



Third Session - Thirty-Sixth Legislature
of the
Legislative Assembly of Manitoba
Standing Committee
on
Law Amendments

Chairperson
Mr. Jack Penner
Constituency of Emerson



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MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Sixth Legislature

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LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON LAW AMENDMENTS

Thursday, June 26, 1997

TIME – 3:15 p.m.

LOCATION – Winnipeg, Manitoba

CHAIRPERSON – Mr. Jack Penner (Emerson)

VICE-CHAIRPERSON – Mr. Ben Sveinson (La Verendrye)

ATTENDANCE - 11 – QUORUM - 6

Members of the Committee present:

Hon. Mrs. Mitchelson, Hon. Messrs. Pitura, Radcliffe, Reimer, Toews

Ms. Barrett, Ms. Cerilli, Messrs. Martindale, Penner, Santos, Sveinson

APPEARING:

Mr. Gary Kowalski, MLA for The Maples
 Mr. David Langtry, Assistant Deputy Minister,
 Child and Family Services Division, Department of
 Family Services

MATTERS UNDER DISCUSSION:

Bill 48–The Child and Family Services Amendment
 and Consequential Amendments Act

Mr. Chairperson: Good afternoon. Could the Standing Committee on Law Amendments please come to order. This afternoon the Committee on Law Amendments will be continuing consideration of Bill 48, The Child and Family Services Amendment and Consequential Amendments Act.

We had made changes to our committee, and our Vice-Chairman has been taken off the committee. We need to elect a new Vice-Chair.

Hon. Jack Reimer (Minister of Urban Affairs): I would like to nominate the member for La Verendrye, Mr. Ben Sveinson.

Mr. Chairperson: Mr. Sveinson has been nominated. Any other nominations? Seeing none, Mr. Sveinson, you will be the Vice-Chair.

Mr. Doug Martindale (Burrows): Mr. Chairperson, when the Minister of Family Services (Mrs. Mitchelson) announced the review committee to look into The Child and Family Services Act, the headline in the Winnipeg Free Press said it was a blueprint for child welfare reform which was probably—it sounds like a quote from a press release.

I am wondering if the minister can tell us if she believes that this bill reflects the things that she announced when she appointed the review committee. There were a number of concerns that she expressed, for example, about the high number of children in care, and I am wondering if it is her belief that any of the plans that were identified in the July 26 Free Press article are actually in the amendment bill.

Hon. Bonnie Mitchelson (Minister of Family Services): Mr. Chairperson, indeed, there were several different components to our announcement around Families First, the document that was put out by our government, and the consultation workbook on review of The Child and Family Services Act was one piece of the whole overall picture. I believe my honourable friend has had a copy of the document, Families First, and it is a document that we used to do several different consultation meetings throughout the community, specifically in Winnipeg, around how we could try to ensure that we all share the responsibility and share finding the solutions together for trying to prevent children from having to come into care and seeing whether there were other ways of delivering service.

Not everything that needs to be done in the child welfare system is necessarily legislative change, but what we heard from the public is included in the

legislation regarding the amendments. Some of the other things that we will be doing do not require legislative change, require policy change, a different direction, inclusion of many of those that live in neighbourhoods and work in neighbourhoods and understand the issues in their neighbourhoods as part of the process. I think it was very clear from our community consultations that many did want to be involved in a much more significant way.

What I have heard from time to time from members of our community is the fact that there needs to be a broader process: a community panelling process for members of the community that work in organizations that deal with children and troubled children; people from Ma Mawi, for example, who feel that they would like to be a part of the case planning process for children that are brought to the attention of the child welfare system. They believe that they might be able to find some of the solutions right in a child's home neighbourhood or home community for the kinds of family support that might be needed if there is not a protection issue. I think we need to work very aggressively, and we will be, have been and will continue to be until we can get that kind of a process set up.

So as I indicated, we want to ensure that everyone is involved in trying to find the solutions. We will ensure that we continue to pursue that and work with those that have expressed an interest and a desire. I think my honourable friend will be very pleased with some of the announcements that will be forthcoming this year to try to change in some respects the way we do business.

* (1520)

Mr. Martindale: Mr. Chairperson, the other headline in the Free Press that day says number of kids in care sparks system overhaul, and the minister announced that the system would be overhauled in an attempt to reduce the unacceptably high number of children in care. I would like to ask the minister if she believes that the overhaul of the child welfare system is reflected in this amendment bill?

Mrs. Mitchelson: Mr. Chairperson, no, these are legislative changes that needed to be made. There were several changes around adoption, and we brought in a

new piece of adoption legislation. There were recommendations for changes to child protection, one of them being the Child Abuse Registry Review Committee and the way it worked. It is one of the more significant changes in The Child and Family Services Act, but the change in direction for Child and Family Services, a lot of it is policy direction, new direction that does not require legislative change, but it requires the involvement of those in the community that believe they can make a difference.

Mr. Martindale: So all of the other things in the box in this story regarding the major elements of the minister's plan presumably are not in legislation as well. For example, reviewing, monitoring and enforcing service standards to families and children; instituting compliance audits to ensure appropriate services are delivered; implementing a consistent risk-estimation system to help workers assess children who may be at risk.

Mrs. Mitchelson: Mr. Chairperson, those are all things that are in process and will be done without legislative change, can be within our ability to make those changes. Compliance to standards is already part of the process that we follow, and we will be enhancing that. It did start with the change and focus right within the branch to a more direct focus on compliance. We have been working very actively to try to develop a risk assessment that can be used right across the board and looking at user-friendly standards, so all of those things are in progress right now. There will be some announcements made in the very near future. I am not going to say soon, because I know my honourable friend always reminds me, but I can indicate that this year changes will be made.

Mr. Martindale: I have in front of me the report of the intersectoral steering committee on the care and protection of children submitted to the Child and Youth Secretariat, dated June 29, 1996. There are several recommendations which refer to legislation. For example, on page 7, No. 3, strengthen legislation and/or practice to ensure that upon first contact, priority is given to immediately removing the abusive parents or parent from the home.

I would like to ask the minister a number of questions, the first of which is: Did the minister or her

staff consult with this Child and Youth Secretariat committee or any or all of the committees that had recommendations about legislation?

Mrs. Mitchelson: I think, Mr. Chairperson, that in that recommendation I heard the words "and/or," so I would imagine that through nonlegislative means we can look at that, examine that and see whether it is appropriate in individual circumstances or situations.

Mr. Martindale: I would hope that the minister might look at that. My understanding is that in other provinces they have made policy changes so that adult abusers are removed from the home rather than the abused.

Also, on page 13, it says, legislation needs to support, mandate the family constellation as central to all decisions affecting children. Is that recommendation reflected in the legislation?

Mrs. Mitchelson: I can indicate that we are looking at a family conferencing model that would be all-inclusive of having family involved and look at a panel process to see what is in the best interests of children. That will be part of the process.

Mr. Martindale: The second recommendation on that page is that legislation needs to support/mandate intersectoral participation in permanency planning and resourcing. Is that reflected in this amendment bill?

Mrs. Mitchelson: Mr. Chairperson, I indicated that procedurally we can make many changes without legislative change. I can indicate to my honourable friend that case planning is an integral part of that. We want to ensure that at the first intake into the child welfare system we look very quickly at what the short- and long-term plans need to be for children. I indicated, if we need to bring those from outside of the mandated child welfare agency to gather around the table to help in that planning, we are going to be doing that.

Mr. Martindale: The third recommendation on this page says, permanency planning expectations to be defined in the act. Are there any amendments reflecting that?

Mrs. Mitchelson: Permanency planning should very much be part of the case management. Right on intake we should be determining whether in fact there is a short-term solution, whether there is an opportunity or there might be an opportunity in the future for that family to be reunified or whether that child would have to become a permanent ward. Then the options for that kind of permanency planning need to be developed, whether they are adoption-extended family placement, whatever might be appropriate in the individual circumstances. So that will be happening as we move towards trying to ensure that at the earliest opportunity, children have a plan that is appropriate in their best interests for either a speedy reunification or the earliest possible opportunity for some other option for a permanent plan.

Ms. Marianne Cerilli (Radisson): Prior to breaking, the committee rising, we had been talking a lot about the financial requirements and assessment under the act. The new provisions for that to be done under the act so that children taken into care will have their parents that can pay help CFS by supplementing those costs for care. In the presentations, we heard a number of presenters talk about poverty and the effect that that is having on a number of families. There was one brief from the Social Planning Council that raised the whole issue of assessments that are being done by Child and Family Services and other assistance that is being brought forward to the family once they become involved with CFS to help them financially. This is an area, I think, that deserves a lot of attention.

