Third Session - Thirty-Seventh Legislature

of the

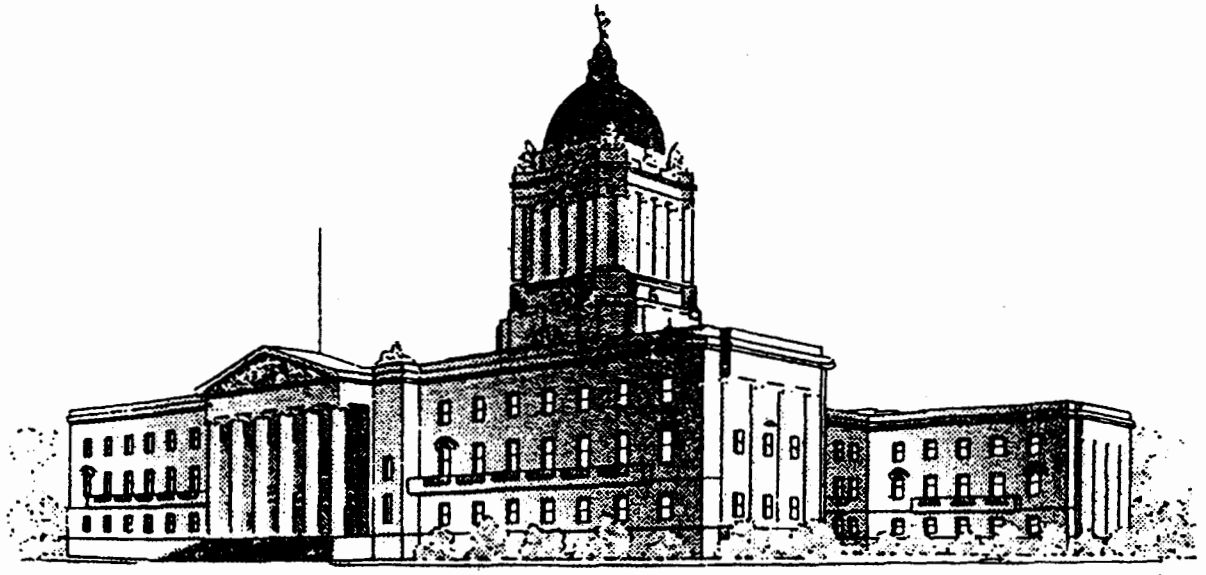
Legislative Assembly of Manitoba

Standing Committee

on

Law Amendments

Chairperson
Mr. Doug Martindale
Constituency of Burrows



Vol. LII No. 2 - 10 a.m., Tuesday, May 7, 2002

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Thirty-Seventh Legislature

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LEGISLATIVE ASSEMBLY OF MANITOBA

THE STANDING COMMITTEE ON LAW AMENDMENTS

Tuesday, May 7, 2002

TIME – 10 a.m.

LOCATION – Winnipeg, Manitoba

CHAIRPERSON – Mr. Doug Martindale (Burrows)

VICE-CHAIRPERSON – Ms. Bonnie Korzeniowski (St. James)

ATTENDANCE - 11 – QUORUM - 6

Members of the Committee present:

Hon. Mr. Mackintosh

Messrs. Dewar, Faurschou, Jennissen, Ms. Korzeniowski, Messrs. Laurendeau, Martindale, Reid, Schellenberg, Schuler, Mrs. Smith (Fort Garry)

APPEARING:

Hon. Mr. Gerrard, MLA for River Heights

WITNESSES:

Bill 8–The Limitation of Actions Amendment Act

Mr. Elmer Courchene, President, Fort Alexander Residential School Survivors Assocition

Mr. George Bergen, Private Citizen

Ms. Betty Hopkins, LEAF Manitoba (Women's Legal Education and Action Fund)

Ms. Roma Elizabeth Hart, Private Citizen

Mr. Bill Percy, Manitoba Division of Canadian Residential School Plaintiffs' Council Association

MATTERS UNDER DISCUSSION:

Bill 8–The Limitation of Actions Amendment Act

Bill 6–The Fortified Buildings Act

* * *

Mr. Chairperson: Good morning. Will the Standing Committee on Law Amendments please come to order. This morning the comittee will be considering the following bills: No. 6, The Fortified Buildings Act; No. 8, The Limitation of Actions Amendment Act. We have presenters who have registered to make presentations on Bill 8, The Limitation of Actions Amendment Act.

It is the custom to hear public presentations before consideration of bills. Is it the will of the committee to hear public presentations on the bill? *[Agreed]*

I will then read the names of the persons who have registered to make presentations this morning: Mr. Bill Percy, on behalf of the Manitoba Division of Canadian Residential School Plaintiffs' Council Association; Mr. Elmer Courchene, President, Fort Alexander Residential School Survivors Association; Mr. George Bergen, Private Citizen; Ms. Betty Hopkins, LEAF Manitoba (Women's Legal Education and Action Fund). Those are the persons and organizations that have registered so far.

If there is anybody else in the audience that would like to register or has not yet registered and would like to make a presentation, would you please register at the back of the room. Just a reminder that 20 copies of your presentation are required. If you require assistance with photocopying, please check with the Clerk of this committee.

Before we proceed with presentations, is it the will of the committee to set time limitations on presentations?

Mr. Gregory Dewar (Selkirk): Mr. Chairman, I suggest, as has been the custom of the committee, that we limit the presentations to a 15-minute time limit. I believe a combination of however the presenter would like to do it, but we do as we have done in the past, limit it to 15 minutes.

Mrs. Joy Smith (Fort Garry): I, at this point, see no reason to limit the presentations to 15 minutes because there are only four presenters. So we would be willing, on this side of the House, to encourage the presenters to give their full presentation.

Hon. Gord Mackintosh (Minister of Justice and Attorney General): We get into this all the time, of course. It depends who is in opposition, who is in government usually. We should put this in the rules probably and get rid of this little debate that we have every time. Sometimes at night, we argue for a couple of hours, and all the people that could have spoken are sitting there waiting.

My view is that, yes, there are not a lot of presenters, but, at the same time, you make exceptions. I just think that we should just keep it to 15 minutes, just do it. Hopefully, everyone can make their presentation in that time. I think, if there are extraordinary circumstances, the committee would be prepared to listen to an argument to extend it.

Mr. David Faurschou (Portage la Prairie): I believe as the minister has alluded to, but we do request the opportunity for questions of presenters. Perhaps, if we look at five minutes in addition to the fifteen would be something we would be considerate of.

Mr. Chairperson: Is there agreement then that we allow 15 minutes for presentations and 5 minutes for questions? Agreed? *[Agreed]*

How does the committee propose to deal with presenters who are not in attendance today, but have their names called? Shall these names be dropped to the bottom of the list? *[Agreed]* Shall the names be dropped from the list after being called twice? *[Agreed]*

As a courtesy to persons waiting to give a presentation, do the committee wish to indicate how late it is wishing to sit this morning?

An Honourable Member: 12:30.

An Honourable Member: Noon.

Mr. Chairperson: I have heard twelve or 12:30.

An Honourable Member: Twelve o'clock.

Mr. Chairperson: Twelve o'clock? *[Agreed]*

We will now proceed to public presentations.

Bill 8–The Limitation of Actions Amendment Act

Mr. Chairperson: I would like to call to the microphone Mr. Bill Percy. Mr. Percy, please come forward.

Is Mr. Percy in the audience? If Mr. Percy is here, would you come to the microphone, please.

An Honourable Member: He is not here.

Mr. Chairperson: Mr. Elmer Courchene, please make your presentation. Please proceed, sir.

Mr. Elmer Courchene (President, Fort Alexander Residential School Survivors Association): Good morning, everyone. I would not know if I would say if I am nervous or not. I thank you for inviting me to this hearing in respect of the proposed act, amendment of the Limitation Act.

My name is Elmer Courchene. I am the president of the Fort Alexander Residential School Survivors Group, an organization of some 230 school survivors. We congratulate the Government for bringing this bill forward. We view this bill as a means to bring both justice and equality to the residential school survivors living in the province of Manitoba.

Residential school survivors who were physically or sexually abused in other parts of

Canada have the right to bring the claim into court no matter where the abuse took place. Only in Manitoba is there a Limitation of Actions Act with wording which prevents a person from bringing a claim of physical or sexual abuse by a predator in a position of trust or authority due to the affliction of time without a remedy.

As the law now stands, a predator could abuse me when I attended a residential school in the province of Manitoba in the 1940s. The same predator can be transferred to a school in Saskatchewan and perpetuate the same abuse upon the residents of that school. The Saskatchewan student would have the right to sue the predator for damages. I do not have that right.

What this bill does if passed into law is to make all survivors who have a claim for abuse in the residential schools in Manitoba equal to residential school survivors in the rest of Canada. Not only do the survivors achieve equality, but they are able to achieve justice as well.

As I was coming down, walking to the building, because of my involvement in the residential schools many thoughts crossed my mind which are not in the paper. To us, the Limitations Act holds us from achieving justice as we wished justice to be seen, and I am not only referring to the sexual and physical abuse aspect here. Because of that history itself, as being a survivor, it is a very sorrowful history, if I put it mildly.

I hoped that the committee will also take in mind that we have suffered many issues besides sexual and physical abuse. Some of those, I will name a couple, loss of our language, and the biggest maybe to most and every one of us, what I call the parental love, the loss of that parental love and guidance and protection in life. I hope that you would consider those also when you are talking about making this bill.

