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Thirty - First Legislature

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LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON LAW AMENDMENTS
Saturday, 26 July, 1980.

Time — 10:00 a.m.

CHAIRMAN — MR. GARY FILMON (River Heights).

BILL NO. 56
AN ACT TO AMEND
THE CHILD WELFARE ACT

MR. CHAIRMAN: There being a quorum present, I'll call to order the meeting of the Law Amendments committee. We begin this morning by hearing delegations on Bills 56, 103, 107 and 114. I have a list of speakers and we'll begin on Bill No. 56. I have a list of speakers here, but if anyone's name is not on the list, there will still be an opportunity for them to speak. We'll begin by hearing delegations on Bill No. 56, An Act to amend The Child Welfare Act and begin by asking for the representative of the Family Law Subsection, Manitoba Bar Association, Robin Diamond, to come forward, please. Robin Diamond?

If not, the second speaker I have indicated as Mrs. Krause of Legal Aid.

MRS. KRAUSE: Good morning, Mr. Chairman. My name is Krause and I'm appearing today in the dual capacity of a lawyer with Legal Aid Manitoba and as a member of the Legal Aid Lawyers Association, the representative of attorneys and articling students employed throughout the province of Manitoba by the Legal Aid Services Society of Manitoba.

MR. CHAIRMAN: Mr. Krause, I'm not sure if the rest of the committee are having the same difficulty hearing you that I am. Could you just go a little closer to the microphone, please?

MRS. KRAUSE: Yes.

MR. CHAIRMAN: Thank you.

MRS. KRAUSE: The following brief is the result of discussions by a number of members of the Legal Aid Lawyers Association expressing their concerns about some of the amendments before you. Our brief will be with respect to the amendments concerning the sections dealing with child protection.

A substantial number of clients serviced by Legal Aid Manitoba will be affected by these amendments and we're often called upon to represent them before the courts with respect to applications made by Children's Aid Society for the permanent or temporary wardship of the children. Because of this, we feel that we are in a position to make a useful contribution to any discussions pertaining to the amendment of the legislation which governs the welfare of children. Can everybody hear me? Is that all right now?

MR. CHAIRMAN: Yes, thank you.

MRS. KRAUSE: We therefore submit the following comments regarding Bill 56 in the Act to amend The Child Welfare Act, the new subsection 25(3)(b). The proposed new section 25(3)(b) allows for a complete waiver of notice at any time up to and including the date and time of the actual hearing of the application, notwithstanding that the hearing may be in progress

This new section would mean that a hearing to make a child a temporary or permanent ward of Children's Aid Society could be commenced without the parents or the persons entitled to receive notice having any knowledge of it. It also means that it will be sufficient for Children's Aid Society to obtain a waiver of notice and file it in court after the case has already been presented.

We feel that it would be highly prejudicial against a parent to allow proceedings of this nature to be commenced without them having notice of it. In most of these cases we are dealing with people who are easily intimidated and ready to sign anything given to them by persons seemingly in authority. It is easily conceivable that a parent presented with a waiver of notice under these circumstances will get the impression that it is too late to oppose the application or to consult with somebody about what steps to take. At that point, people might feel that it is too late to do anything about it and sign whatever they are asked to sign.

But we not only feel that this amendment would prejudice the people concerned, but that it may very well turn out to be quite costly. If people waive the notice because they don't know exactly what they are signing, they will probably later on go to a lawyer and have the situation explained to them. If there is some doubt as to whether or not effective notice was given, the lawyer will have to advise the client of the possibility of an appeal to the Court of Appeal. This, of course, will result in additional cost to the taxpayer, since almost all Children's Aid cases are legal aid cases. We therefore recommend that section 25(3)(b) should not be included in the Act and that it should be retained in its present form.

Amendments to Section 25(9): This amendment would permit that the discretion to decide whether or not to hold an examination for discovery would be placed into the hands of judges rather than into the hands of counsellors presenting the case before the court. In exercising this discretion, a judge must take into consideration the 1979 Manitoba Court of Appeal decision in the Childrens Aid and Molyneaux

The decision was delivered by Mr. Justice Monnin, who states: cases of this nature should be disposed of rapidly in the interests of parents and in the interests of children. Once started, the case should continue to conclusion as rapidly as possible and not be pushed from week to week and month to month. This has been interpreted by Provincial Court judges that in cases of this nature they cannot allow adjournments and will certainly bear on their decision whether or not to adjourn a hearing and make an order for the examination of discovery.

Judges will have to take into account the directions given to them by the Court of Appeal. This would mean that they will have to sacrifice justice to administrative efficiency. We ask that you consider that the right to an examination for discovery is given to people in the case involving a 200.00 debt, but that when childrens lives are concerned, no such right will exist anymore. It is our position that no more serious disposition is known in law than taking away a child permanently and that a parent should have at least no less a right under these circumstances as she has in a case involving a 200 debt.

There is also a practical disadvantage to that particular amendment. Very often, Childrens' Aid cases take two or three days in court. If counsel is allowed to conduct an examination for discovery, it is very likely that there be an agreement on issues or even a settlement. This will significantly shorten the time required in court, or make it even unnecessary to go to court at all. Once the right to an examination for discovery is abolished, initially contested cases are more likely to go to court and will take more time to resolve.

The purpose of discovery is for each party to an action to know the exact position of the opponent and the precise nature of every document likely to strengthen or weaken that position. As the amendments read now, the applicant or any other person affected by the application has a right to obtain particulars with respect to the application. However, it is to be noted that particulars serve a different purpose than discovery. Particulars before trial are required for greater clarity in defining the issues to be tried, whereas discovery is to enable the opposite party to know what case he is called upon to meet, and in addition to simplify the trial by procuring admissions.

We therefore strongly recommend that Section 25 remain unamended in The Child Welfare Act. This is our submission, thank you very much.

MR. CHAIRMAN: Thank you, Mrs. Krause. Are there any questions from the committee members? Mr. Corrin.

MR. BRIAN CORRIN (Wellington): Yes, my question to the delegate is with respect to whether or not there was any consultation as between your association and the government in this regard.

MRS. KRAUSE: No, Mr. Corrin, we only received notice that the committee would be sitting this morning, there wasn't sufficient time really to consult.

MR. CORRIN: Are you telling us then that Legal Aid lawyers were not consulted with respect to these provisions during the drafting stage of this particular bill?

MRS. KRAUSE: I'm not aware of any consultation.

MR. CORRIN: Do you have any idea what percentage of the cases involving child apprehension, Legal Aid has responsibility for.

MRS. KRAUSE: I think it's almost 100 percent. It doesn't mean that Legal Aid lawyers are counselling every case, but Legal Aid is appointing somebody to act in those cases.

MR. CORRIN: Thank you.

MR. CHAIRMAN: Thank you, Mrs. Krause. Our next representation is from the Manitoba Association for Rights and Liberties. I have Norman Rosenbaum, also Mr. Arnold.

MR. A. ARNOLD: I'm just going to say a few words, Mr. Chairman, by way of introduction. This brief has been prepared, as usual, by our Legislative Review Committee in consultation with members of our Childrens' Concern Group, which has had an active concern with childrens' rights for some time and continues to maintain a watching brief on all matters to deal with childrens' rights. The brief will be presented by my colleague, Norman Rosenbaum, who was serving us in a research capacity and who is speaking on behalf of these two committees and our association, and I request your careful attention to his submission.

Thank you.

MR. NORMAN ROSENBAUM: The Manitoba Association for Rights and Liberties applauds the acknowledgement given in Bill 56 to the principle that the rights of a father and mother, whether or not they are or have been married to each other, to the custody and control of their children are joint and equal. The Association further commends the statutory support of the "best interests of the child" test in parental applications for guardianship, custody and access.

The Association wishes to express its concern however, with the continued statutory provision of the unmarried mother as guardian of the child. The Association is concerned that the courts, in custody disputes between mothers and fathers of illegitimate children, will not apply the "best interests of the child" test as the paramount and primary consideration, but will continue to favor prima facie rights of mothers to custody of children. True, the proposed amendment to Section 105 provides that the rights of even unmarried parents to custody and control of their children are joint, but Section 105 grants discretion to the courts to order sole custody. In fact, the courts are currently greatly averse to awards of joint custody, even where issues of custody involve legitimate children.

While the test of the "best interests of the child" is supported by the courts in custody battles involving legitimate children, the courts in Manitoba, citing the Child Welfare Act provision of unmarried mothers as guardians of illegitimate children, favor, as a rule of law, the prima facie right of the mother over the father to custody.

The Association objects that the provision of guardianship is retained in Bill 56. It might be countered that in Bill 56, section 14, condition (b), amending subsection 105 of the Child Welfare Act, provides for joint custody to the parents of legitimate or illegitimate children. It might be further argued that the proposed subsection 107(3) provides that

"either parent may make an application under this part

(a) for the guardianship or custody of the child . . . and in granting or refusing the application the judge shall in all cases consider and be guided by the best interests of the child."

It is pointed out, however, that this provision indicates only that the best interests of the child are a consideration and guide. We suggest that with the guardianship provisions retained, the courts are not going to take the best interests test as the paramount consideration in custody cases involving illegitimate children. On this note, may we point out the case of Wong v. Graham, involving custody of an illegitimate child. It was suggested by counsel to the court, that the Family Maintenance Act provision of the parents of illegitimate children to be treated as if married, for the purposes of the Family Maintenance Act, equalized their rights to custody. Thus, it was argued, the mother should not have a prima facie right of custody, but that the "best interests of the child" were paramount.

This argument was not accepted by the court, which indicated that as long as the Child Welfare Act provided that the unmarried mother was constituted guardian, her prima facie right to custody was the rule.

In conclusion, the Association argues for modification of certain provisions in the Child Welfare Act constituting the mother of an illegitimate child the guardian of that child until another person is appointed guardian by a court. We argue this modification to enshrine the test of the "best interests of the child" as the paramount consideration in issues of the custody of illegitimate children.

MR. CHAIRMAN: Thank you, Mr. Rosenbaum. Any questions from the committee? Mr. Corrin.

MR. CORRIN: Mr. Rosenbaum, I'm just wondering if, having heard your presentation, and I respect it and I must admit I share your concerns, because I initially proposed a private members' resolution that would have brought into effect this particular legislation and then it was followed by this bill, several months later.

I have a bit of a problem with respect, I suppose, to the technical detail respecting the defining of guardianship rights. How do you think we could proceed in this very difficult area, the common-law area, if there wasn't a legislative attempt to designate one parent or the other as a prima facie guardian? I have some difficulty because we're dealing with common-law relationships and I have no set point of view. I'd just like you to talk a bit about that. How do you see it as working in the absence of a prima facie presumption?

MR. ROSENBAUM: I think part of the problem may be that the current legislation constitutes the unmarried mother immediately the guardian of the child. I was thinking that perhaps that statute law could be amended to provide for a court hearing to constitute whoever is to be guardian, but not to provide for the mother as immediate guardian of the child. I think that might be an approach. Possibly as an ad hoc approach to the amendment of this Act, the section 107(3) could be amended should provide the words "paramount consideration" at the end of section (a) so that section (a) would provide "that in granting or refusing the application of the judge, the judge shall in all cases consider and be guided by the best interests of the child as the paramount consideration". Now perhaps there will be stronger statutory language would convince judges in case law.

MR. CHAIRMAN: Mr. Corrin.

MR. CORRIN: Yes, I guess I'm wondering about the cases that may fall in the cracks. As I understand it, The Family Maintenance Act makes provision for custody orders in common-law situations if the spouses have cohabited for a period of 12 months, is that correct?

MR. ROSENBAUM: It's 12 months.

MR. CORRIN: What about situations where that particular time threshhold hasn't been attained?

MR. ROSENBAUM: I believe The Family Maintenance Act provisions provide for maintenance to begin with. They don't deal strictly with custody.

MR. CORRIN: In all cases?