I am wondering, first of all, if the new information that is going to be collected on families, the financial information, is that going to be used in any other way by CFS with respect to the income level and the poverty suffered by many of the families? There were recommendations that were made of different things that could be done in terms of community-based solutions to help deal with poverty. So I am wondering the financial information that is going to be collected, is that going to be used for anything else other than determining how much money a given family could have to supplement CFS's care?

Mrs. Mitchelson: Well, Mr. Chairperson, if we have people that are living in poverty, obviously, the issue of collection of any support for their children, if they

might be in care, would be out of the question, but I guess my honourable friend makes a good point. Quite frankly, as we start to get into family conferencing, community panelling, where we bring agencies, people that serve on agencies outside of the Child and Family Services system into the picture to try to determine what might be in the best interests of the child, we do know that many of the agencies that are not mandated out there but are receiving support from government or any other foundation or the private sector certainly have all kinds of programming that is ongoing.

* (1530)

Gosh, you know, if there was a family that was living in poverty, and we know that we would not be able to charge them to support their child while they might be in care, there might be an ability to refer to a place like, if it was in the neighbourhood, the Andrew Street Family Centre, where they have a community kitchen where they teach parents how to prepare nutritious meals. They get together and prepare meals to take home to feed their families for two or three days. You know those kinds of programs would be ideal.

As we reach into the whole community to try to find what resources are out there and what might be available in their neighbourhood, there might be all kinds of options and opportunities to help parents. If there was an opportunity through a program like Taking Charge!, if in fact that was appropriate, and the parent happened to be a single parent, and there was some training opportunity through Taking Charge! or some other program that might be available through the Aboriginal Council of Winnipeg. I think critical that all of those options and opportunities be explored and that people understand what services and supports are available out there. So I know that if someone is living on welfare or living below the poverty line that in fact if there are resources that have not been tapped into, they certainly could be.

So it might be a good opportunity to explore the whole issue of poverty and whether there are not programs that might be very beneficial to those that have some sort of family crisis and might need some support. I thank my honourable friend for the comments that she has made, and it might be an

opportunity for us to work really proactively on that aspect of poverty.

Ms. Cerilli: Well, I just want to follow up with a few other issues, and I appreciate the minister's interest. Currently, what is the requirement for Child and Family Services to assess the financial and socioeconomic status of the family?

Mrs. Mitchelson: Mr. Chairperson, I am not sure I really understand the question. I have indicated very clearly, I mean if someone has a child apprehended or becomes involved in the child welfare system and they are on social allowances, we know what their income is, and they are going to not be required to pay anything. So I guess I do not know, is there another question?

Ms. Cerilli: I am wondering, does the minister agree with the recommendation that was made by the Social Planning Council? It says that Child and Family Services would be required to provide or arrange financial support to families where financial stress is a factor in placing children at risk. Do you agree with that recommendation or with that—

Mrs. Mitchelson: Do you want to show it to me?

Ms. Cerilli: It is in the presentation that was made by the Social Planning Council. I will read it as it appears in the report. It says, we recommend The Child and Family Services Act be amended to require the agencies to provide or arrange financial support to families where financial stress is a factor in placing children at risk. I am assuming the minister did not support amending the act to require that, because she would have done that, but I am wondering if she generally supports that approach and for Child and Family Services then to be involved in arranging financial support. There are all sorts of other things that could be done. The minister has made some suggestions of referring to other programs. They should be referred, for example, to apply for programs like the Shelter Allowance for Family Renters, for example. It is more of a community development approach, I guess. Someone would get involved either through Child and Family Services, or Family Services refer somewhere else, so that the family gets more support in dealing

with their financial situation. I am wondering if the minister supports that.

Mrs. Mitchelson: Mr. Chairperson, I know from time to time that the agency does contact our social allowance program if in fact there is a need for some emergency social service support, but I think what my honourable friend is saying, going beyond that. I guess, you know, The Child and Family Services Act does speak very much to our mandated agencies, and my sense is that there is a large pool of resources out there in many of our community agencies and programs that are available that can and should be tapped into. That involves the mandated agencies working very aggressively with the nonmandated agencies.

From time to time, I hear that those kinds of relationships have to be strengthened. That is all part of the process of community panelling, working more aggressively and proactively with places like Ma Mawi who have indicated clearly if they understood the needs of the children, the aboriginal children that are part of the mandated child welfare system, that indeed they believe they could help to find the solution. So those partnerships have to be strengthened, and we will be working towards trying to help facilitate that.

Ms. Cerilli: On the one hand, I am concerned about requiring CFS staff to do any more than they are already doing. This legislation is, in some ways, putting more burden on them, but on the other hand, if there is more financial information that is going to be collected now, I think that there is then an onus or it makes sense anyway to look at developing procedures and tools for those procedures to be in place, so that there can be assessment done on the full picture, financial and socioeconomic picture for that family and, to do the kind of linking that the minister talks a lot about, that we now have a Youth Secretariat that is supposed to develop those kinds of relationships between different agencies. So, if it is not CFS that would do this financial assessing and arranging, then they would make sure that some other agency is going to do that. What I am looking for is an indication that the minister supports that, and I see her nodding her head affirmatively. I am assuming that then she does.

Mrs. Mitchelson: Absolutely.

Mr. Chairperson: Clause 1.

Mr. Martindale: I have questions under Clause 14 of this bill which says that where an agency receives information that causes it to believe that a child is or might be abused, the agency shall, in addition to carrying out its duties under subsection 18.4(1), refer the matter to the agency's child abuse committee established under subsection 19(1).

I understand that there will be an investigation, and I am wondering who does the investigation, who is the investigation reported to.

Mrs. Mitchelson: As it presently exists and as it will into the future, when an allegation is reported to the agency, it is the agency worker that goes out and does the investigation. That is the way it has been in the past, and that is the way it will continue to be. If there is suspicion that there has been abuse, that then will be referred to the agency's child abuse committee.

Mr. Martindale: Under 18.6 where the director investigates or, according to the briefing notes, there will be an independent investigation unit, will that unit be made up of staff from a Child and Family Services agency?

* (1540)

Mrs. Mitchelson: Mr. Chairperson, the director's powers will be to either investigate himself or have someone investigate allegations of abuse of children in care. This is the issue that the Child Advocate has raised on many occasions. So this is just to clarify that the agency and—at least alleviate the concern that many people have, that when there are allegations of abuse of children in care, that the agency is investigating itself. This would not allow the director those powers. So it is taken outside of the agency, and it is an independent investigation.

Mr. Martindale: Under new Section 19(1) each agency shall establish an agency child abuse committee to review cases of suspected abuse of a child. I believe someone pointed out to me that abuse is not defined in the act. If I am going by memory—and looking up the bill—abuse is not defined in the definition section. So who defines abuse, or where is it defined?

Mrs. Mitchelson: There are no amendments to the definitions of abuse, but the definitions of abuse in this act are on page 2 of the existing act. What we are doing is just making amendments to the existing act.

Mr. Martindale: Thank you for clarifying that for me. I know that the minister has already explained her amendments, so I apologize if I am being redundant here. Under 19(3) where the accused has the opportunity to provide information, I presume that is in writing and in writing only. Is that correct?

Mrs. Mitchelson: Mr. Chairperson, it is an informal process at the local level. There may be options. There may be the opportunity for the abused to appear before the committee, or there may be the opportunity for the abused to submit an affidavit or information in writing.

An Honourable Member: The abused or the accused?

Mrs. Mitchelson: Accused, I am sorry. I am sorry, the accused. So it could be either one of those processes. That is something that we have to work out at the local level with the abuse committees and determine what the process will be in regulation, but there could be opportunity for the accused to appear before that local committee, and in other instances it may be written information that is presented.

Mr. Martindale: Is it envisioned that the victim might appear before the local committee but, of course, not in the presence of the alleged abuser?

Mrs. Mitchelson: Just as at the court level, the child would not be compelled or called before the committee, but if there was a sense that that child wanted to make representation before that committee, they might be provided with that opportunity.

Mr. Martindale: There is a very controversial phrase in the briefing note that I had that I referred to in questioning some of the people presenting briefs that now I have a chance to ask the minister for clarification. It says the child abuse committee considering the issue may resolve the matter through family conferencing, mediation or other dispute resolution. I wonder if the minister could tell us what kinds of circumstances mediation would be or could be used.