* (10:10)

We thank the Government, and in particular Mr. Mackintosh, for having the courage to bring this bill forward. I want to point out that already a significant number of our members have passed away before they had been able to see their claims brought to justice. I trust that you will give this bill speedy passage so that we can achieve justice for the survivors before they pass on. To me, to stand in front of you and come to you to seek your support and your help so that justice can be done for us survivors.

Anytime that we begin to talk or even think about what has taken place in the residential school you get sort of choked up. You want to cry, you want to get mad, all those feelings come into play. I am not a man that wastes too much time on words. I learned to survive from point A to point B and I hope that my short presentation, even though I did not give you many details, that you will understand the hope and the aspiration that the survivor is requesting from you. With that I say thank you very much ladies and gentlemen. Meegwetch.

Mr. Chairperson: Thank you, Mr. Courchene. Are you willing to answer questions?

Mr. Courchene: Yes.

Mr. Mackintosh: Mr. Courchene, thank you very much for your very brave and eloquent presentation here today. I thank you for your kind words. However, I think the legislation, quite frankly, is just simply due, but your presentation is particularly strong, powerful and loud. Thank you very much, sir.

Mr. Courchene: Thank you.

Hon. Jon Gerrard (River Heights): You mentioned that a number of people who might have been eligible have died. Have some passed away since this bill was introduced in December, three or four months ago?

Mr. Courchene: Yes.

Mr. Chairperson: Excuse me, Mr. Courchene, I need to recognize you every time for the purposes of Hansard, so I will have to address you before you answer the question

Mr. Courchene: Yes. Since we began, we have lost anywhere from 15 to 20 survivors as of to date. I have many that are ill and have diabetes, high blood pressure. The oldest that we have I believe is in the early nineties.

Mr. Gerrard: Just given that many of the people who would fit into this category, who attended residential schools in the 1940s and many are old, this bill proposes that one be able to go to court to get a judgment here. It seems to me that the Province might have provided an approach which could have simplified the delivery of compensation to people who are elderly, where there was a clear case that would not have been as time consuming or as cumbersome for people who are well on in their years and often sick.

Mr. Courchene: Well, I guess I would reply in this format. Yes, if this bill never popped its ugly head, maybe we would have been in court today and maybe we would have seen some sort of settlements being done, but since then we had to try other ways to bring some relief to the survivor.

Mrs. Smith: Thank you for coming today to honour us with taking the time. I know, if you will read some of the comments on discussion with Bill 8 in the House, I can say the members on all sides of the House feel very moved by the kinds of challenges that a lot of the survivors have had just throughout life as a result of some of this traumatic abuse that was foisted upon them.

So I just wanted to say, from our side of the House, thank you for coming and thank you for taking the time to be here.

Mr. Courchene: Thank you very much.

Mr. Chairperson: Thank you, Mr. Courchene.

Mr. Chairperson: The next presenter is Mr. George Bergen. Please proceed, Mr. Bergen.

Mr. George Bergen (Private Citizen): Thank you, Mr. Chairman. As you can see, my report is fairly lengthy. If I presented the entire report, it would take me over an hour, so I am going to have to take a lot of shortcuts. But I trust that you will read the entire report at some point in time.

I have been involved in this issue for the last 10 years, so I am quite familiar with it. At any point in time that you want to ask me questions on any matter in here just feel free to do so, okay? I just want to be quite open with you and frank with you that up until about, well up until last December I was writing a book, and had been writing a book on this issue for about eight months. When I came across Bill 8 in December, I thought: Well, I will just absorb this in my book in some fashion. Then, in January, I came across a 681-page study by a former judge, Québec judge, Fred Kaufman, and I decided that I wanted to oppose Bill 8 for the simple reason that what happened in Nova Scotia and what Judge Kaufman describes in Nova Scotia happened right across Canada. I will leave that discussion for a little bit later, and I will just proceed to present part of my report. I will just start from page 2.

* (10:20)

Before I get into the substance of my presentation, I believe it is important for the committee to appreciate why I am making this submission concerning the bill before you. I am here for two reasons. Firstly, my family's peronal experience with recovered memory therapy and multiple personality disorder is related to the subject matter of Bill 8. Second, the reasons the Minister of Justice gave in the Legislature on November 26, 2001, to justify the Government's initiative in introducing the bill also relates to my family's personal experience. With your permission I would like to quote those reasons from Hansard.

The minister says: "It is now recognized professionally and indeed in the courts, including at the Supreme Court of Canada, that very often victims of abuse will not be able psychologically to initiate legal actions until they develop an awareness of the psychological harm that they have suffered and the cause of that harm being the act of abuse. In many cases, this realization does not occur until many years after the harm, often after a person receives therapy."

The minister next cited a 1993 statement by the then-Attorney General of Saskatchewan, the Honorable Bob Mitchell. The minister continues: The reality, in so many cases, is that the victims of a sexual assault, in particular that happens at an early age, will block that memory out as children and not have it in their conscious

memory as they grow older. Only when in adulthood, when they are undergoing therapy in respect of all the problems they are having in their life, do they discover that the real source of the problem is something that occurred while they were children.

In 1993, Mr. Mitchell could be forgiven for his mistaken views. He made his remarks at the height of the recovered memory craze that was sweeping across North America and the English-speaking world. But I want to suggest to the committee that the minister's expressed justification for incorporating the contents of this bill into Manitoba law is completely wrong.

I do not understand where the honourable minister, Mr. Mackintosh, has been since 1996. Except that he has, perhaps, found a way to repress his own memory on the issue that was very controversial from 1986 to about 1996. Either that or he is getting bad advice from the civil service bureaucracy. Let me assure the members of this committee that the minister's arguments in seeking the support of the House for Bill 8 has already been thoroughly discredited by the psychiatric profession, the academic scholars and major newspapers in North America, Australia and Great Britain.

For example, in a news release dated April 1, 1998, the British Royal College of Psychiatrists stated: A comprehensive review of the literature on recovered memories of childhood sexual abuse has concluded that when memories are recovered after long periods of amnesia, particularly when questionable techniques were used to recover them, there is a high probability that the memories are false. There is no evidence that memories can be blocked out of the mind, either by repression or dissociation.

The paper distinguishes between types of memory, namely episodic, autobiographical and implicit. Numerous studies in children and adults have found that psychologically traumatic events often result in the inability to forget, rather than the complete expulsion from awareness.

I just might add that Bill Percy wrote to the *Winnipeg Free Press* on March 15, expressing the same views, that people will repress their memories: They will block out their memories and then later recover them in therapy. That is just not how memory works.

Just days later, on April 15, 1998, *The Globe and Mail* said in an editorial: Recovered memory therapy was one of the most pernicious trends to sweep North America in the late 1980s and 1990s, fracturing thousands of families and leading to hundreds of arrests and finally crippling lawsuits.

Almost two years ago, the Canadian Psychiatric Association followed the lead of the Americans and the Australians and produced a position paper saying that memories of childhood sexual abuse, triggered in adults during psychotherapy are unreliable and should not be accepted without corroborating evidence.

In January, a leaked report from the British Royal College of Psychiatrists went even further: Despite widespread clinical and popular belief that memories can be blocked out of the mind, no empirical evidence exists to support either repression or dissociation, said the report, which went on to say that repression and recovery of verified, severely traumatic events and their role in symptom formation has yet to be proved. These denunciations have yet to penetrate the Canadian criminal justice system. That is why we are calling on Justice Minister Ann McLellan to order an inquiry into all convictions based on this internationally discredited therapeutic theory.

There are precedents for such a review. Prominent Toronto lawyers, Allan Gold and James Lockyer of the Association in Defence of the Wrongly Convicted, have long been calling for an inquiry into those Canadians imprisoned based on recovered memory therapy.

Furthermore, more than two dozen scholarly books have been written on the subject since 1996 utterly discrediting the fraudulent repressed memory psychotherapy ideas that the minister discussed in the House, as well as satanic ritual abuse and multiple personality disorders. The authors of these scholarly books I am talking about invariably compare the impact of the recovered memory therapy phenomenon to the witch hunt, to the witch-burning scandals of the 15th and 16th century and the 1692 Salem witch

trials which saw 19 innocent witches burned to death.

The subject matter before us is not a pleasant topic. It has a scandalous history that dates back more than 15 years. However, I can assure you that the issue of recovered memory therapy is no longer controversial in the psychiatric profession and has not been for at least five years. Moreover, the period of controversy, that is the years from 1986 to 1996, is now, I submit, seen by the profession and academic scholars in the field as a scandalous period in our mental health history.

The American psychiatrists and medical columnist Frank Pittman calls it a horror story of the forces of mental health gone berserk. You will notice I have the reference numbers in here, but I do not have time to go into that–and an appendix as well. This is a well-researched document.

Dr. Christopher Barden, an American psychologist and attorney and professor, describes recovery memory therapy as one of the most dangerous consumer frauds of the century. In addition, prominent Toronto lawyer, Allan Gold, calls recovered memory therapists "purveyors of quackery who want to cripple the whole adult population."

In my presentation, I used the term "therapist" or "counsellor," which may refer to a social worker, psychologist, a Christian counsellor, psychiatrist, psychiatric nurse and so on. Clearly, the jury is no longer out, and it is unfortunate that the Minister of Justice (Mr. Mackintosh) is not aware of the verdict.

* (10:30)

Recovered memory therapy and MPD diagnosis is just one more entry in a long list of unscientific, come-and-go psychotherapeutic quackeries or frauds, if you will, that the psychology industry has visited on an unsuspecting public in recent years, and I just make the point again that these statements are referenced.