MR. ROSENBAUM: I believe that if the relationship lasts less than 12 months, there is simply no provision for maintenance as if the parties were married. Now that is a problem of The Family Maintenance Act itself that I just referred to. The Family Maintenance Act is by way of indication in that particular case of Wong and Graham, of the interpretation and statutory language of how strictly the courts interpret the guardianship provisions of The Child Welfare Act.

MR. CORRIN: But in terms of the interim custody of the child, in the case of the parents who haven't cohabited for 12 months, you feel that there's no need to make a prima facie presumption in favour of one of the parents. You feel that there's a way that we can assure that there can be a fairly immediate review of custody and guardianship in the absence of that?

MR. ROSENBAUM: I believe there should be in terms of custody of children and I really do think that giving the mother the prima facie right as a rule of law is an inequitable principle to begin with. I believe there could be provision for a hearing, for example, to constitute whatever party is necessary as guardian. But to simply constitute the unmarried mother as immediately the guardian of the child seems to be fairly inequitable and it seems to be quite regressive.

MR. CHAIRMAN: Thank you. Mrs. Westbury.

MRS. JUNE WESTBURY: Thank you, Mr. Chairperson. Will you please correct me if I'm wrong? Is it not true that in law, the parents of the child are presumed to be the married couple, the husband of the mother is presumed to be the father whether in fact he is the father or not? Does this

apply in the present legislation? What I'm trying to say is, it's easier to prove the identity of the mother than it is to prove the identity of the father, which I understand is not proveable?

MR. ROSENBAUM: Surely there are affiliation proceedings under The Child Welfare Act, currently.

MRS. WESTBURY: It is not possible, however, to prove that somebody is the father, is it? You can prove they're not the father, but you can't prove that somebody is the father, can you?

MR. ROSENBAUM: Yes.

MRS. WESTBURY: You can?

MR. ROSENBAUM: You cannot prove that the person is the father. You can't prove.

MRS. WESTBURY: You cannot prove.

MR. ROSENBAUM: Yes. So you can't prove that a person is not the father.

MRS. WESTBURY: You're right. Right. But with a married couple, the married couple is presumed to be the parents of the child, whether in fact the father is the parent or not, so that where a married couple where custody is concerned, the husband has equal rights to the wife, whether in fact he is the father or not, and I'm just wondering how that carries on into the illegitimate child's position. I say this in another connection, but it's a wise man who knows his own father, they say, and I'm just concerned about the fact that sometimes, especially with very young women and, in fact children, they're inclined to be defenceless and may easily be taken advantage of, their emotions easily played upon and especially in a situation where there is an illegitimate child and perhaps the mother has no resources and I'm concerned about the fact that the mother's rights might be dissipated altogether in our anxiety to provide equal rights for the father.

MR. ROSENBAUM: I feel that those are valid concerns. However, I believe that the principle of the quality is of itself somewhat of a necessary principle to enshrine, I think that there are problems of practice in terms of relative positions of the unmarried mother and the putative father. However, I feel that in cases of that sort, that court hearings are a necessary device and surely if such is the case, then court hearings would also be a valid vehicle for determination of custody. And given the fact that in current court hearings custody is really a prima facie right of the unmarried mother, I believe that there is a problem of entering the court hearing with the judicial determination of custody and yet how can the positions of the parties be at an equal in the sense of custody?

MRS. WESTBURY: Mr. Chairperson, I think if I may ask this question in the form of expressing my own concern, which is what worries me is that the prosperity of the father might become the prime consideration of the court, the father having perhaps being in a better position to pursue a career than the mother because of the pregnancy, the birth and the care of the child, and that after a period of a couple of years, perhaps, the father, because he is more prosperous, may be considered to have a firmer claim on the child, it being considered that in the best interests of the child, it's better to live in a more prosperous home or something like that. I suppose you would say that that would depend on the judge and we'd have to have faith in our judges to take more than that into consideration. That's really what I'm worried about here.

MR. ROSENBAUM: And again, we are arguing for the disenshrinement of the prima facie rights of the mother as a rule of law. In practice, it's still a question of fact whether the interest of the child will be better taken care of in the custody of the mother or the father.

MRS. WESTBURY: I accept that . . .

MR. CHAIRMAN: Excuse me, Mrs. Westbury, with apologies. We're getting into debating of an issue that really is well defined in the bill and I think we're asking Mr. Rosenbaum to debate something that should more properly be debated by committee, I believe.

MRS. WESTBURY: Well, Mr. Chairperson, I did preface my remark by saying, I'm asking the question . . .

MR. CHAIRMAN: To express your own concern, yes.

MRS. WESTBURY: His response is what I was looking for. That's all.

MR. CHAIRMAN: Mr. Corrin.

MR. CORRIN: Still, I want to understand your point, because I think you do make a good point and I think we should all appreciate it. Are you saying then, do we agree that common-law parents, if they have cohabited for 12 months, essentially have a quality in law today?

MR. ROSENBAUM: In terms of quality of responsibility, not maintenance.

MR. CORRIN: Custody rights. Then you say not with respect to custody rights? I just want to clarify that.

MR. ROSENBAUM: I was using the example of the Family Maintenance Act and the particular case that dealt with it as an example of the court's interpretation of a particular section of the Child Welfare Act, of the strength of judicial thinking on the guardianship provisions of The Child Welfare Act. Currently there is an equality of responsibility for maintenance of illegitimate children vis-a-vis unmarried parents, but that doesn't indicate an equality of custody rights, for example, of unmarried parents who have been cohabiting for 12 months. That is not the case currently.

MR. CORRIN: Okay. I understand that point. That's clarified. With respect then to your concern, do you think that an amendment that would provide for interim review — as far as I can see there is no

provision in this legislation that provides for interim review of guardianship, there's a prima facie presumption of guardianship in favour of the mother.

MR. ROSENBAUM: Yes.

MR. CORRIN: So do you think in lieu of that, if there were a provision for interim review, that that would be satisfactory?

MR. ROSENBAUM: I still don't think it would really go to the root of the issue of guardianship and custody and how the issue of custody flows over the guardianship provisions of the Act. Perhaps, if there was a stipulation of consideration of the best interests of the child, as a paramount consideration, explicitly in the legislation, that may be a remedy, but I don't believe that interim review would be. I think that the courts would still be stuck with the interpreation of the custody and guardianship provisions of this Act.

MR. CORRIN: What would be your opinion if it was suggested that 107(1) simply be deleted from the Act? What would the effect of that be? If there was a provision for interim review and section 107(1) was taken out, what would the effect of that be?

MR. ROSENBAUM: I believe that there would have to be a court hearing to award guardianship in that case, an immediate hearing, or rather before guardianship would be awarded to any of the parties, there would be a court hearing. Currently in 107(1) the mother is constituted immediately the guardian, until a court appoints another guardian. With the 107 deleted, it would simply — I believe there would have to be a requirement where the parties would probably have to go to court to establish who would be the guardian of the child.

MR. CORRIN: Through you, Mr. Chairman, my problem right now is — we were up very late last night, so I've got a lot of problems. We're operating on five or six hours sleep. I'm concerned about situations where children would be left without a guardian. You know, I'm wondering if that can happen. If you can assure us that that can't happen in law, if you're telling us that there's sufficient protection in this regard, in other words, if a child, using an example, if a child needs medical attention, a child of a common-law union need medical attention and there's no definitive guardianship order in place, can you assure us that that child's interests could be protected? Could a common-law parent give an instruction, for instance, to a physician to perform an operation?

MR. ROSENBAUM: From my reading of the case law, and given that other provinces don't have this explicit provision of guardianship, I believe that the problem of decisions regarding the child are not difficult, in the sense that where the child is in the custody of a particular party, that party does have the right to make the particular decisions as to the child. The child will still be in the care and custody of a particular person. In practice it may well be the unmarried mother. In that case I believe — I'm speculating now, but I believe that the unmarried mother would still have the right to ordering or to direction of certain treatments, etc., for the child. I don't believe that it will be a great problem if this particular guardianship provision was deleted. I still think that the person who has the fact of custody of the child would have the right to direction of major decisions regarding the child.

MR. CHAIRMAN: Mrs. Westbury.

MRS. WESTBURY: Yes, Mr. Chairperson, I'm getting more confused as we go on. 107(1) says certain persons as guardians of child, an unmarried woman, or a widow or a divorced woman, who is the mother of a child. Is it being suggested that somebody's whose husband dies before a child is born has fewer rights than somebody whose husband is still alive when the child is born?

MR. ROSENBAUM: I think you may be misinterpreting the section. I believe where the child is born after nine months, after, for example, the widow's husband had died.

MRS. WESTBURY: Where does it say that, please.

MR. ROSENBAUM: I believe that's referred to in Section 105 of the original Act.

MRS. WESTBURY: 105. But 107(1) doesn't say that, or any part of 107 doesn't say that.

MR. ROSENBAUM: I believe that they are referring to an existing section of the existing Child Welfare Act when they indicate that.

MRS. WESTBURY: Mr. Chairperson, it doesn't say that and if 107 is suggesting that . . .

MR. CHAIRMAN: We're into debate again and with respect, we do have Legal Counsel here to answer those questions and you're asking Mr. Rosenbaum, who may not be as familiar as Legal Counsel might be, having drafted this, for opinions on it and I think that perhaps we've elicited as much information as we could from him and it would be proper to ask those questions later of Legal Counsel who are here with us to answer those questions.

MRS. WESTBURY: Well, Mr. Chairperson, of course I accept your ruling. Its just that certain questions were allowed which made me believe that to happen and I'm trying to elicit the information of what has been said.

MR. CHAIRMAN: The delegate did indicate that he wasn't quite sure of the legislation from his readings. So perhaps we should ask somebody who might be more sure of it when we get to that on the clause-by-clause consideration.

Mr. Corrin.

MR. CORRIN: Maybe you could comment on this question, Mr. Rosenbaum. Under this legislation then, if a child were with its father and the father and the mother were not together, and as I read it the mother would be constituted as the guardian of the child, can you tell us what would happen if the child needed medical attention? Given the fact that there

seems to be a presumption in favour of the mother and that prima facie guardianship is conferred on the mother, what effect would that have on the best interests of the child should it be necessary that the father exercise guardianship rights?

MR. ROSENBAUM: I don't believe that the father could immediately exercise guardianship rights. He would have to go through a court, I suppose, to be able to make the decision as to medical attention, even if the mother was to be absent and could not be located.

MR. CORRIN: So what's your opinion of that?

MR. ROSENBAUM: I believe that there are certain problems with that, for instance, getting in touch with the mother in that circumstance and the father not being able to immediately make an important decision regarding the child and medical attention.

MR. CHAIRMAN: Thank you very much. Thank you, Mr. Rosenbaum.

We have a representative from Walsh, Prober and Company. Do we have either Mr. Yard or Mr. Walsh here? Your name is, sir?

MR. DOUGLAS YARD: Mr. Chairman, there's only a few comments that I wanted to make with respect to Bill 56. My name is Douglas Yard. In part my comments deal with what the bill doesn't contain and in part they deal with what it does contain.

The bill amends The Child Welfare Act, a major piece of legislation in this jurisdiction, and it's a piece of legislation which has been the subject of both hilarity and consternation at the same time, even in the Manitoba Court of Appeal as recently as last month and over the last three years that I have been having to deal with it, and it's in need of major revision in many areas, if not only in terms of housekeeping, also in terms of policy.

This particular piece of legislation that purports to amend it does only a small part of what's necessary to deal with a major problem. It's unfortunate that the bill itself has come to the attention of many people who deal with it at such a late stage that it's almost impossible to make a reasonable presentation as to the bill itself. I happen to be appearing today on instructions from our firm's client, The Childrens Aid Society of Winnipeg, who deal with this bill on a daily basis and process hundreds of cases through the courts every week on the basis of the legislation and we've only been aware of the fact that the bill was proceeding for a matter of a couple of weeks and that's the extent to which representations have been able to be thought through in a careful way.

