

Third Session – Forty-Second Legislature
of the
Legislative Assembly of Manitoba
Standing Committee
on
Justice

Chairperson
Mr. Alan Lagimodiere
Constituency of Selkirk

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MANITOBA LEGISLATIVE ASSEMBLY
Forty-Second Legislature

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ADAMS, Danielle	Thompson	NDP
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**LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON JUSTICE**

Tuesday, April 13, 2021

TIME – 6 p.m.

LOCATION – Winnipeg, Manitoba

CHAIRPERSON – Mr. Alan Lagimodiere (Selkirk)

ATTENDANCE – 6 QUORUM – 4

Members of the Committee present:

Hon. Mrs. Cox, Hon. Mr. Friesen

*Mr. Bushie, Ms. Fontaine, Messrs. Isleifson,
Lagimodiere*

APPEARING:

Hon. Jon Gerrard, MLA for River Heights

PUBLIC PRESENTERS:

Bill 26 – The Human Rights Code Amendment Act

*Ms. Zainab Mansaray, Canada Sierra Leone
Friendship Society Inc.*

Shawna Finnegan, private citizen

*Bill 63 – The Petty Trespasses Amendment and
Occupiers' Liability Amendment Act*

Mr. Norman Rosenbaum, private citizen

*Mr. Bill Campbell, Keystone Agricultural
Producers*

Mr. Grant Melnychuk, Manitoba Pork

Mr. Carson Callum, Manitoba Beef Producers

Mr. Dennis Meeches, Treaty One Nation

*Ms. Catherine Kroeker-Klassen, Manitoba Egg
Farmers*

WRITTEN SUBMISSIONS:

*Bill 26 – The Human Rights Code Amendment
Act*

*Karen Sharma, Manitoba Human Rights
Commission*

*Bill 63 – The Petty Trespasses Amendment and
Occupiers' Liability Amendment Act*

Dino Flett, Garden Hill First Nations

MATTERS UNDER CONSIDERATION:

Bill 26 – The Human Rights Code Amendment Act

*Bill 58 – The Criminal Property Forfeiture
Amendment Act*

*Bill 63 – The Petty Trespasses Amendment and
Occupiers' Liability Amendment Act*

* * *

Mr. Chairperson: Good evening. The time being 6 p.m., will the Standing Committee on Justice please come to order.

This meeting has been called to consider the following bills: Bill 26, The Human Rights Code Amendment Act; Bill 58, The Criminal Property Forfeiture Amendment Act; Bill 63, The Petty Trespasses Amendment and Occupiers' Liability Amendment Act.

I would like to inform all in attendance of the provisions of our rules regarding the hour of adjournment. A standing committee meeting to consider a bill must not sit past midnight to hear public presentations or to consider clause-by-clause of a bill except by unanimous consent of the committee.

Written submissions from the following persons have been received and distributed to committee members: Karen Sharma, Manitoba Human Rights Commission, on Bill 26; and Chief Dino Flett, Island Lake First Nations, on Bill 63.

Does the committee agree to have these documents appear in the Hansard transcript of this meeting? *[Agreed]*

Prior to proceeding with public presentations, I would like to advise members of the public regarding the process for speaking in a committee. In accordance with our rules, a time limit of 10 minutes has been allotted for presentations with another five minutes allowed for questions from committee members. If a presenter is not in attendance when their name is called they will be dropped to the bottom of the list. If the presenter is not in attendance when their name is called a second time, they will be removed from the presenters' list.

The proceedings of our meetings are recorded in order to provide a verbatim transcript. Each time someone wishes to speak, whether it be an MLA or a presenter, I first have to say the person's name. This is the signal for the Hansard recorder to turn the mics on and off.

Also, if any presenter has any written materials for distribution to the committee, please send the file by email to the moderator who will distribute it to all committee members.

Thank you for your patience.

Bill 26—The Human Rights Code Amendment Act

Mr. Chairperson: We will now proceed with public presentations.

I will now call on Zainab Mansaray, representing The Canadian Sierra Leone Friendship Society Incorporated, and I ask the moderator to invite them into the meeting. Please unmute yourself and turn your video on.

