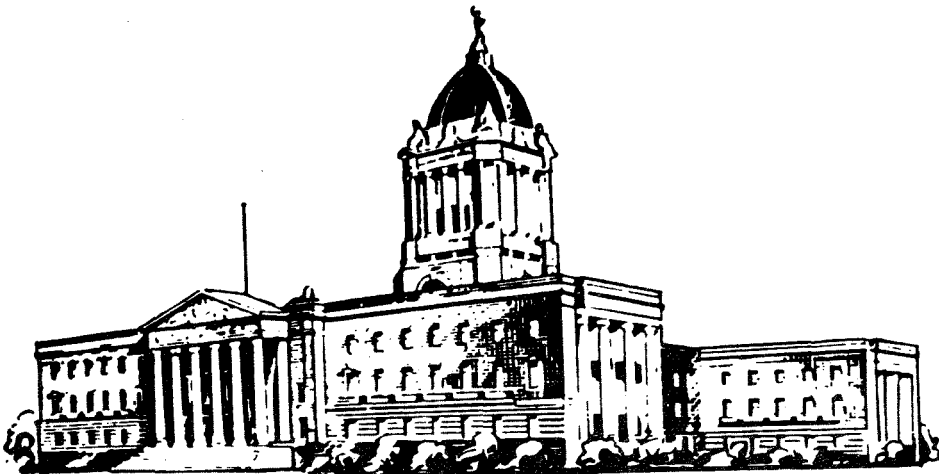




Fourth Session — Thirty-First Legislature
of the
Legislative Assembly of Manitoba
STANDING COMMITTEE
ON
LAW AMENDMENTS

29 Elizabeth II

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The Honourable Harry E. Graham
Speaker*



WEDNESDAY, 2 JULY, 1980, 10:a.m.

MANITOBA LEGISLATIVE ASSEMBLY**Thirty - First Legislature****Members, Constituencies and Political Affiliation**

Name	Constituency	Party
ADAM, A. R. (Pete)	Ste. Rose	NDP
ANDERSON, Bob	Springfield	PC
BANMAN, Hon. Robert (Bob)	La Verendrye	PC
BARROW, Tom	Flin Flon	NDP
BLAKE, David	Minnedosa	PC
BOSTROM, Harvey	Rupertsland	NDP
BOYCE, J. R. (Bud)	Winnipeg Centre	NDP
BROWN, Arnold	Rhineland	PC
CHERNIACK, Q.C., Saul	St. Johns	NDP
CORRIN, Brian	Wellington	NDP
COSENS, Hon. Keith A.	Gimli	PC
COWAN, Jay	Churchill	NDP
CRAIK, Hon. Donald W.	Riel	PC
DESJARDINS, Laurent L.	St. Boniface	NDP
DOERN, Russell	Elmwood	NDP
DOMINO, Len	St. Matthews	PC
DOWNEY, Hon. Jim	Arthur	PC
DRIEDGER, Albert	Emerson	PC
EINARSON, Henry J.	Rock Lake	PC
ENNS, Hon. Harry J.	Lakeside	PC
EVANS, Leonard S.	Brandon East	NDP
FERGUSON, James R.	Gladstone	PC
FILMON, Gary	River Heights	PC
FOX, Peter	Kildonan	NDP
GALBRAITH, Jim	Dauphin	PC
GOURLAY, Hon. Doug	Swan River	PC
GRAHAM, Hon. Harry E.	Birtle-Russell	PC
GREEN, Q.C., Sidney	Inkster	Ind
HANUSCHAK, Ben	Burrows	NDP
HYDE, Lloyd G.	Portage la Prairie	PC
JENKINS, William	Logan	NDP
JOHNSTON, Hon. J. Frank	Sturgeon Creek	PC
JORGENSEN, Hon. Warner H.	Morris	PC
KOVNATS, Abe	Radisson	PC
LYON, Hon. Sterling R.	Charleswood	PC
MacMASTER, Hon. Ken	Thompson	PC
MALINOWSKI, Donald	Point Douglas	NDP
McBRYDE, Ronald	The Pas	NDP
McGILL, Hon. Edward	Brandon West	PC
McGREGOR, Morris	Virdeon	PC
McKENZIE, J. Wally	Roblin	PC
MERCIER, Q.C., Hon. Gerald W. J.	Osborne	PC
MILLER, Saul A.	Seven Oaks	NDP
MINAKER, Hon. George	St. James	PC
ORCHARD, Hon. Donald	Pembina	PC
PARASIUK, Wilson	Transcona	NDP
PAWLEY, Q.C., Howard	Selkirk	NDP
PRICE, Hon. Norma	Assiniboia	PC
RANSOM, Hon. Brian	Souris-Killarney	PC
SCHROEDER, Vic	Rossmere	NDP
SHERMAN, Hon. L. R. (Bud)	Fort Garry	PC
STEEN, Warren	Crescentwood	PC
URUSKI, Billie	St. George	NDP
USKIW, Samuel	Lac du Bonnet	NDP
WALDING, D. James	St. Vital	NDP
WESTBURY, June	Fort Rouge	Lib
WILSON, Robert G.	Wolseley	PC

LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON LAW AMENDMENTS
Wednesday, 2 July, 1980

Time — 10:00 a.m.

CHAIRMAN — Mr. J. Wally McKenzie (Roblin)

MR. CHAIRMAN: Committee will come to order please. We were asked to deal with 39, 49 and 70.

A MEMBER: By whom?

MR. CHAIRMAN: Mr. Minaker and Mr. Orchard.

HON. GERALD W. J. MERCIER (Osborne): Mr. Chairman, would you deal with 49 and 70 first, in order to accommodate Mr. Tallin?

**BILL NO. 49 — AN ACT TO AMEND THE
OMBUDSMAN ACT**

MR. CHAIRMAN: Mr. Hanuschak.

MR. BEN HANUSCHAK (Burrows): Mr. Chairman, when the committee last met, it commenced dealing with this bill, and at that time, I had indicated my concern about the fact that the way the bill reads is, that in the event of a vacancy or an anticipated vacancy, where there is notice given of termination of employment, that the Cabinet — I believe it's the Cabinet — no, the President of the Executive Council, shall convene a meeting of the Standing Committee of the Assembly on Privileges and Elections, which shall consider persons suitable and available to be appointed, and shall make recommendations in respect thereto. My concern about the manner in which the Section reads, is that it would deny the members the opportunity for full debate, or debate to whatever extent members may wish to participate in with respect to the office of Ombudsman, because at that time, some members may wish to discuss the job description, the role and function of the Ombudsman, the type of individual we want to fill that position and so forth. In fact, we may even want to debate the makeup of the committee, because in the existing legislation, the House will appoint the committee to deal with the matter of selection of a candidate. From either side of the House, members may have some comment to make with respect to the makeup of the personnel of the committee.

Now, you might say, Mr. Chairman, that political parties are at liberty to change their membership on the House committees, that is true, but we may want to make comment about the government's nominees to the committee, or in this case, it would be to the committee on Privileges and Elections, so the opportunity for that type of debate would be denied us.

Now, I would suggest, Mr. Chairman, that if the way the section presently reads creates a problem, or could conceivably create a problem by way of delay in filling the appointment, then amended only by including Subsections (a), (b) and (c), that rather than have it read as it presently reads, where the

office is vacant, have it read as it would read now, where the office is vacant or the term of the Ombudsman in office will expire within 12 months, or the Ombudsman has tendered his resignation, then let the House appoint the Committee and deal with the matter of filling the vacancy.

It may create a bit of a delay, but the delay wouldn't be all that great because — well, I don't know what the time lapse would be between the end of this session and the next one — the rate at which we are going now, it appears we might be here until the snow flies, so it might only be a lapse of three or four months between the end of this session and the commencement of the next one. At the very most it is never any more than five or six months and the act does make provision for the appointment of an acting Ombudsman in the meantime.

Really, I don't see what inconvenience it would cause the government that would force it or would prompt it to want to take away the right of debate, the right of appointing a Committee by the Legislature rather than assigning the responsibility to a pre-selected committee and denying the opportunity for debate in the House.

I want to draw to your attention, Mr. Chairman, that a number of years ago, in 1969, when The Ombudsman Act was passed, your then Leader, Mr. Weir — in fact, he even went so far as to suggest that, and I am quoting from Hansard on Page 391, September 3rd, 1969: May I suggest to the First Minister that there is only one way of doing this, and that is by having essentially a unanimous vote of the House that partisan bias, because of a difference of opinion in the House, would be much more difficult than it would be if there were some question of the actions of the government outside the House. In fact, he even wanted to go so far as to have the appointment approved by a unanimous vote of the House.

Now, in this bill, the government is removing the matter of the selection of an Ombudsman from the House entirely, and only placing it in the hands of the Committee members without, and I repeat again, without opportunity for debate. I believe that those of us who were around here eleven years ago, when we created the office of Ombudsman, that it was our intention, it was the intention on the side of the Opposition, that the matter of the office of Ombudsman, the appointment, the operations of the office at all times be within the jurisdiction of the Legislative Assembly, and this to some extent would remove it from the Legislative Assembly.

In closing I would suggest to the Minister that a simple amendment would be to simply add Subsections (a), (b), and (c), and leave the rest of the Section as it presently reads. In other words, still leaving the matter of appointment of the Committee the responsibility of the Legislature.

MR. CHAIRMAN: Mr. Brown.

MR. ARNOLD BROWN (Rhineland): Mr. Chairman, I would like to ask a question of the Minister. How

does this Section 2(2) change the appointment of the Ombudsman? It was my understanding that previously the government of the day appointed the Ombudsman and I believe that there is really is very little change in this section. I wonder if the Minister can make a comment on that.

MR. CHAIRMAN: Mr. Mercier.

MR. MERCIER: Mr. Chairman, my understanding is that the appointment of an Ombudsman under the existing legislation is made on the recommendation of a special committee appointed by the Assembly. The problem with the current legislation is that the committee cannot be established until there's a vacancy in the office of the Ombudsman. A situation arose where there was a possibility of a vacancy — the point I want to make to the committee, Mr. Chairman, is that earlier on this year, I submitted to the Opposition House Leader, Mr. Fox, two alternatives with respect to this section. Mr. Fox came back to me and said this was the preferred amendment of the opposition, the way it reads now. This is one of my difficulties, as I've attempted to point out on a number of occasions in the past, Mr. Chairman, is to somehow, if it's possible, to get the opposition to agree on something within their own group. I felt it was important that there be consultation on amendments to The Ombudsman Act with the opposition so that there could be agreement on the legislation that went forward to the Legislature, and this was this section, as well as the next one, where the alternatives, which Mr. Fox advised me were the preferred alternatives of the party in opposition.

Now, Mr. Chairman, the point is raised by the Member for Burrows that there should be an opportunity for debate on the members who are appointed to a special committee. I certainly haven't witnessed any debate on the appointment of members to committees during the past two and a half years, and I suggest that there really wouldn't be any appointment of members to any committee. The problem with the amendment, or the suggestion of the Member for Burrows, is that there still could be on death or sudden retirement for some reason, a vacancy in the office of the Ombudsman, and I don't think the appointment of an acting Ombudsman is a very good solution to that. By virtue of this amendment, at any time there is a vacancy, a committee, one that is named as the Privileges and Elections Committee — it could be any committee — would meet and make a recommendation as they would in the past to the Executive Council and I would think that within the workings and the debate of the committee there would be a consensus arrived at on a recommendation for an appointment as Ombudsman.