Mrs. Mitchelson: I have tried to make that extremely clear. I think that some of the aboriginal agencies prefer to use the mediation process in resolving some of their issues. I guess one instance that I could certainly cite would be in a custody battle where one parent has accused another parent of abusing the child, so it was referred to the local committee. Now, if that local committee determined that the parents needed to go for some sort of mediation or family counselling because they were not serving the best interests of their child in the manner in which they were dealing with their custody dispute, that would be recommended so that the parents could sort out their problems and get on with their lives without hurting or harming their children in any significant way. So those would be the instances. If there was a child in need of protection, then the counselling and family mediation would not be an option. Those should be tools that should be there and available at the local level should they feel that they need to be used in the kind of circumstance I just explained.

Mr. Martindale: Will this be spelled out in the regulations which would provide guidance to the local child abuse committee?

Mrs. Mitchelson: There is a good possibility. I think there will be guidelines for the local committees that will be set up, and I cannot even guarantee today that the local abuse committees will be exactly the same structure as they are today. I think we need to look at that and discuss that with agencies. It is the agencies that appoint the committees, but there may be guidelines that are set out that indicate what backgrounds or qualifications people might need to be on those local committees.

Mr. Martindale: Does the minister mean that each agency will be writing up its own guidelines?

Mrs. Mitchelson: Mr. Chairperson, we will have standard guidelines across the province and certainly will be working with individual agencies around, ensuring that the committees are there and up to standard.

Mr. Martindale: Is this option of mediation a response to the high number of allegations of abuse at the time of marriage breakup?

Mrs. Mitchelson: Mr. Chairperson, I think it is a combination of a couple of things. I think if you look to the native agencies and some of the agencies that have done an excellent job of—and Awasis is one that comes to mind that has done a really good job of trying to deal with the issues of protection and bringing children into care. They have worked within families in a very significant way to try to keep them together, and I guess it is the family conferencing model that they have used. So that is one of the reasons we have looked at this.

The other reason, of course, is that we find that children are being used more and more in custody battles, and it really is not in the best interest of the child. So if we can try to direct parents to a process that helps them to understand very clearly that they are hurting their children as a result of some of their dispute or activity, I think that is a tool that could be used and should be used.

Mr. Martindale: Will the child abuse committees be allowed to use videotaped testimony or interviews with victims?

Mrs. Mitchelson: Mr. Chairperson, they do that now, and they will continue to do that under the new legislation.

Mr. Martindale: I am wondering if the minister would like to comment on the concerns that were raised by Dr. Charles Ferguson? Since the presenters were mainly here to present and ask questions of the members of the opposition in the very brief one-page submission that he made in addition to his letter to the minister, he said that claims made by minor children as regards sexual assault are only rarely heard in Criminal Court, I am wondering if the changes that were made in this amendment bill have a bearing on that or not.

Mrs. Mitchelson: Can I indicate to my honourable friend that, I guess, the child abuse committees at the local level review—Mr. Chairperson, I just wanted to provide some sort of background detail or information to my honourable friend. I guess, in the year April 1995 to 1996, the child abuse committees at the local level reviewed 1,365 cases of alleged abuse. Okay? Of that they substantiated that there was abuse in 412 cases, and I would presume that many of those might

have been children, young children that were not able to testify. Of those 412 cases, those cases were all put forward to have their names put on the Child Abuse Registry, and out of the 412—and the process today and the process in the future will be that once the local committee has reviewed the case and determined that there has been abuse, you receive a letter that says your name will be forwarded to go on the Child Abuse Registry unless you appeal. Today it is to the Child Abuse Registry Review Committee. When the legislation is passed, it will be to the Court of Queen's Bench. So the same process will still take place, and you have the ability to appeal.

* (1550)

Now, of the 412, only about 45 appeal. So the rest of the names automatically go on the Child Abuse Registry. Does that help to clarify things a bit? So, at the local level, there would have been over 350 names that were automatically registered. Many of those probably would have dealt with younger children who may not have been able to be heard in court.

Mr. Martindale: Of the 45 cases in the year that the minister is citing statistics for, 1995-96, how many were successful in appealing and how many were not? Presumably, some ended up with their names on the registry and others, if their appeal is successful, would not have.

Mrs. Mitchelson: Mr. Chairperson, 20 were registered and 11—okay, so some of them may not have been dealt with. So the number of 45 will not be—but 20 were registered and 11 were not registered. The year before, 16 were registered and 21 were not registered. I think if we take it on sort of a yearly average, it works out to almost 50 percent. One year it might be a little higher not registered, and another year a little higher registered. So that has been the disposition.

Mr. Martindale: Up to this point I have been advocating for the rights of children who are victims of abuse, and we may have more questions regarding that as well. However, there is another side, and that other view was presented, I think, by Ms. Zuefle, the Chair of the review committee, and maybe by others presenting briefs. I have talked to a few individuals who as adults

were accused of abuse. Of course, they have very strong views about their rights, and they, I think, should be pleased with this legislation, because I believe it does give those people accused of abuse more rights.

I am wondering if the minister believes that as a result of this bill, people will feel that their alleged abuse will be dealt with in a more speedy fashion, because one of the concerns and complaints that I have heard is that it hangs over people's heads for an inordinately long period of time, and it is very difficult to resolve. Even if they go to court, it takes a long time. They sincerely believe that in the meantime, they become victims, that they do not have rights, that they are being labelled, that it can ruin their family life, their career, et cetera. I am wondering if the minister believes that because of these amendments, they will get more speedy redress.

Mrs. Mitchelson: I would hope that, in fact, it would make the process a little speedier, especially at the local level, if all of the information is there from all sides for the committee. I mean, when you look at the names that are referred to an appeal process, if there is a 50 percent success rate and a 50 percent failure rate, there are 20 to 30 people that have been, I suppose, unjustly accused and had to go through a pretty onerous process. If in fact full information from all parties at the local level dealt with some of those, even a few of those up front, and their names were not referred forward and they did not have to appeal, that would certainly resolve the problem in a much more speedy fashion for those individuals.

I am not sure in the other circumstances where, you know, they are referred to the registry and found that they should be going on the registry, whether the court process will be any shorter or longer than the Child Abuse Registry Review Committee process today. We will have to, I guess, monitor that to see, but I do know that even at the Child Abuse Review Committee today, the hearings are becoming longer and longer. It has become a quasi-judicial process, and sometimes they are 3 or 4 days, up to 12 days in hearings presently through that process. So it is a pretty onerous process right now, and I think we will have to monitor to see whether in fact the court process is any speedier than the Registry Review Committee as it exists today.

But I do think that maybe up front some of the people that are not being registered as a result of the review process, if there was full and factual information up front at the local committee, might not have to go through that appeal process.

Mr. Martindale: Did the minister consider—and I am not sure that it is even appropriate, but certainly the Minister of Justice (Mr. Toews) would know—using family court instead of the Court of Queen's Bench?

Mrs. Mitchelson: I guess the recommendation that came from the Zuefle report was the Court of Queen's Bench, and we just felt that was the most appropriate, Family Division, Court of Queen's Bench. The judges in the Family Division are well versed in the issues. Its divorce hearings go before the Court of Queen's Bench, Family Division. So that was our decision. I am not sure we really thought about the Provincial Court as an option.

Mr. Martindale: Can the minister tell us how long it takes to get a case before a judge in the Court of Queen's Bench?

* (1600)

Mrs. Mitchelson: My understanding is, from the Minister of Justice, that it is one of the best processes right across the country, right here in Manitoba.

Mr. Martindale: Since the Minister of Justice is here to give expert advice to the Minister of Family Services, I would like to ask which would be speedier. Would it be speedier to get before a judge in family court or in Court of Queen's Bench?

Mrs. Mitchelson: I will just get the Minister of Justice to answer that.

Hon. Vic Toews (Minister of Justice and Attorney General): The family court is a part of the Court of Queen's Bench.

Mr. Martindale: The minister did not really answer my question. I wonder if he would try again.

Mr. Chairperson: The honourable Minister of Justice, to try again.

Mr. Toews: Well, we have a Court of Queen's Bench here in Manitoba. There is an aspect of that court or a division of that court that is called the family court. Judges of the general division are transferable into the Family Division in order to assist with any problems in scheduling that they might have, but my understanding is that that flexibility increases the ability of getting trials on very, very quickly. From personal experience, I can only speak more of the general side of the Court of Queen's Bench, not having practised family law myself. But there are often cases in Manitoba where the courts are willing to hear the trials long before the lawyers are even ready to proceed, so we do have a very expeditious system. No doubt there can be improvements made, and we are continuously looking at seeing how we can better serve the people of Manitoba.

Mr. Martindale: I am not sure I heard an answer to my question which was: Is it faster to get in front of a judge in Court of Queen's Bench or in family court? See, I am not a lawyer, so please understand.

Mr. Chairperson: I am going to ask the Minister of Justice to clarify the court procedure for the honourable member so he understands which court we need to go to.