Please proceed with your presentation.

Ms. Zainab Mansaray (Canada Sierra Leone Friendship Society Inc.): Good evening.

My name is Zainab Mansaray. I'm here on behalf of The Canada Sierra Leone Friendship Society Inc. As I always pleading with all our members both Canada Manitoba and Sierra Leone we have our organization called Canada Sierra Leone Friendship Society Inc., which is our ideas that both in Canada and in Sierra Leone we are working towards a unity and transformation cultural exchange. We're working towards education, agriculture, mining faculty and the famine.

As we all understand how poverty's everywhere but we manage it. As we can always proud to be a Canadian citizen so we proud in Sierra Leone for Canada, what they are doing. We are asking to help us with this human right because we are cultural exchange bringing education, bringing our resources that we have.

We are looking forward for mining industry, so that the old institution—so that we will be able to know what we have in our country to transfer it in Canada, so that Canada can transfer the education that we have, called participatory development.

For more information you can give us—give me the question, we'll happy—then we'll submit our information to the clerk.

Thank you for having me.

Mr. Chairperson: Thank you for your presentation.

Do members of the committee have questions for the presenter?

Hon. Cameron Friesen (Minister of Justice and Attorney General): Ms. Mansaray, I would like to thank you for being here this evening and for presenting to this committee this evening. So thank you again for being present.

Ms. Mansaray: Thank you. Thank you, hope you consider us, as I'm proud to be a Manitoban, and we want to bring the mining industry. If you can give us the bill so we can pass it on. We have the natural resources, but we don't have the education.

Ms. Nahanni Fontaine (St. Johns): Miigwech for your presentation, thank you for your presentation this evening. I know that I probably can speak on behalf of everyone here that we do appreciate you taking out the time to share what you shared with us this evening. Miigwech again.

Thank you.

Ms. Mansaray: Thank you, madam. As I continue to plead for this organization, it's an excellent initiative. Right now we have 170 gold karats that we are bringing in. It happened last year but because the bill is not in, we get stuck in Toronto. Please, we are pleading, as human rights, so exceed your power in Sierra Leone.

Thank you.

Hon. Jon Gerrard (River Heights): Thank you, Zainab, for coming to present to this committee on this bill, which deals with human rights, and human rights is clearly very important for people in Sierra Leone and people in Canada.

One of the aspects of this bill which I would ask you to comment on is that an award under this bill for a—damages, injury or dignity or feelings or self-respect ordered by an adjudicator cannot exceed \$25,000. Do you think that is too low a cap and that award should be allowed at a higher level?
[interjection]

Mr. Chairperson: Ms. Mansaray, I have to acknowledge you first. Go ahead, Ms. Mansaray.

Ms. Mansaray: I'm sorry. As I am study, I taught here at the University of Winnipeg. I'm so proud participatory education and development with—even give us a start. We really appreciate, let's just get a start, we will move forward. If they exceed in it, we appreciate it.

But we want a start to give to the mining industry institution, we are now operating in Sierra Leone, in technology, but we don't have lights, we don't have technology there. We are having problems with the Internet and the lights. If we get that one, we will be able to hire people here, and we have another solar panel company that's wanting to help us.

So when they help us, they will take it from Canada. I'm so proud as everything in Canada, I want to say made in Canada, bring it to Sierra Leone, Sierra Leone bring it to Canada, as we are looking for the students again to come and study.

* (18:10)

We appreciate everything you gave us at the start. Based on what we are doing, you will add more.

Mr. Chairperson: Thank you for your presentation, Ms. Mansaray.

We will now move on to bill—oh, sorry. We have one more presenter on this bill, Shawna Finnegan, a private citizen. I will now call on Shawna Finnegan and ask the moderator to invite them into the meeting. Please unmute yourself and turn your video on.

Shawna Finnegan, please proceed with your presentation.

Shawna Finnegan (Private Citizen): I want to start by expressing my gratitude to the standing committee members for your ongoing patience as I learn the procedures and norms of the Manitoba legislative committees. This is my second presentation to the Standing Committee on Justice in the Third Session of the 42nd Legislature.