Mr. Chairman, I suggest that if there are concerns about the office of the Ombudsman, or his duties or responsibilities, that could be raised by resolution at any time in the Legislature. I have mentioned in the past, I forget which stage it was, but certainly there could be at any time in the future, I think, if the Legislature wished a special committee named to meet with the Ombudsman. If he has special concerns about the legislation or his activities or his responsibilities, and that could be done virtually at

any time. The Legislature could appoint a special committee to meet with him and discuss concerns that he might have. He certainly up until this time has not expressed a desire for that, but it might arise during the course of the term of the present Ombudsman, or a future Ombudsman. But, Mr. Chairman, the main point I want to make here is I consulted with the Opposition House Leader, this was the preferred amendment that was expressed to me by him of members opposite, so I suggest we proceed with it.

MR. CHAIRMAN: Mr. Cowan.

MR. JAY COWAN (Churchill): Yes, I'll be very brief, Mr. Chairperson. I would ask the Minister to explain what effect the recent court ruling in regard to the Imogene McIntyre case has on the provisions of this bill, that alter the contributions of the Ombudsman to the Civil Service Superannuation Fund, if he can just explain if there is any impact and perhaps use this opportunity to update us as to what is happening with that recent court decision.

MR. MERCIER: Mr. Chairman, just on a point of order. I believe we are on Section 1, and I think the question would be more appropriate to Section 2.

MR. CHAIRMAN: Mr. Hanuschak.

MR. HANUSCHAK: Mr. Chairman, all I want to add is I have a very clear recollection of discussing this in caucus after consultation from our side with the government side, but for whatever reason my interpretation of the government's proposals, as I interpreted them then, were different from the way I interpret the section before me now. However, if that is what was proposed at that time, then I erred in misinterpreting the report back from Mr. Fox. I will take the Minister's word that there was agreement; I will not pursue the matter any further and I will check back to see who was . . .

MR. CHAIRMAN: Section 1—pass; Section 2, sub 2(a)—pass. Is this where you wanted to reply to Mr. Cowan? Sub. 2(a)—pass; (b)—pass; (c)—pass; Sub. 2—pass; Section 2 of the bill pass; Subsection 3—pass. That's where Mr. Cowan's question comes in.

MR. MERCIER: Mr. Chairman, again I point out there was consultation on this amendment and another alternative, and this was the preferred amendment of members opposite. Mr. Chairman, I point out for the record and information of members of the committee, Mr. Maltby was appointed for a specific term which expires in April of 1982. He would turn 65 years of age in August of 1979. This amendment is required so that there is no doubt that he will be able to receive a pension for the contributions he has made up until the time that he turned 65 years of age. This is not affected by the McIntyre case.

MR. COWAN: Then I would ask the Minister, Mr. Chairperson, does the McIntyre case not have any impact on pension plans that have an automatic cutoff date for contributions as of the age 65, such as the Civil Service Superannuation Fund?

MR. MERCIER: Mr. Chairman, as I've indicated in the Legislature, I think before, that case is subject to appeal, and I think there is serious consideration being given to appeal. The whole question of mandatory retirement is one that is being reviewed by my department and by the Human Rights Commission. It is a complicated matter, although the principles seem quite simple, but when pension plans are involved, it becomes fairly complex, Mr. Chairman, so that matter is under review by my department and by the Human Rights Commission.

MR. COWAN: Is the Minister indicating then that he would expect an appeal to proceed in regard to that decision from his department?

MR. MERCIER: Mr. Chairman, my department is not involved in the McIntyre case. That's a case between an individual and the university.

MR. COWAN: So the appeal then, Mr. Chairperson, would come from the university itself?

MR. MERCIER: From the university.

MR. COWAN: Could the Human Rights Commission proceed with an appeal in this regard? I ask for information purposes only.

MR. MERCIER: Mr. Chairman, the appeal in that case, I assume would be to the Court of Appeal. It was a Queen's Bench decision and that's where the appeal would lie. The Human Rights Commission are not involved in the actual case but are, of course, interested in the outcome of the decision.

MR. COWAN: But as it stands now before that appeal is proceeded with, and I don't think we should fall into the practice of trying to predetermine when an appeal will be or what that decision of the Appeal Court will be. As the law stands now, is there anything to prevent a person over age 65 from continuing to pay into a fund?

MR. MERCIER: Mr. Chairman, my understanding is, under the Civil Service Superannuation Act, a person cannot make payments into a pension plan after age 65, or Mr. Tallin advises me, under the Teachers Pension Act, also.

MR. COWAN: I would ask the Minister then, Mr. Chairperson, if the decision has any effect on those acts, the recent court decision, the McIntyre decision, in that one might anticipate that it would, if it did rule against the concept of mandatory retirement, would also imply — and I'm not a lawyer so I would seek advice from the Minister — that perhaps one should be able to continue paying beyond 65, notwithstanding what it will do to the actuarial tables of the pension companies.

MR. MERCIER: Mr. Chairman, my understanding is that that case does not affect pensions under the Civil Service Superannuation Act.

MR. COWAN: I would just ask why it does not then, in the Minister's opinion, Mr. Chairperson.

MR. MERCIER: It's just not applicable, Mr. Chairman.

MR. COWAN: It would seem to me that what the court has decided in that particular case, is that a person should be allowed to continue working if they so desire, beyond a certain age. I know that was dealing with a collective agreement and not a pension plan, or not legislation, but it was fairly explicit in the decision, and it would appear to me that if a person can continue to work, then there is no reason why a person should not be able to continue to pay into pension plans and superannuation funds if they so desire. Has the Minister reviewed that particular aspect of the case within his own department?

MR. MERCIER: Pardon me, Mr. Chairman. I was talking to some of my officials. I wonder if he could repeat the question?

MR. COWAN: I'll try. The question was basically, if a person should be allowed to continue working beyond age 65, and that's what the court seems to have decided, at least my reading of it would lead me to believe that, then one would assume that a person should also be able to pay into pension plans and pay into superannuation funds beyond age 65 — and that would directly affect the Ombudsman in this particular case — and I would ask the Minister if his department is reviewing that particular aspect of the decision to see what impact it will have on persons who would wish to continue paying into funds beyond age 65.

MR. MERCIER: Yes, Mr. Chairman. The department and the Human Rights Commission are reviewing that aspect, because that's where all the complications develop.

MR. COWAN: When would the department expect a completion of that report to be made, and will that report be made public?

MR. MERCIER: Mr. Chairman, there's also the case, in court, the member has referred to, the McIntyre case — I would hope the review is completed early, because that case and other cases are coming on, and the matter, I think is becoming more and more urgent to be dealt with.

MR. COWAN: Perhaps I could ask the Minister if he plans to — and I'm not certain whether it's pertinent to this particular discussion — but if he plans to review all the existing legislation that might have been impacted by the McIntyre decision as to mandatory retirement. That would include this act that we have before us, it would also involve the new Public Schools Act. I'm not certain which other acts it would involve, but is the Minister planning to review that and make recommendations as to the legality of those provisions in reference to the McIntyre decision, so that we can have a general overall policy as to mandatory retirement and the payment of funds into pension plans beyond the age 65? Because I do believe that if one is legally allowed to continue working, then one should also legally be allowed to continue paying into a fund, and it will

impact their retirement funds once they do retire. So I think it's important to the individual, as well as important to society. And seeing as how the Minister agrees that this is probably a very timely issue, a topical issue, and one that will demand more and more of our attention in the near future, I would hope that that sort of comprehensive review has been undertaken, not just in regard to the McIntyre case or the Ombudsman Act, but also to go through all the legislation to determine where the legislation needs to be cleaned up to meet with the provisions of the McIntyre case. And until such a time as there is an appeal, and if that appeal worked to overturn that decision, there would probably be appeals beyond that, I'm certain.

So until such a time as that has worked its way through the system, we do have a decision that does, in fact, negate the principle and concept of mandatory retirement. And it's incumbent upon the government to act, and I would say act expeditiously in this regard, in that the government can play a positive and an activist role in trying to deal with this concept and trying to provide some direction to society at large, so I would suggest to the Minister that that be undertaken, and at the same time, I would ask him if perhaps I haven't anticipated a major undertaking of this department that is already under way.

MR. CHAIRMAN: Mr. Mercier.

MR. MERCIER: Mr. Chairman, when that case and others are disposed of finally, I agree it will be necessary to have a thorough review which will have to involve the Labour Department and perhaps the Education Department to deal with the specific area that the member has referred to.

MR. COWAN: When the Minister says when that case has been resolved finally, it leads me to the question of when will he consider that case to have been resolved finally, because if an appeal has not been proceeded with at this point, then we can assume that as of now the decision is the last decision we have and therefore the final decision until such a time as an appeal has been proceeded with. And even at that, there could be another court case that comes along at a different time, under a different judge, under somewhat different circumstances, that would perhaps come up with a different decision. So what the Minister is saying is that we have to wait and we have to allow these things to work themselves out.

What I am suggesting is that it has worked its way through the system to what seems to be a stage at which we can act upon the recent court decision right now, and if there is an appeal, then we will have to act accordingly. But we can't nor should we anticipate the appeal, nor should we try to anticipate the effect of that appeal. If the appeal were proceeded with it may in fact substantiate the Court of Queen's Bench decision, in which case it could go right up to, I would imagine, to the Supreme Court — it may well. It is a concept that many people are interested in.

Reviewing the situation as it is now, I would ask the Minister again to elaborate and clarify as to when he feels that the decision will be a final decision and

that his department should proceed with that general major undertaking of an overall review.

MR. MERCIER: Mr. Chairman, if I might just respond by indicating as I did earlier, an internal review is under way at the present time, there is no intention to wait until the case is finally disposed. When the case is finally disposed of, I mean when the time for leave to appeal expires or an appeal is made, and another decision is made, but that doesn't stop us from internally reviewing the principles and the concepts that are involved in these cases at the present time, and that is under way now.

MR. CHAIRMAN: Mrs. Westbury.

MRS. JUNE WESTBURY (Fort Rouge): Yes, I think the Minister has answered my question, but he may want to comment. I was wondering if his department really is waiting for a test case on his Act, on The Civil Service Act, and whether in fact that would be the ultimate thing that they would be waiting for, and that could take a long time.

MR. MERCIER: No, Mr. Chairman, we are not waiting — Mr. Chairman, that is under way at the present time. There is no necessity to wait for a test case on this.

MR. CHAIRMAN: Mr. Cowan.

MR. COWAN: Thank you, Mr. Chairperson. I ask one more or perhaps a couple more, but I begin with one more question to the Minister, and that is, is the Minister prepared to direct or refer this matter to the Law Reform Commission for a comprehensive review in that respect?

MR. MERCIER: That's a possibility, Mr. Chairman.

MR. COWAN: Then if I can encourage the Minister in that regard, because I think it is a concept that is worthy of that sort of overall review and if there is some way, and I am not certain with all the workings of the Law Reform Commission, so I put it in this terminology — if there is some way that there can be public hearings as a part of that process whereby the general public can come forward to give their concepts, to give their recommendations, I believe that it would perform two functions in that regard. One would be to undertake and complete a comprehensive review of the whole concept. The other would be a public education program whereby the general public through the media, through presentations here, could be advised of the problems that those who would wish this not to be changed may foresee, and could always be advised of the problems that those who are facing mandatory retirement may feel that are imposed upon themselves.