Mr. Toews: Well, you know, I could give you general answers and I think generally speaking they would be correct, but I have a member of my staff here today who could probably give you very accurate information in respect of the family court. I recall I have had dozens and dozens of child welfare trials that I conducted on behalf of the director of child welfare many years ago when Mr. Phil Goodman was giving me instructions. Mr. Goodman is here as well, and I know that the Family Division of the Provincial Court proceeded very expeditiously, and I understand that the process in the Queen's Bench is no less accommodating in respect of expediting, especially cases where there is an urgency to the matter. So usually the delay is not an institutional delay, it is a delay that both parties or one of the parties requires that delay in order to obtain appropriate evidence for the case. You can understand that a lot of these cases come up in a hurry. An incident will occur, the agency, in my experience, reacts very quickly and appropriately in ensuring that the child is protected, and then they need to develop

evidence through expert witnesses or through consultation with agencies such as the police. Similarly, a mother or a father who has met with this kind of challenge needs time with their lawyer to develop a case.

So I do not think it is really a case of institutional delay, if that is the question here. My experience, and I could be corrected by people who have more current experience, but my experience is that it is a delay that is necessary for the purposes of the parties.

Mr. Chairperson: Before we proceed any further along this line of questioning, I would remind the members that we are dealing with Bill 48, and the advice that is being asked for, I think, could be obtained outside of this room at a later date and would not have any reflection on the administration of this piece of legislation. So I would ask members that we maintain our questioning to the pertinency of the bill.

Mr. Martindale: Well, Mr. Chairperson, I guess that sounds like a ruling, so I will respect your—

Mr. Chairperson: It is not a ruling; it is just a suggestion.

Mr. Martindale: Okay, thank you, but I did ask the minister if she considered using family court, and she said that they took the recommendation of the committee Chair and then had questions for the Minister of Justice who did not answer my question, and I guess the Chair does not want us to get into this area.

Mrs. Mitchelson: Mr. Chairperson, I think my colleague and friend, the Minister of Justice, answered that question quite clearly, because I heard an answer, and I think he was saying that both sides worked equally well.

Mr. Martindale: Well, I would still like to know on average which is the speedier process to get—before a judge at Provincial Court or Court of Queen's Bench.

Mr. Toews: Well, if one wants to analyze both levels of court, one cannot simply look at what is the speedier justice. There are issues related to what are the remedies that each court can give, because one is a

Provincial Court and the other one is a Court of Queen's Bench. The Court of Queen's Bench is a court of superior jurisdiction, meaning that it has full powers beyond statutory jurisdiction. The Provincial Court is a court commonly referred to as a court of inferior jurisdiction, by that not meaning that the justice is any less but that it is statutorily based. So there might be certain remedies in the context of a case that a Provincial Court could not grant which a Court of Queen's Bench judge could grant.

If you are saying which one would be the speedier one, it depends what the specific remedy sought is. What we have attempted to develop in this province is in the superior court an expertise in family and child matters. This province is recognized as setting up that kind of a court, as being a leader in that area, and the Court of Queen's Bench has the superior jurisdiction, that is, the full jurisdiction. In certain areas of the province, and I assume that that still continues, that jurisdiction is also held concurrently by a Provincial Court judge, but I do not think there is any—it is very, very difficult to compare the two and say, well, this can be done there, but this cannot be done there. I think that, legally speaking, jurisdictionally speaking, procedurally speaking, there are definite advantages to the Court of Queen's Bench. The Constitution limits some of the remedies that we can give to a Provincial Court. I do not know how relevant this is all to this discussion, but it is a very difficult question to answer in a very short period of time.

Mr. Chairperson: I am going to again remind the members that we are dealing with Bill 48 and would ask that we maintain our questions relevant to the bill instead of wandering off into various court discussion and procedural matters of court. So I ask, Mr. Martindale, please would you redirect your questions to the bill?

Mr. Martindale: Well, I would like to thank the Chairperson and also the Minister of Justice (Mr. Toews) because I think I am getting helpful answers now. If I could paraphrase, I think what I heard the Minister of Justice saying is that going to the Court of Queen's Bench is the most appropriate way of dealing with these matters. Is that correct?

* (1610)

Mr. Toews: I would think so. If we are talking about the child registry in this particular case, I will tell you why I believe it is the most appropriate. This is a personal opinion, and one that obviously has been adopted in this legislative scheme, and that is the Court of Queen's Bench generally holds supervisory jurisdiction. So what we have here is an administrative tribunal, if I can classify the committee as that, which I believe it is—a quasi-judicial administrative tribunal. The appeals either in respect of questions of law, fact or jurisdiction from an administrative tribunal usually go to a superior court, a Court of Queen's Bench.

One does not usually refer a review of an administrative tribunal's jurisdiction which is an inferior jurisdiction that is statutorily based to another court of inferior jurisdiction, again in the statutory sense. So, in my opinion, the most appropriate court to review lower court decisions or even to hear hearings de novo are a Court of Queen's Bench. I think you will find that right across Canada because of the recognized expertise that Court of Queen's Bench judges have in matters of review and appeal.

Mr. Martindale: Thank you very much for that helpful explanation, and I think I am aware of other situations or other pieces of legislation where this is true, for example, The Residential Tenancies Act, where appeals from the review panels go to the Court of Queen's Bench.

Mr. Ferguson had a number of concerns. One of them was the difficulty of keeping volunteers. I am wondering if the minister has a different view? Obviously, she made radical changes in the process, believing that this would not be a problem, but we have the leading expert in child abuse in the province of Manitoba saying that there is going to be great difficulty keeping the volunteers on these child abuse committees.

Mrs. Mitchelson: Mr. Chairperson, I think I answered in a couple of questions back, or several back because the honourable Minister of Justice (Mr. Toews) has answered a few, that in fact the child abuse committees as they exist today may take a little different form or structure as we look to them having an expanded role or mandate at the local level. We will still want the professionals, but I think we need to look at the mix,

and we will be setting out in standards or guidelines what the composition of those committees should be, still remembering that the agencies do appoint the people, so we are not going to appoint people as government.

The agencies will appoint the people based on some standards and criteria that we set out, but you have to recognize that right now the Child Abuse Registry Review Committee does cost some money, and if there are additional costs that might be needed at the local level, those resources could be reallocated to that level.

So as we work through the process with the agencies and look at agencies—and I know for a fact that some agencies have stronger review committees than others do—I think we need to have a standard and a criteria set, and we will have to work with the agencies around those standards and those guidelines.

Mr. Martindale: Dr. Ferguson also had concerns about losing the input of experts because the new process will be too time consuming. Is the minister also concerned that we may lose experts from these committees?

Mrs. Mitchelson: Mr. Chairperson, I think we can work around that issue and try to ensure that there will be expert advice. That might be in the form of—I guess when Dr. Ferguson was looking at it or speaking about it, he was thinking it was in the manner that child abuse committees exist today. There is nothing to say that there could not be a roster of experts or one or two in the province that could not move from committee to committee if it was deemed appropriate.

Those are the kinds of discussions that we need to have. We want to make it as efficient as possible, and so that there might be a couple of experts that might be well received by all agencies that could sit on the abuse committees in one or several agencies if that was appropriate. So those are the kinds of things that need discussion and will all have to be sorted out before we proclaim the legislation.

Mr. Martindale: It seems to me that we are dealing in a vacuum here. You know, the minister keeps assuring me that everything is going to be okay, but the guidelines have not been written yet and we do not now

how many people are going to be on the committees, but we are hearing that the experts are not going to have time, they are not going to stay on but the budget is going to increase. I would like some assurances from this minister that indeed we will have experts on these local committees and that they will have the resources that they need.

Mrs. Mitchelson: The committees that are there presently already review all of these cases. There is not going to be an onerous additional amount of work to be done by receiving information and notifying the accused up front, so we do not anticipate that there is going to be an onerous increase in the amount of activity, but if in fact there is some concern at the local level, we are going to have to try to address that concern.

What I want my honourable friend to know is that very often, just like the vulnerable persons legislation—I mean, we passed the legislation. There was an awful lot of administrative work that needed to be done, there was training that needed to be done, all kinds of things that needed to be put in place. It will be the same, hopefully not as long a process as it took for The Vulnerable Persons Act, but I think we have an act that is up and running and working well because we took the time to put everything in place before we proclaimed it.

We are going to have to assure ourselves—I mean, this is enabling us to do this, to move in this direction, and as we get the structures and the processes and the standards and the guidelines and the education piece done, then the legislation will be proclaimed. It is a direction that we are going, it is enabling us to move in that direction and it will take some time. It is not going to be passed this week or this month or next month and proclaimed and go into effect the next day. It will take some time. We might be a year down the road before we get the consultation and the work done that has the best process possible in place.