It is difficult to believe that in the year 2001 a Manitoban politician spoke in the provincial Legislature in support of a discredited 1990s pop psychotherapy fad that started in the late 1980s, caused great harm to thousands of innocent lives before it began to flame out in 1996. I and many others are deeply interested in the recognized professional sources that the minister referred to in the House in support of these sexual abuse psychotherapy ideas and Bill 8.

I understand there are a few die-hard feminists living in some sort of a time capsule, desperately unwilling to admit the demise of the repressed childhood memories idea. If you detect a sense of anger in my voice, I make no apologies for it. The time is long overdue for politicians in Canada to recognize the incredible amount of harm done by the ravages of fraudulent recovered memory therapy.

Time is long overdue for politicians and the legal profession to recognize the unmistakable connection between recovered memory therapy, more specifically the implanting of false childhood memories and the sexual abuse hysteria that swept the English-speaking world in the late 1980s and 1990s. Since 1993, I have investigated more than 20 childhood sex abuse cases that resulted from memories recovered in therapy and/or by other suggestive means, for example, self-help pop psychology books written by John Bradshaw and early 1990 TV talk shows. I suggest to you that during the early 1990s, the peak years of the memory recovery movement and sexual abuse hysteria, there were far more false memory accusations, many of them supposedly recalling memories of 20 to 40 years before than genuine ones. Furthermore, the vast majority of these false sexual abuse allegations were made against innocent senior citizens who were often too frail to defend themselves.

Of course, there have been genuine sexual abuse accusations in the past, and there continues to be real sexual abuse today. However, this does not in any way contradict or detract from the arguments I am making in this brief. In 1997, Bill C-46, the federal bill, aimed at restricting lawyers access to therapy records, was debated in parliament. Here is what Dr. Harold Merskey, Canada's most renown psychiatrist on recovered memory therapy, said in testifying on the bill before the House of Commons Committee: ". . . let me make a major

statement that replies to what you're saying, that is, I think sexual abuse is very common." I said that at the onset. Therefore genuine accusation will be common, but I think that an uncomfortably high proportion of cases coming to our courts are false, and there are people in prison only on allegation of recovered memory. I can provide examples.

Mr. Chairperson: Excuse me, Mr. Bergen. I apologize for interrupting you, but I just want to let you know that you have one minute left to wind up your presentation.

Mr. Bergen: Okay. In that case let us turn to page 43, okay? I want to talk about the Fred Kaufman report, the 682-page Kaufman report, a very, very well-documented and studied report on what happened in Nova Scotia. In Nova Scotia, the situation there was similar right across Canada, and Mr. Kaufman found that in the final analysis–well, I will start from the beginning.

In 1995, there was a public outcry right across Canada, via newspapers. The opinion was there was widespread and sweeping sexual abuse within residential schools over the last, from 20 to 40 years ago. Well, Kaufman's investigation found that there were, over a period of 30 years, there were three child molesters found in residential schools. The people did not accept it. So what the Government did, they advertised for survivors to come forward.

Mr. Chairperson: Excuse me, Mr. Bergen, but your time is up. Thank you for your presentation. Are there any questions for this presenter?

Mr. Gerrard: You talk in the brief about the efforts of Dr. Colin Ross, and I wonder if you might comment.

Mr. Bergen: Dr. Colin Ross was the psychiatrist at the St. Boniface Hospital from 1986-1991. One of his first patients was my sister-in-law. She had anxiety problems. She went to see him at Ross's clinic at the University of Manitoba. Seven months later, she committed suicide because she could not live with the false memories that Ross had implanted in her mind. Colin Ross had been charged twice in Manitoba. He has been charged in Dallas, Texas.

By the way, Ross was fired from the St. Boniface Hospital, and that was covered up by the hospital. The Government, at that time, was aware that Ross was fired, but, nevertheless, it was covered up. The public never heard about it.

Ross managed to get a licence in Dallas, Texas, began practicing there. Ultimately, he was charged again. The hospital where he worked was closed down, and Ross and a few other people, along with the hospital, settled out of court. Basically, a settlement out of court like that is really a guilty verdict. They settled for millions of dollars out of court in 1999. But the story of Colin Ross is a pretty bad one.

Mr. Gerrard: On page 40, you talk about the charter behavioural health systems which were operated in the United States. Maybe you could comment.

Mr. Bergen: With the peak period of the charter system, I believe they had 92 hospitals across the United States, and they were virtually recovered memory therapy factories. They also had a multiple personality disorder diagnostic throughout the system. They had over 8000 patients.

What happened in the United States was there were virtually hundreds of lawsuits. By the year 1996, there were hundreds of lawsuits against therapists. So what happened was, by 1999, year 2000, there were only about 32 hospitals left. The rest of them had closed. As a result of the hundreds of lawsuits against therapists, basically, the system had to shut down. Insurance companies were not paying any more, and the whole system shut down. So, in the United States, in the court system, you do not have recovered memory therapy.

You would not have a politician in the United States making the kind of comments that our Minister of Justice made in Canada here. Canada's situation is different because we have a public sector system, so the therapists and the Government basically are on the same side. Also, in Canada, the lawyers will not take cases on a contingency basis, where they will in the States. So this whole fraudulent therapy really was stopped by the court system.

Mr. Chairperson: Mrs. Smith, do you have a question?

Mrs. Smith: No, it has been answered. Thank you.

* (10:40)

Mr. Gerrard: The present legislation was brought in, in considerable measure because of some unfortunate circumstances in the residential school system as it operated. I think that a number of us, while accepting concerns about recovered memory therapy as you have outlined them, would wonder whether, in fact, these concerns apply to what happened in the residential school system when, in fact, there seems to be substantial documentation of real problems. Maybe you would comment.

Mr. Bergen: In the residential school system there was physical abuse. Absolutely. There was disciplinary physical abuse just like in many of our homes in the thirties, forties and fifties. There was discipline in the school system. At these standards, there certainly was physical abuse. But there is far less sexual abuse than what opinion and belief, public opinion and belief.

I would like you all to read the Kaufman report. On the front page of my report Kaufman says, he makes recommendations: At the same time, government must not substitute equally untenable assumptions or stereotypes. For example, notions that those who allege abuse almost inevitably were abused. Further, government must educate the public to recognize and avoid myth, stereotypes and assumptions. Although government must be alert to public opinion, it cannot be swept away by an uninformed public. In this regard it must lead, not simply follow.

Like I said before, what happened in Nova Scotia happened right across Canada. There were three perpetrators initially and less than 20 complainants. After the government advertised, there was tremendous publicity in the paper. It was a hysterical period. If you read my book, I make many quotes about showing that the early 1990s was basically a period of paranoia in the public. When the government advertised for more survivors, another 70 or 75 came forward. Then, a year later, when the government introduced a compensation program, 1500 claimants came forward. According to Kaufman's report I do not know how many, less than 80 percent of the cases were legitimate sexual abuse cases. The rest were just frauds. The Government paid claimants, 1246 claimants, $30 million, another $30 million for legal fees. Please, please read the Kaufman report because it is all there.

Mr. Chairperson: Thank you, Mr. Bergen. Your time has expired. Before I call the next presenter, we have had one more person register, and that is Ms. Roma Hart.

The next presenter I would like to call forward is Ms. Betty Hopkins. Please proceed.

Ms. Betty Hopkins (LEAF Manitoba (Women's Legal Education and Action Fund)): Thank you. Good morning to those who have not greeted us before. Honourable members of the standing committee on Bill 8, on behalf of LEAF Manitoba I thank you for this opportunity to share with you the results of some of our work relating to the proposed amendments to The Limitations of Actions Act. We support Bill 8. As an organization which views the law as a tool for the advancement of equality, we request that you consider the opportunity before you to address the unique situation of Aboriginal peoples and the impact that The Limitations of Actions Act has upon their access to justice.

Late last year, at its request, we provided the Government of Manitoba with a copy of our case development report on residential schools litigation. We believe the report is relevant to your current deliberations and so we present to you here today some highlights of its contents. The more detailed and analytical report can be made available. A major component of LEAF's mandate is education. It is in the spirit of education and consultation that we make this morning's presentation. The presentation today is supported by the Mother of Red Nations Women's Council of Manitoba. We are prepared to be available for any further consultation if it is desired.

So who are we? LEAF, the Women's Legal Education and Action Fund is a national,

non-profit, volunteer organization founded in 1985. Our goal is to advance the equality of women in Canada through litigation, law reform and education using the Canadian Charter of Rights and Freedoms.

LEAF has participated in over 130 cases and has helped women win landmark legal victories in crucial areas such as limitations of actions for sexual abuse claims, violence against women, gender bias in employment standards, unfair pensions, sexual harassment, pregnancy discrimination, reproductive choice and social assistance. LEAF has undertaken more charter litigation than any other equality-seeking group and has been involved in the most important women's equality cases at the Supreme Court of Canada. LEAF's work is unique in the world and has provided a model for other equality-seeking groups around the globe.

LEAF is committed to a vision of equality which is called real or substantive equality. This model of equality is based on two basic ideas: (1) that there are groups in our society, for example, women, persons of colour, persons with disabilities, Aboriginal peoples, lesbians, gays, to name a few, whose members have historically been treated unequally; (2) that the purpose of the equality provisions of the Charter, sections 15 and 28, is to prevent discrimination and to help members of disadvantaged groups overcome the effects of discrimination.