I would strongly suggest that the Minister take the opportunity at this time, which seems to be as good a time as any, to refer this matter to the Law Reform Commission and to do so with all expediency and with directions to report back as soon as is possible, so that we can resolve this matter as best we can as a Legislature and as a society. So I would hope that

he would take those suggestions kindly and proceed along that path.

MR. CHAIRMAN: 4(3)—pass — Mr. Mercier.

MR. MERCIER: Mr. Chairman, I just want to make a comment. The Law Reform Commission is a possibility, but I would think that the matter is more relevant to the considerations of the Human Rights Commission, because we are dealing with a proposed discrimination on the basis of age and this issue has been handled, I think, virtually in every other province by their respective Human Rights Commissions. There certainly could still be the possibility of the Human Rights Commission holding public hearings or asking for submissions if that is to be a course of action in the future.

MR. COWAN: I would assume that there would be a public report forthcoming as to the general concept of mandatory retirement from the Human Rights Commission if that procedure were followed.

MR. MERCIER: It is very hypothetical, Mr. Chairman. At the present time, as I have indicated at the beginning, the department and the Human Rights Commission are reviewing this particular issue. I can't give any guarantees what will happen after that review has been completed.

MR. COWAN: I don't have the court decision before, so I am going from memory and sometimes that is not the best way to proceed, so I will phrase my questions in general terms. It seems to me that I recall that part of the problem in this regard was the court had to decide whether or not it was a jurisdiction to deal with this particular problem, and there was some concern that the Human Rights Commission should be the appropriate place to deal with the problem, and I am talking about the McIntyre case in this regard. But the fact was that several cases had been brought before the Human Rights Commission and had not been resolved fully, and that the Human Rights Commission had not completed its deliberations on those cases and that was why the McIntyre case went before the Court of Queen's Bench.

I would ask the Minister if that is a correct recollection of what had happened, that there were numerous cases or a couple of cases before that had been directed to the Human Rights Commission and the Human Rights Commission had never satisfactorily resolved the problem, and that is why it was proceeded with to the Courts?

MR. MERCIER: Mr. Chairman, as I have explained in the past, I believe the Human Rights Commission had a policy that The Civil Service Act overrode the Human Rights Act. But I might, Mr. Chairman, remind the member that we are dealing with Section 4(3) under Section 2 of this Act, which is a section which will simply allow the current Ombudsman to receive his pension, and is something that has been done in the past for civil servants whose term has been continued after age 65.

MR. COWAN: I accept that reminder from the Minister and I probably had strayed a bit from the

Act that is before us, but I felt that it was important to use every vehicle and every opportunity to encourage the Minister to direct his department or his government to deal with this problem as expeditiously as possible and I think that we have done that. We have accomplished that, and I hope that the Minister takes our suggestions seriously and gives them due consideration. I would hope to see that this matter which affects not only the Ombudsman, but also affects many other people in this society, brought before some sort of a commission or some body that will make a public report and will also accept public presentations, and thereby bring us a bit closer to a more enlightened society.

MR. CHAIRMAN: 4(3)—pass; Section 2—pass; Subsection 9(2)—pass; 9(3)—pass; 4—pass; Title—pass; Preamble—pass; — Bill be reported.

Bill No. 70, The Blood Test Act, Section 1—pass — Any amendments? Mr. Brown.

MR. BROWN: Mr. Chairman, I would like to propose an amendment. I would like to move that Section 1 of Bill 70 be amended by striking out all the words therein after the word "liable" in the second last line thereof and substituting therefore the words "for any damages to the person from whom the sample of blood was taken except damages arising out of the negligence and procedures used in taking the blood."

MR. CHAIRMAN: Would you care to explain that? Mr. Mercier.

MR. MERCIER: Mr. Chairman, members of the committee will recall the delegation that was before the committee who were concerned that the words damages for assault did not include damages for battery and some other matters. This would clarify the section to extend the protection from liability to damages for those types of actions but still retain the right of a patient to sue for damages in the case of negligence in the procedures used in taking the blood.

MR. CHAIRMAN: Mr. Cowan.

MR. COWAN: In speaking to the general section, if I can, Mr. Chairperson, not the amendment, I would ask the Minister if he knows of any religious groups that would object on religious grounds to having a blood test performed upon them?

MR. MERCIER: Mr. Chairman, I and my officials are not aware of any.

MR. COWAN: I would ask the Minister if there might not be then a religious group that upon religious grounds, upon tenets or articles of faith, would object to having blood taken from them, a medical practice performed upon them without their consent or even with their consent, they would just have moral or religious objections to such medical practices being performed upon their bodies.

MR. MERCIER: Mr. Chairman, I suppose there is always that possibility that there might be.

MR. COWAN: And if there was, I would ask the Minister, would they be forced under this act to have that blood taken from them?

MR. MERCIER: Mr. Chairman, no one would be forced.

MR. COWAN: If the person was unconscious, and I think this is the intent of this Act, to deal with unconscious persons, and the person was not able to relay those objections to the doctor, would the blood not be taken from that person then, against what would be their will, if they were in fact conscious and aware of the Act?

MR. MERCIER: There is a possibility, Mr. Chairman, yes.

MR. COWAN: What if the person were to wear a medi-alert bracelet that said for religious grounds I object to any medical procedures being performed upon my body whether conscious or unconscious, I'm not certain of the exact wording. Would that in that instance free the individual from the requirements of this particular Act?

MR. MERCIER: Under this section, Mr. Chairman, the way it is worded, certainly the doctor would have the authority still to take a blood test from that person.

MR. COWAN: I just ask the Minister then, does that not concern him, that a person for very strong and religious beliefs, perhaps even tenets or articles of his own faith would be forced to undergo an act that they were morally or religiously opposed to, and is there not some provision that could be built into the Act to allow for a person who has, by way of a bracelet or by way of other information that could be provided in an unconscious state, a card in the wallet prominently displayed, informing the physician that they were opposed to such medical acts being performed on them, whether conscious or unconscious, if that could not be in some way written into the act to allow them to not be subject to the provisions of this Act due to religious beliefs?

MR. MERCIER: Mr. Chairman, this section does not require the doctor to take the blood samples. The doctor himself would have complete discretion under those circumstances where he had some notice that a person did not want a blood test taken, not to take it. He's not required to take it under this section. And this is an instance, Mr. Chairman, if the member would refer to the section where a doctor has reasonable and probable grounds, where a person has been driving, or has the care and control of a motor vehicle — it's not compulsory on the part of the doctor to take the blood sample. He would have full discretion and in those circumstances could certainly exercise that discretion and not take the blood sample.

MR. COWAN: While it isn't compulsive, as the Minister says, it certainly is discretionary. Should the Minister have the discretion, or should the Minister be allowed or should the, excuse me, doctor or the practitioner or whomever is taking the test, be

allowed to exercise their own discretion in regard to another person's deeply-rooted religious convictions?

MR. MERCIER: Mr. Chairman, this is a section that would come into play where the reasonable and probable grounds would probably be that the patient — there is some indication that he had been drinking obviously, and those would be the circumstances under which the doctor could take the blood test — not necessarily take it or be required to take it, but could take it.

MR. COWAN: I am certain that people who have very strong religious beliefs from time to time imbibe and drink and therefore they may come under the provisions of this Act and still be very strongly opposed to their blood being taken, and they could have their blood taken due to the provisions provided for in this particular Act, and I would ask the Minister if that does not bother in him in some way, that that case could possibly exist.

MR. MERCIER: It could exist, Mr. Chairman. It might also be that the patient, or the driver, might be seriously injured, and the doctor might feel that he is required to take a blood test, I suppose for medical purposes, for a transfusion.

MR. COWAN: But that is not what this Act deals with. This Act deals with a person, and I don't see any reference to injury or medical condition of the person. I only see reference to a person who may, in the preceding two hours, have been driving or had care and control of a motor vehicle, and whose blood can be caused to be analyzed for alcohol or drug content, it says nothing about for type, or it says nothing about for transfusion purposes. It's a very specific bill, and I would again point out to the Minister that the powers that are given to a medical practitioner under this bill could in fact be used against a person who is unconscious, but may have by way of a bracelet or a card or any other means communicated to the doctor their opposition to having any sort of medical operation, including a blood test, performed upon them. I would ask the Minister if that does not, in some way, bother him in the regard that he is giving the medical practitioner that very wide-reaching power, discretionary power as it may be?

MR. MERCIER: Mr. Chairman, we're not specifically giving the doctor that power. There are many cases where this is in fact happening now, and has happened for many years, where the tests have been taken, and I'm not aware of any instance such as the one that the member describes. It has not been brought to my attention and I have received no information from anyone in the department that a similar situation has occurred as he describes.

MR. COWAN: Does that mean it's never happened?

MR. MERCIER: No.

MR. COWAN: No, of course it doesn't mean it's never happened, and it may well happen, and what we're talking about here is not what has been practised in the past. We're talking about a very

specific piece of legislation that provides very specific powers to a medical practitioner, and what I am suggesting is that one of those powers that is provided to the practitioner under this Act is the power to take blood against a person's will that will sometimes, if the person is unconscious, that will sometimes be communicated to the doctor. There is nothing that tells the medical practitioner that if they run across a bracelet that says that the person is opposed to any sort of medical procedure being performed on them, that they should not, in fact, take the blood. I would ask the Minister if my analysis of the Act is correct, in that even coming across that very specific statement in written form, that a medical practitioner could, according to this particular Act, proceed, take the blood, and not be subject for any damages as outlined by the amendment?

MR. CHAIRMAN: It seems to me that we're getting into sort of a second reading type of debate in the committee, but . . . proceed.

The Honourable Minister.

MR. MERCIER: Mr. Chairman, there certainly is a possibility that that could happen. Again I point out, there is no requirement that the doctor take the test, but if he does take the test, there is a protection from liability. If there is a situation, I suppose, where five children in a car have been killed, the man is laying on the ground, he's the driver of the other car and there's a smell of alcohol from his breath, it may very well be that despite perhaps that card on his front jacket saying, please do not take a blood test from me at any time, the doctor may in those circumstances decide that the situation is serious enough that a test should be taken.

MR. COWAN: So the Minister does not deem it a worthy enough concern to amend the Act in some way as to protect the religious convictions of those persons who may be forced, against their will, to undergo a blood test in this regard?

MR. MERCIER: Mr. Chairman, I'm very open about this legislation, and I hope I indicated that in the past, that I've had some of the same concerns that the member expresses. And I say, I'm prepared to consider amendments to this particular section if they are submitted.

MRS. WESTBURY: I hope that my question will be accepted under this bill. I think it is relevant, Mr. Chairperson. I wonder if the Minister can advise us what authority, or under what authority the corrections staff at the jail would take blood samples from individuals who are taken in on nothing to do with automobiles, or accidents, or drunkenness, or anything like that, why they would take a blood sample from an individual — it was a case where they were investigating, I believe it was a fraud case or something like that, and this individual was required to give blood before he was released. He wasn't even charged.

MR. MERCIER: Mr. Chairman, I'm not aware of this situation at all. If the member would like to give me some of the details after, we can inquire into it.

MRS. WESTBURY: But that is not a practice that you would expect to continue, or to have ever been adopted there.

MR. MERCIER: Mr. Chairman, I'm not aware of that situation at all, so I would like to enquire into it. But this only deals with a situation where a doctor believes a person has been driving a car within the last two hours.