Mr. Martindale: Well, the minister says that she is going to try to address our concerns, but we have Dr. Ferguson saying that he is concerned that the experts will not stay on the committee because they will not have the time. I would like some assurances from the minister that—because, obviously, the minister must

disagree with Dr. Ferguson that we will have the expertise needed on these committees. What assurances can the minister give or how can she assure us that what Dr. Ferguson is saying is not true and will not happen?

Mrs. Mitchelson: Mr. Chairperson, I think that Dr. Ferguson was sort of of the understanding that there would be a mini-trial process at the local level, and that is not the case. I think as we have talked to him and explained that and looked at the amendment that we will be able to work with Dr. Ferguson, in fact, to try to allay any of his concerns regarding this whole process.

Mr. Martindale: So I take it then that the minister has talked to Dr. Ferguson since he presented his brief and that he has changed his views.

Mrs. Mitchelson: Mr. Chairperson, I know that staff had talked to him around the amendments, and it certainly went a long way to satisfy him. The workload issue is an issue. We are going to have to work through that issue.

* (1620)

Mr. Conrad Santos (Broadway): Mr. Chairperson, I am trying to understand the institutional arrangement relating to the initiation hearing completion of any suspected child abuse from the hands of the child abuse committee. Under Section 19(1) it says agencies shall, in accordance with the regulations, establish a child abuse committee, supposed to review cases of suspected abuse of a child, and to advise the agency concerning what action, if any, may, in his opinion, be required to protect the child.

My question is—I am not familiar with this, so I would like to ask questions—what is the child abuse committee and how many members are there?

Mrs. Mitchelson: Mr. Chairperson, each agency has a committee, and they are not all similar across the province. There is somewhere from six to 10 members on that committee. Many of them are professionals. There might be a police officer, a teacher, a Child and Family Services worker, a doctor, those types of individuals, and the composition is different. Not every abuse committee is exactly the same. I guess we want

to ensure that there are standards across the province for abuse committees, and we will be developing that.

Mr. Santos: I would like to know if there are any minimal qualifications required to be a member of this review committee, child abuse committee.

Mrs. Mitchelson: Mr. Chairperson, the abuse committees are appointed by the agencies and there are some guidelines set out in regulation. We are just trying to see if we can find the regulation, but it talks about professional people such as doctors, teachers or any other person who the agency might feel appropriate to sit on those committees. So the agency makes its own determination. There might be other professionals in the community, other community members.

Mr. Santos: Mr. Chairperson, are there some lay members of the public who do not belong to the established profession who qualify and may become a member of this committee just to represent the general stream of opinion in the community?

Mrs. Mitchelson: Yes, Mr. Chairperson, there are.

Mr. Santos: Who defines the jurisdiction of this review committee? I heard the Minister of Justice (Mr. Toews) saying they are in the nature of administrative tribunals. They determine questions of facts. Who defines the jurisdiction of these committees?

Mrs. Mitchelson: There are guidelines and criteria in regulation today, and there will be guidelines and criteria in regulation under the new legislation. It says it is an informal hearing process to review findings referred to it by the agency of abuse.

Mr. Santos: So it will be the regulations. Who makes the regulations? Who writes the regulations?

Mrs. Mitchelson: Government writes the regulations. The Department of Family Services in this instance because it is our legislation.

Mr. Santos: So it is the Department of Family Services. Now this is a creation of the department, the child abuse committee, and it is now, according to the Minister of Justice, an administrative tribunal. It can present findings of facts. Yet its jurisdiction, what it

can do, the expanse of its authority is defined by the very agency itself. How is that in being both a prosecutor and interested party?

Mrs. Mitchelson: I think my honourable friend is a little mixed up in this. The local abuse committee is not an administrative tribunal. The local abuse committee is an informal process. It is a committee that is struck by the agency to hear allegations of abuse. The administrative tribunal I think that my colleague was talking about was the Child Abuse Registry Review Committee as it exists today. So there is a difference. That was the administrative tribunal, what we have at the local level as an informal hearing process, and that is not set by regulation; that is in the legislation.

Mr. Santos: All the legislation says in 19.1 that it will review the cases of suspected abuse of a child. Who suspects who?

Mrs. Mitchelson: I think I already explained that at the beginning of the process. I think that was one of the first questions Mr. Martindale asked, and that was, somebody phones up to an agency and says, I believe so and so has been abused. The Child and Family Services worker in the agency responds to that, and if that worker has reason to believe that that child may have been abused, it is then referred to the local child abuse committee to look at the facts and determine whether indeed they believe the child was abused, and if that was the case they would recommend that it go on to the Child Abuse Registry.

Mr. Santos: While this is going on, you got the phone call from someone saying this child is being abused. You send someone there to investigate.

Mrs. Mitchelson: No, the agency does.

Mr. Santos: The agency. When I say you, it means the agency. And these are not members of the abuse committee, or are they?

Mrs. Mitchelson: No, it is the social worker in the Child and Family Services agency.

Mr. Santos: On the basis of their investigation, they may or may not refer the matter to the child abuse committee.

Mrs. Mitchelson: Yes, you are correct.

Mr. Santos: If they decide to refer the matter to the child abuse committee, who calls the committee into hearing?

Mrs. Mitchelson: The agency, Mr. Chairperson.

Mr. Santos: When you say the agency, is it the director?

Mrs. Mitchelson: The worker would probably report to her supervisor that she believed there was an allegation of abuse, and the committee is struck by the agency. We have Winnipeg Child and Family Services agency; they have a child abuse committee. When a worker in the agency believes that a child has been abused, the Winnipeg agency determines that they will refer that case to their own committee to review and make recommendation back to the agency on what should happen.

Mr. Santos: Out of these allegations of abuse, on the basis of past performance, past statistics, let us say last year, how many of these complaints are coming from the very members of the family involved, like husbands and wives quarrelling or mother and daughter? Is that a common occurrence?

Mrs. Mitchelson: Under legislation, anyone who believes a child is being abused, whether it be physically or sexually, is under obligation to report that to an agency. It might be a teacher; it might be a neighbour; it might be a boy scout leader, and I have no way of knowing—I do not have statistics here today to indicate, and I would have to go and ask every agency.

You have to realize this is not my department. These are agencies that are mandated by my department to do that kind of work, and there are several throughout the province. We would have to go and individually ask each of those agencies whether they have information on whether the referral or the allegation—sometimes it is an anonymous allegation, but the agency is still required to check that out.

Mr. Santos: If the informer does not want to be identified, is there any penalty for making malicious or ungrounded accusations?

* (1630)

Mrs. Mitchelson: It would be pretty difficult to impose any penalty if you did not know who it was who made the allegation.

Mr. Santos: Well, the agency has to send someone there to find the facts, and if they cannot find any, they will recommend there is no such thing.

Mrs. Mitchelson: Exactly, Mr. Chairperson. That is exactly what would happen.

Mr. Santos: When they form an opinion that this is a legitimate complaint and they refer the matter to the child abuse committee—I just want to understand the system. The child abuse committee will convene a hearing. How do they call all the people involved to appear in that hearing, and if they refuse to appear, what legitimate power do they have to compel attendance?

Mrs. Mitchelson: It is not necessarily a hearing. What would happen is they would receive information from the doctor, possibly, who had examined a child. They would receive information from a police officer who may have investigated. They would receive information from the Child and Family Services worker who may have interviewed, and they would take all of that information collectively and review it, and under the new legislation they will receive information from the person who has been accused also. They will be notified that there is this investigation ongoing, and they either will come before the committee or will submit a presentation or whatever.

So all of that information would be reviewed at the local level. The committee would then make a determination of whether they believe that name should be forwarded to the Child Abuse Registry.

Mr. Santos: Obviously, before the committee makes any determination or rather opinion of whether there is abuse or not, the person who is suspected of being abusive has been heard in that committee.

Mrs. Mitchelson: No, that did not happen in the past. That is the change that we are making today. In the past, that person would never know that they were

being investigated until they got a letter that said, we are forwarding your name to the Child Abuse Registry unless you appeal.

Mr. Santos: So this has been changed.

Mrs. Mitchelson: So the change is there in order that all of the information from all parties will be available in order for that local committee to make a decision based on all of the information and all of the facts that it can gather.

Mr. Santos: When the committee decides that there is such a case of child abuse, obviously they will inform the suspected person who had appeared before it in the hearing that his name will be provided to the registry, and the only thing he can do is object by filing a notice of application for hearing before the Court of Queen's Bench.

Mrs. Mitchelson: That is the new legislation.

