the issues of competency as it relates to that section of Manitoba's population.

The process was not difficult. It did not cost the facility any financial outlay. It meant simply approaching the Manitoba Law Reform Commission with a request that the laws pertaining to this issue be reviewed and that changes be recommended to government as indicated according to the review. The goal was to benefit all Manitobans as we experience the process of growing old. We want every person's right and abilities maintained and exercised for as long as possible. We do not want the process of declaring a person incompetent to be too easily exercised, with nonspecific criteria applied to that determination of incompetency.

By 1994, the Law Reform Commission was able to begin the review process and its work has continued actively until now. This is a work in progress. It cannot and must not be slowed down when it is truly such an important issue for all Manitobans.

We are all vulnerable as we age. Our governments must enable and facilitate law reform as it protects each of us as we age. Law reform, in our opinion, is a government responsibility.

Where would the issue of competency be addressed had it not been for the Law Reform Commission and our ability to access it? As a facility funded by government, we would have no financial resources to access if a cost were involved in order to have this issue reviewed. And why should a cost be involved?

In long-term care facilities, we are entrusted with preserving the rights and abilities of our residents. When we are faced with conflicts and see red flags where we notice these rights and abilities are in danger of compromise, we look at the law, and we make sure its application is correct, or we investigate the problem as we see it. This is where the involvement of the Law Reform Commission becomes invaluable. Here is a government agency, impartial in nature, to investigate concerns and follow up with recommendations of change in the law. We represent the front line people for whom the Law Reform Commission is vital. The vulnerable elderly need to rely on their caregivers to be their advocates, and their advocates need to know there is a place to go with the red flags. We need to know that the government is here to respect and to listen to the public when needs are identified, as Golden West

did with the issue of competency. This, to us, means law reform must be maintained as a government responsibility.

In some way, the law needs to recognize the social issue of justice related to the elderly. This issue needs to be addressed by the Law Reform Commission in the future, and it includes the following: senior safety and security; compensation for victims of crime; elder abuse, including financial, emotional and mental; marginalization; harassment and disrespect; consumer protection and services. The Law Reform Commission has a mandate to maintain and improve the administration of justice in our province. The commission, through its response to the competency issue raised by Golden West Lodge, has been true to its mandate of being responsive to society's current needs. The public has had a voice, front-line workers with the elderly have spoken and have heard.

But what now? With restructuring the commission to less than bare bones, how can this mandate not suffer immeasurably? The allotment of government funds is the responsibility of the province's elected officials, based on sound investigation and review processes. The investigation and review of the relative value of the Law Reform Commission could not have been thorough enough or radical funding cuts would not be forthcoming. The province needs the Law Reform Commission as a government agent for law reform. The commission deserves the dollars needed to continue with meeting its worthwhile mandate, that of ensuring the laws of Manitoba meet the needs of Manitoba's citizens.

If changing laws is dependent on private funding to pay commissioners, how will the public at large and organizations similar to Golden West Lodge, who are dependent on government funding be able to influence change with no access to private funding? As well, these organizations have no means to hire research staff to investigate issues the organization may wish to be addressed. Surely a priority for government funding must be the area of law reform. Privatization of law reform is an onward road to unequal access to a much-needed public opinion.

The Manitoba Law Reform Commission works for all Manitobans. With 80 percent of its proposals resulting in legislation, it is obviously an effective, quality agent for law reform. It is accessible; it is unbiased; it is affordable and beneficial to all. It allows for privatization of law reform needs. It must not be compromised by withdrawal of its financial base. The benefits of the service far outweigh the costs, and the costs to the province and its people will increase manyfold in the long run if the present mandate and resources of the Law Reform Commission are compromised. Manitobans deserve and require this publicly accessible service.

The Golden West Centennial Lodge has benefited from the work of the Law Reform Commission as evidenced by the advanced directives. All Manitobans can be justifiably proud of The Health Care Directives Act, a work started by the Law Reform Commission. Manitoba has been a leader in the area of law reform. It has given us a sense of pride when talking to our colleagues from other provinces to point out that Manitoba is a leader in this field or to say the Law Reform Commission is dealing with the issue, and we expect to hear some word or have some agreement reached by a certain date. Are we prepared to let this fall by the wayside and simply become a mediocre province? Thank you, Mr. Chairman.

Mr. Chairperson: Thank you very much, Mr. Loveless, for your presentation.

Mr. Gord Mackintosh (St. Johns): We share your regret that work that has been three years in the making is going to be destroyed along with the Law Reform Commission. We certainly do not agree that the commission is being restructured. We see it being abolished by this legislation.

I notice in your paper that in addition to the need for dealing with the competency issue, the Law Reform Commission and government should be dealing with senior safety and security, including elder abuse. You specifically listed that. The minister, in justifying the abolition of the Law Reform Commission, argued that the resources, the money was needed for, as he said, public safety and community issues. I am wondering, sir, if you are aware that by this legislation a discussion paper on elder abuse, which would lead to recommendations, is also being killed by the govern-

ment. Not only is the competency matter being killed but also a discussion paper on elder abuse.

* (1100)

Mr. Loveless: I was not aware that that paper was being abolished. I think that is regretful, and in conversation with some of our colleagues this morning–the association I prefer not to mention–these were some of the issues that are bulleted there on page two that came out of that discussion. I think if that paper is being abolished, along with the Law Reform Commission, that is very regretful.

Hon. Vic Toews (Minister of Justice and Attorney General): Thank you very much for your comments, Major. I certainly see that you have expressed quite a bit of concern about the Law Reform Commission and the future of law reform in the province.

Whatever shape that takes after the Legislature deals with this issue, I am certain that there will be opportunities for you and your organization to be involved in future issues to discuss how these very important issues such as competency will be addressed, or other issues that you have raised.

So I appreciate your comments, and I look forward to developing alternative ways to ensure that the issues that you have raised are, in fact, addressed.

Mr. Chairperson: Thank you very much for your presentation, Mr. Loveless.

I call Susan Riley, Manitoba Association of Women and the Law. Have you a presentation for the committee?

Ms. Susan Riley (Manitoba Association of Women and the Law): I do not have a written presentation, no. This will be brief.

My name is Susan Riley. I am here representing the Manitoba Association of Women and the Law, and we merely wanted to add our voice to the voices of protest at the gutting of the Law Reform Commission. We are a small organization, voluntary, nonprofit. Essentially, our role is to promote the legal rights and freedoms of Manitoba women through education, research, law reform and political action.

In the past 23 years, MAWL has used the Manitoba Law Reform Commission's research in its work. Of course, because we are a small organization, mostly voluntary and dependent on student assistance during the summer–we employ law students in order to help with the research projects we undertake–we have depended on the Law Reform Commission's professional ability and academic excellence to provide a base from which we take it a little bit further. We do not always necessarily agree with the conclusions of the Law Reform Commission, but we certainly appreciate the high quality of the work and the excellence of people like Professor Cliff Edwards and John Irvine, who have, over the years, given tirelessly to this organization.

The track record of the commission speaks for itself, and, what is it, over 80 percent of their recommendations have become law. It is a widely respected organization in the country and around the world, and I think it is an organization we can all be proud of. If these amendments go through, I want to be here saying that we at the Manitoba Association of Women and the Law are going to miss it.

On our behalf, Mona Brown did write a letter to the minister, and I just wanted to quote from the end of that, and here I quote: The need to have laws reviewed on an ongoing basis by an independent body cannot be overstated. We would ask you to consider withdrawing Bill 58 which will, in effect, abolish the Law Reform Commission. The change from Bill 22 to Bill 58 demonstrates that your government does not have the courage to admit you want to abolish the commission, but without staff funding it will have the same effect.

Just in conclusion, I would like to say that in these days of fiscal restraint, it is easy to cut small budgets to improve the bottom line but sometimes these cuts can be shortsighted and cost more in drastic policy and legislative mistakes in the long run. I thank you for your time this morning.

Mr. Chairperson: Thank you very much for your presentation, Ms. Riley. Are there any questions? If not, thanks again for your presentation.

Ms. Riley: Thank you.

Mr. Chairperson: Next I call Pat Ritchie, Chair of the Ethics Committee, Grace General Hospital. Pat Ritchie, have you a printed presentation for distribution? You may proceed.

Ms. Patricia Ritchie (Ethics Committee, Grace General Hospital): Mr. Chairman, members of the committee. Thank you for the opportunity for letting me appear. I am actually wearing a number of hats this morning. I was a former researcher in the Manitoba Law Reform Commission. I was a former member of the commission. I am a practicing member of the Law Society of Manitoba. I am also a member of the Board of Management of the Salvation Army Grace General Hospital and Golden West Centennial Lodge, and I am Chairman of the Ethics Committee of the hospital and the lodge.

It is not my intention to address specific sections of this bill. I will leave that to others. I understand President Cliff Edwards of the Law Reform Commission will be addressing specific issues. Rather, I would like to urge you not to permit the Manitoba Law Reform Commission to die, as that is what will surely happen if this bill is passed. The bill leaves virtually a shell with little prospect of full-time staffing, focused researchers and little prospect of permanent funding to support projects unless they are funded by specific interest groups. How can we have effective, independent law reform with commissioners who are expected to find funding for projects as well as study and advise government on necessary changes to our laws?

As a researcher and former member of the commission, I am well aware of the extensive work which goes into producing a report which produces law reform. The considerable volume of research, the analysis of representations received from interest groups, the in-depth consideration of all alternatives and finally, the presentation of recommendations, all these aspects represent just a small part of the work of the Law Reform Commission. What other group can be expected to do this for you people who are our legislators?

As a member of the bar, I have followed with much interest the varied and extensive work of the Law Reform Commission. It has an enviable record of having a considerable number of reports translated into legislation, a measure of the relevancy of its work. I can cite many statutes which, in my solicitor's practice, have had a considerable impact. There have been amendments to The Wills Act, The Powers of Attorney Act. Today the enduring powers of attorney originally proposed by the Manitoba Law Reform Commission are virtually universal. There is The Trustee Act, The Municipal Conflict of Interest Act, The Builders' Liens Act; all these are important pieces of legislation.

In my capacity as a member of the board of the Grace General Hospital and the Salvation Army Golden West Centennial Lodge and as the Chairperson of the Ethics Committee, I would like to confirm Major Loveless' early position on the study of competency which must not be allowed to disappear. In this respect, I would like to thank the Minister of Justice (Mr. Toews) for taking the time out of his busy schedule to meet with myself and Dr. Jim Reid who was the Executive Director of the Salvation Army Ethics Centre in Winnipeg to hear our concerns regarding the earlier bill which proposed abolition of the Law Reform Commission. Thank you, Mr. Minister. We were delighted to hear that that former bill is going to be allowed to die on the Order Paper.