With respect to some of the things that are in there nonetheless, I point out that there's an amendment to Section 25(9) the Examination for Discovery procedure which, based on the experience of our firm, which I say to you does between 75 and 80 percent of all applications under Part III of The Child Welfare Act in this province, that we processed 75 to 80 percent of those through the court by virtue of The Childrens Aid Society of Winnipeg, and it has never been our experience that the privilege that litigants have to use Examination for Discovery has ever been abused by parents, nor has it ever been our experience that the interests or rights of children have been significantly delayed or denied as a result of a parent having a right to discover us and find out what our case is.

I agree with the submission made by Miss Krause with respect to that particular provision and that is that parents, in my mind, ought to have a right to examine for discovery when it's contemplated that their child is going to be taken away forever. Even when we have a case where we're seeking a temporary order, it's a pretty serious matter to talk about taking a child out of the home of a parent for a period of months or years, a parent ought to know what case is going to be presented against him and while in practice, particular share that information in great detail, a parent who chooses to discover ought to have that right.

I had a chance to talk to some people in the Attorney-General's department about that particular amendment and their experience appears in some locations in the province to have been different from ours insofar as perhaps counsel have taken more advantage of the discovery than they appear to in Winnipeg. But it's our position that the discovery ought to be available for parents in that kind of a serious matter. I don't think that in the hundreds of cases tht are processed through our office under that part of the Act every year, we have more than a half-a-dozen examinations for discovery each year, so it's not used that much, but in the cases where it is used, it's a right that is an important one.

That's the only particular section I intend to deal with in terms of what appear to be housekeeping amendments that basically deal with Part III of The Child Welfare Act. The others are housekeeping in nature and appear to make things a little bit easier from a procedure point of view, and they're welcome. But there are two other parts of the Act that are also being dealt with here that I think affect the community generally and there are some major policy provisions being proposed in this bill which, as I say, notification to people involved has not been long and there are policy amendments that have serious ramifications for the fabric of society in a large way, and I refer firstly, to the one that deals with the purported attempt to make the best interest a test in all cases dealing with children, even where the child is illegitimate.

The law has been since Vandenberg and Guimond in the Manitoba Court of Appeal here in 1960s and since two similar cases in the Supreme Court in the same decade, that natural parents or, in the absence of married natural parents, a single mother have prima facie rights and those are rights that have been recognized in the common law for centuries now and they've been recognized for very good reason; and to advance a proposal that is going to elevate persons who have not seen fit to create a legal relationship between themselves and the mother onto the same footing as the mother, without a serious discussion as to the policy ramifications of that, in my submission is a hasty decision and it ought to be something that is only done after a very long and serious discussion about whether it's a good idea or not.

There are certainly some serious problems, as was seen from the questions posed by Mr. Corrin to the last speaker, as to what would result in various

circumstances if that arose. An example, if you look at Part III of The Child Welfare Act dealing with children in need of protection, we can generally ascertain when a child is apprehended who his mother is. We often spend months and years trying to ascertain who his father is and end up serving six or eight different men hoping that they will come forward and state whether they allege they are a father or not so that we can, with some degree of certainty, try to pin down who the potential people are. One can see circumstances where again it is a matter of proof, where we are going to have a number of people involved making claims with respect to the child, all of them alleging that they are fathers, and that can happen now, but without the prima facie right of the mother to be considered the guardian, it is going to be a very different situation. So it is my submission to the committee that that kind of an amendment that deals with a major policy issue shouldn't be processed without serious and long debate on the policy ramifications.

I don't know if the Committee has information about the tests that are being applied across the country in the various provinces. Some provinces are dealing with cases on the basis of best interest and many others are dealing with cases still on the basis of prima facie rights of natural parents, and in particular, mothers of illegitimate children, and that's been the subject of recent comment in the Manitoba Court of Appeal by Mr. Justice O'Sullivan, as recently as last year, in a case by the name of Delvenne and Nabe. So my submission is that that's a major policy consideration that shouldn't be processed too hastily.

The second area, with respect to policy which I wish to address briefly, is the question of the adoption register and the issue of confidentiality. Because of the shortness of time, I've only had a chance to consult briefly with the people that I deal with in the adoption areas, but one of the major concerns that they have with respect to any piece of legislation is that the confidentiality of the adoption process be maintained. Adoptive parents are a major resource to children who are wards of the state, and thats a resource that we want to foster and protect. And many of those resources consider that their confidentialty to be a major part of the decision to proceed with adoption. And any legislation that is going to have any effect on the confidentiality of the adopted child's origin, working both ways, both for the child and for the adoptive parents, should be very carefully considered, and each word of it should be carefully considered, because once you embark on a new direction in a statute, you're going to have lawyers sitting down and dissecting it and finding ways to evade perhaps what you consider to be the spirit of that and it's very likely there's going to be cases come up for the spirit that you intend here today may be avoided. So I'm suggesting that again, when you're embarking on a major policy direction such as that, that it should be done only in consultation with the professionals involved and that their concerns regarding confidentiality ought to be expressed and protected.

Those are all the comments I wanted to make on the legislation.

MR. CHAIRMAN: Thank you very much, Mr. Yard. Mr. Mercier.

HON. GERALD W. J. MERCIER (Osborne): Mr. Yard, on Section 25(4)(1) that's proposed in the Act, in your view and your experience, would you consider this to be an appropriate authority for a judge to have to expedite one of these children's cases. For example, in the case of a situation which will allow the court to dispense with service on a parent who has never been involved with a child.

MR. YARD: The court now has a power to dispense with notice upon persons affected by the application. That's contained in the existing child welfare legislation. The only difference between what's proposed now as 25(4.1) and what exists now as 25(4.1) appears to be the deletion of the words "and the agency is unable to effect service upon the person required to be served with a notice." There are some words that are deleted from the current 25(4.1). The net effect appears to be that it's no longer going to be the test that you can't serve and it's going to be some other test that the judge is going to be called upon to apply. I don't know what test the judges will apply for that appears to be the only distinction between those two sections.

MR. MERCIER: Do you agree or disagree with having that Section in?

MR. YARD: My own opinion is that it is a useful Section. It frequently happens that because of the definition of parent, which includes persons in loco parentis, that we end with a series of gentlemen who have been in the house over a number of years and we have a six-year old child who has had perhaps a succession of four gentlemen in the house for a number of months. Each of those men has to be served and some of them have never shown or expressed interest since their departure three and four years hence, and as a result that power is a useful one to save firstly, the investigative resources of going around the country and attempting to find these men and give them a notice, which they generally don't respond to at any rate, because they are not interested, or alternatively advertising in newspapers, which is a pretty expensive proposition, so that there came be some semblance of an attempt to find them.

MR. MERCIER: Mr. Chairman, through you to Mr. Yard, on Section 25(9), the one about particulars and examination for discovery. I appreciate your comment that in your experience, at least in the city of Winnipeg, you haven't had any difficulty with this that you are aware of. I believe you also indicated you are aware that in another area of the province the right to examination for discovery is being asked for apparently on a consistent basis.

Would you not agree that these kinds of cases are cases that should be dealt with as quickly as possible and in fact I believe there has been some criticism of the delay in some of these case in the Court of Appeal? Would you not agree that the amendment as it stands, which provides for a right to obtain particulars, and a right to apply to a judge for an examination for discovery if the party is not

satisfied with the particulars that have been provided, is it sufficient protection for litigants, considering all the special ramifications of these kinds of cases?

MR. YARD: If expedition is the value that we want to achieve as a result of this amendment, I think that it can happen, particularly in rural areas, that you are going to get delay as opposed to expedition as a result of the amendment, because counsel will ask counsel for the agency, may I have my particulars? You give him what he wants or what you are prepared to give him and you think it is full, and he will ask for more and you will give more. He'll say, I don't think it is enough, I want to examine, and the counsel for the agency will say, well, you have to go and ask a judge about that, when is the next circuit into Thompson, Manitoba or Flin Flon, Manitoba? And so your counsel has to go up to argue a motion as to whether there should be an examination for discovery or not, and as a result of that there will be a determination either yes or no, and in either case there is going to be a further period of time before you are going to get the hearing on. Whereas, by adopting the Queen's Bench practice and having it as a matter of right, the matter is on a court docket and as soon as particulars are provided you are required to set a date for the hearing.

If you are going to examine for discovery you have to state your intentions at that point and get your appointment served and discovery should take place within ten days to two weeks, so that you have a procedure in place that doesn't involve going to court and arguing about things. If you want to do it, get it done, and let's go to court. So that it doesn't delay all that much, but the actually going to court and arguing about whether you should have one or not will result in higher legal expenses for the agencies and it will also results in some more delay.

MR. MERCIER: So in your view the section should be deleted?

MR. YARD: In my view it is unnecessary and discovery hasn't been abused and this could be abused moreso than the current procedure.

MR. MERCIER: Okay.

MR. CHAIRMAN: Mr. Minaker.

HON. GEORGE MINAKER (St. James): Mr. Chairman, I was just going to ask Mr. Yard his concern about equal rights to potential guardianship of unmarried couples, would not Section 107(1) that we have put into the Act in this Bill protect that situation where automatically the mother has the rights to the guardianship until it is contested by the natural parents? Would that not cover that concern that you have with regards to . . .

MR. YARD: That covers the concern at that particular point. You don't have a void in guardianship.

MR. MINAKER: Or you wouldn't get continuous court cases coming forward by the father trying to claim the guardianship at that point.

MR. YARD: The only effect that these particular amendments appear to have on the law as it exists now, is that the test that the court will be applying when there is a hearing will be a different test. The test currently is that the mother has to be shown to have abandoned the child or so misconducted herself as to not be entitled to custody any longer, and now they are going to say, it is the best interests test. It is a different test that you are going to have to meet, but that is a test, the test that now exists, that has grown up over a long period of time, and it has good reason for being in effect in the way that it is. It is a policy decision, it is certainly not a decision to be made by lawyers and people of that kind who deal with the practicalities of things. It is a major policy decision and it is going to have some serious impact, in my view, on society generally.

Child caring agencies, just as an example, have a real commitment to mothers and to helping mothers keep their children, particularly unmarried mothers, and that focus, I think, has come about in part at least because of the knowledge that the law is the way it is. It is a major policy departure.

MR. MINAKER: Will it not be then the onus on the father to prove that the mother is not providing in the best interests of the child, so that even though it is a change, as you indicate, it will still have to be the father to prove it wrong that the mother is not providing in the best interests the care of the child.

MR. YARD: Once you adopt a test like the best interest, there is a multitude of factors that the courts have considered in all custody cases over periods of time, and if the mother has the status quo, that is, the child has been living with her and knows her, I would think that just from an evidentiary point of view there is going to be an onus upon any applicant, be it a grandparent or a common-law father to bring forth a fairly strong case, both in terms of her deficiency and in terms of his adequacy. But the difference in the test is, in my mind, a significant thing.

MR. CHAIRMAN: Mr. Corrin.

MR. CORRIN: Mr. Yard, I am hearing you sort of say two things. I am a bit confused, because in your original presentation you seemed to have a slightly different approach to 107 than you now do. Could you just tell us, first of all, I guess, do you approve of the concept embodied in 107(3) relative to equal rights based on the best interest test? Is that acceptable?

MR. YARD: No, that is the test that . . .

MR. CORRIN: You think that parents should have equal access to custody of their children if they are not married to each other?

MR. YARD: No, I indicated and I repeat that it is my view that the test that exists now in law, that is that an unmarried mother or a mother of an illegitimate child has the right to custody of her child. Absent abandoment and absent conduct, so as to disentitle her, is the proper test as opposed to simply best interest. The court decisions over a period of time

have shown us, and there is a recent one in this jurisdiction, Funk and Funk, by Provincial Judge Carr, that best interest is basically a balancing act. It is like balance or probabilities, if it goes a little bit one way or a little bit the other way, that person wins. The distinction is that as against the natural mother, you have got to do more than just balance a little bit in your favour, you have got to weigh the scale right now.