MRS. WESTBURY: That's why I said I hoped the question would be accepted. Otherwise, I was going to ask it in question period, Mr. Chairperson.

MR. CHAIRMAN: 1—pass; 2—pass . . .

MR. MERCIER: The amendment . . .

MR. CHAIRMAN: . . . as amended; 2—pass; 3—pass; Preamble—pass; Title—pass. Bill be reported.

BILL NO. 39 — THE SOCIAL ALLOWANCES ACT

MR. CHAIRMAN: Are there amendments? There are amendments.

Mr. Balkaran asked me if you would be kind enough — Section 2 there, it should be Cl. 2(l) amended instead of a (1) in the second section. Clause 2(1), amended it's got, it should be 2(l). The first page. Bill 39. Just a correction. Bill 39, Section 2, it should be 2(l). The heading and the first sentence.

Now, do we want to deal with it page by page, or clause by clause? Okay.

Clause 2(h) and (h.1), Section 1, Subsection (h)—pass; (h.1)—pass — Mr. Corrin.

MR. BRIAN CORRIN (Wellington): Mr. Chairman, as I told the Minister before, we have a series of amendments; we virtually wish to amend every section of this bill. So dealing with the first clause of the Bill, we have two amendments which have been typed up by us, they deal with Clause 1(h) and Clause 1(h.1)(iii).

If the Clerk would like, Mr. Chairman, he can obtain a copy of this and provide it to other members. I don't know whether there is a disposition . . .

MR. CHAIRMAN: You only have the one copy, Mr. Corrin?

MR. CORRIN: We only have one copy, I am sorry. I can read it. The amendments are not that extensive that they cannot be read into the record, Mr. Chairman, and easily understood.

The first one deals with Clause 1(h), and it simply deletes all the words after the word "Act" in that particular clause and replaces them with the words as follows, "and includes directors of area offices." The effect of that, Mr. Chairman, is simply to limit the delegatory power given to the executive director to persons who are at least of the rank of area director.

There was, as you will remember, Mr. Chairman, considerable discussion at the last meeting of Law Amendments by delegations relative to the extensive delegatory power that was being given to the

departmental staff and it was thought that the delegation of the director's authority should be limited, and I believe at least two out of the three delegations indicated that they thought there should be a considerable limitation. The Legal Aid Lawyers' Association suggested that the authority to make decisions be limited to area directors and we concur.

Otherwise, Mr. Chairman, without any specificity in the Act, it is impossible to establish who will make which decisions, and we feel that it is important that since these decisions will affect people's right to obtain social assistance, that the sub-delegation of authority be limited to persons of some considerable seniority within the department. We don't want the situation to degrade to such a point that income security councillors would be in a position to make fundamental and substantial decisions relative to allowance eligibility. So that is the purpose of the first sub-amendment.

In order that we can keep the debate fairly rational and progress as quickly as possible, I would wonder if the Minister wants to respond to that particular item now and then we will go on to the second one.

MR. CHAIRMAN: Mr. Corrin, do I understand that you are moving that amendment?

MR. CORRIN: Yes, we are moving that amendment, Mr. Chairman.

MR. CHAIRMAN: Would you read it into the record, please?

MR. CORRIN: I thought I did. Delete all words after "Act" in clause 1(h) and replace with the words "and includes directors of area offices."

MR. CHAIRMAN: Mr. Minaker.

HON. GEORGE MINAKER (St. James): Mr. Chairman, through you to Mr. Corrin, what is the intention with this part of the Bill is that I think everyone has recognized that it is impossible for the director to handle all of the cases, being that there are some 24,000 dealt with at any one time in a year; this is dealing with cases on and off the welfare roll. What is stated very clearly in the proposal is that, "and includes any person authorized by the director to act for him", and I would draw to the member's attention "and approved by the Minister". So that the director will not be able to delegate various authority to anybody within the service. It will be approved by the Minister who will have that particular delegation of authority.

It is our intention, as has been indicated by the honourable member, that we will assign that authority to the director of each regional officer, and one other person. The main reason that we are saying one other person is that you can understand that the directors of district offices have to be away sometime from time to time and the social assistance must continue whether somebody is there or not. It is our intention that we would not delegate the authority more than to two people in a district office, and that is where we would limit that delegation to. I think that is why it states very clearly "and approved by the Minister," so that before anybody has that authority they will have to have a letter from the

Minister. It is basically what is happening at the present time in terms of administrating the income security role in the various regional offices, so there is no basic change in the administration at all; it is now being clearly put into law.

MR. CHAIRMAN: Mr. Brown.

MR. BROWN: Mr. Chairman, the Member for Wellington indicated that they had quite a few amendments to this Bill. I wonder if we could have copies made of all the amendments that they have, so that we have them here before talks.

MR. CORRIN: That is quite reasonable and they are available to the Clerk if he wishes to do that.

MR. CHAIRMAN: Mr. Desjardins.

MR. LAURENT L. DESJARDINS (St. Boniface): Mr. Chairman, the Minister in the past has explained his certain concern and what he has in mind, and I don't doubt that he is sincere in that, but an Act spells out certain things, and I don't think that you start with providing loopholes. I think that you close the thing, and if you have got something in mind, whenever possible you spell it out.

The Act reads that anybody, the way it is, can be delegated, and I am sure that the Minister is not saying that before it is done that these people will have to be approved by the Minister in writing, it could be anybody. I dare say that at times the Minister won't even know, it will be a delegation that — it might be a memo, these people might do it, but it won't be done every time.

The Minister states the directors of the area offices and another one, and that seems reasonable, but why don't we spell it out? Why doesn't the Minister agree with this Minister and add on, with the proviso, and maybe the mover will consider this amending or having his amendment amended to include another one or an assistant. But spell it out, because the way you have it now, anybody in the department can do it.

I submit this is what is going to happen and the Minister said, well, you'll understand that there are hundreds of cases and I didn't realize that, or maybe I did approve it, because this is the way it is going to work. Why don't we go ahead without — you know, we have got a long Bill, we have got a lot of amendments here, without debating that. It seems that both sides want the same thing. The Minister could, maybe with Mr. Corrin, include the directors of area offices and/or his representative. Would the Minister consider this?

MR. CHAIRMAN: Mr. Minaker.

MR. MINAKER: Mr. Chairman, we could accept area directors, but we don't necessarily know who their backup person would be. I have checked with the legal counsel and he indicates that both of those items have to be met before the individual would be considered as a director. In other words, what we are saying is that the person authorized by the director and approved by the Minister, both of those conditions have to be met before that person would have the authority, by law.

Our concern is, as the honourable member knows, that with a staff of some 700 people out in regional offices working that you do have change in staff from time to time and it might be necessary while you are appointing a director of a certain district office to make two people have that authority in the interim period until the advertisement is completed. Primarily, it still puts the onus back on the Minister to approve them and gives him the responsibility if something goes wrong.

MR. DESJARDINS: Mr. Chairman, the Minister is always responsible when something goes wrong, so this is not something new. Why couldn't we have the amendment as suggested, "and includes directors of area offices" and another person authorized by the director and approved by the Minister, have both? The way it reads now, you can have anybody in the department do it. You can anybody at all if it is authorized by the director and approved by the Minister, and I still that the Minister wouldn't see all these approvals. It will be given ahead of time. There is no way that every time a decision will have to be made that they will have to wait until the director approves someone or authorizes someone and it is approved by the Minister. You can have that by putting it on paper and doing it right away.

MR. MINAKER: Mr. Chairman, we could do that, but really if we say any other person . . .

MR. DESJARDINS: No, no, and another person.

MR. MINAKER: Oh, and another person.

MR. CORRIN: One other person appointed by the Minister.

MR. MINAKER: That still leaves the option open that any person can be designated in that office to fill that one spot.

MR. DESJARDINS: No, one other person.

MR. MINAKER: Yes, any one other person, but it could be anybody in the office, so it is six of one and half-a-dozen of the other in that instance.

The intention is that they have to meet both conditions and the final condition they have to meet is "approved by the Minister of the department".

MR. DESJARDINS: That will be done, that will be done ahead of time. You know it, and I know it.

MR. MINAKER: I think, to clearly indicate, Mr. Chairman, to Mr. Corrin, that the director does not have that authority to delegate responsibility without the approval of the Minister, which I maybe thought he was under the impression that they could delegate anybody with that authority. That is not the case unless it has been approved by the Minister in writing.

MR. CHAIRMAN: Mr. Corrin.

MR. CORRIN: I don't want to belabour this, Mr. Chairman. If we do, we will be here forever. I think the point is, though, that we want some control, we want some assurance that there won't be

unwarranted sub-delegation and that it won't be just a blanket sort of an authorization provided to all staff. We want some assurance, because we know that the Minister will not be consulted on every occasion. It is obvious that they are going to, for the purposes of efficiency, they are going to ask for certain extensive privileges unless there is a limitation in the legislation. I mean, obviously the bureaucracy would be pleased to have as many people authorized as possible. It makes life a lot easier for them.

It seemed to me that the Member for St. Boniface was moving in the direction of a constructive compromise. He came up with a fairly acceptable mid-ground as between our two positions.

MR. DESJARDINS: Why couldn't we have, "and includes directors of area offices and one other person from each area office approved by the Minister?" Then you will get exactly what you want and there would only be two of them, and you can approve them ahead of time and unless you rescind that it is the same two. It would be the directors of the area offices and another person in each area office approved by the Minister or designated by the Minister, not approved, designated by the Minister.

Mr. Chairman, I guess I still have the floor, you haven't recognized anybody else. I think that this is an area in this Welfare Act that because there are so many cases and because things come in pretty fast, the Minister might be away and so on, that you need action, but unfortunately at times you have people that I feel are not really qualified. There are too many people, young people, without the proper experience and so on, that are making decisions in this field. If we were dealing with somebody through the Chamber of Commerce and so on, we would be a hell of a lot more careful; but you are dealing with people that have nothing that are at the bottom of the ladder, so anything goes.

I think the Minister would achieve what he wants if he said "directors of the areas and one other person in each area office designated by the Minister". That is exactly what he explained he wanted.

MR. MINAKER: Mr. Chairman, I have no objection to that amendment. I think they are referred to as district offices, that would be just a minor change, but that is the objective of the part of the bill, that the Director of each district office and one other person designated by the Director and approved by the Minister.

MR. DESJARDINS: No, just designated by the Minister. How you go about it is your business.

MR. MINAKER: And approved by the Minister. Those are the two conditions.

MR. DESJARDINS: Designated by the Minister.

MR. MINAKER: No, I think . . .

MR. CHAIRMAN: How are we going to handle this amendment?
Mr. Balkaran.

MR. A. BALKARAN: If the amendment, as seems to be emanating from the discussions would be

accepted, it would read as follows: after the word "includes", you add the words "the Director of any district office and one other person from each district office designated by the Minister."

And if that's accepted . . .

MR. CORRIN: For the record, Mr. Chairman, I would indicate that that is an acceptable compromise, and I think covers the concerns raised both by myself and the Minister.

MR. CHAIRMAN: Somebody will have to move it.

MR. CORRIN: I'll move it. I accept it and I'll move it.

MR. CHAIRMAN: So then (h) as amended—pass; (h.1)(i)—pass; (ii)—pass—; (iii) — Mr. Corrin.

MR. CORRIN: This amendment, Mr. Chairman, which is now before us, for the record is as follows: 1(h.1)(iii) "add regular gifts shall be treated as income and casual one-time gifts shall be treated as capital additions to a recipient's liquid assets."