* (1110)

The ethics committee of the hospital and the lodge are very concerned that this particular study may not proceed. The personal care homes and hospitals are not the only groups in society which need guidelines on how to determine competency in different situations. The banks, police forces and other groups are seeking direction too. The Law Reform Commission, in the course of developing guidelines on the competency issue, would have given all affected groups an opportunity to assist in developing workable guidelines. That opportunity may now be lost as it appears unlikely that this project can continue with the limited funding that is now being made available to the Law Reform Commission.

The work of the Law Reform Commission in analyzing issues, receiving and reviewing presentations

from interested parties, and recommending changes has been an integral part of the lawmaking process which you as legislators bring into fruition. Let us hope, for example, that you can follow through on the most recent study of the Law Reform Commission on antistalking legislation, which is so critical today. The commission has performed a function which no other body or group has the expertise, the independence or the focus to do effectively. To permit the commission to continue its existence in such a limited way as Bill 58 proposes virtually spells its death knell.

What will now happen to other issues such as elder abuse or the rights of the elderly, such a vulnerable population? Who else can provide the focus, the research, the contact with, and receive the input from those affected and can make recommendations for changes in our laws on such topical issues as administration of charities? Should there be a limit on administration costs, class actions? Our laws are outdated there. Should classes, for example, be allowed to sue tobacco companies? Is that topical? Public rights to access on private properties such as shopping malls–these are some issues that could be considered by the Law Reform Commission. I urge you to consider this bill carefully so that the future of the Law Reform Commission in Manitoba will not die. Thank you.

Mr. Chairperson: Thank you very much for your presentation, Ms. Ritchie. Are there any questions? If not, thank you very much again for your presentation.

I call next Doug Finkbeiner, Law Society of Manitoba. Mr. Finkbeiner, have you a printed presentation for the committee for distribution?

Mr. Doug Finkbeiner (Law Society of Manitoba): I do not, Mr. Chairman, although a letter had been written earlier by the Law Society to this committee, a letter dated May 7, 1997. I assume that has been distributed to the members.

Mr. Chairperson: You may proceed.

Mr. Finkbeiner: Thank you, Mr. Chairman, for the opportunity to speak to you this morning. I am here on behalf of the Law Society of Manitoba to speak against the proposed amendments to The Law Reform Commission Act as contained in Bill 58. I must say that it is unusual for the Law Society to appear before this committee. We do not do so regularly. We do not see that as part of our role. However, we will do so in circumstances where the issues are fundamental to the administration of justice, and we believe that those circumstances exist here today with this bill. We have reviewed the submission that will be made to this committee by the Law Reform Commission itself, and we endorse it.

When the intention to abolish the Law Reform Commission was announced we wrote to the Honourable Mr. Toews, the Minister of Justice and the Attorney General, protesting the decision. We outlined in that letter of May 7 the vital role that the commission has played over the last 25 years. A great number of other organizations joined in our protest. Those included the College of Physicians and Surgeons of Manitoba, the Manitoba Association of Rights and Liberties, the Manitoba Association of Women and the Law, the Manitoba Association of Seniors, and the Salvation Army's Golden West Centennial Lodge, whom you have just heard from. These are just a few of the people who have joined in the protest of the original bill.

We were pleased with the response of the government insofar as it abolished the original bill that was intended to abolish the commission, and, unfortunately, replacing that bill with Bill 58, in our mind, does not go far enough in the steps that we think are necessary. While we appreciate the withdrawal of the original bill, we share the concerns of the Law Reform Commission that the commission will now be so significantly underfunded and diminished in its abilities that it will be ineffective in carrying out its very important task. It will no longer be able to carry out the public mandate that it has with the integrity that is necessary for such a commission.

The Law Reform Commission has earned the respect of others throughout Canada and the world in its many good activities over the last 25 years. To cite just a few, the information that we have is that some 80 percent of the 98 reports which the commission has issued since its inception in 1970 have been implemented and affect the day-to-day lives of Manitobans now.

To list some of them, in the area of family law, the commission recommended equal sharing of marital property and modernization of laws protecting the rights of surviving spouses. Those are now laws in Manitoba.

In the area of judicial reform, the commission recommended more accountable methods of appointing and disciplining provincial judges and the amalgamation of the courts. Those are now law.

In the area of health care, the commission recommended legal effect be given to health care directives, otherwise known as living wills, and the modernization of laws relating to organ transplants.

In the area of wills and estates, courts are now allowed to overlook errors in execution formalities of wills, and the modernization of laws protecting the dependents of deceased persons now exist in the law, also the naming of beneficiaries in RRSPs is made legally valid, all as a result of the reports of the Law Reform Commission.

In the area of commercial law, the commission recommended, and it is now law, the abolition of certain outdated and ineffective laws respecting the sale of businesses and the payment of wages.

Under property law, the commission recommended the abolition of ancient and outdated common law rules respecting real property conveyancing.

In administrative law, the commission recommended devising fairer procedures to be followed by administrative agencies and governments.

In the area of access to justice, the commission recommended simpler procedures for handling small claims in court and for awarding of interest on successful court claims and also for the periodic payment of damages in personal injury and death, otherwise known as structured settlements. These are all laws now.

In the area of tort law, the commission recommended the modernization of occupiers' liability rules, the abolition of outdated limits on liability of innkeepers serving intoxicated persons and the abolition of outdated lawsuits.

In the area of trust law, the commission recommended ethical investment criteria by trustees be permitted and more modern investment rules for trusts.

All of these excellent recommendations by the Law Reform Commission have resulted in amendments to the law that benefit Manitobans today.

It is critical that the commission be continued to function in reviewing laws in a nonpartisan and independent way. The laws must continue to be responsive to the changing needs of society, and we all know how rapidly society is changing. It is critical that the Law Reform Commission be there to ensure that the laws are keeping up to date with the changes and the needs of society. Manitobans have benefited over the years from the work of the Law Reform Commission, and we believe they are entitled to continue with that benefit.

Some reduced funding perhaps might be appropriate. We recognize the constraints governments are operating under these days with reduced funding available to them and efforts to try to balance budgets. However, Bill 58 goes far too far. The Law Reform Commission is simply not equipped to fundraise themselves. They simply do not have the tools and certainly under Bill 58 would not have the tools and the capacity to be able to fundraise themselves.

* (1120)

If one were to envision the prospect, even if they could, of trying to get funding from outside sources, you can very quickly envision the circumstance where their independence would quickly be eroded or, more importantly, would be seen to be eroded. One could imagine a circumstance where individuals of wealth, or corporations of wealth, provided funding with the express or implied undertaking, or at least the appearance of such, that laws be changed to suit their purpose but not necessarily for the purpose of Manitobans at large. The independence that the Law Reform Commission has enjoyed is critical to its continued functioning and its role for Manitobans has been vital over the many years of its existence.

In summary, we are opposed to Bill 58, and we ask that the Legislature leave the commission as it is, funded equal to, or at least close to, the levels that it is currently funded so it can carry out its vital role. Thank you, Mr. Chairman.

Mr. Chairperson: Thank you very much for your presentation, Mr. Finkbeiner.

Mr. Mackintosh: Just one question. Was the Law Society of Manitoba consulted by the minister or government officials prior to the introduction of the first bill dealing with the Law Reform Commission?

Mr. Finkbeiner: The first time this became known to the benchers at large–and that is all I can speak to–was at a meeting in April of this year. I cannot speak to the question of how early we were informed. Deborah McCawley, the chief executive officer of the Law Society, is here and I see her shaking her head. The answer is no.

Mr. Chairperson: Thank you very much for your presentation, Mr. Finkbeiner.

I call next Mr. Cliff Edwards. Mr. Cliff Edwards of the Law Reform Commission, would you come forward, please? Mr. Edwards, have you a printed presentation for the committee?

Mr. Clifford Edwards (Manitoba Law Reform Commission): Yes, I have.

Mr. Chairperson: You may proceed, Mr. Edwards.

Mr. Edwards: Thank you, Mr. Chairman. While that is being distributed, I will just introduce myself. You have already said I am Cliff Edwards. I wear a hat of being a professor and dean emeritus of the Faculty of Law at the University of Manitoba. I also have been serving for the last 17 years as a part-time chairman, president of the Manitoba Law Reform Commission. I appear today on behalf of the commission as its president and with the unanimous support of all my fellow commissioners. There are four others apart from myself, one layperson who is Pearl McGonigal. The others are a judge, an academic and a practicing lawyer. We are quite an assortment to represent everyone at large.

I would like to put on record at the very beginning, Mr. Chairman, that we are not in favour of any amendment to The Law Reform Commission Act. The present act was passed in March 1990 by this government when the commission was re-established after a short demise. The commission was originally established in 1970 with the mandate, generally, to maintain and improve the administration of justice in the province of Manitoba and to develop new approaches to and new concepts in law in keeping with, and responsive to, the changing needs of society and to individual members of society. This the commission has consistently striven to do.

In that time, we have published 98 reports, the last being, as you heard today, the stalking report which I hope and I see has received good support from you, Mr. Minister, and I hope will help very greatly in improving a very difficult situation on stalking that is now before you. That was our last report just published a couple of weeks ago. It has had a success rate of approximately 80 percent in getting our reports acted upon by the various Legislatures, whatever the government in power. They are totally apolitical. Its recommendations have covered most of the fields of provincial law, as you have heard already from the Law Society, ranging from family law to property law to health law and to the law of succession to name just a few.

We have been recognized throughout the commonwealth, the old British Commonwealth, and by the way, law reform commissions are still flourishing in commonwealth countries. Australia, New Zealand, England, Scotland are flourishing commissions, and they all regard us as one of the leading commissions in the commonwealth. We met together, the commonwealth body, only last August and we were commended for our work.

As soon as I was informed of the proposed abolition of this commission in March of this year, I strongly protested to the honourable Mr. Justice and Attorney General and his staff, using as an analogy the tragedy of cutting down a flourishing and healthy tree in its prime. I appreciated his response in withdrawing the original bill to repeal the act and substituting in its place an amended Law Reform Commission. However, I still feel that what this new bill will do will be to prune, if I can continue my analogy with the tree, the body of the

commission to the extent that it will not be able truly to perform the mandate for which it was constituted. The pruning is far too vicious.