I continue to learn more about the 19 bills that the PC government tabled and passed through first reading late last year with no text. As I noted in my first presentation to this committee, I am shocked by the tabling of so many bills without text and, as a private citizen, that I have not been provided with adequate time to review and consider the impacts of the proposed legislation.

Over the past few weeks, I have spoken with members of my family, my friends and my community about the potential impacts of these 19 mystery bills. I have chosen to make oral presentations to standing committees regarding only a handful of these bills, and I make these presentations with a great deal of privilege regarding my time and my capacity. I work full time and I volunteer in my community; however, I am able to find flexibility in my schedule in order to be here today, something that I think is not possible for many Manitobans.

My presentation today represents only a fraction of the research and analysis that I believe is absolutely necessary to consider the ramifications of this proposed legislation. I want to focus my presentation tonight on section 43, subsection 2.1 of Bill 26, maximum damages for injury, which states, quote:

The amount of damages for injury to dignity, feelings or self-respect ordered by an adjudicator under clause 2(c) must not exceed \$25,000 and it must be proportionate to the seriousness of the contravention of its effects on the party. End quote.

This proposed change to The Human Rights Code of Manitoba appears to be a significant one and is not in line with other provinces in Canada. I have reviewed the current human rights codes and acts of Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Nunavut, Northwest Territories, Prince Edward Island, Ontario, Saskatchewan and the Yukon. Among these provinces and territories, only Saskatchewan currently mandates a cap on damages for injury to dignity, feelings or self-respect.

In the process of conducting my research, I further reviewed the annual reports of the Manitoba Human Rights Commission and the Human Rights Adjudication Panel between 2016 and 2018, noting that 2018 is the last published annual report that is available online.

I noted several cases in which the 'complainants' were awarded damages of \$15,000 to \$20,000 for injury to dignity, feelings or self-respect. One case in 2016, in which each complainant was awarded \$20,000 for injury to their dignity, self-respect and feelings under section 43(2) of The Human Rights Code, the annual report indicated that this amount of damages was, quote, sending a clear message that the type of harassment they were subjected to was deserving of a substantial monetary award. End quote.

Twenty-five thousand dollars may seem to be a sufficient cap on damages when considering some of these recent cases. However, I see no reason why The Manitoba Human Rights Code should be placing a cap whatsoever, which appears to be incongruent with the human rights acts and codes in other provinces around Canada.

According to the website of the Manitoba Human Rights Commission, when asked, how is the impact of discrimination measured, the commission's response was, quote, discrimination impacts a person's dignity, self-respect and feelings. The impact of discrimination on the 'complainant' is difficult to quantify; however, human rights law tells us that the amount of compensation should be meaningful.

As well, it should be determined based on the nature and extent of the discrimination and its impacts

on the individual, guided, where possible, by decisions made in similar circumstances in Manitoba and across Canada.

During my research, I reviewed cases in other provinces to understand better how and why damages are awarded in cases of injury to dignity, feelings or self-respect. I discovered that in 2015, the Human Rights Tribunal of Ontario awarded damages of \$150,000 and \$50,000 to two employees against their former employer.

The 'tribble'—sorry, the tribunal awarded damages as a result of the sexual harassment and sexual assault of the employees suffered at the hands of their employer.

In British Columbia in 2015, damages of \$35,000 were awarded for injury to dignities, feelings or self-respect as a result of discrimination against an employee with a disability. A similar case in 2009 awarded damages of \$30,000.

In 2016, the Alberta Human Rights Commission issued a decision in which they ordered the respondent to pay the 'complainant' general damages for loss of dignity in the amount of \$25,000. In its decision, the tribunal noted that in Alberta, there is no statutory limit on the amount of damages available for mental distress, injury and loss of dignity flowing from discriminatory conduct.

The tribunal also noted that damages, quote, must not be so low as to trivialize the importance of the human rights legislation by effectively creating a licence fee to discriminate, end quote.

I would like to conclude my presentation this evening by asking standing committee members to consider the ramifications of the proposed changes to The Manitoba Human Rights Code and act in the best interest of Manitobans. Thank you for your time.