This, Mr. Chairman, addresses the problem raised in the Wuziak case. This is the one that Mr. Riley dealt with fairly extensively in his presentation. We feel that the amendment, as it now reads, is excessively harsh because it will deny social assistance recipients the right to receive small gifts without their allowance possibly, and I stress the word possibly, being affected, and of course it would be affected by way of an order to decrease. Our concern is that we want it spelled out that casual one-time gifts should be treated as capital, as opposed to income. We understand, and we can full well appreciate the Minister's argument relative to discretion being exercised by the department and regulations being provided to protect the rights of recipients. Our concern though, Mr. Chairman, is that, first of all, we don't think it should be subject to the whim of government to simply change the law without recourse to come into the Legislature, so we think there should be some protection in law relative to a person's rights to receive small casual gifts.

Secondly, we feel that people should know what those rights. As I said in the debate, Mr. Chairman, and I think as Mr. Riley said when he was here, it appears that there is cause for concern relative to the department's interpretation of what constitutes a gift. In the Wuziak case, Mr. Chairman, the department clearly was opposed to any other interpretation of the airline ticket. They simply refused to accept the possibility that an airline ticket would be anything other than income.

So, Mr. Chairman, in order to protect, to absolutely protect people who receive these sorts of gifts from being the subject of allowance reductions, we want it to be spelled out that these will be considered to be capital additions or accumulations, and then, Mr. Chairman, we note that the government can by regulation define what assets an individual may have. So there would still be an opportunity for the government to protect the taxpayer, as it were, by defining what a person's assets may be, without necessarily working a hardship on people who receive Christmas hampers, gifts sending their children to camps, gifts of such a

nature that a person might get a free flight back home to visit an ailing parent. That is the substance of what we're trying to do, Mr. Chairman. We're trying to assure that those types of gifts won't be the subject of future reductions.

MR. CHAIRMAN: May I remind the members of the committee, Mr. Corrin, on these amendments we're reading from, at the top you have Bill 38. It should be Bill 39. Would you correct . . . the one that I'm reading Section 1, Bill 38, it should be Bill 39.

MR. CORRIN: It should be Bill 39.

MR. DESJARDINS: Mr. Chairman, I have a problem here. I would prefer another amendment, and I don't know if it could be dealt with first, because I wouldn't want to defeat this to bring my amendment, because if my amendment is not passed then I would support this one. And my amendment, I'll just explain I'm not moving it until you help me in deciding how this should be done, and I'm looking at the bill now, (h.1)(iii). I would like to see "regular", before the word "gifts", and I would like to delete all words after the "applicant" in the second line.

Now my reason for that, the amendment says that if you have one of these gifts that is not considered the regular gift, it's a one-time gift only, it's added as capital, and you're allowed so much money, and after that, you lose your welfare pay. So the amendment of my colleague, Mr. Corrin, would go only halfway. If somebody for instance, was allowed 500 and if this amount puts him over the 500, then they can't get it. And I can't see what's wrong with this, and I know, and I sympathize with the Minister when he wants to do with the abuse, and I still think that you can do it without abusing in reverse fashion.

For instance, you have someone, and that doesn't spell it out, and I don't see why this would not be covered under this proposed section, you can have a youngster in a family, and his mother's on welfare, and somebody selects him and takes him for a holiday, or it might be that somebody dies and they send the person on welfare to see their parents, and I don't think there's anything wrong. That is certainly not abuse. There was a big thing made about somebody going to Barbados. Well, so what? You could go to Montreal and spend more money than in Barbados. We don't know the situation, and everybody is scandalized because somebody is going to go and lay in the sun when they're on welfare.

If it's a regular thing and if they can get holidays that other people don't get, I can understand. But normally, it could be a one-shot deal, I don't see anything wrong with that.

You have the income tax people take better care of the people that have funds. For instance, professionals, I think such as doctors or lawyers, are allowed one trip, it's supposed to be on business, one trip in Canada and one outside of Canada every year, and everything is charged to them and they don't pay any income tax.

It's bad enough, and if we give the welfare, it's to assist people and there's a limit to what you can do, and I can understand that. With the situation the way it is now, it's hard enough to live, but if somebody could come in, if I'm a good guy and I see a youngster that plays with my kid and his wife is on

welfare and I pack my kid and this youngster somewhere on a holiday, what the hell, is the province, is the taxpayer, will they lose by it, if you can help some youngster who would not have a chance to enjoy life the same as my kid or your kid? I can't see anything wrong with that.

The abuse, I'm with the Minister 100 percent, and I think if this comes in, well then you can go to court and that will be decided. And I'm not talking about regular, that there's just a way to beat the system and that somebody's going to make a gift every year, or the people will give their money . . . and that happens. There's a lot of abuse. There's some abuse. You might have somebody that has 10,000 and leave it to their kids, and then they give it back. That's not what I'm — that would never be considered.

If there is a way, if there is anything that the Minister wants to bring in to stop the abuse, I'm with him, but now I think he's unnecessarily harsh on certain people and he will prevent people from — there is no way, it's not at the discretion of the Minister, it's just anything that they get at all will be charged, and technically, if the province would decide that there is a holiday, that could be considered. Under the federal government, or another government, if there's an exchange between students to another country, they couldn't qualify. This would be considered. So I don't see anything that would cover that, so in principle, I think this is wrong, Mr. Chairman.

MR. CHAIRMAN: Mr. Green.

MR. SIDNEY GREEN (Inkster): Mr. Chairman, what concerns me is the attitude that is reflected here with respect to a necessity of changing the law. It seems that some of the motivation for this particular amendment is that a person on social assistance had the audacity to receive a gift from a friend which entitled them to lie in the sun. Is that what we're talking about? That has brought a need for legislation, to curb that kind of thing happening. And the entire Legislature is asked to get together to make sure that this cannot happen again. And it's then surmised that, my goodness, if a person can receive a gift from a friend, from a relative, to lie in the sun in the Barbados, they could also receive a gift whereby the child was sent to camp, or maybe somebody took him to the movies. And all of these things have to be carefully scrutinized because this person is on social assistance.

Now, what is the concept of social assistance? Before a person can be on social assistance, they have to satisfy the state that they are completely penniless, that they are on the verge of not having money to satisfy their basic needs for shelter and food, and they cannot be employed. All of those things are requirements before they can get the social assistance.

Now contrast that, Mr. Chairman, with the attitude that is being expressed for a problem which has arisen, vis-a-vis drought. Is it the government's intention, with regard to drought assistance, to say that nobody will be entitled to drought assistance unless first of all they can prove that they have no assets that their farmlands are no longer there; that they have no money in the bank, that they have no

machinery which is unencumbered, that if they do not receive this drought assistance, the following month they will not be able to eat, and on that basis, they will be given the assistance of the state.

Now, if I were to question whether that is being done, my rural friends would pounce on me and say, how can you suggest such a thing? That's exactly what they would say, Mr. Chairman. It matters not whether a rural person has got a million dollars in land, has money in the bank, if there is a drought relief program, he will be entitled to the taxpayers' money all over this city to help him over this problem, regardless of the assets that he has of his own to deal with that problem. I'm not faulting that, Mr. Chairman, I'm faulting the attitude with regard to this woman who somebody sent to the Barbados so that she could lie in the sun.

Mr. Chairman, I have heard the Minister of Agriculture say that he is considering debt adjustment and debt suspension, or a moratorium on debt by virtue of the drought. In the last year, and I want to be accurate to the point of being conservative, with a small "c", there have been at least a thousand people in Winnipeg who have had their homes foreclosed against, and this year, starting in 1980, they are advertising notices of exercising power of sale during a certain period at the rate of 50 a month, and nobody has suggested from the government side that all of these people should have moratoriums on the foreclosures because of problems which have arisen, such as 500 people being laid off at Swifts, which is not an act of God, it's an act of Swift's. But the result on the person who does not get the income is the same. It is worse, because the average employee employed at Swifts needs next month's salary to pay last month's bills, and that is not the case with many of the people who are affected by the drought in rural areas. It's true it will hurt their incomes, but if the rules with regard to social assistance were applied, they would have to go to their own assets before they could come to the state. That's how the rule is applied with regard to social assistance. No farmer is being asked to dip in and utilize his own assets to carry him over the drought as a condition of receiving drought assistance relief. It is not based on any means test.

I make that comparison, Mr. Chairman, not because I say that it should be done, but to try to encourage my rural friends to see that there is a total difference of attitude here, that the people who are affected by social assistance are in worse categories in many cases, in 90 percent of the cases, than some of the people who are going to be financially affected by this drought. And we are gathered here struggling to pass a law to make sure that one of these poor unfortunates will not be in a position of receiving a gift from a friend so that she could lie in the sun in the Barbados, something which apparently the Court of Appeal says is legitimate under our law. Who are we to take that away? There will be abuse under welfare or social assistance legislation. There is far more abuse under income tax legislation, and there will be abuse under any program. We know that some garage keeper in Emerson signed as a condition of receiving government assistance to move his building, or that he would build in a certain place on the condition

that he would not in the future apply for flood compensation. He applied for flood compensation and got flood compensation, and it's now being looked into. This particular thing I do not consider an abuse. A woman apparently who was in the category of legitimately receiving social assistance had the good fortune, not to win a lottery, but someone made it possible for her to have a holiday, and we are gathered here as legislators, as serious legislators, trying to figure out how we can pass the law so that cannot happen. Are we not ashamed of ourselves? Because that's what we are doing. In the context of things, Mr. Chairman, it is an exercise which I find repugnant and that we should not be involved in.

MR. CHAIRMAN: Mr. Minaker.

MR. MINAKER: Mr. Chairman, first off with regard to comments by Mr. Green, that he fully knows that the drought conditions we're experiencing in Manitoba at the present time, we hope will be a one-time situation that won't occur again hopefully for another 100 years, but he also knows that the reason the government, not only the provincial, but the federal government is involved in trying to retain the livestock in Manitoba for the protection of the consumers of Manitoba, so that the investment of the moneys that are going in by the taxpayers is also to protect themselves from high beef costs etc. and the retention of an industry that contributes taxes to keep the people that we are talking about assisted. To try and draw in the drought comparison I don't really have a fair comparison to what we are dealing with.

With regard to the proposed amendments put forward, in actual fact the present policy of the department is to consider one-time gifts. By law at the present time we allow a certain asset to a family before we would even consider cutting them off, and that is 2,000 per family maximum or 400 per person. It might be that these have to be reviewed. They were, I think, established some four or five years ago, and we might have to review them, but at the present time when we look at casual gifts, we do not really give them consideration. When they come up in the size of 1,000, obviously we have to take a look at them and consider each one separately, and when we talk about the individual sunning on the beaches of the Bahamas, we're not just talking about the air fare. If anybody has gone down south, you know that they're probably looking at 1,200 - 1,500 cost for any length of time down there, when you consider the hotel room and so on. But I want to assure the honourable members that we are following that casual gifts — if you wanted to fly someone to a funeral, obviously we're not going to consider that.

MR. DESJARDINS: Where does it say that on the bill?