At the request of both the minister and his deputy, I did submit a reduced proposed budget, but I never imagined the extent to which the minister would increase the reduction and propose this repeal to the original act. My proposal was that the original act be left in place so that it could continue in operation for a fuller implementation as and when funds become again available for the future. I fully recognize, my predecessor said, your problem on funding, but I ask that we not jeopardize the future of the commission by the present situation.

The specific provisions in this new bill to which I must register my objections are as follows and I set them out here:

1. Repeal of Section 5 which deletes all payment of any remuneration or even expenses to the commissioners. Maybe this was an oversight. While the commissioners' remuneration has always been comparatively small and while we have all offered to reduce this remuneration further, nevertheless, some sums however inadequate should be contained and recognized for their services. Our present commissioners are quite ready to forgo all their remuneration, but if we set that precedent, you might keep us in office for life because no one else will take over. So we feel there should be a continuation there.

2. Repeal of Sections 10 to 12 and 13(1) which removes civil service status for any staff employed by the commission. The proposed new Section 10 only gives the commission the power to hire persons on contract. Let me give you a couple of what will flow from this. First of all, for the present, this means of course the termination of all existing staff. This leaves us without any legal research staff at all and without our present administrator who by the way has been with the commission since its inception in 1970, 27 years, and is now left with the option of either seeking new employment outside–which is of course difficult at her age–or continuing with us on this reduced basis of a contract employee without any staff benefits. Not a very pleasant prospect for a women who is in her sixties.

Secondly, for the future, this means we will never be able to hire any legal research staff of any kind on a permanent basis. This would certainly prevent our hiring lawyers of quality–of course, all lawyers have quality. Forgive me for that one. [interjection] Yes, I know. I have to say that. This will prevent us hiring lawyers of quality who would want positions with some prospect of continuance rather than being engaged on a temporary contract basis.

3. Section 13(2) is repealed so the commission is no longer an agency of government. Frankly, I do not understand this section when Section 15 of the original act continues to require the commission to submit its annual report and all other reports to the Minister of Justice. Also, we continue to have members appointed by the government who has the right to assign projects and set priority and control investments. We do not object to that, but it seems inconsistent if the government is retaining that kind of nexus with the commission why you do not want us as an agency. The sections do not seem to go together. I just wonder whether it was put together hurriedly, and I say that with respect.

In general, I understand that this government desires in some ways to privatize the commission. I have been informed that in future, our total budget allocation will be only $50,000 compared with a sum of just over $400,000 in our last year's budget, and we must then go out and raise additional funds as needed. Just as an aside, I do not think $400,000 is a great sum in a total overall picture for a Law Reform Commission.

The commission members have strong objection to our being required to raise funding from private sources for the following reasons:

1. The commissioners are not equipped and do not have the time to give to fund raising. For example, one of our members is a high court judge. Can he really be expected to undertake these tasks? Furthermore, we believe it would be most difficult to attract public support for a function which is generally regarded as a government responsibility.

Secondly, it is felt that if we approach outside private bodies for funding, this will affect the present impartiality and independence of the commission, for

surely he who pays the piper calls the tune. We have never been beholden to anybody, any person, even the government for what we do and how we do it. We report to you, and we accept what you say, but we are not controlled.

Thirdly, many commission projects extend over two years or more. As you have heard, we have been working on competency now for some time. Stable funding is therefore essential for such projects. We cannot take the risk of a sudden drop in funding from private sources when a major project is in midstream.

* (1130)

In summary, therefore, we would like to see this act withdrawn and the original act allowed to continue. If, however–and this is my very bottom line; I do not in any way advocate at all when I say this, to point out that I am not being absolutely obstinate, although I do not like it–the government is committed to continuing this new legislation, we would ask at the very minimum, the very minimum, the following amendments in the new bill.

One, Section 3 of the bill be restricted to a repeal of Section 5(3) of the act. That is the section regarding remuneration. We have no objection, if you want to, to reduce our remuneration, if that is what Section 5(3) says, but we do not think you should remove it altogether.

Secondly, Section 5 of the bill be deleted. That is the one dealing with the civil service status for any staff, restricting us to contract employees.

Thirdly, Section 6 of the bill be restricted to repeal of Section 13(1) of the act. That is the section that deletes us being an agency of government.

My last word to you, ladies and gentlemen, is that the commission has always worked with government and been co-operative to all parties. While we are continually prepared to work with you and try to do what we can with reduced funding, we do–and I want to put it on record today–have grave concern, very grave concern that this tremendous reduction which is proposed would radically affect the functioning of this commission, and we are not sure it can be done. I express that grave concern to you, and I cannot give you undertakings, but we are concerned. We will do what we can, but we do not want you to hold us responsible for what cannot be done. They say the possible we do today; the impossible takes a little longer. Thank you, ladies and gentlemen.

Mr. Chairperson: Thank you very much, Mr. Edwards, for your presentation.

Mr. Mackintosh: Thanks for your presentation, Professor Edwards. Just a few questions, first of all, were you or any of the commissioners to your knowledge consulted by the minister or government officials before they introduced in the Legislature the plan to abolish the commission?

Mr. Edwards: No, none at all, Mr. Mackintosh. I personally, and I was the only one I think from the commissioners that got a phone call from the deputy on the morning that the budget was being introduced for reduction, I got that call at 9:30 in the morning, and I believe the budget came in at 11:30. That was all the notice I had. There was no–it was an absolute bolt out of the blue to me and a bolt out of the blue to the staff. I believe one of the deputies went and met with the staff at the same time; total bolt out of the blue to every one of us.

Mr. Mackintosh: We have heard concerns about the elder abuse discussion paper that the commission had begun and as well the progress to date on the recommendations respecting competency, which I would argue contrary to the minister, are essential issues of public safety. I guess what we really want to know, Professor Edwards, is will the elder abuse and competency work likely continue now?

Mr. Edwards: A very good question. In fact, our commission is meeting this afternoon, and perhaps for the last time in its present form anyway, to look at the first preparatory draft of competency. One of our full-time officers worked on that. I was hoping that we could be further along than we are, but I spoke to her last week, and she says there is a lot more consultation to be done, writing to be done, and she says I will not get it finished by the end of the month. It is on our agenda this afternoon. For one thing, she will be laid off the end of June. Here is my problem. I have asked

her if she would like to continue on a contract basis to do consulting. She said, well, I have probably got another job coming. I have got a permanent job in the profession, why should I? So I frankly, even if we are kept, I do not quite know who will take that on. We will have to find perhaps a consultant, but it does mean almost for that person starting from not quite from start but starting with a handicap to rework that paper which is right now before us on competency.

Elder abuse, my other staff worker had that discussion paper he was working on. He too will be leaving, of course. I have asked him to put that on notes to the file so that it can be picked up if we can find someone else who is a consultant who could take that work up. So I promise you those are there, and we will not forget them. But there is our problem. It is purely logistical problems.

Mr. Mackintosh: The bill does away with payments to commissioners. I am just wondering what impact that will have on the contribution of you and your colleagues on the commission to Law Reform?

Mr. Edwards: Well, as I say, Mr. Mackintosh, our colleagues have never been paid very much, so it is not a crucial matter, and we do not want to stop law reform because we want payment. At a meeting of my colleagues yesterday, all of us agreed we would forgo our payment, but we do not feel that is right either ethically or right for us except in title because, as one of them said critically, then the government will keep us in office in perpetuum because they do not want to appoint somebody they have got to pay.

So while we are prepared to forgo, let me say this. Perhaps you may have a question, but I want to come across today as telling you, all of us commissioners are firmly dedicated and believe in law reform. We are not in it for the money. We have not had any money much from it. We are in it because we believe this province needs law reform; we are committed to it. I have fought and worked for the last three months to work on this. My home has been disrupted because I have striven to keep this commission going, because we believe that law reform is important to the public, to the people, the individuals of Manitoba, and we are prepared to go on whatever we can do. This is why I have agreed to a reduction to keep–but I cannot agree to something when we cannot function. We are committed. We are dedicated commissioners. Every one of my colleagues is a dedicated commissioner, wonderful people, and we cannot go on if we do not have resources.

Mr. Toews: Thank you very much for your presentation. Just on a very small issue that you have raised, it may not be–in the total picture, I think it is one of the smaller issues. I certainly appreciate the discussions that we have had in the last little while either directly or with my staff. I appreciate your comments and your efforts in respect to the Law Reform Commission.

Just the one issue I did not understand is why you would say that this bill would cut off the remuneration for the commissioners for the Law Reform Commission, given that the Order-in-Council that pays them still continues?

Mr. Edwards: I confess I am confused, because your Section 3 deletes any question of payments to commissioners. Now, I do not know, I am not a constitutional lawyer. You have been in constitutional law more than I have, Mr. Minister. The Order-in-Council is there, but this Section 3 is deleting remuneration of commissioners. Now, which has precedent?

Mr. Toews: You are also familiar with the sections in The Interpretation Act which deal with powers of appointment, including the power to remunerate, are you not?

Mr. Edwards: Yes, I am. We are not arguing that, Mr. Minister. We could not care less if you have no provision to pay us. We are depending on your good faith, and we are committed to law reform. We believe there should be provision, that is why we think that section should be cleared up so there is not a conflict between the section and Order-in-Council Interpretation Act. That is all that we are saying.

Mr. Toews: I do not want to get into an argument with you about that. I just wanted to find out what your position was legally and why you were taking that position.

Mr. Edwards: Our position is we feel–

Mr. Chairperson: Just a wee minute. I should have done this before at the outset, because we have a Hansard recording here, and if we do not tell him who is speaking he might record you as Mr. Toews, and I would not want that to happen.

Mr. Edwards: Oh, dear. I am sorry. I apologize. Mr. Minister, I have just made the point because this is a law amendment, and I thought we should tidy up the act, be clear what we are doing. I felt possibly Section 5 was not intended to abolish the remuneration. It was simply intended to abolish the question of reduction in changes. I am not going to argue, but I just put that forward for a question of what I call house cleaning. Thank you.

Mr. Chairperson: Thank you very much for your presentation. Mr. Mackintosh, for a final question.

Mr. Mackintosh: One final question on the budgeting for the commission which, of course, is just as important as the legislation itself, but it is your information, I see here, that the commission is to receive a budget of $50,000. Is it your understanding that it is $50,000 for a fiscal year?

Mr. Edwards: My understanding was that $50,000 was for the remainder of this fiscal year, which has now nine months to go, and also we would be allowed to retain what we have in reserve from over many years. That is why I said for this present fiscal year we could continue in operation because we would have a total of probably over $100,000. We would have 50 and 50.