I happen to think that as a matter of policy, that there is a good reason for that having been so in the past and it shouldn't be disruptd without serious policy discussion.

MR. CORRIN: You are saying that you feel that with respect to "illegitimate children" that there should be a different test applied than there would be in the case of a legitimate child born in wedlock.

MR. YARD: That is true.

MR. CORRIN: Could you explain why you feel that we should discriminate as against the class of children who were born out of wedlock?

MR. YARD: I don't see that that is discrimination against either the father or discrimination against the class of child born out of wedlock. I think the law is that a child has a right to his natural parent, but in a case where we have a situation where there is only a mother who has legal obligations at birth for that child; we have a gentleman who is the father of the child who hasn't given his name to the child. We have a mother who carried that child in her for a period of nine months and went through the process of birth and brought that child into the world, and yet that other individual has not seen fit to set forth himself and bring himself into legal relationship with the child. The Family Maintenance Act, after all, has provisions that at least orginally, at the birth of the child, don't operate in his favour against that father, that the law ought to come down on the side of the natural mother.

MR. CORRIN: What I don't understand and it seems a bit harsh, what you have done is have used sort of a very narrow case to make your point. Let's talk about the case that Mr. Rosenbaum raised, the Wong and Graham case, and the facts in Wong and Graham, where the parents have been together for some time, it is a established union very much like any other marital relationship. It is a perfectly normal thing except that the parents chose not to actually . . .

HON. BRIAN RANSOM (Souris-Killarney): On a point of order, Mr. Chairman, I believe that we are getting back into debate again. Mr. Corrin is attempting to debate the point with the witness and I think that is out of order.

MR. CORRIN: On the point of order, I am not attempting to debate and I don't even think the witness thinks I am attempting to debate. What we are trying to do is find out how the law would apply, as it is drafted.

HON. HARRY ENNS (Lakeside): No, that is not what we are trying to do. Mr. Chairman, on a point of order. That is precisely not what we are trying to do. Our well-established rule around this Committee is that we ask and we receive delegations, witnesses, to give us their points of view on particular pieces of legislations and we ask, for further clarification, any more questions to make that presentation more clear to us, not to argue points of differences that members of the Committee may have.

MR. CORRIN: What were we arguing about? Perhaps I will just continue, I don't think there is an argument, Mr. Chairman, and it is quite clear to everyone that there isn't, except these two gentlemen.

MR. CHAIRMAN: I think that the whole Committee could function more evenly and avoid any clashes if people would use the witnesses as resources to answer and clarify information based on their briefs on this particular bill, and not to draw them into a discussion about other members of the committee's opinions, so if we could just attempt to clarify what he has brought us in the brief, then what would be fine.

Mr. Corrin.

MR. CORRIN: Yes, thank you, Mr. Chairman. Mr. Yard, in the case of dealing with your perception of the best interests test in 107(3), in the case that the relationship is longstanding, do you feel that there should not be equal status conferred on the parents?

MR. YARD: I think that the test has to be independent of the facts. The test is a test in law and it is based on the status of the parties. The facts that surround the relationship between each of the individuals and the child is something for the court to consider in applying the test. You have to distinguish in my mind between the facts of the case and the legal relationship between the parties, and in that particular case the legal relationship now between the parties is that of a natural mother who has obligations, inheritance rights flow, and many things happen with respect to her.

On the other side of the coin, when you deal with the father of the illegitimate child, the inheritance rights aren't there, none of the things that constitute the normal parent-child relationship are there, and as a result I feel that that is a distinguishable legal test that ought to be continued in the law.

MR. CORRIN: If we accept your argument, do you feel then that it would make the job of Children's Aid easier? Given the fact that you would have identification on a prima facie basis of the mother as the guardian, do you think that in cases of apprehension proceedings with respect to the children of common-law unions that it would make the position of your child care agency easier insofar as you could effect easy service and proceed with more expedition in this respect?

MR. YARD: I don't think it affects, in terms of service, it doesn't affect anyone who basically you believe may have been in loco parentis at some time, you have got to make an effort to serve him or to

have service dispensed with in terms of presenting the merits of the case. It is certainly important, in my view, that you have a legal guardian who is the respondent to the application and that any other parties, for example, fathers of illegitimate children, who want to make themselves heard regarding the interests of the child, who want to propose a plan for the future of the child, ought to come forward and so state. The Children's Aid now only has to present a case as against the existing legal guardian. If there were other legal guardians who may not be part of the same family unit, there could be two and three different individuals, because there would be a questions of paternity, — It often arises, who is the father of this child? — would be presenting a case against the mother, Father No. 1, Father No. 2, or potential Father 1 and potential Father 2, and it would certainly make the hearing a lot more cumbersome. You would have to bring in evidence against many people. Whereas now, if the man is interested, he comes forward and he presents himself and he presents his case, and the agency only has to present a case as against the existing guardian.

So from that point of view this amendment has some ramifications to the kind of the case we would have to present in the future.

MR. CHAIRMAN: Thank you very much, Mr. Yard.

Mrs. Westbury, did you — no, I am sorry. The next delegations we have are Parent Finders of Manitoba. I believe we have Laurie Mason, Ruth Nickel, and Joan Vanstone.

Would you please identify yourself and speak directly into the microphone?

MRS. LAURIE JOAN MASON: Good morning Attorney-General Gerry Mercier, Members of Parliament, Mr. Chairman, ladies and gentlemen.

My name is Laurie Joan Mason, Director of Manitoba Chapter of a very well-known group national through Canada called Parent Finders. My presentation will be concerning Bill 56, Section 94(2) of the amended Child Welfare Act of Manitoba.

After an urgent phone call from Vancouver Friday morning from our President, Mrs. Joan Vanstone, who by the way cannot be here today, I have tried to put together her feelings and the feelings of all adoptees here in Manitoba, plus my own, as to the effects Section 94(2) will have on the many thousands of adults now and in the future if allowed to be passed into legislation.

Section 94(2) now states, the county court clerk may, on written request, issue a certified copy of an order of adoption to an adopted parent or to the adult adoptee or to both, as the case may be. We feel that Section 94(2) should be changed to read, the country court clerk must, on a written request, issue a certified copy of an order of adoption to an adopted parent or to the adult adoptee as to both or as the case may be.

In addition to this, as of 1970 and on, Section 94(2) has deleted the adoptee's original surname from the decree of adoption. We propose that this section to allow an appended affidavit be attached to all orders of adoption for that period to show the true name of the adoptee. Ladies and gentlemen, if we continue to delete the surnames from original adoption orders, we are denying Canadian citizens their human rights by not giving them the same right of birth knowledge that other Canadian citizens enjoy who are not adopted.

I would also like to remind you of the serious medical and sociological situations that could be caused by this lack of knowledge. Is there cancer in the family? High blood pressure? What disease must the adoptee check periodically to ensure health? And what about preventing marriage by adoptees who are sisters and brothers and cousins? We, the Parent Finders of the Manitoba Chapter Incorporated, feel that The Child Welfare Act must be paramount over all other parents' needs and must ensure the rights of the adoptee. What about the adult adoptee's right of peace of mind?

We would also like to bring to your attention the fact that Manitoba is the only province in Canada that has removed the surname of the adoptee from the original adoption order. In closing I would like to challenge you to search your hearts and honestly ask yourself this question: If I were an adoptee, wouldn't I want to know my birth parents?

Thank you.

MR. CHAIRMAN: Thank you very much, Mrs. Mason. Any question of the Committee? Mr. Corrin.

MR. CORRIN: I am interested in what you have said, particularly because it has some substantial ramifications. You mentioned medical histories and I presume that this can be quite difficult, it can cause difficulties as a result of an adult adoptee's inability to inform him or herself of her adoptive parents' names and backgrounds.

You are simply saying, and I just want to make sure we all understand it, you are simply saying that you want the law to be changed in order that the surnames of the adopted person, the original surname, the parent's name, be included on the record and become a part of the adoption order that you are allowed to see. You want access to that and you want to have the name instead of the number. You are saying that if you had the name, I take it, notwithstanding that the parent was dead, that both parents were dead, or notwithstanding the fact that the parents hadn't volunteered to have their identify divulged, that you would still like the opportunity to do some tracing in order that you could ascertain your familial background. You say one of the things that would facilitate is the obtaining of medical histories and information.

MRS. MASON: I do agree that it is most important to have the birth name. If a person did want to do some background work on their own case, to find out if there are medical problems, and also to make sure you are not marrying a cousin or a brother or a sister, which has happened.

I just feel it is discrimination against the adoptees. I mean, we are labelled different because we don't have a name, we have a number from birth, and it is just very unfair.

MR. CORRIN: You appreciate the Act will allow the divulging of information respecting birth parents if the parents volunteer to have that information divulged. You do appreciate that?

MRS. MASON: Yes, I do, but in most cases a lot of the birth parents are dead by the time that this matter can happen. I think there should be somewhere where an adoptee and birth parent can bring their concerns together, which we don't really have.

MR. CHAIRMAN: Mrs. Westbury.

MRS. WESTBURY: Yes, Mr. Chairperson, this is really a very emotional issue I am sure for everybody concerned, but could I ask Mrs. Mason what protection she thinks then there should be for the mother of an illegitimate child who does not want anyone ever to be able to find out that she did, in fact, have an illegitimate child. Does Mrs. Mason feel that the mother, by giving birth to that child, has surrendered all of those rights to that kind of privacy, or how would Mrs. Mason suggest that we could provide some protection to that mother, because I think if we accepted Mrs. Mason's suggestion, I don't see any other place in here that that mother would be protected.

MR. CHAIRMAN: Mrs. Mason.

MRS. MASON: I feel if we had a proper office set up, maybe in regards to the Childrens Aid Society or the Department of Child Welfare, if we had an office set up where an adoptee can come forward and the birth mother can be approached through a social worker or whatever, and asked certain questions. The birth mother does not have to come forward, and you would find that a lot of adoptees would be more settled if they can just — all they want is information, especially about medical problems.

MR. CHAIRMAN: Mrs. Westbury, because you are addressing me you are not being picked up by the mike, so would you put the microphone closer to you, please. Thank you.

MRS. WESTBURY: Yes, Mr. Chairperson. I think the voluntary aspect is covered in the bill, wouldn't you say? Have you had an opportunity to read the whole bill?

MRS. MASON: No, this just came to me very quickly last . . .

MRS. WESTBURY: I think you will find that the information volunteered is going to be, if this is passed, freely available, that where the mother is adamantly opposed to the name being given out, would you think, Mrs. Mason, that perhaps — I can understand anyone not wanting to be called by a number — but would you think that it was sufficient to have a register of possible medical problems . . .

MRS. MASON: That arise within years later, yes.

MRS. WESTBURY: That would have to cover, of course, subsequent years for young mothers, rather than the name which can be identifying. Couldn't you foresee that some adoptees might use the information, if they had the name, to embarrass or hurt the mother?

MRS. MASON: We are not asking for the name of the parents, like the mother, Mary Ann Smith. We are only asking that the adult adoptee can obtain his own surname. If it is John Elizabeth Smith, so it be, we are not asking for the . . . I do think that the birth parents' name should be on record if need be, only to be opened or disclosed by the social worker or whoever is handling the case, but not to be given to the adoptee that approaches for the information. I am only saying, we want a name. We don't want to just have a number. You have a name.

MRS. WESTBURY: Yes, I do, and I understand the problem. Mr. Chairperson, is that name not on record now? Forgive my ignorance, but is that name not somewhere in somebody's files, the Children's Aid files, so it is there but it is not available.

MRS. MASON: It is not being given out, and only a number from 1970 on, and that is what we want changed.

MRS. WESTBURY: So you want the availability of the name?

MRS. MASON: Thank you.