Mr. Santos: My concern about this is that only those who are literate enough to understand the working of the Court of Queen's Bench or financially able enough to hire a lawyer will be able to resort to this remedy.

What about those who are suspected who are poor, who are not educated enough, who are on the lower totem pole of society? How can they appear before a Court of Queen's Bench?

Mrs. Mitchelson: They can appear before the Court of Queen's Bench the same way they can appear before the Child Abuse Registry Review Committee today. Very often, the Child Abuse Registry Review Committee, there is a hearing, and the accused has legal representation, and if he cannot afford legal representation, he has Legal Aid representation, the same as he would have at the Court of Queen's Bench.

So right now, if you want to appeal, you come before the Child Abuse Registry Review Committee, but it has become a very legal process. So sometimes the hearings are up to 12 days at that committee level, and very often there is legal representation for both the agency and the accused, and that legal representation is provided for by Legal Aid. It would be the same at the Court of Queen's Bench.

Mr. Santos: In the hearing, is there any representation on the side of the child being abused?

Mrs. Mitchelson: Yes, there is representation for both the child and for the accused.

Mr. Chairperson: Mr. Santos, Mr. Kowalski has—are you going to be long?

Mr. Santos: I do not know. I am just asking questions.

Mr. Chairperson: Okay.

Mr. Santos: I would like to know if someone, you have, the government has rejected the idea of a child advocate to represent the child. In all these hearings the quarrel is between the one who wants to put his name on the registry, the agency, and the person who is objecting to it. I mean, he does not want to be named or to be put on the registry; obviously, he will use his resources to vindicate his name.

Mr. Chairperson: I have been trying to, Mr. Santos, listen very diligently to see whether there is a process of recommendation here for amendment to the bill, or whether you are satisfied with the clauses in the bill, or whether it is simply procedure that we are discussing. It appears to me that it is procedure. I would suggest, as I did to Mr. Martindale before, that there is a process that I think we can initiate to allow you to assure that procedure is properly in place even under the old act, but I do not think that needs to be done around this table in respect of the time that we need for consideration of the actual clauses in the bill. So I am going to ask you to make sure that your questions are relevant to the bill.

Mr. Santos: My question is relating to the availability of counsel and the fact that nowadays it is very difficult to get Legal Aid lawyers because of limited resources of government. I am concerned that only those who are of the higher socioeconomic strata, the educated class, the elite in society would be able to resort to this remedy to appear before a Court of Queen's Bench because you cannot appear before a Court of Queen's Bench unless you have a lawyer who is acting for your interests. You can be your own lawyer if you know how, but a fool for a lawyer is a saying in our system.

Mr. Chairperson: Again, I think we are discussing procedure here, and I ask that you maintain your comments relative to the bill. It is important.

Mr. Santos: It is relevant to the bill. The point I am making is that this administrative arrangement is set up for the benefit of the higher class in society.

Mrs. Mitchelson: Mr. Chairperson, absolutely not. I had indicated earlier that the Child Abuse Registry Review Committee was set up and it has become a very legalistic process. Both sides now have legal representation in many, many instances. You can appear before it without legal representation, but the norm has become that we have long hearings with legal representation for the accused and legal representation for the child. If, in fact, one cannot afford the cost of a lawyer, Legal Aid provides that legal support for the accused or for the—well, it would be the agency in the case of the child very often.

Can I indicate, Mr. Chairperson, that I would like to request just a five-minute recess?

* (1640)

Mr. Chairperson: A five-minute recess is requested. [agreed]

The committee recessed at 4.40 p.m.

After Recess

The committee resumed at 4.50 p.m.

Mr. Chairperson: Will the committee come back to order.

Mr. Gary Kowalski (The Maples): I have further questions to do with the bill, but the member for Broadway (Mr. Santos) just raised some thoughts in my mind about the process here.

The example that the minister gave—I have been away from the police force for some years now and I just want to make sure. Many times it is not Child and Family Services that first become aware of the

complaint, and, in fact, there are many times when calls are received, and the police will actually come and find the abuse in progress and take immediate action. In fact, what I am not too clear of, if things have changed at all, will the police still be able to actually charge a parent, or does it still have to go before the abuse committee, or if the police find obvious grounds such as finding the act being committed, does that change any need for the abuse committee to meet?

Mrs. Mitchelson: Those kinds of circumstances would not even go before the abuse committee. There are three different ways that you get onto the registry. One is through the criminal court system. The other one is through the family court system, and the other one is through the Child Abuse Registry, so that when evidence from a young child cannot be heard in court, but the police officer and the doctor who has examined the child and whatever determine that they believe there is an abuse instance, the local committee hears it and recommends the name go forward.

So there are the three different ways.

Mr. Kowalski: I thank the Chair for allowing that question. It may be a little bit out of the scope of the bill, but I appreciate it. I have further questions in regard to the bill for later.

Mr. Martindale: Moving right along here to Section 25, we had presenters at the committee stage express concern about what I described as a workload issue whereby they have to provide particulars within seven days, and I am wondering if the minister heard those concerns and how she plans to address them.

Mrs. Mitchelson: Some of the presenters were concerned that the assessment had to be done within seven days, and I think that was the major concern. They thought they would not be able to interview families and do enough work with the family to get a full assessment.

The seven days is not for the full assessment. The seven days is to ensure that particulars are provided to the court, so those are particulars around the circumstances seven days from the date of apprehension. This is to speed up the process because

very often kids remain in limbo for too long a period of time, and we want to ensure that the particulars are there before the court as early as possible, but the assessment still can take a longer period of time. So I think we need to clarify that with those presenters who indeed have that concern that they would have to have all of that work done and that it was not a realistic time frame.

Mr. Martindale: The front line workers that I spoke to did say that it was a good change to require particulars within seven days because that is better for children and for families, but they also spoke about the time required to write up the particulars. I am wondering if, since I do not think we can or need to address this in the legislation, the agencies are going to address this by ensuring that there is adequate staff time to do a good job?

Mrs. Mitchelson: I think in the best interests of children—and I think that is where the workers were coming from when they said that they had no problem with that—what we have to do is ensure that whatever resources are required are there to make that happen and that it becomes a priority.

Mr. Martindale: We also heard a concern that there may be 10 staff in an agency and all 10 of them are working on getting particulars ready for court, and there may be no one to respond to emergencies. Is the minister going to ensure that there is extra staff available if the existing staff are all tied up in paperwork?

Mrs. Mitchelson: I think that is certainly one of the things that the agency has to look at in its overall priorities. If in fact protection is the key priority—and that was one of the things I talked about yesterday with the media and in the House in response to questions—I know that the agency seems to believe that they want to have more prevention responsibility and would like more resources for prevention. I look to organizations or agencies like Rossbrook House or Ma Mawi, Andrews Street Family Centre and the Head Start programs, all of those programs that are doing the upfront early intervention, and believing that maybe there is a greater role for those agencies to play and that—

An Honourable Member: Then give them some more money to do it.

Mrs. Mitchelson: I know my honourable friend from Wellington gets a little exercised from time to time, but the reality is, in our community consultations, there has been expressed to me time and time again that we need to be involving community agencies to a greater degree in some of the things that are child welfare agencies.

I have to tell you, we have asked our child welfare agencies to be all things to all families and children. I think maybe we have to re-examine whether in fact we need to ensure that the resources within the agency are focused on the prevention, the case planning, in a very meaningful way right up front in the best interests of children, and that if some of the preventative services can be done outside of the agency, that we have to look at that. That is certainly something that we are doing and aggressively pursuing.

Mr. Martindale: Well, to interpret what the minister is saying—sometimes you need a dictionary or a thesaurus to interpret what the minister is really saying, and in this case my dictionary would interpret her words to mean, no, the agencies will not be given any new resources, and if they think that this is going to be a problem, then they have to reallocate existing resources. That is what the minister was really trying to say.

Mrs. Mitchelson: Mr. Chairperson, maybe if they did not have as broad a responsibility, the resources that they have would be adequate to reallocate to the priority areas of protection and ensuring that case planning was done at the earliest opportunity.

Mr. Martindale: So I take it that in the minister's mind this idea is still alive of removing from Child and Family Services agencies prevention and giving it over to community-based agencies and that there may be future amendments to The Child and Family Services Act to reflect this.

Mrs. Mitchelson: Mr. Chairperson, community agencies cannot work in isolation of mandated agencies, and mandated agencies cannot work in isolation of community agencies. We need to all be working together.

Mr. Chairperson: We will recess for a little while.

The committee recessed at 4:58 p.m.

After Recess

The committee resumed at 5:16 p.m.

Mr. Chairperson: The committee will come back to order.