* (1140)

Now I see there is some doubt whether that $50,000 is coming this year. I mean, I would have to put this on record that if we do not get $50,000 this year, I do not think we can continue. I understood, yes, the $50,000 was to come to us for the remainder of this fiscal year of nine months, and that, coupled with what we have in hand, would enable us to struggle by for the remainder of the fiscal year, but after that, I do not know. Does that answer your question, Mr. Mackintosh?

Mr. Chairperson: Mr. Mackintosh, for one final, final question.

Mr. Mackintosh: Just to clarify, is it your understanding then that any amounts that the commission has retained will no longer be available to the commission, and you will only get the $50,000?

Mr. Edwards: My understanding has always been that we can retain what we have in hand, but I have had a question put as to whether this $50,000 will be deducted from that. I hope not. I hope the $50,000 is plus that, because that is the only way we can function.

I would put on record, I made that clear in the negotiations from the beginning to the deputy and I think to the minister, that we do need the $50,000 plus.

Mr. Chairperson: Thank you very much for your presentation, Mr. Edwards.

Mr. Edwards: Thank you for your time, Mr. Chairman.

Mr. Chairperson: I call next Mr. Garth Smorang, Manitoba Bar Association. Mr. Smorang, have you a printed presentation for distribution to the committee?

Mr. Garth Smorang (Manitoba Bar Association): I do not, Mr. Chairman.

Mr. Chairperson: You may proceed then, Mr. Smorang.

Mr. Smorang: Good morning, members of the committee.

Mr. Chairperson: Welcome again.

Mr. Smorang: It is the second time this morning. The last time was about one o'clock this morning. I have a whole new respect for the work that you do.

The Manitoba Bar Association is a branch of the Canadian Bar Association. The Canadian Bar Association represents approximately 35,000 judges, lawyers, law professors and law students across this country. The Canadian Bar Association has always very strongly supported law reform work across this

country, and we have seen the value of it in this province and across other provinces and nationally.

I will not repeat many of the things that have been said to you already by the representatives of the Law Society and Professor Edwards, especially Professor Edwards, who spoke so eloquently and passionately on the issue. I think I would just simply not do his words service by repeating them.

I will tell you, though, that the Manitoba Bar Association, which represents approximately 1,000 judges, lawyers, law profs and law students, passed a resolution by its elected council on March 27, and the resolution indicates that the Manitoba branch is to protest the decision of the government of Manitoba to terminate the role of the Manitoba Law Reform Commission and advises the executive of our association to communicate the branch's position to the Minister of Justice (Mr. Toews), which we have done by letter and orally.

The Bar Association is a group of lawyers. It is a voluntary organization. We are sometimes accused of being a lobby group for lawyers. I want to tell you that, aside from my views on that point, this is not a lawyers issue. There is nothing in this for lawyers except perhaps the one or two lawyers who might be employed by a Law Reform Commission and earn their living doing this work.

This is a justice issue. This is a peoples issue, and I am sure you have heard from various speakers already on this point. You do not need to be told again of the fabulous work that the Law Reform Commission has done over its tenure of 27 years or so for the people of this province, making sure that the laws of this province stay in tune with the social realities of this province, and you need look no further than the stalking report that was recently issued from the commission to know that the work that is done is not only invaluable but, in my view and in our association's view, irreplaceable. I wish to emphasize the dedication and the energy and the brilliance of the jurists who are the commissioners of the Law Reform Commission as it exists. They are very dedicated people who are willing, as Professor Edwards indicated, to work on this because they believe in it, not because it adds to their annual income.

There is, in the view of our association, no merit to a Law Reform Commission funded privately. As Professor Edwards indicated to you, the person who pays for the piper does call the tune, whether that be a group of lawyers, whether it be business, whether it be lobby groups of any sort or nature. The true independence of the commission cannot be unless it is funded by the people of this province, and that funding must come from the government of this province. I am led to believe that the commission could survive and be viable on a budget somewhat less than it has enjoyed in the past. I urge you seriously to reconsider the effect of this bill, to reconsider the funding and to work with Professor Edwards and the commissioners towards perhaps a scaled down but yet an effective and vibrant commission.

That we are known across Canada and across the world for our commission is nice but really the work of the commission benefits the people of this province, has benefited them, has benefited the various organizations that have written to you over the last number of months urging you to reconsider. On behalf of the lawyers of this province and my association, I also ask you to reconsider. Thank you for your time.

Mr. Chairperson: Thank you for your presentation, Mr. Smorang. Are there any questions?

Mr. Mackintosh: Mr. Smorang, thanks for your presentation. Was the Bar Association consulted before the government introduced the abolition of the Law Reform Commission?

Mr. Smorang: No.

Mr. Chairperson: Thank you very much for your presentation, Mr. Smorang.

Mr. Smorang: Thank you.

Mr. Chairperson: I call next Valerie Price, Manitoba Association for Rights and Liberties. Ms. Price, have you a presentation or a printed presentation for distribution?

Ms. Valerie Price (Manitoba Association for Rights and Liberties): Yes.

Mr. Chairperson: You may proceed.

Ms. Price: Good morning. Thank you for this opportunity to address the committee. I guess I could start by saying that MARL would endorse all the previous presenters. We are quite concerned by this proposed legislation. Earlier this spring, we had expressed our concerns that the government intended to abolish the commission through Bill 22 and although this current bill does not abolish it outright, we are equally concerned with it.

We believe, for example, that the changes provided for in the bill will weaken the commission's ability to work effectively. As stated in our letter to the members of cabinet, there is a need for an independent body to provide a review of the fairness, relevance and effectiveness of Manitoba's laws, and you have heard ample examples of that this morning. Certainly, from our perspective, the work of the commission has often been relevant to the protection of human rights in Manitoba, and I will cite several examples. Their work on the provincial Bill of Rights in 1976, work on the emergency apprehension and admission rights under The Mental Health Act in '79, self-determination in health care in 1991, and sterilization of minors and mentally incompetent adults in 1992 are just a few examples. The recent report on stalking legislation is yet another.

With the proposed repeal of Sections 10 through 12 relating to the employment of staff and their replacement with a far more general description of engaging persons to assist in carrying out responsibilities, it appears that the intended result is that the commission will hire staff on a contract basis and that has been confirmed by Dr. Edwards. This, coupled with the reduction in funding which we understand the commission will face, raises concern that the commission will have difficulty attracting well-qualified staff and maintaining the quality of work for which it has been so highly regarded. Additionally, we understand that the commissioners will be encouraged to find alternate sources of funding. Not only will that have the potential to compromise the commission's independence as it seeks to satisfy the criteria of various funders, it will also divert the time and energy of the commissioners from the real work of the commission.

We are particularly troubled by the repeal of subsection 2(2) under this amendment act which required the approval of the Legislature to wind up or alter the affairs or the duties of the commission. With the repeal of this section, it will now be possible for the government to abolish the commission without further consulting the Legislature and without input from the public. As always, we are concerned when decisions are removed from the democratic process and may be made by cabinet without the benefit of public consultation.

It appears that in the face of considerable opposition to the killing of the Manitoba Law Reform Commission, the government has chosen instead to starve it to death. Without adequate resources, both human and financial, the commission will be unable to do the job that Manitobans require and deserve. MARL urges the government to withdraw Bill 58, restore the commission's budget and allow it to continue to provide a vital service to the province of Manitoba.

Mr. Chairperson: Thank you very much for your presentation, Ms. Price. Are there any questions?

Mr. Mackintosh: Just a comment. I just want the committee to know, and the presenter to know, that it was actually through my association with MARL over the course of many years that I learned to really truly appreciate the role of the Law Reform Commission in the development of the health care directives legislation where the commission put forward a discussion paper for community input and then went and studied the feedback and came with recommendations which is now the law in Manitoba. It was a tremendous effort and a significant contribution to the ability of patients to determine their own future and their own medical care. So I understand why MARL is here today, and I appreciate your coming out.

* (1150)

Mr. Chairperson: Thank you very much for your presentation. What is the will of the committee? We have a bit of time. Is it the will of the committee that we go clause by clause till a determined time, or what are your wishes? [agreed]

Before we do that, however, are there any other presenters in the audience who have not registered to come forward?

Bill 21–The Jury Amendment Act

Mr. Chairperson: Seeing none, we will then continue into clause-by-clause consideration of Bill 21, The Jury Amendment Act. As in all other bills, the title and the preamble will be set aside for consideration of the bill.

Clause 1. Shall the item pass?

An Honourable Member: No.

An Honourable Member: Pass.

Mr. Chairperson: Oh, by the way, I am sorry, are there any opening statements on this bill?

Mr. Gord Mackintosh (St. Johns): This bill does not deserve the support of the Legislature whatsoever. It does away with the $30 per diem payment for jurors when they serve on juries of 10 days or less, which is the majority of jurors who serve. The average jury trial is six days in this province, I understand. What the impact will be is to disproportionately impact on those who will suffer financially, particularly the working poor. I know the minister has said, well, there is no big deal with this legislation because potential jurors can be excluded for financial hardship reasons. What that does is simply skew juries in this province. Juries are to be comprised of one's peers. We should not forget that those who disproportionately come before the courts are disproportionately lower income individuals, but regardless of that, to skew juries in favour of those who are financially comfortable is a threat to what the objectives of juries are. We just cannot support it.

Now the minister says the per diem rate of $30 a day is not representative of a realistic compensation for a wage earner, to use his words from the second reading debate. Well, that is no reason to get rid of it. If you do not like $30, increase it. It has not been increased since 1987. I think it is time to show respect for those who are summoned for jury service in a real way to ensure that there is no financial impediment, there is no financial strain put on those who serve. It is critical that Manitobans, all Manitobans be able to serve on juries, to see how the justice system works, to participate in the administration of justice. It is even more important that we ensure that juries truly represent a cross section of the community. So we are opposed to this legislation.

Hon. Vic Toews (Minister of Justice and Attorney General): I just wish to repeat a few of the comments that I made in the House. I will not go into them in any detail. I want to indicate that all selected jurors will continue to be compensated for out-of-pocket costs such as travelling, parking, child care and meals. I might point out that the provinces of Saskatchewan and Newfoundland do not pay any jury fees, and other provinces such as New Brunswick and Ontario pay only for trials that last over 10 days. The anticipated saving that this will create for the province is approximately $96,000 annually. We also note that people who would be prejudiced by serving on a jury can ask the judge to be excused for reasons including financial hardship.