Mr. Chairperson: Thank you for your presentation.

Do members of the committee have any questions for the presenter?

Ms. Fontaine: Good evening, Ms. Finnegan. Shawna, it's good to see you again. I got to see you last time that you presented.

So, first let me just say this: I do want to just commend you, even though you have a very busy schedule, like many of us and like many Manitobans. This is the second time that you've presented, that you've made that commitment on behalf of so many Manitobans that can't get here or don't know about

getting here, right? Not every Manitoban knows that they have the ability to present.

So I want to thank you for that, and I want to thank you for your dedication and commitment to coming to present.

As I said last time, I think it's important that the minister and all of the PC MLAs here, you know, hear from the public, from the folks that vote them into office. The consequences and the ramifications, not only of withholding bills, right? Like, the text of bills, keeping bills secret from the very people that pay their salaries and get them elected. I think that's important.

But, certainly, I also—I think it's important to—for them to also hear about the legislation. The legislative agenda that they're, you know, putting on the—in the queue here that Manitobans will be forced to live with. And so, I really appreciate you doing that. And even though probably many other Manitobans don't know, I'm sure that they would appreciate you doing that work as well.

So, I appreciate all the work that you did, you—very succinctly, as we can all tell here, you did a lot of research and—to pull your presentation together. I'm curious as a citizen, as Manitoban citizen, as an electorate, you know—how do you feel about this bill, that they're capping those damages that can be awarded in the amount of \$25,000? How do you feel about that?

And, you know, you spoke about the ramifications of doing that—what do you feel that those ramifications will be in the lives of those individuals that will be making those complaints and should be awarded those dollars?

S. Finnegan: Thank you so much for your comments. I really appreciate them.

And, very briefly in response to your question, I think the ramifications are really hard to understand, given so little precedence in this choice of placing a cap. It seems to me, based on the research that I have done, that there are some significant changes to how the public understands how The Human Rights Code can help them and what support they are provided.

* (18:20)

I think, as well, it can potentially minimize the impacts of some of the—pardon me—some of the potential damages that can affect Manitobans. I think, for example, considering some of the cases in other provinces where people with disabilities were discriminated against by their employees, is the fact that there is going to be now a cap of \$25,000, mean that

employers can then make choices with regards to, maybe there's a cost savings of firing somebody, and they know that as a maximum, they'll only have to pay \$25,000.

I also think there's really ramifications for considering that when is this act next going to be updated. I mean, is it going to be in act for 10 years, in which case inflation has other huge impacts on the impact of this cap.

But just to say, I think it's really hard, with so limited time, to really under the full extent of the ramifications, and I would really ask the government to delay passing this bill.

Mr. Friesen: Thank you, Ms. Finnegan, for being at committee this evening and for joining us here. It's good to see you again.

Thank you for your presentation and the research that you've done on to the human rights code bill that we have introduced in order to improve service for all Manitobans. You've indicated you care deeply about issues of human rights. We do, too.

I just wanted to ask you to comment on a few things. I wanted to know if you were aware that, when we took government five years ago, the amount of time it took to advance a complaint to decision in this process, in the Human Rights Commission, was between four and five years. And I wanted to ask you if you knew that the crux of this bill is to bring changes that will reduce the amount of time it takes for people to have their complaint heard by the commission.

Besides that, I just wanted to also indicate, and—sorry—we seem to have a snow shovel going on outside here, so we're competing with a plow, that's not just heckling at the table, I'm sorry. We're back.

I want to also ask if you knew that it's also the Canadian Human Rights Commission that does have a limit in place, and that that limit in place in the Canadian Human Rights Commission is actually lower than the proposed limit that the Manitoba amendment would bring.

So, I'm just asking you to respond to those things and, once again, thank you for your presence at committee this evening.

Mr. Chairperson: The time for questioning has expired.

Is it the will of the committee to hear the answer?
[Agreed]

S. Finnegan: Thank you, Minister Friesen. I really appreciate your comments.

I want to say that I was not aware of what you mentioned, in particular because I had only a few days to prepare for this bill and I've done an incredible amount of research in the time that I had, but it's really difficult to do anything like the amount of research that will be required to understand even the ramifications of what you've described in such a short period of time.