MR. CHAIRMAN: Thank you very much, Mrs. Mason. Sorry Mr. Corrin, did you have another . . .

MR. CORRIN: I just wanted to know then, in terms of an amendment to 94(2), you just simply, just to put all members to knowing, so that the Minister is clear and he can consult with Legislative Counsel, you want the word "may" struck in the first line so that it becomes imperative on request that the County Clerk provide the adoption order. Is that correct?

MRS. MASON: We would like "may" taken out and "must" put in.

MR. CORRIN: So there would be no discretion on the part of the Clerk, that he would have to do it, and you want provision for the name to be left on, you don't want a number, you want a name.

MRS. MASON: A name.

MR. CORRIN: How about the cases between 1970 and the present now. I take it that those cases right now, that they are only registered by numbers?

MRS. MASON: Yes, we would like to have, as I stated, an appended affidavit to be attached to all these orders of adoption with the birth name on it, not a number.

MR. CORRIN: Thank you very much.

MR. CHAIRMAN: Thank you, Mrs. Mason.
The next delegate that we have is Mr. Roger Pyper.

MR. ROGER PYPER: Mr. Chairman and ladies and gentlemen of the Committee, I appear as a citizen, an adoptive parent, because having committed myself with some considerable emotion to the business of raising two adopted children, I now find

that having had an emotional, legal, and intellectual commitment, that I should then believe and have society's belief that these children are mine as if born to.

Since Mrs. Mason and I cannot, or at least I cannot walk in her shoes, I do not have any feeling for what it must be to be an adoptee and not know, I accept that. I have spoken with my daughter and while she is rather junior I have understood that she in fact feels, at the moment at least, that she does not need this information.

So since I believe intellectually and emotionally in the relationship as if born to and it causes me then to be committed to the raising of these children, I see some considerable danger in altering that relationship by creating, upon the attainment of adulthood by my children, a new relationship. It has been argued that since this is an Act to affect adults, it therefore does not have any effect upon my relationship or my children's relationship with me as we grow together. That, of course, would be very much like suggesting that The Liquor Control Act, only permitting the use of alcohol by adults, does not ever result in any damage to children. It does have a warming effect prior to the arrival of the event.

It has been my experience as a result of having lived in other parts of the country that sometimes the rationale for creating a registry is based upon law that existed some considerable period of time ago. There have been references to the illegitimacy of children. I would much prefer that children be referred to perhaps as being unlicenced, in the sense that I do not grant that any child is illegitimate. It is legitimate in its own right and exists not because of its parentage, but because it has a continuing existence and is now.

As a consequence, the particular information in the bill that I would like to have changed would be that one in 94(3) in which it only requires the consent of two parties to the release of identifying information, in the sense that I, as an adoptive parent, have got this considerable emotional involvement. I have some objection to their being a right for somebody who departed, perhaps after as little as a one-night tryst from my children's life, have a greater right than I to reaffirmation of contact. I accept the fact that in me saying that that there is some requirement for me to appear selfish, the answer is and I prefaced my remarks by saying, I cannot walk in somebody else's shoes and I ask for your judgment and understanding.

I have done some considerable study with this. I have read the Berger Commission Report. I have been collecting letters from interested people, any one of who may be part of the triangle, and in the Manitoba Law Commission Report there have been numerous references to the triangle. When the recommendations actually come down, however, the triangle, it appear to me, has been ignored, and it is on that basis that I call to your attention in the Law Reform Commission Report, there were two sections, one Section 5 on Page 30, which provides that an essential registry should have the power to compell release of information when it receives the written consent of the adult adoptee or biological parent. However, by the time you get to Section 10 of recommendations on application to the court, etc., etc., the court must apply to the members of the adoption triangle to solicit their views. It seems somehow or other that when we then get to the legislation, as it will be amended, is that the principle of the court has been dropped, the registry exists and there are only two parties.

My experience in British Columbia was that eventually the Berger Commission recommended that since the adoption had been an act of a court that any continuing discussion of that should perhaps be from the court as well, and if that were the case, I would certainly then have no objection to there being only one party that needed to make application, in the sense that I rely upon the wisdom of the court to make sincere judgments.

Thank you.

MR. CHAIRMAN: Thank you, Mr. Pyper. Mr. Minaker.

MR. MINAKER: Sorry, will he accept questions?

MR. PYPER: Certainly.

MR. MINAKER: Mr. Pyper, first, I would like to thank you for your presentation and I was just going to inform you that I do not have any adopted children, but some of my colleagues in the Legislature do.

MR. PYPER: I was aware of that, sir.

MR. MINAKER: I have talked to these particular individuals, because I would think that they would have concerns like you have, and I have indicated to the colleagues that I am not bound that this particular part of the Act remains as is. The only concern that I have would be possibly, and I ask you what your thoughts are on the subject, if we retain the triangle where all three parties have to indicate that they want the confidentiality released, would it not create possibly a problem between your daughter and yourself, or say any adult adoptee towards their adoptive parents, that they would not have that right to go and get the information and find out that one of the three people had not agreed to it? Then they would obviously come back to their adoptive parent and say, have you signed the release? Would that not create some bitterness between the adult adoptee and the adoptive parent?

MR. PYPER: I certainly agree that there is a potential for it becoming a problem. I suggest, sir, that you would require the wisdom of Solomon, however, to weigh that problem against the problem that I will be faced with or similar prospective adoptive parents will be faced with if they do not have this as if born to concept, because under those circumstances the benefits of what I see to be a very worthwhile Adoption Act and it applies virtually across the country in my experience, it places a moral, social obligation upon a couple to look after this child as if it were theirs. If you abridge that in any way, I suggest that you may find yourself with a problem that you did not intend to create. However, I recognize that it would require the wisdom of Solomon to undo this knot, because I haven't been able to come up with it, I only represent an opinion and hence the reason why I say I cannot walk in

anybody else's shoes, I do not know what the answer is. I cannot even know whether or not my children will in fact curse me for what I do today, but I do ask that they will recognize I have done it in some honesty.

MR. CHAIRMAN: Thank you, Mr. Pyper. Mrs. Westbury.

MRS. WESTBURY: Thank you, Mr. Chairperson. To Mr. Pyper, I wonder if you wouldn't feel, Mr. Pyper, that the years of caring for the children, having in fact made you the true parent of those children, would remove from you any fear that somehow you might lose the children if they found their natural parents?

MR. PYPER: You see, there are two sides to this, Ma'am. I, of course, argue as a private citizen and suffer the possibility of being interpretated as not being secure in my relationship with my children. The very fact that I have brought one of my children here with me today might indicate that I am sufficiently secure that she in fact can listen to everything I say. However, I have a feeling that if you do not provide for this continuing confidentiality, if you do not provide for this as if born to, you may sometime in the future create an impasse in which the age of majority is lowered by the Act affecting the age of majority, that we know from experience that there are some considerable difficulties occurring with the adoption of children who are older, in the sense that they are five or six years of age, so if you start to move the age at which a child is adopted towards the age at which it reaches majority, you decrease that period of time for it to become as if born to. If that is the case, you may undermine what appears to be a good act.

I recognize that the people who in fact are attempting to have a registry are extremely well-motivated. They have a very solid case and I cannot argue with the fact that they have a solid case. However, I have a feeling that their motivation arises out of an era in which the business of being adopted was not a comfortable thing, and as a consequence they are reacting to a condition which may well have already been corrected, and that we now, when we adopted our children, were advised that we should not conceal from them the fact that they were adopted. They are as much our children as my wife is mine, even though we did not come from the same womb. It is an act that causes her to be my wife, we are committed to one another as long as we believe that we love each other, and under those circumstances that relationship, of course, was intended to be created so that these children would have a place that they were secure. Since they must be secure in order to grow up well, I think it is worth preserving.

MRS. WESTBURY: Mr. Chairperson, I don't think anyone would argue, and everyone is glad that there are people like you to look after the children who need people like you. But if your child should at some future time become curious about her/his ancestry, roots, and if the finding out of that information was withheld, do you think that could not cause some resentment in a young adult, and that could in fact, without any action on your part, deteriorate the relationship to some extent?

MR. PYPER: There is no doubt that if I were to withhold that information it would deteriorate our relationship. By the same token, one can imagine the withholding of such information would then of course beg the question, should that information be withheld in order to protect the confidentiality of a biological parent on the premise that if the child as such, as the adoptee, once reaching adulthood has a right, then in fact can that right be abridged by anybody's other right, you see. It is a conundrum. I don't envy you your deliberation.

MRS. WESTBURY: I don't either, I think I'll go home.

MR. PYPER: I merely point out, if I may be so bold, that it is a very thorny question and if you do not consider it carefully you may in fact create a problem that doesn't yet exist. You may in fact be solving a problem that did exist some long period of time ago and it is causing the requirement to change.

MRS. WESTBURY: In referring to the wisdom of Solomon, of course, you are referring for the need for Solomon to decide which was the true mother of a child, that was one of the problems that Solomon was called upon to solve.

Through you, Mr. Chairperson, would you comment then on the medical knowledge that was referred to formerly. There is one disease that is very much a hereditary disease, I don't remember the name of it, it doesn't matter, which doesn't become identifiable until the people are in their forties, but it is very much passed on from one parent to another, and by 40, of course, most people have had their children and, you know, there are other diseases as well. Would you comment on that?

MR. PYPER: It had been during my previous involvement with this same legislation in British Columbia, we had had some members of our organization there who were pediatricians and medical doctors of one sort or another, and they gave me to believe that the statistical probabilities of you knowing anything about your parentage that would, in fact, influence your altered chances of living a normal life even if you in fact knew your natural parents, were fairly remote. In the sense that if you knew that your natural parents had a predisposition to diabetes you should not put on excessive weight, you should exercise regularly, and you should perhaps avoid sugary foods. Of course, mind you, that could be said that everybody should that regardless of their parentage.

I accept the fact that there are some very few diseases, which in fact do occur and are transmittable and hereditary conditions, and that that may well represent a viable requirement. I believe Mrs. Mason pointed out that if non-identifying information were made available at the time of adoption and perhaps were updated from time to time to show such medical conditions as they occurred, that that may well serve that purpose, you see. But I don't think that the essence of having identifying information is absolutely necessasry.

It has occurred to me that it might be reasonable to ask the Parent Finders Group whether or not, upon the existence of a registry, they would no longer feel a need to exist, in the sense that if that registry existed it is conceivable that all of their desires would be satisfied. I don't know that. If it were, then I would say, fair enough, but I have a suspicion that they may well feel that they still have this, apparently it is called a biological bewilderment I think is the term, that this would probably continue even though the registry existed. However, as I say, I now get emotionally involved in this and I am attempting not, but I can't avoid it, and so at the time I then leave you with the problem.

MRS. WESTBURY: So, Mr. Chairperson, the last question. Mr. Pyper, you would be contented then if 94(3)(e) . . .

MR. PYPER: Actually I think (d).

MRS. WESTBURY: (d) and (e), yes, included the adoptive parents. Well, (e) does, so (d) included the adoptive parents, if still alive, as having to agree.

MR. PYPER: That would be the intent, to continue to recognize the triangle nature of this in order that . . . See, I might find myself, and this is a very hypothetical condition, as being the guardian of an adult adoptee who was not independent in the sense that they required continued custody, but under this Act in fact that person would have no longer any requirement to refer to me as a parent. I think I am intending to be a parent to my children until the day I die and then hopefully with their continued memory for some period of time thereafter, so I don't intend to stop being a parent upon the attainment of their adulthood. But the effect of this Act might well be that it would abridge my commitment. It has a warming effect as you approach it, exactly the same way as if you put your hand on a hot stove, you burn when you touch it, but you can sure feel some discomfort as you start to get close.

MR. CHAIRMAN: Mr. Corrin.