So we understand that all of us as citizens in this province may well be required to serve on juries from time to time and, in certain situations, they will be excluded. I think we have not had to take the drastic steps that they have taken in provinces like Saskatchewan to exclude jury fees totally, and we have tried to be reasonable in our approach to this issue.

Mr. Chairperson: Clause 1. Shall the item pass?

Ms. Jean Friesen (Wolseley): Mr. Chairman, I have a question about people who are on welfare and are called for jury duty. Will their welfare payments be continued during their period of service on a jury?

Mr. Toews: Yes. I do not see anything in the bill that would affect that.

Ms. Friesen: I do not see anything in the bill either, but this seems to me to strike at the heart of what this government is all about, and that answer is not the one that I think would give assurance to many of my constituents who will be affected by this. It may be done by regulation in the social services department. So I am looking for an assurance from the minister that that is not going to happen.

Mr. Toews: Well, nothing in this particular bill would indicate that that course of action is going to be taken. I can only comment on what this bill is doing; I cannot comment on any other statute. I am not aware of anything that would prejudicially affect the person to continue to receive social assistance payments.

Ms. Friesen: Would the minister undertake to consult with the Minister of Family Services (Mrs. Mitchelson) and to assure us in writing that that will be the case?

Mr. Toews: I will raise this with the minister, and I will allow her to respond to you.

Mr. Gary Kowalski (The Maples): On a 10-day trial for someone making minimum wage, it means that they are going to be out approximately $480 of income. For someone making minimum wage, that is a very hard blow. So, of course, they will indicate that there will be a hardship, and they will be excluded. So that means all minimum-wage earners will be excluded from jury trials, serving on a jury in Manitoba. That means that someone who is not a middle-class or an upper middle-class person or a rich person will not be facing a jury of their peers, because it will be hard, especially in juries that involve civil litigation. It might be hard for that jury to reflect on someone who is struggling financially. How many people from the north end of Winnipeg will be excluded from serving on juries because it will be a financial hardship to them? Has the minister looked at that?

Mr. Toews: Well, I cannot say whether any persons would be excluded from a jury by the introduction of these amendments. That is an issue for a judge to determine.

Mr. Kowalski: Well, it is not the judge who is bringing forth this legislation that is going to cause someone on minimum wage to lose $480 in income if they want to do their civic duty, if they want to take part in society, if they want to be part of a jury, be part of the justice system. So it is excluding a large portion of the population from being able to do that duty.

Before this legislation was brought forward, was there any analysis done on how this will reflect on the number of people who will be able to serve on juries and be able to suffer a financial burden of $480 in their monthly income?

Mr. Toews: I am not aware of any such hardships that may have arisen in other provinces like Saskatchewan that would have affected detrimentally the composition of juries, but, certainly, this is an issue that my staff will review from time to time to determine whether or not this is having an undesirable effect that will have to be addressed in the future.

Ms. Marianne Cerilli (Radisson): I want to follow up on the questions asked both by the member for Wolseley (Ms. Friesen) and the member for The Maples (Mr. Kowalski), and I am wondering if in the development of this legislation the minister did consider these issues, not only for people collecting social allowance and their ability to serve on a jury but those collecting Employment Insurance benefits or workers compensation, if that was discussed or was looked at.

* (1200)

Mr. Toews: I understand that the staff looked at that issue, and we discussed many of the issues relating to the payment of these fees.

Ms. Cerilli: So then your answer to the member for Wolseley is puzzling because there was no real assurance given, and I am wondering if the same question should not be asked and we should ask for assurances for those who are on Employment Insurance benefits, who are collecting workers compensation, if you can undertake to assure us that they will not be told that they are not going to be available for work while they are serving on a jury if that is the current situation, if that is going to change with these new provisions in this bill.

Mr. Toews: As I have indicated earlier, it is my understanding that it will not. If there is some indication that the member has that it will change, I would appreciate knowing about that, but there is nothing in The Jury Amendment Act that would affect anyone's income from social allowance or from another source of publicly funded program, including a program like Employment Insurance which is also privately funded as well as publicly funded.

Ms. Cerilli: Well, I was just going to say that the governments, both federally and provincially, though, have been changing regulations for qualifying, both for social allowance and for Employment Insurance benefits, making it more difficult in both cases. There are very onerous requirements under workers compensation as well, so I am looking for assurance that this will not affect the ability for those individuals to collect their benefits and serve on a jury.

Mr. Toews: Well, nothing in this bill, as I have indicated earlier, affects the entitlement of anyone to wages or to receipt of money. If it did not do that prior to this time, I cannot see how anything in here would do it subsequent to this time if the legislation is passed. I am very puzzled by the question because I do not follow the logic.

Mr. Kowalski: Prior to this bill being brought forward, has there ever been a study done on the make-up of juries in Manitoba as far as occupation, income levels? Was any study done prior to this legislation being brought forward on who are making up juries, who are serving on juries now as a benchmark to review later the effects of this legislation on who will be on juries in the future?

Mr. Toews: I cannot comment specifically on whether any studies have been done in respect of Manitoba juries. I know at other times and for other purposes studies have been done in respect of the composition of juries, but no such study was undertaken in contemplation of this particular act.

Mr. Kowalski: Would the minister be willing to make a commitment? He has brought forward this legislation and said that if there are problems, if it is going to create hardships, if it does cause people–he is not aware of any exclusion from any other income that serving on a jury will provide. Would he make a commitment to do such a study on who make up juries, what occupations, what income levels before this legislation, so that we could see the effect of this legislation after it goes through? Because I am sure with the government and the majority, it will go through what the impact is, so we can look a year from now, two years from now. Is there a segment of our society that is excluded from serving on juries? Can the minister make a commitment to doing such a study?

Mr. Toews: I will consult with my staff in respect to the feasibility of looking at that particular issue. I might note that my staff has been very responsive to requests for information where it is available and indeed has provided me and compiled information for me where that information does not exist in a compiled form. So, I will discuss the feasibility of doing that, and I know that my staff will monitor the situation on an ongoing basis to determine whether or not problems indeed will result as a consequence of anything in this bill.

Ms. Friesen: Mr. Chairman, I am interested by the minister's commitment to monitor this. Could he tell us how he is going to report back on this monitoring and what questions are going to be asked in this monitoring?

Mr. Toews: Well, the member for Wolseley is putting words in my mouth. What I have stated is that the staff will monitor this on an ongoing basis as they monitor any of their programs, and if there are issues that create difficulties, they report that to their superiors and in due course that is dealt with on an administrative basis.

Ms. Friesen: I think I reflected very accurately what the minister said before my statement and what he has now said afterwards. The minister made a commitment to monitor this. I want to know how he is going to report that to the Legislature and what kinds of questions he is asking, because what he is doing in this bill is creating a situation where the social composition, the class composition of juries, may change. He says that he monitors. How is he prepared to report upon that monitoring?

Mr. Toews: The staff will examine the situation as it develops and, if there are issues that result as a consequence, I would expect that they would report back to the appropriate officials.

Ms. Friesen: That is not a commitment to report to the Legislature. It is not a recognition of what the situation is. The minister has displayed no understanding that what he is doing here is changing the social composition of the ability of people to make judgment upon their peers, so I have no confidence that the minister's words mean anything. Is that the impression he wants to leave with this committee, that he is not

understanding the social issues that he is changing here; that he is making a commitment to monitor that only reports to him and refuses, actually refuses to this committee to report in a broader public way? Is that what he wants to leave on the record as a result of his bill?

Mr. Toews: No, Mr. Chairperson, that is not what I have left on the record and the words that the member for Wolseley is using are not accurate.

Ms. Friesen: Mr. Chairman, well, will the minister tell us what it is that his committee or his staff are going to monitor? What questions are they asking? What are the research questions that they are going to ask? What is going to be monitored? How will it be monitored and to whom will they report?

Mr. Toews: My statements remain on the record and you can judge my actions according to those statements that I have made.

Ms. Friesen: Well, thank you, Mr. Chairman. What I see then and what I judge is a Minister of Justice who is prepared to alter the social and class compositions of juries in this province and who is not prepared to report or even to ask questions on the consequences of that to justice in this province.

Mr. Toews: Well, that is not correct. As I have indicated, those type of programs or that type of a process in Saskatchewan, where they have abolished all jury fees, has not resulted in that and, if the member has information to the contrary, I would appreciate seeing what her colleagues in Saskatchewan have done in respect of abolishing all jury fees in that respect. I do not believe that her colleagues' experience in Saskatchewan indicates that that, in fact, is correct. But if the member has information that she wishes to draw to my attention to that effect, I would be more than pleased to examine that information and to determine what particular steps should be done as a consequence of reviewing the information that the member appears to have, because she seems to make certain assumptions that certain things will happen. She states it without producing any information, without producing any studies and without verifying it in any way. While I respect her as an honourable member, I think that she has speculated in an area where she has simply made statements on a flier.

Ms. Friesen: Mr. Chairman, I think it should be said quite definitively that what both I and the member for The Maples (Mr. Kowalski) are looking for is a minister and a government who have some recognition of the consequences of what they are doing and who are prepared to investigate that and who are prepared to report on it publicly. That is what we asked for, and I think that is a reasonable request of any government who seeks to make this kind of change to juries in Manitoba.

* (1210)

Mr. Mackintosh: In answer to the question from the member for The Maples, there has in fact been a study of juries and their composition in Manitoba, and that was in the Aboriginal Justice Inquiry. I just want to quote from page 378 of the inquiry.

Mr. Chairperson: Mr. Mackintosh, could you move your mike up just a wee bit closer. We are having a bit of trouble picking it up.

Mr. Mackintosh: Yes. The inquiry found the following. They said: We believe that the jury system in Manitoba is a glaring example of systemic discrimination against aboriginal people. Studies conducted for our inquiry confirmed that aboriginal people are significantly underrepresented on juries in northern Manitoba and are almost completely absent from juries in the city of Winnipeg.

I want the committee to hear this. Of all the ways that aboriginal people are underrepresented in the justice system, this is one of the most disturbing. This is going to get worse, not better, complicated by the fact that the government has not moved in a systematic way to respond to the recommendations of the Aboriginal Justice Inquiry. It is not just the bill, though, that causes us concern. It is the attitude that lies behind it and is part of a pattern that goes with the doing away with pauper status, with taking away benefits for people not working at the time of the injury who were victims of crime.