Mr. Martindale: Mr. Chairperson, on Section 35 of the bill, the notes say amendment intended to clarify when a permanent guardianship order expires. I wonder if the minister could explain what is happening here. Just to clarify, it is Section 50(1) and thereafter. In my briefing book, it says caucus decision No. 40.

An Honourable Member: 50(1)?

Mr. Martindale: Yes.

Mrs. Mitchelson: Mr. Chairperson, I will get Mr. Langtry to answer this.

Mr. David Langtry (Assistant Deputy Minister, Child and Family Services Division, Department of Family Services): The amendment to 50(1) is being done simply to remove the words "subject to subsection (2)" from the existing act because in the existing act, when you looked at Section 50(2), it really is not subject to that at all. It has no relevance to 50(1), so all we are doing is removing the words "subject to subsection (2)," because it really does not apply.

Mr. Martindale: So I take it this is a rather technical amendment to correct something that needed to be corrected.

Mr. Langtry: Very technical and minor. In 50(2), the words "the director" have been added because where there is no mandated agency, Regional Operations of the department serves as the agency, and, therefore, the guardian is the director, so we have expanded it to the director and an agency.

Mr. Martindale: If we could go on to Clause 78(1), I guess we could dub this the grandparents clause. I know that the minister took some time to explain this during the presentations at committee stage, but I wonder if, again, just for the record, the minister could verify that this new wording does what the GRAND Society was requesting from this minister.

* (1720)

Mrs. Mitchelson: Yes, this does address the issue of the GRAND Society plus it extends the opportunity for additional family to apply for access.

If you look at the definition of family in the definitions at the front of the bill, it means the child's parent, step-parent, siblings, grandparent, aunt, uncle, cousin, guardian, person in loco parentis to a child and a spouse of any of those persons.

So it is expanding it considerably so that extended family indeed can apply for access. That is the definition in the act.

Mr. Martindale: Thank you, Minister, for verifying that. I would like to go on to, I think it is Clause 48 in the bill. I may not have my numbers right because I think there have been some number changes since my briefing book. However, it is the amendment to Clause 86(q), is amended by striking out the word "native."

My briefing note refers to program standard 421, and I have had complaints from an aboriginal organization in Winnipeg that there continues to be a problem with program standard 421 in that some people believe that aboriginal agencies are only being notified at the last minute that a child is going into a placement, and they believe that because of that there is no opportunity for them to respond or to find an aboriginal home or make some other arrangements. Now, I realize that this amendment probably does not address that problem at all, but I am wondering if the minister is aware of the problem and if somebody is working on it.

Mrs. Mitchelson: Mr. Chairperson, yes, I am informed by my staff and know that this is, indeed, a fact and it is a problem with the Winnipeg agency. We have taken upon ourselves the responsibility to try to facilitate a solution by bringing the native agencies together

around the table with the Winnipeg agency. It is an ongoing problem, and we are asking Winnipeg to try to resolve that.

Mr. Chairperson: The title and the preamble will be set aside in the bill as normal until we have done the clause-by-clause consideration of the bill.

Clauses 1 and 2—pass; Clauses 3, 4(1), 4(2)—pass; Clauses 4(3) to 4(4)—pass. Clause 5, is there an amendment?

Mrs. Mitchelson: Mr. Chairperson, I move

THAT the proposed subsection 8(11), as set out in section 5 of the Bill, be amended by striking out "not less than \$200. and".

[French version]

Il est proposé que le paragraphe 8(11), énoncé à l'article 5 du projet de loi, soit amendé par substitution, à "de 200 à", de "maximale de".

Mr. Chairperson: All those in favour—

Mr. Martindale: I would like to see the amendment before we approve it.

Mr. Chairperson: Amendment—pass; Clause 5 as amended—pass; Clause 6(1)—pass. Clause 6(2).

Mrs. Mitchelson: Mr. Chairperson, I move

THAT the proposed subsection 15(3.3), as set out in subsection 6(2) of the Bill, be amended by adding "and any such order may be enforced as a judgment of the court." after "exceeding \$5000."

[French version]

Il est proposé que le paragraphe 15(3.3), énoncé au paragraphe 6(2) du projet de loi, soit amendé par adjonction, après "5 000 \$", de ", auquel cas l'ordonnance peut être exécutée au même titre qu'un jugement de la Cour".

Mr. Chairperson: All those in favour—

Mr. Martindale: Mr. Chairperson, we are not going to object to the amendment, but we are going to vote against Clause 15(3.3).

Mr. Chairperson: Clause 15, we are not there yet.

An Honourable Member: Well, we are just letting you know.

Mr. Chairperson: Amendment—pass; Clause as amended—pass; Clause 7—pass. Clause 8(1).

Mr. Martindale: Mr. Chairperson, I was trying to give you notice that we were going to vote against 6(2) after you had amended it. We are wanting to vote against it.

Mr. Chairperson: We will go back. Shall Clause 6(2), as amended, pass?

Some Honourable Members: Yes.

An Honourable Member: No.

Voice Vote

Mr. Chairperson: All those in favour of the clause as amended, would you indicate by saying yea.

Some Honourable Members: Yea.

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

Some Honourable Members: Nay.

Mr. Chairperson: I declare the item passed.

Some Honourable Members: On division.

Mr. Chairperson: On division.

Clause 7—pass; Clause 8(1)—pass. Clause 8(2). There is an amendment.

Ms. Becky Barrett (Wellington): In the committee I was in yesterday dealing with Bills 50 and 51, the ruling was the way to deal with removing a section is simply to vote against it.

Mr. Chairperson: For the information of the committee, we have done it both ways. I mean, you can move to withdraw the motion, or you can move to amend the motion, or vote against the amendment.

All those in favour of Clause 8(2), shall the item pass?

An Honourable Member: No.

Mr. Chairperson: I declare the item lost. Now, 8(2) will show that it is removed. There is an amendment?

Shall we recess the committee and come back after the vote? The caucus chair indicated to me that we should recess at 5:30 and then come back later. The committee will recess until we come back after the vote.

The committee recessed at 5:29 p.m.

After Recess

The committee resumed at 5:37 p.m.

Mr. Chairperson: The committee will now reconvene. Committee come to order. The honourable minister, with an amendment.

Mrs. Mitchelson: I move

THAT the following be added after subsection 8(2) of the Bill:

8(2.1) The following is added after subsection 18.4(2):

Report of conclusion where child not in need of protection

18.4(2.1) Subject to subsection (3), *where an agency concludes, after an investigation under subsection (1), that a child is not in need of protection, the agency shall report its conclusion*

(a) to the parent or guardian of the child;

(b) where there is no parent or guardian of the child, a person having full-time custody or charge of the child;

(c) to the person, if any, who is identified by the investigation as the person who was alleged to have caused the child to be in need of protection;

(d) to the child where, in the opinion of the agency, the child is capable of understanding the information and disclosure to the child is in the best interests of the child; and

(e) to the person who reported the information that gave rise to the investigation, except where disclosure is not in the best interests of the child.

[French version]

Il est proposé d'ajouter, après le paragraphe 8(2), ce qui suit:

8(2.1) Il est ajouté, après le paragraphe 18.4(2), ce qui suit:

Enfant n'ayant pas besoin de protection

18.4(2.1) Sous réserve du paragraphe (3), lorsqu'il conclut, après l'enquête visée au paragraphe (1), qu'un enfant n'a pas besoin de protection, l'office communique ses conclusions aux personnes suivantes:

a) aux parents ou au tuteur de l'enfant;

b) à la personne qui a la garde ou la charge à temps plein de l'enfant, si celui-ci n'a ni parents ni tuteur;

c) à la personne, s'il y a lieu, reconnue au cours de l'enquête comme étant la personne qui serait la cause du besoin de protection de l'enfant;

d) à l'enfant, si l'office estime qu'il est capable de comprendre les renseignements et qu'il est dans l'intérêt véritable de l'enfant d'obtenir ces renseignements;

e) à la personne qui a fourni les renseignements qui ont donné lieu à l'enquête, sauf si cette divulgation n'est pas dans l'intérêt véritable de l'enfant.

Mr. Chairperson: I am wondering whether the numbering is correct here. I seek information because we removed 8(2) by defeating, so it will need to be renumbered? [interjection]

I am informed there will be a renumbering motion at the end of the bill, so that will fix that.

Mr. Martindale: In looking at this, it looks quite similar to another clause in the bill regarding notice to persons.

Mrs. Mitchelson: Yes, this is the one we discussed earlier. What we previously had in the bill was that if there was a conclusion that there had been no abuse, there was the requirement still to report. We still want to report to these people that there was no abuse, but we do not want to report to employers or schools, so we have taken employers and schools out of the requirement to notify when there has not been abuse.