MR. CORRIN: Mr. Pyper, I might say before I commence that I have very much enjoyed your presentation and I think that it is indeed a very difficult subject and one that requires all the resources of this Committee to deal with. I am concerned, though, because I have spoken to the representatives from Parent Finders about the rights of natural parents. I was told by the representatives that there are some 3,000 birth parents in Canada who have registered through Parent Finders who are in the process of looking for their children, and that seems to me to be a fairly substantial number of people, and it must represent a considerable amount of anguish for a lot of those people, and I think you have been quite cognizant of the psychological ramifications of that sort of situation and circumstance.

I am just wondering, though, whether you wouldn't agree that those people should be given a chance to make their reparations, to make their peace as it were, with the children that they were severed from early in life. I can't help but think of the Peter Sellers' case. Just before he died he was interviewed and it was just a few weeks, and he said that the one thing he wanted to do more than anything else was find a child that he had fathered when he was very young and he wanted to confer an estate upon the child. He became a very wealthy man and he wanted to make it up to the child and he wanted to know who she was, and he had spent a fortune trying to seek out the child's identity. I am wondering whether people shouldn't have that sort of opportunity and I think that is the intent of the legislation, essentially. What do you say from that point of view?

MR. PYPER: I have some personal knowledge of a person who had placed a child for adoption and discovered later that in fact that child represented the only possibility that person could have a child. As a consequence of the dissolvement of the marriage, the person in an attempt to try and find some identity, in fact went looking for the child. A person close to me in fact talked that person out of it, because in fact she was going to invade that child's life regardless of the effect upon the child. So for everyone that you can come with, I can come with one, and we finish up back at the same position. There are no solutions.

In the sense that people have rights to know. If you were in your wisdom able to come up with a solution that provided that all children should be the children of all of mankind and that the existence of national groups, family names, social positions, financial status and all the rest of it, were to be completely eliminated, you might then find that in fact nobody derived any satisfaction at all from any identification, other than their own, and as a consequence you could then solve all these problems. But since the purpose of most legislatures is an attempt to make the world a better place to live in, I suspect you are going to be sometime away from that at the moment, at the risk of being offensive.

MR. CORRIN: Thank you very much, Mr. Pyper.

MR. CHAIRMAN: That is the list of speakers that I have on Bill 56. Are there any other speakers on Bill 56? If not, we move now to Bill 103, The Wildlife Act, and the first speakers that I have are Mr. A.J. Church and Mr. Norman Edie of the Manitoba Cattle Producers Association.

BILL NO. 103
THE WILDLIFE ACT

MR. A. J. CHURCH: Mr. Chairman, members of the Committee, with apologies our President is not able to be with you. My name is Al Church, I am employed by the Manitoba Cattle Producers Association as their Manager.

As many of you will recall, the Manitoba Cattle Producers Association was established by statute in 1978 and presently endeavours to represent the views of some 15,000 cattle producers in Manitoba through 14 democratically elected members from across Manitoba. The officers of the Association are listed on the brief that is being distributed.

The cattle industry in Manitoba represents an investment by producers of well in excess of 500

million in cattle alone. In 1979 cash sales exceeded 280 million, which generates additional income in the provincial economy at an estimated 2 to 1 multiplier effect. In fact recent studies in B.C. suggest that figure might well be 5 to 1, which then I suggest represents well in excess of 1 billion of economic activity in Manitoba.

The Association feels that for some time cattle producers' concerns have not been adequately represented or recognized, and I certainly would like to make the exception that that does not include such matters as the recent drought and the action of government to mitigate that effect. However, we are particularly pleased to see in Bill 103, Section 33 recognition of our representation to the Minister of Natural Resources respecting access by hunters to private lands, or crown lands on which livestock are kept, and that it shall be by permission of the owner or occupier. In the long term, we are committed to creating a better environment for cattle production in Manitoba. As one significant part of this overall endeavour we see Section 33 of bill 103 as being rightful recognition of a long-standing problem to producers.

We are concerned that the proliferation of four-wheel drive and camper vehicles and gooseneck livestock trailers is of increasing concern to cattle producers throughout Western Canada, and is equally of concern, I suggest, to wildlife conservation officials. Our Association is actively developing proposals for brand inspection at markets, the use of producer manifests whenever cattle are transported, and a system of voluntary range patrols as measures to deter the thefts of cattle.

Under Section 33, in our view Section 33 of Bill 103 brings Manitoba into line with legislation in other western provinces. We do not have docomentation of losses attributable to hunters since cattle losses can take so many varied and different form, such as losses or inconvenience caused by gates left open, the mysterious disappearance of cattle, or the remains of animals found on pastures at any time of the year, with the cause of death unknown.

One substantial survey conducted during December of 1979 went out to some 1,137 producers who were renewing their brand registrations. A surprising 848 replies were received, which is some indication, at least, of their concern.

These 848 producers who replied reported unrecovered losses of 749 cattle or calves over the three years, 1977 to 1979. We do not, in any way, suggest that this implicates hunters as a group, since predators, disease and many other causes are equally probably. It is indicative however that serious losses do occur and that surely it is in the public interest to minimize the causes.

What we see in Section 33 of Bill 103 is a clear statement to both hunters and cattle producers that if it is observed by both parties can greatly mitigate suspicion and friction. We would commend the government for this approach and the changes inherent in this Section.

It should be remembered that due to the nature of cattle raising and the land that is best suited to this purpose, cattle producers are extremely vulnerable to various forms of losses. We hold the view that Section 33 will be beneficial to the cattle industry of Manitoba, and will result in improved hunter-farmer-rancher relations without significantly detracting from the privileges of the true sportsman-hunter.

With respect to Section 88, under Section 88(1) of Bill 103 respecting compensation for livestock killed by accident, we request you give consideration to deleting the phrase "by accident", and broadening this section to include animals killed by shotgun or small bore rifle during upland game or waterfowl seasons. We have been advised that animals killed by this method, that is, by shot gun or small bore rifle, are considered to be the result of vandalism and subject to action under the Criminal Code.

From our point of view and from the producers' standpoint, the vandal is unknown to him or cannot be found and yet his loss is just as real as that sustained by a person who is eligible to make a claim and receive compensation because his animal was shot "by accident" during and at a place where big game hunting was in effect.

In summary the number of valid claims made and paid in respect to the Hunter Killed Livestock Compensation Program during the last three years is quoted, in 1977 there were 8 of 11 claims submitted, were paid; in 1978 there were 6 of 7 that were submitted; and in 1979 only one of 5 submitted was subsequently paid.

It is our position that this does not reflect the probable losses sustained by producers and that changes to Section 88, as recommended, would more realistically compensate producers in keeping with the intent of this Section.

It is also our conjecture that this section and the administration of it tends to be overly protective of public funds rather than a more open recourse by producers for losses generally occurring during hunting season.

I wish to thank you very much for the opportunity to appear at your committee.

MR. CHAIRMAN: Thank you, Mr. Church. Are there any questions by the committee? Mr. Ransom.

MR. RANSOM: Just one quick question, Mr. Chairman. Do you think, Mr. Church, that the provisions of Section 33 are likely to result in reducing the problem that is addressed by Section 88?

MR. CHURCH: Yes, I would agree that it is likely to be part of the solution that we seek under Section 88, that's quite true, yes.

MR. RANSOM: Thank you and thank you for taking the time to make the presentation.

MR. CHURCH: Thank you.

MR. CHAIRMAN: Thank you very much. The next speaker that we have is Mr. Keleher on behalf of the Manitoba Environmental Council.

MR. JIM NICKELS: Mr. Chairperson, committee members. My name is Jim Nickels. I'm chairperson of the Wildlife Committee of the Manitoba Environmental Council with the assistance of Mr. Keleher, who is the executive secretary of the council. I would like to make a presentation which

represents the views of the Wildlife Committee, if I may.

First of all, I'd like to mention that the Manitoba Environmental Council is the citizens' advisory group to the Honourable Mr. Jorgenson and, at this particular point, I would like to give a notice of appreciation that the Honourable Mr. Ransom sent us a copy of The Wildlife Act so we could comment on it.

Our view is that it represents innumerable improvements over two previous documents, The Predator Control Act and the previous Wildlife Act. Particularly I would say in terms of increasing the restrictions on importing and exporting of wildlife and in such aspects as allowing for the statement of an endangered species, we find this to be extremely helpful. Also in terms of Section 83(1) and (2) the regular reports by the Minister seem to be very favourably evaluated by the members of the Wildlife Committee.

However, there are two reports that are indicated in the Act as proposed. One is the annual administrative report and the other is a five-year report. Our committee would like to make a recommendation that since the annual report on the activities of the Ministry regarding wildlife for the year has only to do with the implementation of the Act, such things as perhaps the number of licences issued and things of this sort; and only every five years there would be any attempt to give a review and forecast of wildlife activities. It is the recommendatin of the Wildlife Committee that either the annual report be more inclusive or that the five-year period be reduced.

This does not imply that each year a complete and extensive report would have to be given but at least that other issues besides the implementation of the Act could be mentioned. Such things as the status of wildlife, the review of ongoing programs and the forecast of future activities. For every year there to be a comprehensive report, we admit would be too much but we think that there would be an advantage to providing for a greater number of topics to be dealt with more periodically than every five years. This is one of the recommendations that the Wildlife Committee has.

Mr. Chairperson, would you prefer that I indicate all of the recommendations we'd like to give, first?

MR. CHAIRMAN: Surely.

MR. NICKELS: All right. We also very much favour the combination of The Predator Control Act and The Wildlife Act. This is a great advantage. The one issue that this raises, however, is that although there may be an advantage in discriminating for certain species, for example, endangered species, protected species, there is the possibility of a continuing discrimination against certain species. I refer particularly to various sections, such as Section 18 regarding remuneration for taking various wildlife forms; Section 32 and Section 46(1). All of these, particularly in terms of big game, mention both the black bear and the wolf.

It would be the recommendation of the Wildlife Committee that since there is adequate protection in other sections of the Act, particularly Section 64-1, that there is no need to continue the stipulation of the wolf as being taken for remunerative purposes. The wolf is being persecuted in so many areas, is becoming endangered and at the same time to add to that the possible remunerative apsect, the Wildlife Committee would like to recommend that in those three sections the word "wolf" be omitted.

Finally, there is in Section 14(1) and 37(1) the very favourably evaluated reaction regarding the cancellation of a licence or permit if an individual is convicted of an offence under the Act. These, however, these sections again perhaps may show some form of discrimination in that the fur bearing animals listed in Division 2 have no such recourse, as far as the elimination of permits and licences if someone is found practising trapping or hunting of them illegally. The Wildlife Committee has asked that I also recommend that whenever a licence or permit be revoked because of conviction of an offence that this be across-the-board to all wildlife forms, not just to certain forms and not to others.

One other comment I might make is that as far as specifying particular species is concerned the entire amphibian and reptile group appear to be sort of fair game, if you will; and the small game group, the small game animals, Division 4, as listed in the Act, as indicated there are no instances under the title, Small Game Animals. The Wildlife Committee, since it just received the report, was unable to find out whether this meant that there were some that would be protected, some that would not be protected. But if the small game group, if the implication was there were so many that they wouldn't all be listed, then we would assume that they would all have protection of either licenced hunting or not. If, on the other hand, there was some other reason for not indicating what species were under the licenced hunting for small game animals, then the Wildlife Committee would recommend that this be completed and that the licencing of hunters be appropriate for small game animals too.

MR. CHAIRMAN: Thank you very much Mr. Nickels. Any questions of the committee? Mr. Adam.

MR. ADAM: Mr. Nickels I have the one question to ask of you in regard to suspension of licence. I believe you indicated that in event of an infraction in . . .

MR. CHAIRMAN: Sorry Mr. Adam we can't hear you, the mike isn't picking up your voice. Could you move it a little closer to you, please.

MR. ADAM: I'll try again, Mr. Chairman, in the event that a licence suspension occurred in, say, waterfowl, are you suggesting that a trapper would also lose his trapping privileges? Is that what you're indicating?