But the minister himself has acknowledged that there will be an impact on those serving on juries by his statement in the House, and I want to reiterate what he said. He said, given that potential jurors can be excluded for financial hardship reasons, there will be no negative impact to the jury process or to the public. Now, I find that confounding, elitist. I certainly find the class analysis there to be disturbing. I think the ideology that is driving this bill comes through loud and clear. There is in that statement the statement really that all Manitobans do not count, that those who are not financially comfortable do not really count.

I am also concerned about this government's continued theme of looking to other provinces somewhere to justify reducing the little bits of equality that this province has struggled for over many years. The lowest common denominator theme is really worrisome. Thank you.

Mr. Chairperson: Clause 1, shall the item pass?

Some Honourable Members: Pass.

Some Honourable Members: No.

Voice Vote

Mr. Chairperson: All those in favour of Clause 1 passing, would you indicate by saying yea.

Some Honourable Members: Yea.

Mr. Chairperson: All those opposed, would you indicate by saying nay.

Some Honourable Members: Nay.

Mr. Chairperson: I declare the Yeas have it.

Clause 1 shall be passed.

* * *

Mr. Chairperson: Clause 2, shall the item pass?

Some Honourable Members: Pass.

Some Honourable Members: No.

Voice Vote

Mr. Chairperson: All those in favour of passing Clause 2, would you indicate by saying yea.

Some Honourable Members: Yea.

Mr. Chairperson: All those opposed, say nay.

Some Honourable Members: Nay.

Mr. Chairperson: I declare the Yeas have it.

* * *

Mr. Chairperson: Clause 3–pass; preamble–pass; title–pass. Shall the bill be reported?

Some Honourable Members: Agreed.

Some Honourable Members: No.

Voice Vote

Mr. Chairperson: All those in favour, would you indicate by saying yea.

Some Honourable Members: Yea.

Mr. Chairperson: All those opposed, would you indicate by saying nay.

Some Honourable Members: Nay.

Mr. Chairperson: I declare the bill shall be reported.

Formal Vote

Mr. Mackintosh: Count-out, please, Mr. Chairman.

***A COUNT-OUT VOTE** was taken, the result being as follows: Yeas 6, Nays 4.*

Mr. Chairperson: I declare the bill will be reported.

Bill 33–The Executions Amendment and Consequential Amendments Act

Mr. Chairperson: Bill 33, The Executions Amendment and Consequential Amendments Act. As in previous bills, the title and the preamble will be set

aside until we have considered clause by clause the rest of the bill.

Are there any opening statements?

Mr. Gord Mackintosh (St. Johns): A preliminary question for the minister, does the bill privatize the function of the service of documents?

Hon. Vic Toews (Minister of Justice and Attorney General): No.

Mr. Mackintosh: Another preliminary question, is the minister aware that the staff at the sheriff's office, in particular those who are directly affected by this privatization, were told in very clear terms that privatization was off the table at the sheriff's office at the very same time this legislation was being introduced into the House?

I wonder if the minister would comment on that affront to the workers at the sheriff's office, who are, by the way, dealing with concerns on other fronts as well, including their own safety.

Mr. Toews: What the staff took out of the meeting I cannot say. I know that members of my staff did discuss this with the sheriff's officers and indicated that the only impact of this bill dealt with the execution of writs of seizure.

Mr. Mackintosh: I would urge the minister to look into my allegations. There is, I think, a very unhealthy relationship between workers and management at the sheriff's office, it appears. Would the minister tell the committee how many staff years are affected by this privatization?

Mr. Toews: I understand that there were four staff years affected a number of years ago. Three of those positions were vacant, and the one other individual was transferred to another department.

Mr. Mackintosh: Is the minister saying that no staff years are therefore to be deleted as a result of the bill?

Mr. Toews: Other than the four staff years that we have already discussed, no.

Mr. Mackintosh: It is my understanding there are two Sheriff Officer IIIs who are dedicated to the work of seizure and sale. I am just wondering how the minister can explain those two staff positions and how they will be affected.

Mr. Chairperson: Before I allow the minister to respond, I am having a great deal of difficulty between the jackhammers and the discussions going on at the table to distinguish whether I am listening to Mr. Mackintosh or the minister or all the rest. Could I please have a wee bit of order around the table. Thank you very much.

Mr. Toews: Those two positions will continue in not only enforcing writs but also monitoring the agencies that will be contracted with to conduct this service.

Mr. Mackintosh: This takes me then to the minister's argument that this is done as a cost-saving measure. I know that the report by Ken McCuaig, in 1993, recommended against privatization as is now being brought in by the government. As well, there have been some difficult experiences in other jurisdictions, I think particularly of British Columbia in going to privatization, but I ask the minister how he can argue that there will be a cost-saving.

We have not seen the cost-saving evidence here. For one thing, the staff years already devoted to this function will continue, so there will be no staff-saving costs. Second of all, the evidence that I know the government garnered to support the argument of cost-saving was based on a regime before the law fees were significantly increased. In fact, the writs now cost $240. I certainly have not been convinced with anything the government has brought forward that there is any cost-saving here. I ask the minister to demonstrate the reason for the bill then.

Mr. Toews: I might indicate for the member that this is not just an issue of the saving of money, but it is also improving service to people who utilize the courts to execute on writs. I might indicate that in spite of the increase in the fees that part of the service still continues to lose money. It does not break even in that sense.

* (1220)

Mr. Mackintosh: I would like to see the figures. If it does not break even, then the minister has an obligation to explain why it is not breaking even. I fail to understand where there are any cost-savings whatsoever. If the staff years are continuing to supervise private agencies and, I do not know, provide training and support perhaps, if the fee increases have gone up considerably, I want to see the cost-benefit analysis. He is asking the Legislature to support this bill; he should provide the evidence rather than assuming that there is a cost-saving here. Can he provide the documentation in support of his argument?

Mr. Toews: I will determine what information is available and see if that can be communicated to the member.

Mr. Mackintosh: Is it therefore the position of the minister that this bill can be delayed?

Mr. Toews: No, that is not my position.

Mr. Mackintosh: Well, since when are arguments made after the fact? We want to know what the cost-benefit analysis is that has been done by the government allegedly, because quite frankly it is my suspicion that there is no cost-benefit analysis. This is done on the basis of ideology and ideology alone, without considering what is in the best interests of either cost-benefit or the public interest.

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

Mr. Mackintosh: We have further questions. What protection will there be for the consumer if some property is seized and stored, for instance, any property of significant value, and something happens to that property? What will be the bonding and liability requirements for these private agencies?

Mr. Toews: The agencies will be required to enter into contracts to provide the service and will be required to comply not only with the conditions of that contract but with the requirements of The Executions Act, the applicable sections of The Queen's Bench Act and The Consumer Protection Act. Through regulations, the province will have the authority to have the agencies monitored by the sheriff's officers and, in the event that they operate outside of the regulation or contract limits, there are various legal remedies that lie.

Mr. Mackintosh: I am worried the minister has not considered this issue fully. The sections in the bill that describe what can be in the agreements with the private agencies and the section of the bill regarding what can be in the regulations, do not specifically talk about bonding and liability issues. The second point is if monies are received after a sale of property, what provisions are there to protect the consumer in regard to the maintenance of a trust account?

Mr. Toews: As indicated earlier, that will be addressed in the agreements and in the regulations.

Mr. Mackintosh: These are fundamental issues of consumer protection, and I would think that they should be a fundamental part of the legislation. I ask the minister, will he also not defer the bill for the reason not only of cost-benefit analysis but, as well, to ensure that bonding and liability and trust account issues are fully dealt with in the legislation?

Mr. Toews: My staff assures me that the appropriate measures can be taken under this legislation to protect the public interest.

Mr. Chairperson: Thank you very much. Clause 1–pass; Clause 2(1)–pass; Clause 2(2)–pass; Clauses 3, 4, 5(1), 5(2), 6, 7(1)–pass; Clauses 7(2), 7(3), 8, 9(1), 9(2), 10 and 11–pass; Clauses 12(1), 12(2), 12(3), 13, 14, 15 and 16–pass; Clause 17, 18, 19, 21, 22–pass; Clause 23.

An Honourable Member: I did not hear you say on the record that you were referring to Clause 20.

Mr. Chairperson: Clause 20–pass. Now we have guaranteed it. Clause 23(1)–pass; Clause 23(2), 23(3), 24 and 25–pass; preamble–pass; title–pass. Shall the bill be reported–

An Honourable Member: No.

Mr. Chairperson: All those in favour of reporting the bill, will you say yea?

Some Honourable Members: Yea.

Mr. Chairperson: All those opposed say nay.

Some Honourable Members: Nay.

Mr. Chairperson: I declare the Yeas have it.

An Honourable Member: Count-out, Mr. Chair.

A COUNT-OUT VOTE was taken, the result being as follows: Yeas 6, Nays 4.

Mr. Chairperson: The bill shall be reported. Thank you.

What is the will of the committee? Shall we continue clause-by-clause consideration? What is the will?

An Honourable Member: It is 12:30, Mr. Chair. Shall we adjourn?

Mr. Chairperson: Is it the will of the committee to rise? [agreed]

The committee will then rise and will meet again at the designation of the House leader (Mr. McCrae).

COMMITTEE ROSE AT: 12:27 p.m.

WRITTEN SUBMISSIONS PRESENTED BUT NOT READ

Re: Bill 56

This document has been prepared by members of our coalition as a written submission to the legislative committee on The Family Maintenance Act.

The Coalition of Custodial Parents of Manitoba is a loosely knit organization of 100-plus custodial parents established in May 1994 as a result of our struggles with the Maintenance Enforcement Program. We all share in common ex-spouses who have habitually reneged on court-ordered child support payments for lengthy periods of time. Most of us work full time. Many work full time plus several part-time jobs in our efforts to provide for our children. Though we are very busy with our multiple roles and find it difficult to meet regularly, we are dedicated to improving the lives of Canadian children. Many of our members do not speak in public due to fear of reprisals, financial and safety, that may negatively impact our children. The Coalition of Custodial Parents is our voice.

We recognize that many noncustodial parents genuinely care for and regularly support their children without the necessity of legal sanctions. Unfortunately, this has not been our collective experience. Many of our members have escaped from partners who abused our children and/or ourselves and continue to do so financially, physically and psychologically.