LEAF argues that if laws or government practices contribute to the inequality of disadvantaged groups the courts must strike them down or require that they be changed. The reverse is true as well. If laws or government practices promote the equality of disadvantaged groups, these laws and practices must be protective. That is, there is a positive obligation on government to ensure that legislation complies with the Charter. In some cases, there is a positive obligation on government to enact legislation which will help disadvantaged groups overcome the effects of discrimination.

In a recent case, the Supreme Court of Canada held that governments have a positive obligation to extend protective legislation to unprotected groups. The Court recognized that in some circumstances government had an obligation to remove barriers to the exercise of rights and search for remedies.

The equality provisions of the Charter are outlined. I am sure you know them. I will just leave them for you to go over again, but it is because of LEAF's ongoing commitment to equality that we are presenting here today.

Our position concerning Bill 8: LEAF commends the Government of Manitoba for its proposed amendments to The Limitation of Actions Act. We are pleased to see the Government has decided to abolish the limitation periods for certain types of assaults. Violence against women and children is a barrier to equality. Due to the courage of Premier Doer, Minister Mackintosh and their honourable members, there will now be legal recourse for those who have suffered so much.

We support the Government for empowering these individuals who have suffered sexual assault. We support the Government for empowering those who have suffered physical assault at the hands of a parent or spouse. We support the Government for empowering those who have been abused by a person who had authority or power over them. We support the Government for empowering those who were violated by people or institutions which had a duty to protect them.

Due to the efforts of this Government, some of those individuals who previously had no redress for wrongs they have endured will soon be able to stand up for their rights in a court of law. Removing the limitation on these claims recognizes that the harm suffered as a result of physical or sexual assault does not stop after two, six or thirty years but can last a lifetime. Removing the limitation on claims ensures that abusers cannot escape responsibility for their abuse by virtue of the simple passage of time.

While we are pleased for those who will have an opportunity to access justice, we are very concerned about a particularly important group that this legislation seems to have forgotten–residential school survivors. As a result of this omission, LEAF takes the position that The Limitation of Actions Act discriminates

against residential school survivors on the basis of race. In order to remedy the disadvantage, the proposed change to the act must go further and must create a specific exemption for residential school claims.

We believe that Bill 8 should abolish the limitation period for Aboriginal Canadians who were victims of the residential school system. The government policies which created the residential school system were based upon race. In particular, these policies were premised upon the inferiority of Aboriginal peoples and were intended to assimilate them into mainstream society. The idea was to catch Aboriginal children at a young age and erase their Aboriginal identity. This was done in a brutal and abusive way.

The extensive harm to Aboriginal peoples, both individually and collectively, has been well documented by the Aboriginal Justice Inquiry, the Royal Commission on Aboriginal Peoples and others. These commissions acknowledged a clear link between residential schools and the poverty, poor health, violence and despair that many Aboriginal peoples face today. These wrongs are so solidly documented that the Government of Canada has acknowledged the devastation wrought by the system and has even apologized.

The Government of Canada stated that: "The residential school system separated many children from their families and communities and prevented them from speaking their own languages and from learning about their heritage and cultures. In the worst cases, it left legacies of personal pain and distress that continue to reverberate in Aboriginal communities to this day. Tragically, some children were the victims of physical and sexual abuse."

"The Government of Canada acknowledges the role it played in the development and administration of these schools. Particularly to those individuals who experienced the tragedy of sexual and physical abuse at residential schools and who have carried this burden, believing in some way they must be responsible, we wish to emphasize that what you experienced was not your fault and should never have happened. To those of you who suffered this tragedy at residential schools, we are deeply sorry." The harm inflicted by the residential school system was extensively revealed in the consultation LEAF held with Aboriginal women survivors last spring. We were told: "Children suffered from loneliness, neglect, punishment for speaking their languages, rampant disease and widespread physical, psychological and sexual abuse.

"The effect of these schools was devastating to the children who attended them and the families and communities that lost their children. Aboriginal women told us of the spiritual, emotional and psychological damage they suffered, including suppression of feelings and shame. Aboriginal children were literally silenced when they were punished for speaking their languages. They were taught to be ashamed of and to deny their identity and their culture.

"This is consistent with the literature on residential school survivors. In her dissertation, *Dealing with Shame and Unresolved Trauma: Residential School and Its Impact on the 2nd and 3rd Generation Adults,* Dr. Rosalind Ing wrote about a 'culture of shame' in residential schools, in which Aboriginal children were taught to feel 'dirty', ashamed of who they were, their Aboriginal heritage, their parents and being associated with a devalued culture.

"Not only did the children learn shame, but they suffered from what Dr. Ing described as unresolved trauma. She discussed how children were traumatized by abuse or severe punishment for such things as trying to escape from the schools. Dr. Ing referred to theories of trauma to explain how children who themselves were not abused were also traumatized. They would be gathered together and forced to watch another child's punishment and that 'such demonstrations served as warnings.' She adopted the term 'permanent mortification', which occurs when an individual watches a physical assault and can take no action.

"Dr. Ing theorized that this trauma caused the suppression of feeling by Aboriginal children, and that continued into adulthood. This resulted in parents who suppressed and were silent about their experience. Dr. Ing looked at

how silence and suppression affected parenting and their intergenerational effect: 'The denial, shame, self-esteem, silence on past, experience of racism, myths/lies about First Nations peoples . . . have had detrimental impacts on the next generation.'

"We suggest that this damage to residential school survivors has impacted on their ability to heal from or to seek redress for the harm they suffered. The literature on residential school survivors indicates that they were left isolated and alienated from their own culture and communities, while still excluded from mainstream Canadian society. They had no avenue for reintegration, healing or regaining what they had lost. The legacy of silence and suppression meant that for many years, residential school survivors had no ability to express, either personally, socially or legally, through the courts, the harm done to them."

* (10:50)

Within the last five years in Manitoba, large numbers of former students of Aboriginal resiential schools have begun legal actions against the Attorney General of Canada and the churches that ran residential schools. All residential school plaintiffs, both in Manitoba and other provinces, attended these schools more than 20 years ago, and many filed their claims more than 30 years after they ceased being students. Now that the survivors are coming, those who want access to the courts face the obstacle of the limitation period.

The proposed changes will allow actions based on physical and sexual abuse only. As survivors have stated, their claims are more than purely childhood abuse cases. Residential school claims are based on allegations of loss of identity, language and culture. These harms go far beyond sexual or physical assault. They extend to all sorts of psychological and cultural devastation such as loss of culture, language and lifestyle. The deprivation of family, culture and spiritual beliefs contributes significantly to the harm suffered.

The Aboriginal Justice Inquiry noted that in addition to the physical and sexual abuse that Canadians are now hearing took place in residential schools, emotional abuse was the most prevalent and the most severe. Limiting claims to sexual or physical abuse alone will bar actions which address the totality of harm suffered by survivors, thereby perpetuating the discriminatory impact of the residential school system.

Residential school survivors are a unique and discreet group in Canadian society. They were treated differently because they were Aboriginal. Even though The Limitation of Actions Act, on its face, does not treat resiential school survivors differently, the effect of the limitation denies them the equal protection and the equal benefit of the law. By treating residential school survivors like everyone else, we fail to recognize the unique and catastrophic harm suffered by Aboriginal peoples. No one else in Canadian society was subjected to the residential school system, only Aboriginal people who were subjected to it because they were Aboriginal. This was clearly discrimination because of race and preventing residential school survivors from pursuing their claims perpetuates that discrimination.

All that residential school survivors seek is a right of access to the court. They should have the right to pursue legal remedies if that is what they need to overcome the disadvantage caused by the residential schools. By denying them access to court, the Government of Manitoba is sending residential school survivors the message that they are less worthy as human beings and less deserving of access to justice. We urge the Manitoba government to create a specific exception for residential school claims. The act should expressly permit claims by residential school survivors against the Government of Canada, the religious orders and organizations which administered the schools and the teachers, clergy and other personnel who either abused students or failed to protect them from abuse.

The act should allow claims which were previously statute barred to be revived and should exempt them from the 30-year ultimate limitation. By enacting this provision the Government will empower Aboriginal people whose lives were torn apart and who are still suffering as a result of the aftermath of the residential school system. The situation of the

residential school survivors is unique among plaintiffs. The Government of Manitoba, through new legislation, has an opportunity to take the lead and alleviate some of the disadvantage that Aboriginal peoples have had to endure. This Government can give the survivors at long last their much deserved chance to access justice.

If this honourable Government does not make the necessary changes, LEAF, in collaboration with Aboriginal women's organizations, will consider a legal challenge to the Limitations of Actions Act on the basis that it discriminates against residential school survivors. This would build on the work that we have already done and to which I referred in my beginning comments. We believe that this could cause further pain and suffering for the survivors. Instead, we ask that you allow the survivors the dignity that they deserve by giving them the right to take legal action against those who have perpetrated injustices against them or who failed to protect them from the abusive conduct of others.

As I mentioned, we have provided our case development and consultation report to the Minister of Justice and these contain a more detailed equality analysis of the issues raised in this presentation. Thank you.

Mr. Chairperson: Thank you, Ms. Hopkins. Are there questions for the presenter?

Mr. Gerrard: One of the issues which you raise which would be separate treatment of people who are residential school survivors from others, if you are going to extend the provisions so that allegations can be made on the basis of loss of identity, language and culture, why would you restrict that to those who have been in residential schools?

Ms. Hopkins: We are not suggesting that you restrict. We are saying that Aboriginal people are in a unique position. They are the only people to have been treated in this way. We are dealing today with them as a priority. They are a concern. If there is a desire on the part of Government and the opposition parties to extend it to other groups, I am sure that we would not likely be against that.