I greatly appreciate the efforts of the provincial government to make changes that would expedite the processes of hearing these cases, but I still believe that there is not sufficient evidence to suggest that it is the right decision for this Province to be mandating a cap. And I honestly feel that it's beyond the scope of what this committee should really be dealing with—or, rather, this Manitoba legislative committee should be dealing with.

Thank you very much for your time.

Mr. Chairperson: Thank you, Shawna Finnegan.

That concludes the list of presenters for Bill 26, Human Rights Code Amendment Act.

I see we have no presenters for Bill 58, The Criminal Property Forfeiture Amendment Act.

Bill 63—The Petty Trespasses Amendment and Occupiers' Liability Amendment Act

Mr. Chairperson: So we will now move on to Bill 63, The Petty Trespasses Amendment and Occupiers' Liability Amendment Act.

I will now call on Norman Rosenbaum, private citizen, and ask the moderator to invite them into the meeting. Please unmute yourself and turn your video on.

Floor Comment: Yes, thank you very much, and hopefully I can be heard. Was that correct?

Mr. Chairperson: Okay, Mr. Rosenbaum, please proceed with your presentation.

Mr. Norman Rosenbaum (Private Citizen): Yes, I may make a comment on the The Petty Trespasses Act and the interrelationship between that and Bill 57, The Protection of Critical Infrastructure Act.

The Petty Trespasses Act amendments are designed to remove the term unlawful entry from the existing Petty Trespasses Act. In other words, there's an offence committed by mere entry upon land.

Bill 57, The Protection of Critical Infrastructure Act, makes an offence of entry upon land. For example, if there is disputed Aboriginal title where a protestor maintains they have a right to enter upon land, and lawfully enter upon land, then their entry upon land by reason of a posting by the land owner—of thou shall not enter—is an offence.

And the difficulty is, Bill 57 is going to make an offence subject to very substantial fines and imprisonment, for mere entry upon lands. And—

Mr. Chairperson: Mr. Rosenbaum, just to remind you, we are speaking—you keep referencing Bill 57. It's—the number of the bill is Bill 63, the petty trespasses amendment act and occupiers' liability act.

Mr. Rosenbaum: Hello? Yes. Bill 63 deletes the reference to unlawful, makes an offence of mere entry upon land and I submit to the committee that the committee should consider the removal of that term unlawful and criminalizing of mere entry upon land.

Additionally, the current petty trespass act requires actual warning by the landowner of prohibited entry whereas now, it can be implied if there—if a landowner doesn't want other people on the premises, that entry upon land is unlawful.

I appreciate the Chair's comment that we're talking of Bill 63 and not Bill 57 so I'll simply restrict my comments to Bill 63.

Making a summary conviction offence to simple entry upon land affects people's Charter rights and also can affect the rights of Aboriginal protestors if they maintain that they have a lawful right of entry upon lands or for example, activities on the lands violate their rights of prior and informed consent pursuant to the UN Declaration of Rights of Indigenous People.

Subject to any questions. And I am simply stating that it's not clear that the committee has considered the ramifications of this. And to say that we're going to criminalize mere entry upon lands, I'd submit, is going to create a brand new offence, previously unknown to law, and will affect people's security of the person rights but also free speech and freedom of association rights under the Charter—subject to any questions that might be had.

Mr. Chairperson: Mr. Rosenbaum, thank you for your presentation.

Do members of the committee have questions for the presenter?

Ms. Nahanni Fontaine (St. Johns): Good evening, Mr. Rosenbaum.

I appreciate you presenting to committee this evening and I understand what you were trying to do. I think it is important to look at 63 and 62 in concert with 57. So I appreciate what you were trying to do there and I wholly agree with what you were submitting to the committee.

And we—and I think that, you know, we see a series of legislation that are impacting on Manitoban's Charter rights and are certainly impacting on Indigenous people's rights to our traditional territories.

So I would ask you just to maybe take a couple of minutes just to submit to the committee what you feel those ramifications are in respect to Bill 63, particularly in respect to Indigenous people's right to traditional territories.