Our ex-spouses come from all walks of life. The vast majority live in Winnipeg. A cross section of noncustodial parents who regularly avoid child support payments include a child psychologist and a social worker with local government agencies, a pediatrician, a university professor, a judge, an MLA, an MP, a lawyer, an architect, an armed forces lieutenant, MBAs, accountants, businessmen, executives, high school teachers, steelworkers, appliance repairmen, factory workers, and lower income workers. Many of our ex-spouses have voluntarily reduced working hours and quit jobs to avoid supporting their children. Many can afford expensive car payments, expensive houses, RRSPs, vacations abroad, et cetera, but they manage to convince judges that they cannot afford child support payments. As a result, many thousands of dollars in child support debt has been forgiven by courts $30,000, $40,000, $50,000 at a time, while the children for whom the support was intended continue to live in poverty. Courts, too, have reduced child support amounts substantially when noncustodial parents claim hardship, yet it is our children who must live within the most constrained financial circumstances. Most of our members are low wage earners who cannot recoup financially. Child support is not a luxury, but a necessity if our children are to have the basic essentials of life.

Introduction

More than 11,000 single custodial parents live in Manitoba. According to Statistics Canada, 66 percent of single parents compared to 10 percent of noncustodial parents in Canada now live in poverty. Only in 4 percent of cases does single parenthood result from casual or teen pregnancy. The vast majority of single parents, 96 percent, become single parents due to

the breakdown of a legal or common-law marriage. About 60 percent of custodial parents have child support orders, although the default rate on these orders is high.

For most of this decade Manitoba has had the dubious distinction of being the child poverty capital of Canada, with a child poverty rate hovering at about 29 percent. Approximately 50 percent of children living in poverty live in single parent households, although children of single parents account for only about 15 percent of all children in Canada. Government cutbacks of the last few years have undoubtedly exacerbated rather than relieved the dilemma of children in poverty.

In 1994, we estimated that 58 percent, the official number, to 75 percent, including late, partial and missing payments, of child support orders in Manitoba were in arrears. Amendments to the maintenance enforcement act in 1995 assisted in a few situations; however, new situations have arisen and many of our members continue to struggle to obtain fair representation regarding collection of child support. Others have simply given up on the system. Raising children singlehandedly is an exhausting enterprise and requires all our time and energy. We should not need to struggle with government as well.

General Response to Bill 56

The present situation in Manitoba is that child support orders can be filed under either The Family Maintenance Act or the Divorce Act, if divorce is contemplated, when legally married parties separate. Orders are filed under The Family Maintenance Act only where parties were not legally married.

The members of our coalition agree with the principle that children should be treated uniformly regardless of the previous marital status of their parents. All children should be equally entitled to an equitable share of the noncustodial parents resources. They automatically share the custodial parents resources by virtue of living in common with them.

We do not support the adoption of the federal child support guidelines in their present form since they are inherently flawed. These flaws are discussed in further detail in the section reviewing the new Divorce Act in the submission. It is vital to understand these flaws in order to correct them.

We recommend that provincial child support guidelines, which would take precedence under Divorce Act provisions so that one standard applies across the board, should be formulated that are more progressive than and seek to correct the flaws of the federal guidelines.

According to the Manitoba Association of Women and the Law, Manitoba courts have been progressive in the past few years in raising average child support payments above national levels. Thus, though the federal guideline amounts will raise payments for many children across Canada, in Manitoba many child support orders will decrease under the federal guidelines.

In formulating provincial child support guidelines we would remind the committee that the stated intention of both provincial and federal legislation is to promote the best interests of the child. Thus the first question must be: does this legislation truly seek first the best interests of the child?

Is it in the child's best interests to live in poverty? Is it in the child's best interests to live in poverty when their noncustodial parent does not? Is it in a child's best interests to have insufficient nutritious food to eat or inadequate clothing for our climate? Is it in a child's best interests to be inadequately supervised because the custodial parent must work several jobs in order to provide basic essentials and cannot afford the cost of quality daycare?

Is it in the best interests of society to allow children of single parents to be so disadvantaged?

Specific Comments

Guidelines should be considered a floor only and courts should be instructed to increase payments wherever possible. A statement to this effect could be added to Section 37(2) of Bill 56.

Section 37(4) and Section 37.2(8) of Bill 56 require further clarification. In reading these sections, we are

uncertain as to which party could be ordered to pay costs. Is the intention that the noncustodial parent pay costs or could the custodial parent be required to do so? If the custodial parent is ordered to pay costs, then it is our contention that the costs are actually being paid by the child. In reality, the child's financial well being is inherently linked to the financial circumstances, resources and debts of the custodial parent.

We believe that Section 37(5) should require an automatic continuation of the child support obligation after death of the noncustodial parent, providing that the estate has a positive balance. Custodial parents do not receive a widow's pension when their ex-spouses die, yet the children's support needs still exist.

We question the presence and application of Section 37.2(1) of Bill 56. Many of our members have experienced situations where courts rescinded prospectively or retroactively for instance by forgiving arrears of support or suspended child support payments for various reasons so that we received less or no support although our children's basic needs and costs had not decreased, nor had our income earning capacity increased. Thus we were left with the entire child support obligation, a situation which is certainly not equitable.

Child Support Service

Costs–We note that the bill does not indicate whether or what costs will be charged to a person requesting the assistance of the child support service for matters such as obtaining financial information and recalculations, Section 39.1(2). We believe that, in keeping with the stated intention of the divorce legislation, there should be no cost to the user of this service.

Application–It appears that one must have an original order obtained via lawyers prior to being eligible to use the support service, since only recalculations are mentioned. We believe that, if it is a simple matter of plugging figures into a computer program as we have been led to believe, original orders should be obtainable through the child support service. Many custodial parents do not obtain child support orders because they cannot afford to pay the legal costs involved. For the sake of the children, these orders ought to be in place.

Time gap between request for recalculation and notification of amount

We find no reference in this bill indicating the length of time one could expect to elapse between the initial request for assistance and the actual obtaining of the recalculated amount.

Section 36.1(1) indicates only that financial information must be provided. No time limit is given, although perhaps the 31-day limit in the Divorce Act would be applicable. Section 39.1(4) indicates only that the payer must begin payments 31 days after receiving notification of the recalculated amount. How much time may elapse while the child support service is in the recalculation process or before notifying the parties of the recalculated amount? How long will our children be without the support of both their parents?

Some Problems Inherent in the Federal Child Support Guidelines

Inadequate support amounts: The child support guidelines are based on the faulty assumption that children do not have basic costs but rather cost only a certain percentage of whatever income is available, i.e., one child costs 17.65 percent of available income.

Custodial parents know that real children cost real money and that there is a basic minimum amount required if children are to survive physically and emotionally.

According to Manitoba Agriculture (1995), yearly basic essential costs, minus child care, for one child range from $4,656; $9,644, with child care, for a five-year-old to $6,997 for a 16-year-old. Federal guidelines support amounts in many cases do not cover even half the basic costs of a child. Where the custodial parent cannot compensate for the missing amount, children are impoverished.

A payer earning $27,000 would be expected to provide only $2,400, 8.8 percent of income after taxes in support, about 33 percent of the basic costs for a teen. This leaves a shortfall of $4,600. Thus the custodial parent must pay an additional $2,200 if the child is to be provided with essentials. If the custodial parent also earns $27,000, 17 percent would be

required to make up the balance of $4,600. Wherever a payer earns less than $36,000, the custodial parent is left to cover more than half of the child's basic costs, and frequently much more.

Dependent children live with their mothers in 87 percent of cases. Women working full time still earn only 66 percent of men's wages. This gender-based wage gap leaves women with much less disposable income than their male counterparts. Yet the federal guidelines assume both parents can equally afford to contribute the same dollar amount toward the children's needs.

Many women work for a minimum wage. A custodial parent who earns $12,000 will have to spend nearly 70 percent of income to support one teen child adequately. If the other parent earns $18,000, the child support amount is $1,625, leaving a shortfall of $5,775. Provided the ordered child support is received, the custodial parent must still spend 48 percent of her earned income on one child. However, poor families spend an average of 45 percent of income on housing alone. How will this parent support herself or any other children involved?

The federal guidelines allow payers a minimum standard of living before they pay any support. However, custodial parents must support their children no matter how low their incomes. They must support their children first. Where resources are scarce, it is the custodial family that suffers the most.

Legal costs still required for support orders and shareable expenses

About 66 percent of custodial parents have support orders. Many custodial parents have no support orders because they cannot afford the legal costs involved. Often they make just slightly too much money to qualify for full legal aid coverage; they have no money for lawyers.

The child support service has power to recalculate, not to set original order amounts or to calculate shared expenses, Section 25, 26, 13, Divorce Act.

Inequitable sharing of health expenses

The Divorce Act, Section 7 and 13, sets up the custodial parent to meet a much greater proportion of health expenses.

A $100 deductible is applied to health expenses per event or illness; no deductible is applied to other shareable expenses. This deductible could prove rather expensive to the custodial parent, many of whom have no insurance coverage. Conceivably a custodial parent could have several children, all of which require two dental visits in a given year. Each visit costs perhaps $70, thus is subject to the deductible. If four children have two visits each at $70 per visit, the cost totals $560. This cost is totally borne by the custodial parent since each visit is subject to the $100 deductible and thus not shareable. Add to this cost other items such as physiotherapy for a knee injury due to a fall on the playground, $38 per visit; counselling due to an assault, $70 per visit; antibiotics or other prescriptions required on a regular or an ad hoc basis; glasses for four children due to a hereditary shortsightedness, $95 each for cheap glasses for cheap frames which may well need to be replaced soon since they break easily, et cetera.

Child support reducible if 40 percent custody or access

It is quite possible that a noncustodial parent have access to a child 40 percent of the time yet is not involved in any of the substantial duties inherent in raising a child. For instance, all the laundry, the cooking, the help with homework, the purchase of clothing, et cetera, may be relegated to the custodial parent although the child spends 40 percent of the time with the other parent. Section 9 thus allows child support to be reduced even though the custodial parent's child-related costs have not decreased.

Child support reducible if support orders for others excepting the child's parent

Section 10 allows support to be reduced due to obligations to any other person, presumably includes spousal support orders for other than the child's mother, yet Section 15.3 does not allow support to be reduced due to spousal support for the child's own parent. Thus former spouses are treated inequitably.

Child support reducible if increased access costs

Noncustodial parents often make a deliberate and unnecessary choice to move across country. This increases access costs substantially, but it does not reduce the child's living costs paid by the custodial parent. Where noncustodial parents have chosen to live far away from their children, they should bear the increased costs of access themselves. Removing child support money from the custodial parent penalizes the child financially and thus it is actually the child who pays the additional cost.