MR. NICKELS: Yes, the recommendation is there be no discrimination as to which species the infraction occurred with.

MR. ADAM: Thank you.

MR. CHAIRMAN: Mr. Jenkins.

MR. JENKINS: Thank you, Mr. Chairman, through you to Mr. Nickels, dealing with your recommendations on 83(1) and 83(2), I just want a bit of clarification, in other words, what you're recommending to the committee is that the Minister in his annual report make a more comprehensive report dealing with species of wildlife than he would only do under 83(2) which would be a five-year report, is that the basis of your recommendation?

MR. NICKELS: Yes, in other words that it be more comprehensive, not that it necessarily be any longer but at least that it be more comprehensive and cover more than just the immediate implementation of the Act. Now there were two ways that we recommended it could go. It could either be included as an expansion of topics dealt with each year, in the annual report, or it could mean that there be a reduction in this five-year period to deal with the entire issue. But the feeling was that five years is too long to deal with the comprehensive view of wildlife, wildlife management and Manitoba's resources.

MR. JENKINS: Yes, then through you to Mr. Nickels, Mr. Chairman, what would your recommendation be on 83(2) then, would it be every three years or something like that?

MR. NICKELS: Yes, no more than three years. The consensus among the Wildlife Committee was two to three years.

MR. JENKINS: Fine, thank you.

MR. CHAIRMAN: Thank you very much, and thank you for your presentation Mr. Nickels.

Those are the only persons I have wishing to speak on Bill 103, is there anyone else who wishes to speak.

If not then we'll proceed directly to Bill No. 107, An Act to Amend The Public Utilities Board Act and The Manitoba Telephone Act.

BILL NO. 107
THE PUBLIC UTILITIES BOARD ACT AND THE MANITOBA TELEPHONE ACT

MR. CHAIRMAN: The first speak I have is Mr. John Buhler, President, Valley Cablevision, Morden, Manitoba. Mr. Buhler.

MR. JOHN BUHLER: I'm just going to withhold my comments, if that's all right?

MR. CHAIRMAN: Certainly, that's always acceptable, Mr. Buhler, thank you.

Johnson Controls Ltd., Mr. J. P. Patterson.

MR. J. P. PATTERSON: Mr. Chairperson, honourable members, ladies and gentlemen, is that mike all right, sir?

MR. CHAIRMAN: I think we're picking up just fine, thank you, Mr. Patterson.

MR. PATTERSON: Thank you very much. I'm a member of the private sector, sir, and I'm appearing on behalf of our concerns regarding this bill.

I appreciate the opportunity to make our concerns about this bill known to your commitee. My comments are generated by two sources:

(1) Our interest as a member of the private sector using Manitoba Telephone System's wiring network as an essential part of our monitoring business; and

(2) On the advice of counsel regarding the particular wording of Bill 107.

I believe this bill is unique in that there is agreement, on both sides of the House, on what it is intended to accomplish.

We are sensitive to the pressures on government to satisfy demands from the private sector and Manitoba Telephone System. It is the government's difficult task to chart a course between these sometimes conflicting poles that will be in the best interest of the taxpayers and the province of Manitoba. Gentlemen, I do sympathize with you in your attempts to do this.

Our sympathy is manifest in preparation of proposed wording changes to this bill as printed, in the hope that you will take them into consideration, and, if you are in agreement, act on them by inserting the wording in the amendment form when the bill is finally brought forward for third reading.

Engineering Standards — Design Innovation and Competition:

On advise of counsel we have interpreted the main problem with the bill as printed, as far as our industry is concerned, to be Clause 21.(d)(1). The bill, as printed, vests the engineering in the hands of the Manitoba Telephone System technical expertise in this particular area.

However, to maintain control, we have suggested in our amendment that all network design be approved by the Public Utilities Board before it is implemented. This is the key safeguard to ensure the complete compatability between any network MTS may design and maximum access of terminal units provided by the private sector.

The essence is one of timing. In the bill, as printed, MTS can design a unique system, install it, and lease matching subscriber terminal units, commonly known as STUs. If, and when, the private sector appeals, after the fact, to the Public Utilities Board, on the basis that the private sector terminals are incompatible with the MTS system, the Public Utilities Board, it seems to us, has two choices: one is to disallow the intervener's claim; the other is to direct MTS to design a system that will be compatible with private sector terminal units.

We submit, Mr. Chairman, that Manitoba Telephone System may plead in its own defense that it will be a financial hardship to scrap and redesign and a burden on MTS customers to have to replace their STUs.

In other words, we perceive that with the bill, as printed, MTS may design unique systems and, when private sector is allowed to make representation to the Public Utilities Board, the issue will be purely academic. Therefore, we strongly suggest that the amendment we have outlined be put into effect in the bill so that the Public Utilities Board can be an effective monitor on MTS activities before the fact, rather than after the fact.

We perceive the bill, as printed, gives MTS considerable financial and technical freedom that, if employed to design a unique system, can allow MTS

to compete unfairly in the private sector by supplying, leasing, complete services to customers.

Our proposed Clause 21(2) ensures that Public Utilities Board has prior sanction over engineering for both MTS and any private applicant. In the bill, as printed, MTS dictates what is acceptable engineering and can effectively and arbitrarily block competition form innovative and competitive approaches.

Terminal Standards and Access:

In our proposal, 43(2), MTS and everyone else has to be approved for a terminal connection by the Public Utilities Board. In the bill, as printed, MTS has sole determination of connection of their own devices. In our proposal all terminals are authorized by Public Utilities Board. At the present MTS can arbitrarily make any connection charge it wishes. These charges are not tariffed through Public Utilities Board approval. Our proposal allows the public to challenge connection rates and, in our 43(4), one does not have to qualify as a commission, owner, manufacturer, or supplier to apply to the Public Utilities Board for a tariff amendment. We believe the bill's wording in the letter of the law is too restrictive and that the public should have access to the Public Utilities Board.

Public Utilities Board Guidelines:

In our proposal 43(4)(b) we set down the guidelines for Public Utilities Board rulings to enhance competitive interest in supplying services to the public. Public good is also protected by preventing damage to the system. In the bill, as printed, no guidelines are given. In private conversations, it has been our impression that the Public Utilities Board is pleading for further legislative direction and we believe that our amendment will serve well in this regard and fill the gap in the legislation to make the Public Utilities Board a more effective tool of government policy.

In this way, standards will be maintained and the possibility of innovative and imaginative approaches can be made by both private sector and MTS. Public Utilities Board will be the sole arbitor of acceptable approaches.

Our proposed amendments will ensure that full expression will be given to government policy, without imposing undue hardship on Manitoba Telephone Systems.

Our conclusions:

If our amendments are adopted then the Minister's expressed desires to have: the electronic highway under the exclusive jurisidiction of the Public Utilities Board; and, the jurisdiction over whom and what goes over the highway and at what price will be with the Public Utilities Board, will be achieved.

In the bill, as printed, there are implicit opportunities for the misapplication of the talent and financial resources of MTS if the letter of the bill is followed.

As we are all aware, statutes may be entered on the books where enforcement may be to the letter, or on the other extreme completely ignored.

We are soliciting your support in changing the wording of this bill to provide effective legislation that can be enforced and yet be equitable to both Manitoba Telephone System and the private sector. It seems to us that this is the criterion of any legislation and that this committee and the House finally pass to proclamation.

As the Minister cited at his introduction of this bill, we are on the threshold of an explosion in communications technology. We completely concur that legislation should keep pace with advancing technology.

In our view, the bill is commendable. The slight changes in wording will make it a notable and effective piece of legislation.

Thank you very much, gentlemen, for your consideration of our remarks.

MR. CHAIRMAN: Thank you, very much, Mr. Patterson. Any questions of the delegate? If not, then our next delegation is Mr. Skora of the Canadian Radio and Television Commission. Mr. Skora is not present.

Mr. Gordon Richardson, not present.

Mr. Gary Brazzell and Mr. Lorne Campbell, representing Cablevision.

MR. GARY BRAZZELL: Thank you, Mr. Chairman, and members of the committee. Mr. Campbell and I have been discussing all morning just how we should, from a procedural point of view, address ourselves to the committee. We, as you mentioned, respectively represent Greater Winnipeg Cablevision and Winnipeg Videon and we have been very carefully considering the provisions of the bill. We have had some discussions, we understand there may be some amendments. We are aware that once the committee gets to the stage of considering amendments, that we would have to ask the tolerance of the committee to make any comments. In other words, we don't know if we will have any comments, Mr. Chairman, and we're in something of a dilemma. In any case we are present when the time arrives for the consideration of the bill and any amendments, and would be pleased to have whatever opportunity the committee may give us to participate in the discussions.

MR. CHAIRMAN: Including none? Including no opportunity? I can't speak for the committee; under normal circumstances you would not have another opportunity.

MR. BRAZZELL: I understand that.

MR. CHAIRMAN: I'm just forewarning you. Thank you. Mr. Enns.

MR. ENNS: Mr. Chairman, I do want to take this opportunity of indicating through you to Mr. Brazzell that there are amendments forthcoming on Bill 107. It's been my good fortune to have had the opportunity of working through some of these proposed changes and amendments to the bill with representatives of the people that Mr. Brazzell is speaking on behalf. I think the honourable members of the committee acknowledge though, that the kind of rules that we operate under, that members of the committee have to be privy to the amendments first in much the same way as a bill is being presented. But I did want to indicate to the representatives who have an interest in Bill 107, both those interests of the cable operators and others as in the case of Mr.

Patterson, who spoke just prior to you, that there will be some particular amendments being introduced, as we consider the bill clause by clause.

Some general indicators have already been made at the closing of the debate on second reading of the bill. For instance, there's been a concern about the inclusion of the word ''programming'' and I've already indicated that publicly in the closing of the bill, that that would be dropped from the bill.

So, Mr. Chairman, under our rules, we'll just have to ask the honourable delegations to bear with us, for some of us who have been here since 4:00 o'clock last morning. We will try to conclude our business, I presume this afternoon, if some agreement is reached to come back into committee to consider the clause by clause consideration of this bill.

MR. BRAZZELL: Thank you very much.

MR. CHAIRMAN: Thank you very much. Oh, I'm sorry, there are other questions, Mr. Brazzell. Would you permit a question from Mr. Jenkins, please?

MR. BRAZZELL: Of course. By the way, excuse me, Mr. Chairman, Mr. Moffat and Mr. Baker of Winnipeg Videon are here as is Mr. Comack from Greater Winnipeg Cablevision.

MR. CHAIRMAN: Fine, thank you.

MR. JENKINS: The request that Mr. Richardson had made that he wants to make comments when the committee deals with bills, I would say that that is highly irregular, and during my nearly 12 years here, it is not one that I think the committee would favour.

MR. BRAZZELL: Mr. Chairman, I didn't say that I wanted to or expected to. I did say that I was aware of the rule. Our position is that we're in somewhat of a dilemma and we may not have any comments at all, so all I can repeat is, that we are here and available.

MR. CHAIRMAN: You're here as a resource, and if committee members individually wanted to consult with you, that was possible.

MR. BRAZZELL: That is correct.

MR. CHAIRMAN: Okay. Mrs. Westbury.

MRS. WESTBURY: Mr. Chairperson, I was going to suggest to Mr. Brazzell that perhaps he and the people he is with should tell us what changes they would like to see made to the bill as it's written, and we can weigh those against the amendments that are brought forward by the Minister. — (Interjection) Well . . .

MR. BRAZZELL: I repeat, that we are here.

BILL NO. 114
THE MANITOBA ENERGY AUTHORITY ACT

MR. CHAIRMAN: Okay. Thank you, Mr. Brazzell. I have no other speakers for Bill 107, unless there is anyone else who wishes to appear. If not, then I have Bill No. 114, The Manitoba Energy Authority Act, and I have representatives of the Manitoba Association of Rights and Liberties, again, Mr. Arnold and Mr. Rosenbaum.