MR. MINAKER: Well, it's a practice of the department which the honourable member knows exists at the present time; also that we allow relatives — I think it was brought up, if somebody wants to increase the casket for somebody, that's allowed in our policy, if anybody wants to do that. I think what we are trying to do is to define gifts that

are regular from those that are one-time. How are we to know if that same individual gets another 1,500 worth of fun in the sun this year. Has that become a one-time gift? I would suggest that it becomes a regular gift, a yearly gift, so that to try and define regular becomes very difficult and I think there has to be practicality given to the department. I think they have been practical up to this point and would continue. I think when a taxpayer phones and says, how come my neighbour is sunning herself on the beach in the Bahamas and I'm paying taxes and trying to make ends meet, and probably doesn't have the 2,000 in the bank, that we allow that individual who receives the social assistance, then we have to investigate it, and that's exactly what was done.

I think what we are proposing is a fair amendment to the act and will be used with discretion, and will not, in the extreme example of Mr. Green, if somebody takes a child to the show that we are going to cut them off welfare, not in any way are we. We will be looking at the limits of exemption on assets that presently exist by legislation and see if they have to be increased because of increases that have occurred since the past four years. I could not accept the amendments as put forward, because of the problems of trying to define what are regular gifts by law. A year or two goes by and we realize that somebody is receiving a gift every year, then I would suggest that that's a regular gift, not a one-time gift, that it will be used practically and as it has in the past.

MR. CHAIRMAN: Mrs. Westbury.

MRS. WESTBURY: Mr. Chairperson, I understand that the regulations allow for gifts up to 100. I would suggest that should be included in the law rather than in the regulations, the law being passed by the House, rather than a regulation which is approved in Cabinet, as I understand it, because when people are going by the law — and I suggest that most people do try to live within the law — they will go by the law as it's written and as it's observed to be. I think that many of us are aware of instances where young children who perhaps can't afford to participate in certain events such as hockey, which can become rather expensive, are assisted in ways by the community, by the community clubs, people raise money to allow equipment to be purchased for a young lad perhaps, whose family cannot afford to let him play. That could come under the definition as it now is. There are all sorts of instances, some of which have already been referred to and which any of us could imagine. So I would like to suggest that some sort of definition should be in the law.

But I'm also concerned — people have related this to people cheating on their income tax and that sort of thing. If a person is cheating, they're cheating and they should be prosecuted, and just because people might be seen to get away with such cheating on their income tax has nothing to do with how we approach the treatment of welfare recipients. I'm also suggesting that perhaps this individual did not feel that she was cheating. The Minister has referred to 1,500, on one occasion 1,200, but I thought it was a 400 gift. If we are talking about 400 we shouldn't be throwing out figures of 1,500, I'd like to suggest.

Another thing that I'm concerned about is the aspect of someone trying to help another person who is in trouble or who is living in an impoverished existence, and the apparent desire on the part of the Minister, department, whoever, not to allow people to make one-time gifts to the poor, our whole concept of charity and love we're legislating against, it seems to me, with this bill. I'm concerned about that. If it is in fact a yearly gift, then I would say it comes under regular payments, regular gifts. If it is not a yearly gift, then I can see nothing wrong with this amendment. I will support the amendment, because I just feel that I myself must feel free to give a one-time gift if I see fit, to someone in need. That is part of my individual right and individual freedom.

MR. MINAKER: Just to very briefly, Mr. Chairman, explain to Mrs. Westbury, what we were talking about, the 1,200, was the fact that 400 was the air ticket to the Bahamas and we do not pay for the cost of rooms or the cost of meals in resorts out in the south, so obviously someone paid for them, and that's where I said the value of another 800 probably for the stay there is involved in the total gift, but that's a debate that took place some time ago. Also it's our intention to provide for the needy, there is no question about that; and also for the working poor that wouldn't necessarily get this allowance, but they get CRISP and SAFER programs that are quite eligible for gifts as well from people that they will receive from time to time. We are not just talking about those people on need, as well, there has to be some consideration for the lower income people who are working and also paying towards the welfare of these people.

MR. CHAIRMAN: Mr. Corrin.

MR. CORRIN: There has been a good deal of, I think, disregard for the facts of the Wuziak case, Mr. Chairman. I think we should remember what Mr. Riley told us about his client, Mrs. Wuziak. He told us that Mrs. Wuziak had been ill for some time; that she had sick family members; that she'd been under a lot of stress, a tremendous amount of pressure and anxiety, and a close friend, I believe her boy friend, decided that she deserved a trip. For the life of me, Mr. Chairman, I really don't understand what's so horrible about that. She's entitled to be loved. She's entitled to have someone be concerned for her; she's entitled presumably to some respite from the indifferent circumstances which she finds herself in, and so, Mr. Chairman, she was relieved of all that and transported to a sunny haven where she could take two or three weeks' rest. It didn't cost the taxpayers anything. It cost her boy-friend some money. I presume he earned it, I presume he paid taxes on his income, some of which will go to Mrs. Wuziak's welfare allowance, and I really don't understand why it's so absolutely important that the Minister and the department get this thing stomped out. The Court of Appeal said, in Wuziak, that if they would have found any regularity — they said the character of income is regularity — they said if they would have found that there was any regularity in this gift, if there had been any other gifts of this sort, if there had been any evidence to that effect, they would have determined that the gift was indeed

income, and would have been calculated as income for the sake of determining her benefits. But they didn't. They found that it was a one-time thing, based on one charitable act from somebody who cared. And on that basis, they decided, under the law as it now exists, that the gift should be considered as part of her liquid assets, as opposed to income, and there should be no reduction in her monthly benefit.

I don't know why we want to change that. The court has given us a workable definition; the department, Mr. Chairman, which the Minister is so defensive about, held that she wasn't entitled to that. He says that we can rely on the discretion of the staff. Well, if we can rely on the discretion of the staff, Mr. Chairman, why did this problem arise in the first place? Why did Wuziak end up in the Court of Appeal in the first place? I think that they were very narrow-minded in this particular case, and I may be only speaking for myself, but I think that they should have been a bit more charitable and a bit more relaxed in their view of this particular occurrence.

But they weren't, and they were willing to send solicitors all the way to the Manitoba Court of Appeal to fight it. So it seems to me, Mr. Chairman, that the entire amendment is unnecessary, but if it is necessary in order to protect against these sorts of gifts in kind, you know, the gift of a Christmas hamper, or air fare to see an ailing mother, or sending a person to a special clinic for treatment in the United States or somewhere else; if it's necessary, then I think we should distinguish, and we should do it on the same basis as the Court of Appeal, and that's what I have attempted to do in my amendment. I've said regular gifts would be treated as income, and the casual one-time gifts would be treated as capital, and on that basis, Mr. Chairman, I don't know what harm can befall the department, and it certainly would be protective of the recipient's rights.

MR. HANUSCHAK: Mr. Chairman, I'm opposed to the section of the bill as it presently stands. There are a number of types of gifts, or whatever one wishes to call them, that a welfare recipient may receive, or a welfare recipient's family may receive, and I'd like to cite two or three examples.

I was told by a member of a board of trustees of a parochial school that in their school, even though they normally charged tuition fees, they do not close the doors in the face of any child who wishes to enroll. In other words, if a child of a welfare family wishes to enroll in the school, the church finds ways and means of covering the education costs for that child. In other words, the parish picks up the tab for the tuition fees. Now, I would suspect that in schools of that type, there is a set tuition fee, 500, 1,000 a year, whatever. Now, if the Minister should find a child of a welfare recipient enrolled in a private school, and on whose behalf tuition fees are being paid by someone else, a service club, a church parish, whoever, is the Minister going to say to that welfare recipient, oh, you're receiving a gift which is worth 1,000 — the Minister is shaking his head in the negative, but where does he say in the bill that he will not consider that a gift?

Lord Thompson, who owns a chain of newspapers, apparently has a bit of a benevolent feeling within

himself and from time to time he gives his paper carriers awards for either enlarging their paper route the most, on whatever basis I don't know, but all of us have seen those ads appear in the newspaper once or twice a year showing the photographs of the paper carriers who received an award, a trip to Disneyland, I think some trips have been to islands in the South Pacific on occasion, to Hawaii and the like, and to the Caribbean. Now, as the Minister said, those trips cost more than just the air fare, that's true. There's the air fare, there's the hotel accommodation, sightseeing expenses, meals, etc., so those trips probably are worth 1,200 or 1,300 per paper carrier participating in them.

So here is a mother on welfare, parents on welfare, believers in and supporters of this free enterprise, private enterprise philosophy of this government, the virtues of rugged individualism; they send their child out to work to deliver papers, and they encourage that kid to expand his paper route; he does that, and then in turn, he is rewarded for it. He is offered a free trip. He's one of the top producers. He's offered a free trip of roughly maybe the same value as the one received by Mrs. Wuziak. Now, is the Minister going to penalize that family? Is he going to say, this child received a trip worth 1,200.00?

A third example, a welfare recipient receives a family heirloom. There is some article in the family which has acquired an antique value; it may have been some silverware, it may have been a piece of jewellery or something that was handed down from mother to daughter through the generations, and the Minister walks into the welfare recipient's home and sees that she or he is wearing a 10,000 diamond ring, or there is a piece of expensive china in the cupboard in the home, or silverware. Is the Minister going to penalize that welfare recipient? Is the Minister going to say, ah, under the act, how does it read? — yes, gifts, whether in cash or in kind — this is a gift in kind, and it's appraised at 1,000 to 5,000, whatever, that comes under the provisions of this act and therefore that has to be taken into account as financial resources.

MR. DESJARDINS: Mr. Chairman, first of all, I'd like to answer Mrs. Westbury. I'm the one that mentioned the income tax. I think she misunderstood. I did not say that people were cheating the income tax. I did mention income tax; I stated that under the income tax, I believed that professionals are allowed a trip in Canada once a year and outside of Canada once a year, and everybody knows that 99 percent of the time, they're going on a holiday. They're people that can afford it, and as far as I'm concerned, they're costing me money because that should be taxed, but that is allowed.

Now, under this bill, I'm not a lawyer, but I've asked the lawyers that are here, it seems very clear to me, we spell out what financial resources are, and we say here, any gifts and gratuities, there's no exception, one-time basis or otherwise, and I would say that regulations that exempt them — there is something in the financial resources that you can go, a family, a maximum of 2,000.00. Anything after that is financial resources. The Minister said there is some regulation that they allow 100.00. There are all

kinds of examples that were given today, for a scholarship in the schools, any school, or anything like that. The Minister shakes his head, oh no, that's not what we want, but again, the same as the previous amendment that was passed, that covered that, there is a bit of abuse, and then we have all the rights in this act that they're going to stop that.

Now, the Minister said, well, we'll break the act, we'll go against the act that says, and there's no ifs and buts, there's nothing that says at the discretion of the Minister, or notwithstanding the regulation that might be brought in from time to time, nothing in this says that, it just states that all these things are financial resources. Again, because they're the people at the bottom of the ladder, the poor, sometimes maybe not too well educated, and we get away with that. And the people that need it less find a way to get around this.

For instance, we had a good example last week. We were called back Saturday to make sure that there was enough days so the rural members could get their 40 a day, and that's a bloody shame. We get away with that, ourselves, professionals get away with these things. But what about these people?

The Minister said, I don't want abuse, I don't want any abuse either. Not too long ago we were ready to let anybody in the department make decisions, and the Minister said, well of course we're going to appeal, somebody phoned, and we're going to investigate, and they did investigate. I'm not trying to stop that, I think that the act the way it is, that probably would be the best amendment, to delete (iii) and let the Court decide. I have much more confidence in a judge, and it might go to the Court of Appeal, as in this case, than anybody in the department, and I'm not talking about intention or anything like that, I'm talking about people qualified to make a decision.