Standard of living tests not enforceable on new partner

The Divorce Act requires that some form of standard of living test be utilized to establish undue hardship claims. Penalties are provided within the act and income can be imputed for ex-spouses who fail to co-operate, Sections 22 and 19. However, although the determination requires financial information of any new partners, the act provides for no penalties or imputing of income for new partners who fail to co-operate with the process.

Guidelines are useless unless enforced

The majority of child support orders presently are in arrears. A national automatic payment system would do much to improve the lives of children. This would require that public money be used to make up the difference between what is owed and what is paid. Since it would be the fund and not the families who would be penalized where default occurs, there would be a much higher motivation for fund administrators to ensure full collection potential.

Conclusion

The Coalition of Custodial Parents believes that children should be treated equitably whether under federal or provincial legislation. However, we cannot recommend the adoption of the federal child support guidelines in their present form. The inequitable treatment of health expenses and low support levels in many cases are particularly problematic. No mention is made of sharing expenses incurred under The Parental Responsibility Act, though a child's delinquency is often directly related to the abrogation of parental responsibility by or harmful parenting practices of the absent parent. Also, a process is not established regarding the logistics of claiming and collecting special expenses.

We believe that the province of Manitoba can do much to improve upon the child support guidelines, that Manitoba's children deserve better child support guidelines. We would be pleased to provide further consultation in the process of establishing made-in-Manitoba guidelines. Our recommendations for a child support service and for child support guidelines follow.

Recommendations Regarding a Child Support Service

We recommend that the child support service to be established consist of an adjudicative panel by means of an administrative tribunal with power to hear appeals, to adjudicate disputes or variances, to calculate and recalculate support amounts and special expenses, to expedite fair resolution. The tribunal could obtain financial information, calculate support including special expense amounts. The tribunal would hear and review evidence from the paying parent, the receiving parent and from the staff of the Maintenance Enforcement Program as applicable. This would provide a forum in which parties could be heard without the need to go to the courts with legal representation. In our experience, having to resort to the adversarial legal system for action in regards to support matters drains emotional energy and resources which could be better spent in nurturing and caring for children in the trying and difficult task of raising children.

We recommend that this tribunal be empowered to hear and adjudicate matters of dispute or default and its decisions directly appealed to the court. The advantage is that the custodial parent would have a direct opportunity to present information relevant to the matter under adjudication, without having to go through a lawyer which most cannot afford to hire, on speculation that the other parent will eventually be called to account. We anticipate that should the administrative tribunal's decision be appealed it would then be the defaulting or disputing payer making the appeal, and bearing the associated costs, and the receiving parent would have the benefit of having the relevant information considered by the court through the information presented in support of the tribunal's decision.

The assistance of the tribunal should be cost free to the participant and timely. Collections should be made by the Maintenance Enforcement Program. A maintenance advance program could also be administered by the tribunal.

We oppose any changes to the system which further transfers the costs of achieving settlements back onto the families to the disadvantage of children.

The economic protection of children rests with the courts and judges who are expected to act in the best interests of children. Any alternative to this system must have as its primary objective keeping as much of the family's resources within the family as possible. Only then can we ensure that custodial parents have sufficient resources to feed children nutritiously and to provide adequately for them. Lacking reasonable support, women and children are doomed to live in poverty, and many are forced to become dependent on overburdened and inadequate social programs.

The child support service must have the best interests of children as its primary priority. A properly instructed child support service could do much to improve the lives of children where parental relationships have broken down. Adequate legislation is also necessary to ensure children are properly supported. Canada has signed a pact with the United Nations agreeing to ensure that all children are guaranteed a healthy standard of living. Manitoba must do its part to ensure children are cared for according to these standards.

It is the position of the coalition that our families should not have their economic resources drained to achieve fair and adequate child support/expense settlements or to ensure that child support/expense payments are made in full and on time. We believe that the high legal costs and long delays which characterize our present system force many families to rely on food banks, clothing exchanges or shelter allowances to provide for our children. We are asking for improvements to be made to the judicial system which recognize the importance of meeting the needs of children and families in a cost-effective and timely way.

As we discharge the most important of society's responsiblities, the raising of healthy children, we ask only that we have the resources to raise our families free of the burden of poverty. To accomplish this we must not be forced to use our scarce resources to time, money and energy to obtain justice for our children. Child maintenance is for the care of the children of a relationship and should not be provided grudgingly because one parent wants to punish the other financially for the relationsip failure. Responsiblity for children of the relationship does not end for the noncustodial parent at the end of the relationship out of which the children were born.

A parent who truly cares for his/her children gladly does all within their power to meet the needs of the children. Unfortunately, too many noncustodial parents stray from their primary responsibility as parents: to ensure that their children are provided with the essentials of life and health. In these cases, legally binding support orders/contracts are necessary for the sake of the children. We envision an independent child support tribunal/service overseeing the entire process of obtaining, processing and enforcing child support orders that are designed to fully meet children's physical, psychosocial and health needs.

Some Alternative Guideline Models

The Coalition of Custodial Parents recommends that guidelines based on the income of both parties have the potential to apportion child-related costs more equitably than amounts based on payer's income only.

The child support guidelines project on which the federal child support guidelines are based recognizes that the majority of child support payers, usually male, earn less than $32,000 annually and that women's incomes are generally much lower than men's incomes in separation/divorce. Many women have given up education and career advancement opportunities during marriage and following separation due to the necessarily time- and energy-consuming tasks inherent in being designated primary caregivers for the children of the marriage. Also, when children are ill, custodial parents must miss work to care for them. Statistics Canada indicates that 62 percent of custodial families live below the poverty line compared to 10 percent of divorced men.

The first and foremost factor in calculating child support amounts must be the actual costs of raising children.

The second factor requires an equitable division of child-related costs including necessary accommodations, furnishings, household operations, housekeeping, food, clothing, health-related costs, personal care, school-related costs, transportation, recreation, supervision, the costs of providing a stable environment for the children of the marriage. Too often custodial families are relegated to living in run-down, gang-infested slums while noncustodial parents live in luxury.

In Manitoba, single custodial parents on welfare are expected to spend more than $3,530, 37.5 percent of total income, on one child from their welfare allocation of $9,721 annually. This is about eight times more than a noncustodial parent is expected to pay under the federal child support guidelines. Many custodial parents in Manitoba work for minimum wage. Thus the federal guidelines frequently perpetuate a grossly inequitable division of child-related costs between parents.

The third factor requires that, where there truly are insufficient funds between the two parents to adequately meet the basic needs of the children or where funds ordered are not received, the government must step in to provide adequate support for our most vulnerable citizens, dependent children.

Our suggested guideline models assume a basic adult amount of $6,000 for each adult and a basic child amount of $9,500, where child care required, and $7,000 for a teen child. Special costs must be calculated and paid additionally.

Suggested Guideline Model 1

In this model the income of both parents is combined and then divided by the number of people involved from that union on an equal basis. The amount calculated for each person should then go to the household that person lives in, i.e., if there are two parents and two children involved and three of the four people live in one household, then 75 percent of the combined income should go to that household and 25 percent of the combined income goes to the one person living in a separate household. Both parents must maintain separate households but one parent has the added costs of raising the children.

Example 1:

Income: Parent A - $10,000
Parent B- $15,000

Combined income = $10,000 + $15,000 = $25,000
Divide income by the total number of people resulting from that union, includes both ex-spouses and any children jointly produced.

For example, two ex-spouses and one child of the union equals three people.
Divide $25,000 by 3 people = $8,500.

Each person is allotted $8,500. Thus $17,000 goes to the custodial household and $8,500 goes to the payer household. Since this amount is above the adult basic amount the adults do not require a supplement. However, where this amount is insufficient to meet the basic needs of the child, according to Manitoba Agriculture standards, the government must pay the shortfall either by direct payment or via free child care, additional tax credits, et cetera.

This model would provide much more adequately for the child's needs than do the federal child support guidelines. Under the federal guidelines the above payer, if parent B, would be expected to pay only $1,356 annually for one child, thus the custodial family, parent A and one child, would have to survive on $11,356 while the noncustodial parent, one person, lives on $13,644.

Example 2:

Income: Parent A - $10,000
Parent B - $18,000

Combined income = $10,000 = $18,000 = $28,000
Divide income by the total number of people resulting from that union, includes both ex-spouses and any children jointly produced.

For example: two ex-spouses and two children of the union equals four people.
Divide $28,000 by 4 people = $7,000 each.

In this case the payer's income may require some supplementation from the government, but that supplement should not come out of the children's coffers. The $7,000 for each child meets the basic costs of a teen according to Manitoba Agriculture, but does not provide for additional expenses and is not sufficient to cover the amount required for a five-year-old, (includes child care). Unfortunately, the custodial parent here likely makes too much money to qualify for subsidized child care, in the unlikely event that she can manage to find availabvle subsidized spaces. The necessary child care money should not come out of the children's coffers. Rather, government subsidies are necessary.

Under the federal guidelines the above payer, if parent B, would be expected to pay only $2,940 annually for two children, thus the custodial family, parent A and two children, would have to survive on $12,940 while the noncustodial parent, one person, lives on $15,060. Thus the custodial family of three people must survive on less than half the combined income while the other parent, one person, lives on more than half the combined income. Again this perpetuates gross inequality in apportioning post divorce child-related costs between parents.

It is the contention of the United Nations that all children should be guaranteed a minimum standard of living which is adequate to meet their basic needs for nutritious food, adequate shelter, a healthy environment, et cetera. Canada, and thus Manitoba, are signatories to such an agreement. Yet the federal child support guidelines leave the majority of children of divorce, 41 percent of all children in Canada, living in poverty. Federal guidelines do not protect children. The federal guidelines protect a basic standard of living for payers only. Custodial parents and children must lower their standard of living to survive on whatever amount is left over.

Suggested Guideine Model 2

This model is based on payer's income only. The amount of support required from the payer would be equal to the amount the custodial parent is expected to be able to provide for a child with the same income. The Manitoba welfare sytsem assumes that a custodial parent can spent 37.5 percent of income on one child. Therefore the payer should be able to pay support equaling 37.5 percent of income on one child. The payer who makes the same income, about $10,000, should be able to pay $3,750 in support, et cetera.

The problem with this model is that it does not attempt to equalize the standards of living. However, it would come much closer to providing a basic standard of living, in conjunction with the custodial parent, for the children than the amounts expected in the federal guidelines. Under the federal guidelines the above payer would pay only $1,140 annually for one child.

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