Mr. Rosenbaum: Yes. Prior informed consent of Indigenous peoples—hypothetical—forestry or mining projects on traditional territories. The operator sticks up a sign: unlawful entry prohibited except to authorized persons. The Aboriginal protestors believe that they have a right to prior consultation and consent and they, in fact, have potentially Aboriginal title. There are certain bands that haven't been recognized as being Native bands but still maintain that they have rights to traditional territories within Manitoba.

* (18:30)

So, we have a certain sense where the Aboriginal protestors were example protests; I protest the activity of mining or affecting traditional religious ceremonies upon their lands. They enter upon the premises—in this case, the lands—acreage where there is a mining development. They feel that there is a spiritual connection to the land; they feel that the—that their rights to observe their spiritual practices has been affected.

They show up; they protest; they hold up a sign; they've entered the lands; they've committed an offence. Even if otherwise under The Petty Trespasses Act it would have been a defence by reason of unlawful. That defence is taken away.

The mere entry becomes prohibited by operation of law. No defence; it may be subject to a Charter challenge, but the presiding judge may say, well, they've taken out the term unlawful, so, well, you have simply entered by reason of mere presence on those lands, you've committed an offence.

And then the Native protestors are 'attasked' with a defence raising their traditional rights and saying, we've been here lawfully. The judge may say, well, it's not part of the statute. You can be there lawfully, but you're still committing an offence because the mining operator has stuck up a sign saying only authorized persons are entitled.

They can essentially crush and squelch Native protests. And, I will say, I agree with the honourable member about the fact that you cannot view bill—this bill, the petty trespasses act amendments act, in isolation from Bill 57.

Bill 57 makes mere entry upon lands unlawful. The 'analot' here is Bill 63 makes it unlawful to enter upon lands, effectively with no defence of the entry being lawful. There are important issues of First Nations feeling a real connection to the land, a spiritual connection and entitlement that they have not ceded their rights by surrendering their rights under the Indian Act.

They have not ceded traditional title; they've certainly not ceded more than the original treaties. This presumes that they've given up all their rights under treaties, whereas First Nations persons—I'm not a First Nations person, but I suspect that First Nations people would say, we haven't ceded all our rights. We still have rights. We have rights to protest if we have not been consulted.

And, Manitoba has to have their laws be consistent with the rights UN declaration of the rights of Indigenous—

Mr. Chairperson: The time for questioning has expired.

I will now call on Bill Campbell, Keystone agriculture producers president, and ask the moderator to invite them into the meeting. Please unmute yourself and turn your video on.

Floor Comment: Good evening. Can you see and hear me?

Mr. Chairperson: Mr. Campbell, please proceed with your presentation.

Mr. Bill Campbell (Keystone Agricultural Producers): Thank you, Mr. Chairman. Good evening. My name is Bill Campbell, and I am president of Keystone agriculture producers, also known as KAP.

KAP is Manitoba's general farm policy organization providing a unified voice for farmers on issues that affect agriculture. We work with governments,

industry and stakeholders on overarching issues that affect all farmers.

KAP is funded and directed by our members, which include farmers from across the province and organizations representing specific crop, livestock and specialty commodities. Our members set KAP's policy through a grassroots democratic governance structure. In total, we represent and promote the interests of 4,500 farmers and 20 commodity associations across Manitoba.

This evening is an opportunity for our members to provide further input into Bill 63, the petty trespassings amendment and occupiers' liability amendment act.

KAP is committed, through policy developed by our farmers, to protect the interest of agriculture from the spread of animal and plant diseases and to address the growing trend of rural crime and trespassing in Manitoba. Our members have been clear that this is an important issue and that the solution requires legislative action.

KAP has lobbied the provincial government for stronger legislation with tougher penalties to deter rural crime and trespassing. We have called for legislative and regulatory changes aimed at enhancing the protection of farm families and livestock operations. KAP also submitted feedback to the provincial government's rural crime consultation held last fall.