So Mr. Chairman, if the Minister means — all right, of course he's not counting that paper boy that's going to have a trip, and of course he's not talking about the scholarship that somebody gets in a school, he's not counting these things, but nowhere does it say that. And I'm not ready to leave that at the mercy of the Minister, and say, okay, I'll pass this, because I know you're going to break the law. I don't think this is the way this committee should work. The laws are there, we've got to spell it out, and if the regulations — I don't know of any bill that we allow the department to make regulations that will go against the bill, and that clearly does that.

I don't see why we have to insist — has there been that many abuses, that many cases? This thing went to the Supreme Court, and we heard from the lawyer that worked with this lady, explaining the thing, and it wasn't exactly the thing. The Minister right away, he's doing the same thing as the people next door, heard that somebody was out there, it's going to cost so many dollars. Well, it's going to cost, maybe there is a value, but it might not cost, somebody might have a condominium out there that he's not using, that his family can't use at the last minute, and he puts somebody on the plane. He might have a ticket on a plane on a charter that they have their members, and there's a space at the last minute, that they might pay a couple of hundred

dollars. I'm not saying this is the case, but this is a possibility.

I can't see what is wrong with the way we're doing now. If there is cause to investigate, investigate. That's why we have the courts — we are saying today, we don't have any confidence in the courts. Well, then let's abolish these courts, not only for these people, then change the whole system. I think that we are now too harsh, we're making laws, especially with the intent of breaking them. The Minister keeps shaking his head at many of the examples that were given. He says, oh no, that's not what we want, with a smile, and of course that's not what he wants. He's as sincere, and he's as compassionate as I am, but I don't think he understands what this committee is all about and what an act is all about, that you don't put in certain things that say we're going to break the law.

I think that we should just leave it alone, forget the amendment that I proposed, forget this other amendment, and just delete this altogether, and let the courts decide. That would be the fair way. This is one thing. We talked about the abuse on welfare, we talked of that. When I was named Minister responsible for this in 1974, the statements that I made, I was going to clean it up. Of course, I agreed. Of course, I agreed I was going to clean it up; I was on my white charger, I was going to change all that. Well, damnit, I couldn't find these abuses, and the Conservative Minister said the same thing. There's two people — and the socialist government is just helping these people, everything for these people, and in the House, the previous Minister, the now Minister of Health, stated very clearly and very loudly for the press to get and report this, that he did not find the abuses, there were very few abuses in welfare, and he stated the same thing, that when he started, when he accepted this responsibility, he thought that he would find all kinds of things, and he couldn't find anything. I'm not saying that there aren't any. But the people talk about that, your neighbour that phoned you and said, this woman is sunning herself in the sun, maybe they could start talking about the people next to them that are maybe beating the income tax. —(Interjection)— Well, all right then, the second neighbour then, or somebody on the next street.

But Mr. Chairman, I want us to stop any abuse, and there is going to be abuse. You are dealing with people that are desperate. You're dealing with the cost of living. You were talking about these farmers, and I think by the way, that was a very good example, what the motive is, you're helping these people, it's supposed to be an act of God. Well, there are other people in other areas, in this city and so on, that are losing their houses — I don't know if it's an act of God, but something happens, for a certain reason, we don't help them. I'm not against helping these farmers, although I do and I'll probably be criticized for that, I think that we consider them number one and there are a lot of other people, because they are not as united or as strong and so on, we don't consider.

This is a case here that because of some abuse we want to bring in harsh measures on too many people and I don't think that this is — especially if it costs the province one cent more I could understand and say, hey, that's cost me some. But if you take some

poor people and if he gets a trip and maybe in another country that's going to cost 5,000; maybe it's done with an exchange with Canada and Canada has exchange agreements with different countries, I know that they had one with France for instance, and they allow somebody to go in this area where it doesn't cost the province a cent — what are we going to do? Are we going to stop that? Are we going to say, well — and according to this bill we have to. It doesn't say when the Minister shakes his head this won't apply. It doesn't say that. It says that, and it spells it out, and it talks about the one-time basis also, and it says that this will be financial resources and the Minister had told us and we know that the financial resources allowed are a maximum of 2,000 per family.

Mr. Chairman, I think that there is no need for that. Let the Minister go back and get his staff to try find other ways to catch the people that are abusing the system. But let's not penalize everybody and make it harsh on somebody because you want to get that woman that was sunning in the sun, and you're going to penalize all kinds of other people, or you are asking us to pass an act that you tell us that you will bring and I'm not ready to do that, Mr. Chairman.

MR. CHAIRMAN: Mr. Green.

MR. MINAKER: Mr. Chairman, if I might.

MR. CHAIRMAN: Oh, the Minister, is that okay, Mr. Green?

MR. MINAKER: Just one second, Mr. Chairman, if I might with regards to answering Mr. Desjardins, that when I shook my head I did not indicate that I was prepared to break the Act and I fully understand what this Act means and what this committee means. But I would draw to Mr. Desjardins' attention that it says in the very clause that he's referring to, that means with the exception of the exemption specified in the regulations, and this is where there are exemptions to some of these facts, and that's where at the present time certain things exist, where I said no that doesn't count. These are available in the regulations that are passed by Order-in-council.

MR. CHAIRMAN: Mr. Green.

MR. GREEN: Mr. Chairman, just a brief question, and I do want to add something. The 2,000 in assets, that's total assets. That includes the household effects . . .

MR. MINAKER: No, no. Maybe I should, . . .

MR. CHAIRMAN: Mr. Minaker.

MR. MINAKER: Can I explain to Mr. Green, Mr. Chairman, what we would count as liquidable assets would be money in the bank account of that individual; any surplus property they would have other than their residence; it would not count any of their furnishings within their home and would not count a family vehicle unless they had two. Stocks and bonds would be counted as assets, but if the individual has a home and is living in a home, we pay the principle and taxes on that home and we lien the principle only on the mortgage payment. If there is a

repair to that home that does not exceed over 500, then it is not liened on the property. But we are talking about surplus assets. We are not talking about clothing, personal belongings; we're not talking about furniture or houses or a family car.

MR. CHAIRMAN: Mr. Green.

MR. GREEN: Thank you, Mr. Chairman. I am confirmed, Mr. Chairman, in the discussion that has followed that the difference is one of attitude. Unfortunately, the attitude is so ingrained in some that they can't recognize that there is a difference. There is, Mr. Chairman, whether we like it or not, a tendency to regard people on social assistance, and I've heard it suggested on numerous occasions, that these people are somehow getting money from the state for nothing. From that stems the notion that they are abusing the system. And the former Minister of Health described it very well when he came into office, Mr. Desjardins, the Member for St. Boniface. He was instilled in this attitude and then he checked and he found out it wasn't so; and the new Minister was instilled in this attitude and found that it wasn't so. But that has not changed the attitude. It's changed the thinking of two people, because the attitude persists and it was exemplified by the Minister when he spoke about the drought assistance and by the Member for Fort Rouge when she talked about the income tax.

Nobody is suggesting that people should be able to cheat. What I suggested is an entirely different attitude towards people who are alleged to have abused social assistance and people who are alleged to abuse income tax. We don't refer to the entire business community as parasites who are cheating the income tax. We don't see that in editorials. We don't see that in commentary. But we do see it about people who are on social assistance and we do hear that these people are somehow the ones who are a problem.

I want to tell the Minister something. When he says that we are giving drought relief not to assist the farmers but for self-interest, I tell him that with social assistance that is in spades. Society does not give money to people on social assistance to help the people on social assistance. They give it to people on social assistance to help themselves, because the consequences of not giving money for the failure of the economic system in which we live and which causes over 34 percent of the people to live below the poverty line is disaster to the rest of us and that's why we give the money, not because we are trying to help those people. It applies more with regard to social assistance than it does with regard to drought. To say that drought is a one time thing — I hope so, but most people who are affected by the drought have got the assets to overcome it. What we are doing is to prevent them from digging into those assets. We are trying to save them. We would never do the same for people on social assistance.

If it is a one time thing, it's even easier for it to have been accommodated rather than by state assistance, and I'm not suggesting we don't give it. I am merely asking people to understand their difference of opinion when it comes to a man losing his job at Swifts and being forced to get not only

what he needs, but what he's entitled to. It was the Conservatives who said these people are not entitled to the unemployment insurance that they are asking for, and went to Ottawa on the basis that they're going to reduce that unemployment insurance. All of those people who lost their jobs by virtue of that needed next month's salary to live. They couldn't survive one month without a salary.

That is their general position and it is not the same with regard to many of the people who we are now assisting. And we do, whether the Member for Fort Rouge agrees with it or not, the fact is that we do not run around talking about our business community as being cheaters because one has been found to have cheated on his income tax. The percentage of people who cheat on income tax at the upper levels of society far exceeds the percentage of people who are abusing social assistance under cases of extreme need. That is a fact, Mr. Chairman, and that's all I said. And that's the attitude that I'm fighting against.

Now the Member for Wellington has indicated the real answer to this question. The court found that if it was a regular problem, they wouldn't have found as they did. The court has come to the assistance of the Minister. The law as it now stands, as I understand what the Member for Wellington has said, and I look to him for his guidance because I did not read the decision. I know enough about the attitude to know what the department was doing. But if the Court of Appeal has found that this was not a regular source of income, this was an act of charity, we are outlawing Christian, Judaic charity.

That's what the Court of Appeal has said, that this was an act of charity. If they found that it was a regular source of income, they would not have made that finding. The Minister has got all he wants. Is the Minister trying to preclude the Court of Appeal decision? Because the Court of Appeal decision says to him, a person cannot regularly receive this type of gift. I'm not sure that I would agree with the Court of Appeal, but nevertheless he should agree with it. That's what the Court of Appeal said and if that's the case, then I say to the Member for Wellington, we don't need his amendment and we don't need this bill, that both of them are wrong. We are sitting around, 20 people, plotting as to how we are going to deprive a man from giving a woman who needs it, a holiday. That's the attention of the Manitoba Legislature. If somebody from outer space was looking at us, he'd say, they're a bunch of idiots.

MR. CHAIRMAN: Mr. Anderson.

MR. HENRY J. EINARSON (Rock Lake): Mr. Chairman, I just listened to the last comments from the Member for Inkster, and I can't help but wonder, and I've always been very interested in listening to what he has to say, but it seems to me we're covering the waterfront here and we're trying to use examples to defend a particular case. I, Mr. Chairman, want to say that from the comments that we have heard on the other side, are trying to give the impression to the people of Manitoba that the Conservative Party are against anyone on welfare or receiving welfare. That's the impression that they are giving, and that they are trying to convey to the people of Manitoba, and I'm not so naive as to sit

here and listen to all I've listened to this morning, to think that isn't exactly what they are trying to plot, Mr. Chairman.

Having been in politics for 14 years, I happen to know, and have had experience in some cases where some young people, able-bodied people, were given welfare on the municipal level and because a job was provided and offered to them, they turned it down, Mr. Chairman. I have to go back into a little bit of history here, having listened to all this nonsense that I've heard all morning, and think of a few cases where those persons who were able-bodied people to work, decided to heck with it because of the kind of environment that they had when the NDP were in the government of the day, and said, I'm not going to work because it is a lot easier to be on welfare.