Mr. Gerrard: I just would like your comment on the circumstance that was described by one of the presenters earlier, that many of the individuals in Fort Alex, for example, are elderly and not well and indeed a number have died in the last few months.

If you are going to get an adequate assessment and justice in these circumstances, there is some concern that this will open up the opportunity to lay claims under the courts. How long do you think that process will take, given the controversies around and the debates about who should be paying what? This is likely to go on for some time before those people get justice, do you not think?

Ms. Hopkins: I have no idea how long it would take. Anything that goes through the courts seems to take an inordinate length of time, and the courts are only one way to redress issues of injustice, but at this point we are commenting on the limitations of action in the use of the law to affect change. We think if that is indeed going to work that it needs to be extended.

Mr. Chairperson: Thank you for your presentation.

The next presenter is Ms. Roma Hart, private citizen. Ms. Hart.

Ms. Roma Elizabeth Hart (Private Citizen): Good morning. I did not think I was going to be able to present today. Hello Marcel. I am one of your most annoying constituents. My presentation is actually a letter to Marcel that I had faxed to him at nine o'clock yesterday morning. It is very brief, thank goodness.

I spoke with Scott on Friday. I will leave out the first paragraph because it has nothing to do with the presentation.

As you are aware, Marcel, I filed a lawsuit against Dr. Colin Ross many years ago, and the lady from LEAF talked about things dragging through the courts. I filed eight years ago to get the statute of limitations extended for my case, which was only four months above the statute of limitations. It has taken eight years. No decision has been made, even though I was heavily drugged and under intense therapy and was considered disabled. Even then, eight years of

fighting and they still have not overcome the statute of limitations, so these things really do drag on.

When I was selecting lawyer No. 2–I am on to lawyer No. 4 now–a couple of years ago, one of the people I asked to take over my case was Harvey Pollock. I told Harvey Pollock, when I first saw him, that all of this material, my files, my medical records, had been sent down to Harvard, and several of the psychiatrists and professors in Harvard had reviewed the material in the records. Dr. Harrison Pope, Jr., told me, in his esteemed opinion, mine was the worst case of medical abuse he had ever seen in his career. So I thought that would make some sort of impression.

* (11:00)

The first interview I had with Harvey I pointed out to him that the experts he kept referring to were named either in my lawsuit as instigating factors in the fraud and malpractice or on the blacklist of therapists practising recovered memory fraud. He took exceptional offence to this, actually started yelling at me: I do not want to hear about it. It was not terribly funny.

At my second interview with Harvey, I arranged to give him $5,000 to review the affidavits, discovery transcripts and educational material concerning false memory syndrome. I had hoped by doing that he would learn that any therapist using recovered or repressed memory therapy was committing fraud, and the evidence was seriously tainted by it, so that even though a person may have actually been abused, if they go through the recovery memory therapy system of therapy, whatever additional memories they produce will taint their entire evidence.

At my third and last interview with Harvey, after he read the affidavits and discovery transcripts, but none of the educational material, he refused to take my case. As he led me to the door of his office, he stopped at a table stacked with manila folders, two-feet-high stacks. He put his hand on top of one of the stacks and said to me: I have a much more important case that I am working on, the Indians from the residential schools. These, and he looked at the big pile, are all recovered memories. And I remember that I told him that the experts he was using were named in my lawsuit and on blacklists.

Well, Marcel, I was so appalled and upset that I walked all the way to Mr. Alsip's office in tears. Apart from the fact that Harvey stole the $5,000 from me based on an obvious conflict of interest, and then tried to sabotage my case to prevent harm to his, there was one other fact that Mr. Alsip called obscene or a criminal one. These Indians are being charged twice the rate that I am paying my lawyer, and almost twice the percentage in contingency fees, 40 percent. After they win, and I do not consider it a win, if they actually do, they would be lucky, and I was talking to other lawyers and George, and we figured it out, the legal fees, the fees to pay the experts and then the contingency fees after that, they will get about 10cents on the dollar.

Last year I spoke with an author out in B.C. who was writing a book about the way the Indians are being exploited by lawyers who push these residential school lawsuits. I asked her to add the way the Indians are being exploited by the white man's recovered memory therapy. While we certainly agreed that some children at those schools were probably mistreated, and I add that we certainly believe that some may have been sexual abused just as some children in school systems across the world, not just residential schools, can be harmed that way, the harm they suffered there pales in comparison to the life of misery they endure as imagined victims of recovered memories.

Dr. Richard Ofshe was an expert in the Humenansky case, down in Minnesota where Colin Ross was also an expert. In the transcripts, Dr. Richard Ofshe said: Recovered memory therapy is the closest thing to rape that a therapist can get to without actually touching the patient.

Many of them commit suicide, not because of any real torture that their therapist encourages them to believe, but because of the impossibility of living a normal life while believing that they were victims of the vilest of crimes. Many are also told that they participated in satanic rituals, infanticide and murder.

Ross and his colleagues went to the reserves. Ross and his colleagues went up north, and they perpetuated the insane theories and practices that were practised in the St. Boniface Hospital. I know of at least a couple, and Dr. Pamela Freyd has files full of them, of suicide notes. The suicide notes generally say I cannot live with the memories–and it goes on–satanic rituals, infanticides, murders, sexual memories.

I hope that I have made it clear that the lawyers who are pushing these lawsuits are doing so purely out of greed, but there is yet another slimy side to this travesty.

Dr. August Piper has used an old Chinese proverb to explain the therapist's stake in pursuing these lawsuits to the bitter end. It goes: He who rides the tiger dare not get off.

Mr. Daryl Reid, Acting Chairperson, in the Chair

As I explained to good old Harvey, the Indians have a better case against their therapists than the residential schools, and perhaps LEAF would like to help them with that. It is also a clearly observable fact, and I am talking about the filing cabinets full of this information and documentation in the false memories syndrome's office in Philadelphia, that in the U.S.A. recovered memory patients get better after their insurance runs out, and they can no longer be treated by their therapists.

It is also alarmingly clear to those therapists that recovered memory patients who can no longer be controlled after they leave therapy have shown a strong tendency to retract their false memories. Those are the patients like me who served their old therapists with lawsuits.

As a contact person with the False Memory Syndrome Foundation and a retractor, I have spoken with many other retractors. We were all encouraged to believe without question–without question–every bizarre theory and practice, memory and plot that our therapists cooked up in their feverish minds. We were all encouraged and outright pushed to sue our parents and send them to jail for whatever crime we were told they were guilty of. None of the retractors I spoke with went through any lawsuits against their parents. We all agree that if we had and our parents had been sent to prison, we would never have been able to retract our false memories. This is what the therapists are well aware of. It is called making a commitment to the memory. People do not retract their memories after they send a loved one to the penitentiary. People also do not retract a false memory after receiving and spending money or rewards for accusing someone of a crime.

If the therapists can push through this statute of limitations extension and get the patient some money, then the threat of a malpractice lawsuit in the future is virtually eliminated. So what is the big deal, some people say. So what if all the Indians named in a lawsuit get a little money? What is the harm? Well, I will tell you: (a) the true victims of the abuse in the residential schools–and I am telling you that I am sure there are true victims there, somewhere in there–will be diminished, both financially and in available support systems, and as the person with LEAF said, courts are not the only way to help these people; (b) the victims of implanted false memories are less likely to ever recover from the fraudulent therapy; (c) innocent people will be both prosecuted and persecuted, and you will see that in the Kaufman report; (d) an extension of the Statute of Limitations based upon a flimsy lawsuit like this will open the courts to a re-entry of recovered memory lawsuits that have been discarded; (e) An extension of the Statute of Limitations for this case will leave every school teacher, parent and child care provider in danger of losing their pensions or freedom. Any former student or child that they cared for could blackmail or sue them for any possible dream or memory retrieved in therapy, counselling or other curious means. I will tell you, as a contact person for the FMS Foundation, the parents, many of them, most of them elderly, tell me that they have been blackmailed. Pay us this or I will take you to court.

Marcel, please understand that if I thought for one minute that a lawsuit against the former residential schools was a good thing, I would be the loudest person fighting for it. Marcel knows how annoying I can be. As far as I can see, though, it would only benefit the lawyers and therapists and cause further harm to the indians.

I would take any questions that you would like to ask of me.

Mr. Chairperson: Thank you for your presentation.

Mr. Gerrard: You comment that the true victims of abuse in the residential schools will not be well served by this kind of legislation. Maybe you could comment on what might be an alternate approach that would better serve those who are really true victims.

Ms. Hart: Any victim of sexual abuse can use the systems that are in place right now, and LEAF, I am sure, has a long list of available resources to sexually abused victims.

Mr. Gerrard: You are talking about resources which are other than compensation through the courts. Are you suggesting that there be alternate ways of helping or compensating those who are really true victims?

* (11:10)

Ms. Hart: If there are people who say that they are victims of sexual abuse, then they can certainly use the resources that are available. The statement that their culture and language has been damaged irreparably, that can be helped. You see that lovely building on Main Street where they have all sorts of resources available there. Is it Thunder-something? *[interjection]* Thunderbird House. Something like that is certainly a good start.

Mr. Gerrard: What you are suggesting is that investments in places like Thunderbird House and support mechanisms provided there would be a better approach than this approach.

Ms. Hart: It would be a positive approach. Lawsuits and continuing destructive recovered memory effects, that is not a positive thing. That is a very negative thing and negatively impacts people. Positive things like the Thunderbird House, programs that they are using there, that is a positive thing. That will make the people healthier.