Trespassing on private land is a safety and biosecurity issue, and we welcome changes that will clarify requirements for landowners and deter potential trespassers. Manitoba farmers take biosecurity and food safety seriously because they know that the food that they produce should meet the highest standards. Farmers work hard to develop and adhere to biosecurity protocols to protect their farms and livestock from the spread of diseases to humans, animals and plant life.

Biosecurity protocols include requirements depending on the species, such as employees showering when entering and exiting a barn; mandatory gowns, face masks and boot covers; and other standards aimed at keeping both animals and the food supply safe.

These protocols are mandatory, universal, enforceable and include third party independent auditing and verification. A breakdown in biosecurity protocols jeopardizes food security and often 'necessitates' drastic action to prevent disease outbreaks, which

have critical, immediate and long-lasting impacts on our industry.

For example, when a sole borne–soil-borne disease such as clubroot enters a canola field, yields can be decreased by as much as 100 per cent and farmers are limited in their future crop choices. KAP defends and supports the right of a landowner to legal protection from unauthorized trespassing. We believe that trespassing on farmland should be considered a chargeable offence.

Landowners should not be required to enclose their land and to confront alleged trespassers before law enforcement can act. Requiring farmers to confront trespassers is isolating and intimidating as they wait for enforcement officers to arrive.

Many farmers live and raise their families near or on their farming operations and are concerned that they may be threatened. Farmers and farm families have the right to know who enters their property and that they should feel safe, secure and at ease living and working in rural areas and rural communities.

This legislation will appropriately address trespassing offences and shift responsibility from the landowner to the trespasser. This legislation will provide greater protections to landowners from civil liability through enhancements to duty of care provisions. It also addresses the need for exemptions to trespassing laws. Overall, this is a step in the right direction, and KAP will continue to highlight the need for written permission to enter private property.

Going forward, we encourage the Manitoba government to proactively educate rural landowners and clarify the level of responsibility required. It is also important to clarify allowable actions in terms of preventing trespassers and ensuring the safety of those who may enter the private property.

In closing, we want to emphasize that Manitoba should be confident about where their food comes from. Our industry and the farmers in this province have high standards for themselves and stringent requirements that they must meet when it comes to food they produce.

We appreciate being included in this important discussion as the voice of farmers in Manitoba.

Thank you.

*(18:40)

Mr. Chairperson: Thank you for your presentation.

Do members of the committee have questions for the presenter?

Hon. Cameron Friesen (Minister of Justice and Attorney General): Thank you, Mr. Campbell, for being here with us tonight at committee for consideration of Bill 63. Thank you for the participation of Keystone Agricultural Producers in the very considerable public outreach that occurred prior to the development of this bill and other bills. I want to thank your organization for all that they do in our communities.

You made some very interesting points that I think are worth further exploration this evening. As you know, this bill is an attempt to get it right, to balance off the right of, you know, land owners to have a reasonable confidence about who's entering their property.

At the same time, it does remove some capabilities that are right now in place in Manitoba that allow for land owners to detain or to essentially place in citizen's arrest people that they presume to be trespassing.

And as you've made clear this evening, that's unhelpful. We want law enforcement officials doing law enforcement. It intimidates land owners to think that they must somehow intervene. So I wanted you to perhaps tonight speak to that further, if you would like to.

But also, you spoke about the rising issue of rural crime. We heard this during our public-facing exercise and I would like you just to speak for a moment or two about what Keystone Agricultural Producers have heard from its members about the seriousness and reality of rural crime.

And thank you once again for joining us tonight at committee.

Mr. Campbell: Yes. Thank you very much for the question. We have seen increased amounts of rural crime and trespassing on our properties from our members. It is certainly intimidating and fearful for the process to confront a trespasser. We have seen enhanced processes where we're not sure of the state of the person that we see on our property, and so for a private individual and his family to have to confront individuals that are on their property is a life-threatening situation.

I don't think that that is a role that citizens should encounter. I believe that is a role for the law enforce-

ment agencies. I believe that we need to have clarification with regards to property-rights owners in rural Manitoba. We have seen the law enforcement agencies become longer to respond to calls, so—which places our biosecurity measures and farm safety at greater jeopardy.