MR. GRANT MITCHELL: Mr. Arnold and Mr. Grant Mitchell today.

MR. CHAIRMAN: Oh, fine, thank you.

MR. ABE ARNOLD: Mr. Chairman and members of the Law Amendments Committee, I rise with some concern to introduce our presentation on Bill 114, The Manitoba Energy Authority Act, which we learned about for the first time just one week ago today when its introduction was reported in the press.

Since the Manitoba Association for Rights and Liberties is the only group making a presentation on this bill, I must tell you that we began to receive phone calls from concerned members as soon as the bill became known, urging that we make a presentation.

I would further point out that our organization only received its subscription copy of the bill on July 23rd, and here we are just three days later having to submit our views on this bill, which has serious implications for the infringement of civil rights.

The haste with which this bill has been pushed through is the most serious example in our view, of the inability of the public to participate adequately in the traditional due process for which our legislative practice in Manitoba has become particularly well known.

Our association, in spite of the undue pressure, has nevertheless been able to prepare a brief, and we are happy that Mr. Grant Mitchell, a member of our legislative review committee and a distinguished younger member of the Bar of Manitoba, was able to arrange to be here today to present our brief. I urge your careful attention to Mr. Mitchell's presentation. Thank you.

MR. MITCHELL: Good afternoon. At the outset I'd like to repeat Mr. Arnold's concern about the speed with which this matter is being brought to the Legislature of Manitoba. We feel it's a matter of utmost concern to Manitobans everywhere, and we feel that eight days from the time of the presentation of the bill in the House to this appearance today has been insufficient for Manitobans generally and for us in particular, to prepare a brief. I say this partially by way of apology, because I won't have as thorough a presentation as I might have had with a little more time to prepare. In particular, we haven't had an opportunity to meet as a group and prepare a submission with the concurrence of all of our members, which we would have preferred to do.

We feel that the legislation that's proposed provides for infringements of civil liberties along the lines of The Federal War Measures Act, and as such is one that has to be viewed with the utmost concern and should be given the most careful scrutiny before it is passed to be the law of this province. Therefore, the basis of our submission is that this matter should at least be put over to a further session for more review, and our bottom line is that in particular, Part

II of the legislation should never be passed as law in Manitoba.

We feel that at this time there is no demonstrated need for emergency energy powers in this province. We feel that with proper resource management, or even a proper resource observation, such an urgent situation would not arise. We feel that there would be sufficient time in order to do the things which the Act wants to do without resorting to such emergency procedures, and in general, we feel that the Act is premature and certainly a severe violation of civil liberties, the need for which has not been demonstrated.

What the bill proposes to do, is to interfere with such civil liberties as the right to a hearing, the right to notice of a hearing; the right to enjoy the privacy of home safe from search and seizure where the person involved has committed no law breaking; the right to defend yourself from arbitrary or unlawful authority or the exercise of it; the right to justice without delay; the right of appeal and the right to contract lawfully. These rights or any of them should be abrogated unless it's absolutely necessary in the public interest to do so.

Our suggestion is, that emergency controls could be implemented without such a sweeping removal of the individual rights which make this a so-called free society. We feel that the real danger is not in the shortage of energy but in this legislation itself. It is, in fact, shattering to us to think that this Legislature has the competence to suspend civil rights in so quick and simple a fashion. I submit it could not happen in other jurisdictions if it's, in fact, legal in Canada.

Dealing specifically with the provisions of the Act, our main concern is with Part II of course, the Emergency Powers provisions. I'm going to start on that part of the legislation, which is on Page 13 of the bill. Section 49 of the bill says that the declaration of the emergency shall be done by the Lieutenant-Governor-in-Council, that is the provincial Cabinet, and there's no provision for a review by the Legislature as a whole or any other kind of review. If there is a real or apprehended state of emergency, it is declared and this part comes into play. I note that this is not the way in which the emergency is brought into force under the comparative federal legislation passed last year, in which case there is an emergency call of the Parliament of Canada to review the decision by the Cabinet that such an emergency exists. It's our submission that there should be such a review by the Legislature as a whole.

Further, we feel that there should be a periodic review once a state of emergency has been stated to exist, which is not provided for under Section 49(2). Presumably it goes on open-ended until the Cabinet again makes the decision that there should be termination of the state of emergency.

Dealing with Section 53, the suggestion is that the board can make its order without a hearing. Obviously there will be emergency situations where a hearing is unnecessary, or is impossible under the urgent situation, presumably that's what's being contemplated, but if that is so there should be sufficient relief under other sections to provide the person who is affected by the order with sufficient opportunity to address the board or whichever entity is making the order, for a review of the order.

There is some provision. Section 55 provides that any person feeling aggrieved may apply to the board for relief, and the board will make an order granting the whole or any part of the application. It doesn't provide for a time in which the hearing may be heard, but I will refer you to Section 69, on page 18 of the bill, which says — and I have difficulty understanding the wording of this section; I think there may be a drafting error here — "The board may refuse to hear any application or to conduct any investigation made within one year of the occurrence of the event giving rise to the application or investigation."

I suppose that what's intended to be said there, is that the board has one year in which to hold a hearing. I don't think that it clearly states that, but if that is the intention I don't think that's sufficient relief to a person who'e affected by an order without a hearing under Section 53. I think there's a drafting problem there and a person should be entitled to an immediate hearing, or at least as soon as practicable under the legislation.

Under Section 60 on page 16, there's a suggestion that: "Where the board is of the opinion that the special circumstances of any case so require, it may make an order under this Part ex parte," meaning without the presence of the parties affected, "and any order so made shall be an interim order only and shall be effective for a period of time specified by the board and no longer," without specifying a maximum period of time. Again we feel this could be an infringement of rights which could go on obviously in perpetuity if the board so ordered.

We feel that the legislation has to, if it's going to provide for the suspension of civil rights, it also has to provide sufficiently for recovery of the rights and for a time period in which a person can receive his relief from the very stringent legislation.

Under Section 63, again the orders are made without notice. It says that, "It may, upon the ground of urgency or for other reasons appearing to the board to be sufficient, notwithstanding any want of or insufficiency of notice, make the like order or decision in the matter as if due notice had been given to all parties, and the order or decision is as valid and effective in all respects as if made after due notice had been given." Again, the right to natural justice, to be notified of a hearing where you're affected, suspended there, and we feel that Section 63(2) is not sufficient relief to the person aggrieved to have his fair notice and hearing. We feel that these matters should be reviewed as well.

Section 68 provides for the requirement that a person bringing in a complaint or an investigation before the board, has to deposit money in order to have their case heard, which I feel runs contrary to our usual idea of justice, but in this case the board can decide how much money has to be deposited, which can ultimately be forfeited. For any person to have his hearing before the board, we feel this again is unfair. The party has agreed he should have a right to have his hearing without having to be a person of means.

Section 71 makes it compulsory for persons to obey orders and directions of the authority made pursuant to this part and to do all things necessary

to ensure the observance of those orders and directions by its officer, agents and employees. That sounds reasonable, until you realize that anybody who doesn't do what Section 71 directs, is brought within Section 85(1), which says that any person who contravenes or fails to observe a provison of this part is guilty of an offence and liable on summary conviction to a penalty up to a 50,000 and/or two years in jail. This is not criminal legislation. If it were criminal legislation, it would be beyond the competence of this Legislature, so that presumably if the legislation is valid, there's no requirement of mens rea, anyone who fails to do what the board directs, whether the intent not to do it or not, is liable to a penalty of up to two years in jail. We feel there is obviously an error involved here and it has to be corrected. If you're going to impose those kinds of penalties for a failure to observe rules enforced, then there has to be some at least requirement that a person have the intention at least to violate the rule.

We get to the provisions dealing with the inspectors, these are perhaps the worst violations of civil liberties of all. It involves giving power to inspectors beyond the powers of any peace officers in our country. They, without a search warrant, or with anything other than a little card, signed by a person who is appointed under the legislation, to enter into any house, without a warrant, at any time, simply by presenting the card, and any person whose premises are entered under the power given under this section, has to co-operate in every possible way with the person who comes. There is no such similar legislation under any Act that's now in power in Canada which would require anyone who's the occupier of premises to be subject to that kind of treatment. It goes far beyond the need that I believe has been demonstrated for control of energy, or even in an emergency. We feel that the powers of inspectors are far too broad. These inspectors could become, what the newspapers have referred to, as SS people, or in this case EE people. These are the very serious concerns that would have to addressed at this time, if this legislation is to be passed. We submit that you should not create this type of a super police officer, who can enter into any premises on any grounds, without any recourse, without any liability. You have to be very careful in creating this kind of a person or an entity who has these kind of powers. We feel that the legislation doesn't protect the public interest, doesn't protect the private citizen's interest from these kind of officers.

Section 78(2) says that no person shall obstruct or hinder an inspector in carrying out an inspection under this part. It does say obstruct, but it also says hinder. What does hinder mean? We feel that this goes too far. Again, being provincial legislation, you have to be concerned that there is no mens rea requirement, any person who hinders, without even realizing he's hindering an inspector, presumably is guilty of an offence under Section 85.

Section 78(3) says that any person who makes a false statement — it doesn't say, knowingly makes a false statement, or a misleading statement, it merely says, make a false or misleading statement. Again, a person could inadvertently commit an offence here and then be liable to a penalty which, I should point out, is far more severe than the penalty provided for by parliament, which does have the jurisdiction to make legislation in respect to criminal law. Supposedly this is not criminal legislation, yet it provides for a monetary penalty far greater than that provided for by parliament. It's a 10,000 fine federally; it's a 50,000 fine in Manitoba.

Under Section 79, it provides for powers of seizure. It does not require that the documents seized be relevant to the investigation, and makes no limitation on these powers of seizure. This runs contrary to the laws that have prevailed in this country from the time it began; it's a very very broad power, and we suggest that it has to be very carefully reviewed and tied in, at least to the investigations being conducted and still more. A person should have better authority than merely a card from an appointee of the Cabinet.

We note that there is no requirement for a warrant under Section 77. We don't know why there's no requirement for a warrant. Surely it wouldn't take so long that it would jeopardize the energy interests of the province for a person at least to have court authority to enter onto premises and interfere with a person's private rights.

Section 82, going on to the provision for appeals. Well first of all, Section 81, we feel that questions of fact should not be strictly the jurisdiction of the . . .

MR. CHAIRMAN: Order please. The hour being 12:30, the committee will rise, but prior to that I'll ask the Government House Leader to state the intention as to what will happen with respect to this afternoon's sitting.

MR. MERCIER: Mr. Chairman, it would be my intention to go into the House at 2:00 as we scheduled. My understanding is that there will probably not be a question period and that we will adjourn the House until 10:00 a.m. Monday morning, but we'll come back into this committee for the rest of this afternoon and this evening, if necessary, to complete the work of the committee.

MR. CHAIRMAN: Thank you, Mr. Mercier. Mr. Jenkins.

MR. JENKINS: Well, I'm in a bit of a dilemma here. I'd like to hear the rest of the brief, but unfortunately we have to eat, and there's no place to eat here today so it makes it difficult for members. I just want to know if you could complete your brief and whether you would be back at 2:00 to answer any questions.

MR. MITCHELL: Yes, I'll be available.

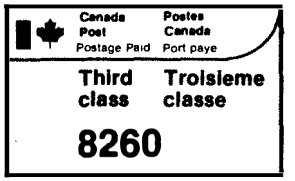
MR. JENKINS: Well, then, Mr. Chairman, I would move that we hear the brief, and the gentleman return so that we have an opportunity to ask him some questions.

MR. CHAIRMAN: Yes, I'm sure it is the intention of the committee to have Mr. Mitchell complete his brief, it's just a matter of time.

MR. JENKINS: Could you complete your brief at 2:00 then or shortly after.

MR. MITCHELL: Yes.

MR. CHAIRMAN: Committee rise.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