Mr. Marcel Laurendeau (St. Norbert): Thank you for your presentation, Roma. Yes, we have had some dealings in the past, and I am sure we can have some in the future.

When you speak about the true victim, and you say that you would be one of the people out there supporting them, do you not believe that the true victims of sexual abuse, or any abuse, should not have this limitation put upon them?

Ms. Hart: Well, I was sexually assaulted when I was 9 years old, something that I have never forgotten a day in my life. From what I know from the lawsuits, and from what I know of the people who have gone through lawsuits, pursuing anything in the court, if I was given the opportunity to sue that person, it would not make me a healthier person. It would not make me a happier person. It would hurt me.

Mr. Gerrard: Just to take that last point one step further. You have talked about some of the positive things like investments in Thunderbird House and the support mechanisms, and I suppose there could be similar support approaches from First Nations communities, for example. But, in your case, what sort of positive approaches would you feel would be better than this kind of approach from a court and legal perspective?

Ms. Hart: Educational programs. I have two daughters, one 25 and one 7, and they know very little about Aboriginal culture other than what is being taught in a few pages in books. The particular school that my daughter goes to out in Fort Richmond is very multicultural. I think maybe 20 percent of the children are white children, and all the rest, because it is so close to the university, are just from every ethnic background and maybe another 25 percent Indian. Just thinking of that one school and saying that if they could do anything in the school to promote the Aboriginal education and extend whatever–just across Canada there is no reason why there should be such a small amount of education for something that is so important.

Mr. Chairperson: Time for questions has expired. Thank you for answering questions. I would like to call again Mr. Bill Percy. Is Mr. Bill Percy here? Yes. Please come forward.

Mr. Bill Percy (Manitoba Division of Canadian Residential School Plaintiffs' Council Association): My apologies, honourable members, for being late this morning. I was delayed at another commitment. I probably should apologize in advance for my brief, which is just a repeat of a letter that I had written to the *Free Press* in response to an editorial, and it had set out, in part, some of the reasons why I am–

Mr. Chairperson: Excuse me, Mr. Percy. I need you to go to the microphone, please, so that we get all this recorded for Hansard.

Mr. Percy: Perhaps I will start again. My apology, honourable members, for being late today. I understand I was called first, and the submission that I provided is a letter that I had earlier written in response to an editorial in the *Free Press*. It, in part, sets out the reason I am here in the support of our bill, the support of Bill 8. We have a loose association of lawyers in Manitoba who have been advancing claims on behalf of the residential school victims, and it is in that capacity that I am appearing here today.

I do not think there is much I can add. It has probably been a long morning for you, and it sounds to me that most things have been said. I think the letter, perhaps, speaks for itself in terms of why we support the Attorney General's legislation. In terms it basically gives Manitoba citizens the same rights that exist in all of the other jurisdictions in Canada.

In effect, we are the only jurisdiction where a person cannot bring a claim for sexual abuse or physical abuse that had been suffered 30 years ago. Even though the 30 years may sound like a long period of time, there are further complications in the Manitoba legislation. Even if you bring your application within the 30 years, if it is after a two-year period you have to convince a judge through psychiatric evidence that the person has only recently recalled the sexual abuse situation. That, in itself, is a very expensive process that basically eliminates most of the members of our society who are caught into this situation. So, for all intents and purposes, a person abuses, a child would have to bring a claim by the time they were 20 years of age because there is a two-year limitation period, and it would start to run when they turned 18. So the 30 years is somewhat misleading.

Notwithstanding that, the other jurisdictions have removed all limitation periods for claims of this sort. So, certainly, the legislation is not granting anything that has not already been acknowledged in other jurisdictions.

The other thing that we are hopeful the change would bring about would be, rather than the perpetrators of these acts denying them and attempting to avoid responsibility, if they know there is not a limitation period that they can hide behind, perhaps it would encourage people to deal with these matters on a more forthright basis and in a more civil, sensible way, rather than the denial and the victims being made to feel that they are responsible or that the events did not occur.

I do not know if there is a lot more in my letter. I think you have heard everything today, and it speaks for itself, but I certainly would like emphasize the fact that it is only granting Manitoba citizens rights that exist in all the other jurisdictions.

I might just comment on a couple of the comments that I had the opportunity to hear today because I would not want this committee to be misled by all the talk about recovered memory syndrome. I do not claim to be an expert on that, and I do not doubt there are different schools of psychiatrists and psychologists who are prepared to debate that. I heard even one of the presenters say that there should be corroboration of the evidence and I do not doubt that is a good idea but, certainly as it pertains to the residential school claims, recovered memory syndrome is not a major issue. I mean if there are some claims that would come forward under that category, I would think you would be looking at 1 or 2 percent.

These are not people who have forgotten what had happened to them, these are people who have buried it through different addictive measures so they did not have to recall it. I would say 95 percent of the residential school claims across the country, they cannot afford, nor have they had the opportunity for any sort of sophisticated psychiatric counselling, so this is

not a recovered memory syndrome. Certainly, I would not want to see this committee confused by that. That is really a non issue. These are people who only after the federal government apologized and it was acknowledged have been empowered to come forward and advance their claims, as Mr. Gerrard had indicated in one of the questions. I mean, there is ample evidence: the Aboriginal Justice Inquiry, many textbooks by professors, students, historians. This is not something anyone is imagining, so do not be concerned in that regard at all.

Obviously, I would like to adopt the LEAF proposal which really asks for an exception for their residential school claims generally. That is, there should not be any limitation that applies to those claims because, in addition to the physical and sexual abuse which the legislation addresses, there are claims of cultural abuse, as you have heard, and there would be false imprisonment claims and what are called intentional infliction of mental shock, which would be more the emotional abuse claims. There might be abuse of public office claims, interference with family relations.

* (11:20)

Some of these claims are not as common, but, certainly, many of them are valid claims, and they would enable the courts to address things like emotional abuse which are not covered under the physical and sexual. What LEAF had touched on, and it might be of interest for you to know and it was appropriate that it came from LEAF, that particularly a lot of the female students who were less inclined to act out–just to give you a simple scenario–would arrive at the school, let us say, and within the first week would see brother, sister, neighbour, friend, another student whipped within an inch of their life, so to speak.

So you have a 5-year-old girl witnessing that, and, I mean, in most cases they withdrew into a shell, in effect, and never spoke out for the rest of their five or ten years there, whatever their term was. But they themselves were not subjected to actual physical or sexual abuse because they avoided any situation where that might occur. So to think that they did not come away with emotional abuse, of course, I think any right-thinking person would know otherwise.

Unfortunately, the legislation as it is drafted does not enable those people to advance a claim because they themselves would have had probably what would come under that law as intentional infliction of mental shock, but they have not been subjected to the actual physical hands-on abuse or sexual abuse of themselves.

So the suggestion that the residential school situation be exempted from the act in its entirety obviously would appeal for people who are acting on behalf of the residential school students.

I do not know if it is of any interest, but Mr. Bergen referred to–I do not know Mr. Bergen but he has obviously had a personal experience which has him committed in this area. Certainly the Kaufman report, I have not read it in detail. As I understand it–I have read some of it–the main recommendation coming out of the Kaufman report is that alleged perpetrators should have an opportunity of being called, and a chance to deny the claims would be heard by committees. I mean, this legislation is only giving people the right to bring their claim into court.

The Nova Scotia experience, there is a provincial institution, and a provincial compensation scheme was established, but the alleged perpetrators were not given ample opportunity to be heard at those hearings. Obviously, that is a very legitimate criticism that Mr. Justice Kaufman has brought forward. In that sort of situation, obviously the alleged wrongdoer should be given an opportunity to be heard.

So, in terms of some of the concerns, what we sometimes lose sight of as well, the amendments to the act just give these people the right to bring their claims before the court. Somehow people sometimes get confused that this means they are going to be successful. I know in the judges I have spoken to, off the record so to speak, we have some pretty difficult people to overcome there. So this only gives people the right to have their case heard. It is difficult, of course, to prove claims that have gone on so many years ago, as it is difficult to

defend. But that is what the judges are there to scrutinize, make findings on, assess the credibilities and make a determination because sometimes there seems to be a false impression that somehow the right to bring a claim means the right to be successful. Of course, that is no way the situation.

But in terms of the LEAF proposed amendment, we have no question in this situation which is a particularly black mark on Canadian history. The actions of the Canadian government and the participating Canadian churches in all probability constituted cultural genocide, as that term is defined under the relevant United Nations provisions. The federal government does not want to acknowledge that, and that is why we continue to carry on with this scenario. Maybe we as Canadians do not want to acknowledge it, but if there was an amendment to the act that entitled all the claims to come forward, be they cultural or the emotional abuse situation I described, that would at least give these people the opportunity.

You heard Mr. Courchene talk of the loss of family love, their language issues. They had spirituality issues. They had child labour issues. They worked on farms rather than educated in the schools, then were expected to go into white man's society and find jobs when they did not have an education to do so. It goes on and on, but in any event a general amendment would open up the opportunity for other claims to be considered by the courts rather than the most common acknowledged ones of the physical and sexual abuse.

Those are all my comments. Certainly, if anyone has any questions, I would be happy to address them.

Mr. Chairperson: Thank you, Mr. Percy.

Mr. Laurendeau: That is okay. He answered my question.

Mrs. Smith: Mr. Percy, I understand you are chairman of Manitoba Lawyers for the Advancement of the Claims of the Indian Residential School Survivors. Is that correct?