Cases have been brought to court and when you go before the Appeal Board, which they are entitled to, if the municipality turns them down and says they have a job for them and they decide they are not going to accept it, or work for a little while and then decide that the other way is easier. They had a chairman on the Appeal Board on those days, Mr. Chairman, that said, they accused the councillor who was the chairman of the welfare, on any particular council, and charged them with the responsibility for this person coming before that court. I've also listened to the former chairman of the Appeal Board speak to the Rural Municipal Council Convention in the Fort Garry Hotel, who talked to those gentlemen who were responsible and elected people of the rural parts of Manitoba, and said that they were irresponsible, and she said that there was enough money to go around for everybody, regardless of how it was done.

These are some things, Mr. Chairman, that should be known when we are talking about people who are recipients of welfare. And let me make it very clear, Mr. Chairman, for the record, that I as a member of the Conservative Party have never been objected to individuals receiving welfare because of ill health or other reasons through no fault of their own, that they should receive that. I want to correct that impression that I have gathered from the members opposite and hope that the press and so on, are not gathering that impression, because I don't want the people of Manitoba to think that we in the Conservative Party are opposed to people getting any form of welfare.

And so the Member for Inkster also uses the analogy about this drought situation, and as usual he gave an excellent argument, but as usual, as I've said before, he only told you half the story when he talks about trying to protect and help the farmers because of an act of God that they are in a real financial squeeze. The other part that he failed to tell, it so happens that agriculture is an industry that is providing food for the people in the province of Manitoba and for the people of Canada. And if assistance of that kind isn't forthcoming, there are farmers who because of an act of God cannot provide that food, and the first people you are going to hear hollering to the highest heavens when the prices go up because there's a shortage, because the farmers cannot produce it, are the consumers of this province. And I suggest, Mr. Chairman, I don't think that the Member for Inkster would want to see that happen. I don't think that the argument now that he uses is valid in any shape or form.

One other thing, Mr. Chairman, that the Member for St. Boniface mentioned, and it was mentioned also by a member last week when we were in the House, and I want to put an answer to this, for the record, is that the 40 that we were complaining about not getting if we didn't sit on Saturday as opposed to on Monday, I for one member, Mr. Chairman, take very grave objection to, when they are trying to create the impression, and they used this as an example, in regards to this legislation, that it was terrible to think that we were sitting on Saturday morning because we wanted to get the 40 a day.

Mr. Chairman, I understood, to make it very clearly understood by all members, that if we didn't sit Saturday, we'd be back Monday, and the members in the NDP Party are pretty well all in the city or very close to the city — they didn't stop to think about the members of the Conservative Party who had a 500-mile trip to make if they had to come back on the Monday morning and go home again on the Monday night. That was the basic reason why we wanted to sit on Saturday morning and not on Monday, and I want to make it very clear, Mr. Chairman, that for the Member for St. Boniface and the Member for Logan to try to give the impression to the people of Manitoba once again, and which is a false impression, and I take very grave concern on that matter.

MR. CHAIRMAN: I have to call the member to order. We are dealing with Bill No. 39.

MR. EINARSON: Well, Mr. Chairman, I listened for almost two hours to that same kind of debate, Mr. Chairman, from members opposite and I just wanted to make these few comments, to put these facts, as far as I am concerned, on the record to show to members opposite that what they are saying is not totally correct.

MR. CHAIRMAN: Mr. Corrin.

MR. CORRIN: Mr. Chairman, I wanted to go back to some of the opinions that were submitted to us by the delegations. As I said earlier, we heard from Mr. Riley and we received his opinion and through him the opinion of the Manitoba Court of Appeal with respect to the present state of the law. Members should also be reminded that we heard from the Manitoba Association for Rights and Liberties. Their Legislative Review Committee, chaired by Garth Erickson, said as follows, and you know, Mr. Chairman, I think we should remember because presumably they have no axe to grind.

In dealing with Clause 2(h)(1) they said that this proposes to include gifts — and I am reading — gifts, gratuities, whether in cash or in kind, received by an applicant on a one-time basis or otherwise as a financial resource. They said that their group was concerned regarding this provision, because neither gift nor gratuity is defined anywhere in The Social Allowance Act. They go on to say that it our understanding that the government would not consider a gift to send a child to camp as a financial resource, however, under the proposed amendment there can be no assurance that this will not occur. I think that is really the point. Everybody seems to be

concerned about protection from bureaucratic arbitrariness.

They went on to say that we believe the Act should stipulate what constitutes a gift or a gratuity. At the very least, if the government does not intend that all gifts and gratuities be included as financial resources, then these exceptions should be stated in the Act.

Again reinforcing the submissions made by the Member for St. Boniface, the Member for Inkster, myself, the Member for Fort Rouge, and the several delegations that appeared; the Manitoba Association for Rights and Liberties, Mr. Chairman, evinces the same sort of concern. They are concerned about the arbitrariness, the lack of definition within the Act.

I think everybody can agree that generally speaking it would probably be better to leave the situation as it currently is and not try and doctor up the Act. I, for one, am willing to consider the necessity for the inclusion of gifts or gratuities in kind. If that was a defect inherent in the current legislation, then I suppose I would be willing to recognize that such an amendment, a slight amendment as that might be appropriate.

What I take great exception to, though, is the clause that would include such gifts and gratuities, even if they were on a one-time basis. It is the total absence of definition, as everyone has indicated. There is absolutely nothing to guide the bureaucracy, nothing to spell out explicitly what a person's rights might be, and that is very bothersome and potentially, Mr. Chairman, think fraught with difficulty.

It seems to me that notwithstanding the Minister's assurances that there will be humanity and compassion in the administration of the legislation, that there is a possibility that as in the Wuziak case, there will not be, that common sense will give way to some less worthy emotion, and people will be subjected to harsh treatment. I think if, as I think we all agree, that is a possibility, that we should make the law clear, we should define what we mean to do in black and white terms in order that people know what the government intended to do.

This is a very fuzzy sort of amendment, and you know, I don't think people are wrong in taking the Minister to terms on the basis that this amendment seems to be an effort to address the Wuziak case. It appears that the government is moving to block what they perceive as a loophole and on that basis I think it is fair for people to infer that the government agreed with the arbitrary decision of the department, and on that basis I don't think the member who has just spoken is correct in imputing motives to this side. I think clearly that the government has exposed itself to that sort of criticism by virtue of the way it has gone about dealing with this particular matter. Obviously, it is unacceptable to a wide cross-section of the public.

We had a brief from the Legal Aid Lawyers Association, who are most immediately involved with these sorts of cases; we had a brief from a lawyer who specializes in that particular area; we heard from the Manitoba Association for Rights and Liberties, a representative group that seems to be doing a lot of work with respect to law amendments committee bills and consideration of those bills. It

seems to me that all these concerns deserve some critical review and analysis.

My own suggestion, Mr. Chairman, is that we leave this particular — if there is a disposition on the part of all members in this regard — that we leave this particular section and go on to the next amendment. I don't think we are going anywhere, unless the Minister is willing simply to indicate that he is intractable, and wishes the passage of the provision as it currently exists, and if that is the case, I suppose we could vote it before 12:30.

MR. CHAIRMAN: Mr. Minaker.

MR. MINAKER: Mr. Chairman, just to make it very clear to the honourable members opposite that we are not against charity, and our government isn't against charity. I think what we are looking at is what level of charity does the department or the government accept and recognize that that level is adequate enough and additional social assistance isn't required. I think it is very clear that is what your amendment is also putting forward, that you support charity, but to what level of charity do you accept before you say, well, does the individual family need additional assistance? That is what you are trying to establish with the amendment, and I suggest that the clause that we have in here, (iii), is trying to achieve the same thing, and what maybe we are forgetting is that you cannot cover each individual case, it is impossible, and that is why there is in the clause with the exception of exemptions specified in the regulations.

This is what we are proposing and to continue with the same administration that we have done in the past and the former administration did. It will be a question that we will never answer, I don't believe, by putting it in black and white in the legislation itself, it will be done by regulations and regulations are, I have found, to be the most efficient way of handling a problem this way and that if you tie down, as was suggested by Mrs. Westbury, that maybe we should say in the law that if a gift is under 300 it won't be counted. The problem is, if that is the wrong amount, then we have to wait until the following session to make the amendments to the Act, whereas in the regulations it can be done immediately by Order-in-Council.

What I am suggesting to the members of the Committee is that we are not against charity. The question is to what level do we allow charity to be given to a recipient and then say that in addition to that they need further assistance. The main criteria that we have used, the department has always used, is one of need, that obviously if somebody receives a gift of 10,000, the question mark comes up, should they, in fact, require additional assistance of taxpayers' money?

That is why the clause in the Bill is put forward in the way that it is and I can assure you as a Minister that will be the approach that we will take, that in the instance where common sense tells you that one-time gift should not be considered, it definitely will not be considered; but each individual case has to be dealt on its individual merits. This is why we are putting the proposal forward and we would like to see it passed in the way that it is put forward in

answer to the Member for Wellington's question regarding the clause in question.

MR. CHAIRMAN: Mr. Corrin.

MR. CORRIN: If that is the case, Mr. Chairman, and I say this respectfully through you to the Minister, why does he bring this amendment forward at all, because that is the current state of the law. They are all being dealt with individually, your department is making judgment calls, and people can go to the court if they don't like it, so what is the problem? I say that with all due respect to the Minister, Mr. Chairman. What is the need for the amendment at all if that is the rationale for it? I mean, it seems to be totally unnecessary. If he can tell us that, if he can explain to us, in view of his remarks, why he needs it, then maybe we will all vote for it.

MR. MINAKER: Mr. Chairman, basically it is being unable to determine what is a regular gift. If it is once a year, it takes two or three years to establish this and so it is practically impossible to determine the definition of a regular gift at the time that it is received.

MR. CORRIN: I don't understand the problem. The departmental staff now is in the position where they can look into past circumstances and irregularities, they can assess that, they can evaluate whether or not there is any constancy and consistency and regularly in the gifting. Obviously, they can make a decision based on their critical judgment; having exercised their current right to make such a decision and exercising their discretion, the assistance applicant can appeal that decision to what we call the Welfare Appeal Board, and at that point, Mr. Chairman, I think we all agree, that either party can exercise the right of appeal to the Manitoba Court of Appeal if they feel that the decision is wrong.

It seems now, Mr. Chairman, that obviously because of the Wuziak case, a body of law has grown up. The Manitoba Court of Appeal has defined the differences between income and capital assets, they have dealt with the Wuziak case. Obviously anybody will be aware of the case. I mean, presuming that anybody who was going to go to the Court of Appeal would have a lawyer and I am sure the department is well assisted. So everybody knows what the status of the situation is now, it has been defined. The department spent, I would imagine, far more than excess of the 400 Mrs. Wuziak's boyfriend spent on the air ticket determining the state of the law in the Manitoba Court of Appeal. We heard it took a couple of days and I presume the departmental solicitor's salary was far in excess of that, as well as the three judges who heard the case, who were also being paid partially from provincial coffers.

Mr. Chairman, it is beyond my understanding why we need the amendment on that basis. It appears, Mr. Chairman, that the amendment is there just to include all sorts of gifts and it is there in order that the department does not have to fuss or bother with the Court of Appeal in the future.

MR. CHAIRMAN: Mr. Green.

MR. GREEN: Mr. Chairman, I would like to pick up from what the Member for Wellington said and say it as concisely as I can, but it is his thought. I think what he is saying is that we all understand the solution, what we can't understand is the problem.

MR. CHAIRMAN: Committee rise.