Mr. Chairperson: Amendment—pass.

Now how do I deal with this? Do we need to deal with Clause 8(2) as amended and pass it, because we just removed 8(2)? I need some advice here as to how we deal with this matter.

Clerk Assistant (Ms. Patricia Chaychuk): This is only a subsection; it is added to the bill.

Mr. Chairperson: This is only a subsection. We have added to a subsection, so we just pass it and then move on to 8(3).

Clerk Assistant: Pass it and then move on to 8(3), because 8(2) has already been taken out, so you cannot pass it as amended.

* (1740)

Mr. Chairperson: Thank you, as long as we got that clear.

Shall the item pass—pass. 8(3), an amendment.

Mrs. Mitchelson: I move

THAT the proposed subsection 18.4(3), as set out in subsection 8(3) of the Bill, be amended by adding “or (2.1)” after “subsection (2)”.

[French version]

Il est proposé d'amender le paragraphe 18.4(3), énoncé au paragraphe 8(3) du projet de loi, par substitution, à "ses conclusions", de "les conclusions que vise le paragraphe (2) ou (2.1)".

Mr. Chairperson: Amendment—pass; Clause 8(3) as amended—pass; Clause 9—pass. Clause 10(1).

Voice Vote

Mr. Chairperson: No. All those in favour of Clause 10(1) say yea.

Some Honourable Members: Yea.

Mr. Chairperson: All those opposed to Clause 10(1), say nay.

Some Honourable Members: Nay.

Mr. Chairperson: I declare the item passed.

An Honourable Member: On division.

Mr. Chairperson: On division. Clause 10(2).

Mrs. Mitchelson: Mr. Chairperson, I move

THAT the proposed subsection 19(3.6), as set out in subsection 10(2) of the Bill, be amended by striking out everything after "At a hearing," and substituting the following:

(a) the agency has the burden of proof on the balance of probabilities;

(b) all parties may be represented by counsel and shall, subject to clauses (c) and (d), be given full opportunity to present evidence and to examine and cross-examine witnesses;

(c) the court is not bound by the rules of evidence in relation to the evidence of a child who the agency alleges was abused by the applicant and may receive the child's evidence through hearsay, by way of a recording, a written statement, or in any other form or manner that it considers advisable; and

(d) a child who the agency alleges was abused by the applicant shall not be compelled to testify.

[French version]

Il est proposé que le paragraphe 19(3.6), énoncé au paragraphe 10(2) du projet de loi, soit amendé par substitution, à tout ce qui suit "À l'audience", de ce qui suit:

a) l'office a le fardeau de la preuve selon la prépondérance des probabilités;

b) toutes les parties peuvent se faire représenter par avocat et, sous réserve des alinéas c) et d), ont la possibilité de présenter des preuves ainsi que d'interroger et de contre-interroger des témoins;

c) la Cour n'est pas liée par les règles de preuve à l'égard du témoignage d'un enfant qui, selon l'office, aurait subi de mauvais traitements de la part du demandeur, et elle peut accepter le témoignage de l'enfant par oui-dire, par voie d'enregistrement, par voie de déclaration écrite ou de toute autre façon qu'elle considère comme acceptable;

d) les enfants qui, selon l'office, auraient subi de mauvais traitement de la part du demandeur ne peuvent être tenus de témoigner.

Mr. Martindale: I wonder if the minister can tell me what page this falls under in the bill, please.

Mr. Chairperson: Now, Mr. Martindale, have you got your answer?

Mrs. Mitchelson: It is on page 10.

Mr. Chairperson: Amendment—pass. Shall Clause 10(2) as amended pass?

An Honourable Member: Not yet.

Mr. Chairperson: Not yet, there is another amendment.

Mrs. Mitchelson: I move

THAT the proposed subsection 19(3.7), as set out in subsection 10(2) of the Bill, be amended by striking out "and provide all parties with written reasons" and substituting "and record the reasons".

[French version]

Il est proposé que le paragraphe 19(3.7), énoncé au paragraphe 10(2) du projet de loi, soit amendé par substitution, à "remet à toutes les parties les motifs écrits", de "consigne les motifs".

Mrs. Mitchelson: This was the one on written reasons versus recorded reasons.

Mr. Chairperson: Amendment—pass; 10(2) as amended—pass; 10(3)—pass. 10(4). We have an amendment.

Mrs. Mitchelson: I move

THAT the section heading of proposed subsection 19(6) of the English version, as set out in subsection 10(4) of the Bill, be amended by striking out "re offence".

[French version]

Il est proposé que le titre du paragraphe 19(6) de la version anglaise, énoncé au paragraphe 10(4) du projet de loi, soit amendé par suppression de "re offence".

Mr. Chairperson: Amendment—pass. Clause 10(4) as amended—pass; Clauses 11, 12 and 13(1)—pass; Clauses 13(2) and 14—pass; Clauses 15, 16—pass. Clause 17, we have an amendment.

Mrs. Mitchelson: I move

THAT the proposed subsection 30(1.3), as set out in section 17 of the Bill, be amended by adding "and any such order may be enforced as a judgment of the court." after "exceeding \$5000."

[French version]

Il est proposé que le paragraphe 30(1.3), énoncé à l'article 17 du projet de loi, soit amendé par

adjonction, après "5 000 \$", de ", auquel cas l'ordonnance peut être exécutée au même titre qu'un jugement de la Cour".

Mr. Chairperson: Amendment—pass; Clause 17 as amended—pass; Clauses 18, 19(1) and 19(2)—pass. Clause 20. There is an amendment.

Mrs. Mitchelson: I move

THAT the following be added after 20(1) of the Bill:

20(1.1) Subsection 38(4) is amended by striking out "or master".

[French version]

Il est proposé d'ajouter, après le paragraphe 20(1) du projet de loi, ce qui suit:

20(1.1) Le paragraphe 38(4) est modifié par suppression de "ou un canceller-maître".

Mr. Chairperson: Amendment—pass. Shall the clause as amended pass?

Some Honourable Members: Pass.

An Honourable Member: No.

Voice Vote

Mr. Chairperson: All those in favour of passing Clause 20(1), would you indicate by saying yea—as amended.

Some Honourable Members: Yea.

Mr. Chairperson: All those opposed, would you say nay.

Some Honourable Members: Nay.

Mr. Chairperson: I declare the Yeas have it.

Mr. Martindale: On division.

Mr. Chairperson: On division. The item as amended will be passed on division.

I am sorry, I made a mistake. I asked that 20(1) be amended, and this motion is actually in addition to 20(1). Is that clear? Shall the item pass? The item is accordingly passed.

Clauses 20(2) and 20(3)—pass; Clauses 21, 22 and 23—pass; Clauses 24, 25(1), 25(2), 26, 27—pass. Clause 28. We have an amendment.

Mrs. Mitchelson: I move

THAT the proposed subsection 78(5), as set out in section 28 of the Bill, be amended by striking out

(a) “or master”; and

(b) “, and a person who was served but does not appear or with respect to whom an order was made dispensing with service is deemed to consent”.

[French version]

Il est proposé que le paragraphe 78(5), énoncé à l'article 28 du projet de loi, soit amendé par suppression:

a) de “ou un conseiller-maître”;

b) de la deuxième phrase.

Mr. Martindale: I know that this is legalese, but I wonder if the minister could explain (b) to me please.

Mrs. Mitchelson: This ensures consistency in procedure between access applications under The Family Maintenance Act and this act.

Mr. Chairperson: Amendment—pass. Item as amended—pass. Clause 29—pass; Clauses 30, 30(1), 31(2)—pass; Clauses 31(3), 31(4), 31(5), 31(6) and 32—pass. We have an amendment.

Mrs. Mitchelson: I move

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

[French version]

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

Mr. Chairperson: Shall the item pass? The item is accordingly passed. Shall the title pass?

Mr. Martindale: Mr. Chairperson, I would just like to note for the record that this was the only minister whose budget line was voted against in Estimates and also that it was this minister's bills who were the last ones out of committee. I think it shows that this minister can make great improvements, and we will be looking for that in the next year. Thank you.

Mr. Chairperson: Preamble—pass; title—pass. Shall the Bill be reported?

Some Honourable Members: Yes.

Some Honourable Members: No.

Voice Vote

Mr. Chairperson: All those in favour of reporting the bill, will you indicate by saying yea.

Some Honourable Members: Yea.

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

Some Honourable Members: Nay.

Mr. Chairperson: I declare the item passed.

Mr. Martindale: On division.

Mr. Chairperson: On division and it will be reported.

Committee rise. Thank you very kindly for your indulgence.

COMMITTEE ROSE AT: 5:49 p.m.