Mr. Percy: That is correct.

Mrs. Smith: It is my understanding right now there are approximately 700 claims in court. In the event for some reason this bill did not pass, could you tell the people around this table whether or not those claims would be potentially affected if this law was not passed?

Mr. Percy: I obviously do not know the details of all of those claims, but it probably would be a reasonable estimate to think that 90 percent of those would fail because the events would have occurred more than 30 years ago. The schools actually operated up to 1969, so there would be some people who would have brought their claim within the 30-year period, but that would be a small minority.

Mrs. Smith: Earlier in the presentation, there was comment being made that a lot of lawyers get rich from these kinds of claims. You are the chairman of the Manitoba lawyers for the advancement of the claims. Can you tell us how many lawyers approximately you think are involved right now? I know you cannot predict the future, but, No. 1, how many are involved right now and do you think that number would be seriously affected if this bill was passed?

Mr. Percy: I would expect most of the claims have surfaced, but it is an unknown as you are indicating. Right now there are probably about 12 lawyers, 10 to 12 lawyers in Manitoba who have advanced claims in court on behalf of various individuals.

Mrs. Smith: The other part of that question was: Do you think there would be a lot of additional lawyers come into the fray with the passing of this bill, or do you think it would remain relatively what it is at this point?

Mr. Percy: I think, with respect, this is a question whether there would be a lot more claims coming forward. Yes, I would expect if there are more claims, those people would probably be in contact primarily with the existing lawyer group. So, as I indicated, I would expect and I only have to guess that 90 percent of the claims have come forward because they have continued to come forward now over about a four-year period. I would not expect that there would be a significant number of further claims to surface.

Mr. Gerrard: I just wanted clarification of one of the issues that was raised earlier in terms of the number of people that we are dealing with are elderly and often in poor health. For a claim, well, for instance, say the bill was passed and became law by the end of May, what is the sort of time line that one might expect a claim could be processed in the courts and that a claimant who is elderly and in poor health might receive some compensation?

Mr. Percy: Probably, like most cases, we would hope never to have to proceed through the courts. The benefit of the legislation primarily for the Manitoba school survivors is that there is ongoing negotiations going on, that was the reason I was late today, with the federal government and some of the church groups. Those of us representing the Manitoba claimants are regarded somewhat lightly when we are at the table because the only bargaining leverage you really have is to take the offending bodies to court if we cannot resolve it at the table.

* (11:30)

As long as the Manitoba legislation stays as it is, the federal government and the church bodies know in Manitoba we cannot take them to court. As a result, the Manitoba settlements are considerably behind the other provinces because we have not been able to advance through the courts. They know they have lots of time in Manitoba.

In fairness to the federal government on that, they certainly are meeting with us and verbally indicating they are not going to treat us differently, but when push comes to shove we just collapse because we have nothing to fall back on if this amendment does not go through so that they know they are going to be confronted in court. The federal government also, in terms of their obligations to the taxpayers, they in some circles express some reluctance to paying claims in Manitoba where they could not be held legally liable because of the restrictions on our Limitation of Actions Act.

The hope is for the people Mr. Courchene talks of and most of our clients that we would not have to wait for a three- or four-year court process. There are ongoing discussions, but this would give the Manitoba survivors equal footing with the people in the rest of the country. For example, in Saskatchewan there has been a number of settlements already because their legislation was amended in 1993 and the court cases have been ongoing, where in Manitoba we are stuttering, threatening and pretending we are going somewhere but we have not been able to get anywhere really.

Mr. Gerrard: The process outside of the courts, in terms of what length of time is that taking for an individual case to proceed?

Mr. Percy: Well, I mean, it is taking way too long, but we are just at a stage where it looks like we have a platform now built in Manitoba that we are ready to step off of and move forward with a limited number of claims. The federal government established approximately 10 pilot projects across the country. We have a group of 60 people here and that is looking like it will start being assessed over the next couple of months. Then that would probably be about a four- or five-month process. Those people were predetermined, so we cannot add people who have got ill since then, et cetera.

The federal government has another initiative that has just gotten underway. As well we were trying to address older people and people who are less well, to try and address their concerns. There are meetings going on. As a matter of fact, today even, we are exploring a dispute resolution method that all of the claims perhaps could potentially get involved in.

Certainly time is of the essence. There is no question about that. It is criminal frankly that it has been delayed this long. I am sure you are all following the media to some extent. What is really unfortunate for us as a society, the perpetrators of the act, the federal government and the churches who created the problem have now created the delay, because they basically said to the native people: Well, you wait and we will sort out how we are going to share this responsibility. After about three and a half years of talking, as you probably know, Deputy Prime Minister Herb Gray on October 29 said: Well, gee, the federal government will go ahead and address these claims on a 70% basis.

So, basically, claims waited during that period of time. Other provinces were pushing along with their court cases to bring some pressure to bear on the Government and churches, and we in Manitoba were not able to push along.

Mr. Chairperson: The last question goes to Mrs. Smith, Fort Garry.

Mrs. Smith: To respond to some comments that were made by earlier presentations, in your position as chairperson of the lawyers' association, a comment was made that often the lawyers get paid so much that the actual person who comes forward to make the claim does not actually see any dollars. I believe it was quoted: They would be lucky to get 10 cents on the dollar.

Could you comment on that, people who do come forward and are looking for at least some symbol of compensation? And I would hope it would be more than a symbol, but that they would have some benefits when the court cases do go through the courts and the case is proven. Could you comment on what percentage most lawyers would see out of these settlements, as opposed to the victims who come forward?

Mr. Percy: Perhaps it may be a little bit of a long road to get there in part. There are a number of different discussions going on. For example, in the Manitoba pilot project which is about to get launched, on that project the federal government is paying the legal fees of the lawyers for the victims so that whatever the victims receive, they get to keep 100 percent of that. Certainly, not only the presenters here today, I think probably most of the citizens of this country are concerned about that, and, certainly, the federal government is concerned about it.

So that is being addressed in different ways, and on the dispute resolution meetings we are in today, certainly, that is one of the issues on the table again, that the federal government would pay the legal costs of the victims. Whether that is going to apply in all situations at the end of the day, certainly I do not know. The percentages that I have heard across the country, I think, at the extreme high end, is 40 percent, and at the low end, I cannot be certain. Certainly, I am well aware of 15 percent, and it might be lower than that in some situations.

Certainly, there may be some people who will earn a reasonable fee off it. I mean, that is all lawyers are entitled to earn. Any person who feels that lawyers earn more than a reasonable fee, they have their account taxed by the local court officials. So it not as though lawyers have a licence to charge what they want. They can enter an agreement with the person, but then that person can have that taxed. There would be, I think, many public eyes scrutinizing that, and I do not think that is likely. Certainly, that will be common public talk. We have heard it here today, and that seems to be the burden we lawyers bear.

In any event, it is odd when we hear it in this case, because if the federal government would have paid the victims what they had spent in fighting the case, combined with the churches, this thing would have been all over with and people would have received some reasonable compensation. So it is of interest that the people with the unlimited monies raised the complaint, while, gee, some lawyers might make some money trying to advance the case for these vulnerable people. But, certainly, the federal government is well aware of that, and I think that you would be protected in that regard.

Mr. Chairperson: Thank you, Mr. Percy. That concludes the list of presenters that I have before me this morning. Are there any other persons in attendance who wish to make a presentation, in the audience? Seeing none, is it the will of the committee to proceed with detailed clause-by-clause consideration of Bills 6 and 8, and, if yes, in what order do you wish to proceed? *[interjection]* Bill 8.

Bill 8–The Limitation of Actions Amendment Act

Mr. Chairperson: Does the minister responsible for Bill 8 have an opening statement?

Hon. Gord Mackintosh (Minister of Justice and Attorney General): Mr. Chair, I remind the committee, of course, that this legislation deals with limitation of actions, not with causes of action, which I think presents many intriguing

questions for us in terms of the kinds of claims that could or should be advanced. I know in the courts there is consideration of other causes of action, and causes of action continue to be developed at the common law. I certainly respect that process, and we will be paying close attention to how that unfolds.

I think the only other point I would like to make, given that I did close out on second reading on this, was to just indicate to the committee that we do have one amendment, relatively minor, a clarification amendment to propose.

Mr. Chairperson: We thank the minister. Does the critic for the Official Opposition have an opening statement?

Mrs. Joy Smith (Fort Garry): Basically looking at the intent of Bill 8, we found it to be very reasonable. I know, with any legislation, it is not infallible. There are challenges that you have, and there are things that happen along the way that you wish did not happen. Looking at The Limitation of Actions Amendment Act, basically it is timely that this should happen. It does address a serious issue that is out there in the public, and I commend the Attorney General for bringing this forward.

* (11:40)

Mr. Chairperson: We thank the member. During the consideration of a bill, the enacting clause and the title are postponed until all other clauses have been considered in their proper order. Also, if there is agreement from the committee, the Chair will call clauses in blocks that conform to pages with the understanding that we will stop at any particular clause or clauses where members may have comments, questions or amendments to propose. Is that agreed? *[Agreed]*

Shall clauses 1 and 2 pass?

Mr. Mackintosh: In regard to clause 2, I will move that section 2 of the bill be amended–

Mr. Chairperson: Excuse me, Mr. Minister. If your amendment is on clause 2 then we will pass clause 1 and then entertain your amendment.

Clause 1–pass.

Mr. Mackintosh: I move

THAT section 2 of the Bill be amended

(a) in the proposed subsection 2.1(3), by striking out "Subsection (2) applies" *and substituting* "Subject to subsection (4), subsection (2) applies"*; and*

(b) by adding the following after the proposed subsection 2.1(3):

Limitation period in *The Trustee Act* applies
2.1(4) Subsection (2) is subject to subsection 53(2) of *The Trustee Act.*

Mr. Chairperson: It has been moved by the honourable Mr. Mackintosh THAT section–

An Honourable Member: Dispense.

Mr. Chairperson: Dispense. I am informed that the amendment is in order. Is it the will of the committee to pass the amendment?

Mr. Mackintosh: Now that we fully understand the import of that amendment, I will nonetheless explain it further. That is to ensure that a provision in The Trustee Act continues to prevail that says that if a person dies there must be an action within two years of the death by the trustee. So it is just to make sure that does not eliminate that or overcome that provision. I will leave that, just further, though, to say that there still is no limitation for sexual assaults.

Mr. Chairperson: Amendment–pass; clause 2 as amended–pass; clauses 3 to 5(2)–pass; clauses 5(3) to 6–pass; enacting clause–pass; title–pass. Bill as amended be reported.

Bill 6–The Fortified Buildings Act

Mr. Chairperson: The next bill is Bill 6–The Fortified Buildings Act.

Does the minister responsible for Bill 6 have an opening statement?

Hon. Gord Mackintosh (Minister of Justice and Attorney General): Thank you, Mr. Chair,

just to add that we do have one amendment. There may be others. I think we just proceed clause by clause.

Mr. Chairperson: We thank the minister. Does the critic from the Official Opposition have an opening statement?

Mrs. Joy Smith (Fort Garry): I do have a couple of amendments that I will address along the way as we go through the act to strengthen the act.

Mr. Chairperson: We thank the member. Mr. Gerrard would like to speak. Is there leave to allow Mr. Gerrard to speak? *[Agreed]*

Hon. Jon Gerrard (River Heights): Actually, I have a question for the minister. It relates to the ability and the effect of this act in dealing with situations in First Nations communities. Can you clarify the act and whether it will pertain throughout Manitoba or whether it will be limited to certain areas of Manitoba?

Mr. Mackintosh: Mr. Chair, this is a law of general application in the province of Manitoba. It is driven, of course, by complaints that are received from communities wherever they may exist. This is not a bill only about Winnipeg, I just want to add, because I think sometimes there can be that assumption.

I understand from administrators that where a complain would be received from our First Nations there would be an investigation and presumably there would be discussions with chief and council in terms of action on a complaint.

Mr. Gerrard: You mentioned a circumstance where the complaint would be received from a First Nation. In many other circumstances, clearly a complaint would be provided not necessarily by an individual within the community, not necessarily somebody who is, for example, an elected representative.

Can such a complaint be brought forward and investigated by any citizen of Manitoba anywhere in the province, or are there limitations?

Mr. Mackintosh: Mr. Chair, if the information comes from a Manitoban, it would be dealt with by the branch. That includes a complaint from a person in whatever capacity. There is no differential treatment based on the office that one might hold or what the status of a Manitoban is who makes a complaint. The investigation would take place, as set out on page 3. I think the act sets out a good process with good checks and balances, but also I think quite an innovative process.

I hope that answers the member's questions.

Mr. Gerrard: I just want to get that absolutely clear. What you are saying is that where any citizen of Manitoba brings forward a concern about the presence of a fortified building, which is a contravention of the act, whether that building is within a First Nations community or anywhere else in the province, it would be subject to similar investigation and action under the act. Is that correct?

Mr. Mackintosh: Well, as I said earlier, the law is one of general application. If there are complaints that are relayed they will be responded to. As I say, there may well be communications with the band and council that would depend on circumstances, as well as the local law enforcement agencies, as part of the response from the department.

* (11:50)

Mr. Gerrard: I just have a brief follow-up comment. I wanted to get a very clear statement, because I think it is very important that the act not be administered or written in a way that would potentially result in fortified buildings moving onto First Nations communities and causing problems there, and the last thing that we want is to create difficulties for people in First Nations communities because of some differential application of the act.

Mr. Mackintosh: I just do not know if it is fair to assume that Aboriginal communities would welcome fortified buildings for the purposes of criminal activity any more than any other communities in Manitoba.

Mr. Gerrard: That is not an underlying assumption in this case at all. It is just that I want to make sure that people in First Nations communities are protected from this act being differentially applied in ways that would cause problems for people, and I think that the assumption that you made is just wrong, but I think that what we want to make sure is that the act will not have force or application in ways that could cause differential problems in certain communities compared to others.

Mr. Chairperson: During the consideration of a bill, the table of contents, the preamble, the enacting clause and the title are postponed until all other clauses have been considered in their proper order. Also, if there is agreement from the committee, the Chair will call clauses in blocks that conform to pages, with the understanding that we will stop at any particular clause or clauses where members may have comments, questions or amendments to propose. Is that agreed? *[Agreed]*

Clause 1(1)–pass; clause 1(2) to 2(2).

Mrs. Smith: Clause 1(3), I have an amendment. I move the amendment of clause 1(3).

Mr. Chairperson: Excuse me, we are going to pass clause 1(2), first.

Clause 1(2)–pass; clause 2(2).

Mrs. Smith: I have been trying to say that we are going too fast. We need to slow down. I have an amendment in 1(1) definition of director.

Mr. Chairperson: I am sorry. We will revert to clause 1(1). Is there leave to go back to 1(1)? *[Agreed]*

Mrs. Smith: I move

THAT *section 1 be amended*

(a) in the definition "director" in subsection (1) by striking out "under The Civil Service Act*" and substituting "under subsection (4)"; and*

(b) by adding the following after subsection (3):

Appointment of Director of Public Safety

1(4) The minister shall appoint, as Director of Public Safety, a person who has been employed as a police officer, or who otherwise has practical experience in police work.

The reason for this is to ensure–

Mr. Chairperson: Excuse me, I need to read it first.

It has been moved by Mrs. Smith

THAT section–

An Honourable Member: Dispense.

Mr. Chairperson: Dispense.

Mrs. Smith: The reason for this particular amendment is to ensure that when a director is appointed to establish that a fortified building is, indeed, a fortified building, the director have some practical education and background in terms of police work. An example would be often there are fortified buildings, and you do not know it is fortified until you start banging down the doors to get in, and a director who actually is appointed as somebody who must identify fortified buildings should have the expertise in law enforcement in some area.

So that is to strengthen the bill, to strengthen the intent of the bill which is to give the police department more tools to work with, particularly in fortified buildings which are related to gang activity.

Mr. Mackintosh: Just first, it is, of course, quite unusual that legislation would set out the job description or qualifications of an individual who performs a function. Second of all, and I think very importantly, the role of the director of public safety is one that is related to many endeavours in the interest of public safety, and it is important that there be a broad range of experience and background in that position.

One of the roles of the director is to receive advice from those who are particularly skilled and professional with expertise in doing investigations. That does not mean that the director, him or herself, must have come from an investigative background but must look at the reports and advice and consider that in the context of the broader objectives of the

legislation. Of course, decisions made by the director are subject to judicial review.

I might add that the head of the Vice Division for the City of Winnipeg Police Service, for one, was thoroughly consulted on this legislation, and that was not a concern that had been expressed. I might add that the Public Safety branch, Investigation Unit is comprised of individuals with over 75 years of experience with policing in Manitoba and expertise actually in the area of policing as well.

For example, one of the individuals and the person who heads up the unit was the former sergeant in charge of the Street Gang Unit for the Winnipeg Police Service, was in charge of the crisis negotiation unit, was the sergeant in charge of the anti-crime tactical unit. He was a detective in robbery and homicide, a polygraph examiner, and he also had general patrol experience. He has extensive experience in planning, organizing and co-ordination of special projects including Northern Snow, I might add, drug projects, the execution of search warrants and raids, high-risk arrests, evidence collection, court testimony.

I might add, working with that individual in the unit is a person with 25 years of experience with the Winnipeg Police Service as a detective sergeant in the Street Gang Unit, as well coming from a background in the Youth Division, the Child Abuse Unit and an investigator with the district detectives. Another former officer with the unit has 28 years experience with Winnipeg Police Service, including a sergeant in charge of the Vice Division for drugs.

So that is the kind of expertise that we have gathered around, and I think it is important to have different varieties of background in this unit for it to be indeed effective and responsible in delivering the mandate set out in the legislation.

So, at this time, Mr. Chair, it would not be our intention to accept that particular amendment.

Mr. Chairperson: Members, we need to deal with a few procedural matters before we continue.

First of all, the time being 12 noon, is it the will of the committee to rise as previously agreed but not before we deal with the fact that we were going in blocks of clauses, and kind of we got ahead of ourselves.

The other procedural problem is that the amendment is out of order because it includes amendments to two different clauses, so I would recommend that when you come back we will have two separate amendments.

Is there leave to withdraw this amendment? *[Agreed]*

Mr. Mackintosh: Well, I think we were having some debate internally as to whether we sit to 12 or 12:30, and it would be my thinking that we could perhaps conclude this bill by 12:30. We are anxious to move it along. I am just wondering if we can do this–*[interjection]*

Mr. Chairperson: The House leaders will come to an agreement on when the committee will meet again, and it will be announced in the House.

Shall we report Bill 8 to the House? *[Agreed]*

Shall the committee rise? *[Agreed]*

COMMITTEE ROSE AT: 12 p.m.