Ms. Fontaine: Mr. Campbell, you've spoken a lot tonight—a significant portion of your presentation was about rural crime. I'm curious—you've indicated that rural crime has increased alongside trespassing.

So, a couple questions: one, where are the stats on that and where did you get the stats from that? So—because you have said that several times throughout your presentation, so where are the stats on that? Where did you get it?

And then secondly, who's doing the trespassing and the rural crime?

Mr. Campbell: Well, thank you for the question. I believe that those stats are available through reports to the law enforcement agencies. We have also seen increased comments from our members, so—and we have seen increased incidence in my local area where people have reported these cases.

The other—pardon me, the other question, the second question, if you could remind me?

Ms. Fontaine: The second part of my question is, who's doing this? And because if you're—if—and I ask you these questions because if you're presenting to the committee and you're obviously quite in favour of Bill 63 and you're using it, you know, part—as part of your presentation as a justification for the need for 63, again, I'm not sure about the stats, again, because what you've provided is, kind of, you know, stories from here and, you know, a story from there. So I'm not sure about the stats.

But again, who is—who's doing the trespassing and the rural crime that you say has grown exponentially in the last many years?

Mr. Chairperson: Our time for questioning has expired.

Is it the will of the committee to allow the answer?
[Agreed]

Mr. Campbell: Well, thank you. And I guess this would be a direct response with regards to the law enforcement agencies and insomuch as that we do not have any charges against a lot of trespassers and rural crime in our areas, and so to identify them I don't think would be just at this case. But we just know that there

are increased cases of rural crime and trespassing when we live in the rural communities and rural areas.

Mr. Chairperson: Thank you, Mr. Campbell.

I will now call on Grant Melnychuk, private citizen, and ask the moderator to invite them into the meeting. Please unmute yourself and turn your video on.

Grant Melnychuk, please proceed with your presentation.

Mr. Grant Melnychuk (Manitoba Pork): I'd like to thank the Chair and the committee members for giving me opportunity to speak this evening.

My name is Grant Melnychuk and I'm the manager of planning and sustainable development with Manitoba Pork. I would just like to clarify that I am representing Manitoba Pork tonight. I registered as a representative of Manitoba Pork. So just to—I'd like to clarify that that makes its way onto the Hansard.

And I'm pleased today to speak to the committee this evening to voice Manitoba Pork's support for Bill 63, The Petty Trespasses Amendment and Occupiers' Liability Amendment Act.

As background for the committee, Manitoba Pork represents all hog producers in the province. We are committed to excellence in the delivery of swine sector programs such as quality assurance, food safety, animal care, swine production research and environmental stewardship.

In total, there are over 600 hog farms located across Manitoba. Our sector provides upwards of 14,000 jobs and contributes approximately \$1.7 billion to the provincial economy annually. Our goal is to work in partnership with government and stakeholders to effectively build and sustain a prosperous hog production and pork processing sector in Manitoba into the future.

My comments this evening will touch on two very important reasons as to why Manitoba Pork supports Bill 63: that's the importance of biosecurity and ensuring the safety of our producers, their families and our stakeholders.

Firstly, with regards to the importance of biosecurity, one of the biggest threats to our sector is the introduction of a foreign animal disease to the Canadian and Manitoban commercial swine herds. Diseases like African swine fever, or ASF, are present in major pork-exporting countries, including Russia,

Germany and Poland, and has caused the loss of over 200 million pigs in China alone.

In the event ASF was transmitted here, it would cause irreparable harm to our industry, both in Manitoba and all across Canada. As we've learned through the COVID-19 pandemic, viruses will spread rapidly when basic fundamentals such as hand washing, mask wearing, physical distancing—when these fundamentals are not adhered to.

Preventing disease spread in swine herds involves that similar biosecurity fundamentals be adhered to. Manitoba's pork producers and their staff follow stringent biosecurity protocols in their barns each and every day to—in order to keep their animals healthy and safe. Producers and employees are required to shower before entering barns. They must change into designated clothing and footwear in separate areas of the barn before entering the biosecure areas where animals are located.

Anyone trespassing on farms or entering barns without following proper biosecurity protocols puts the health of animals, the safety of food and the livelihood of farmers and our sector at risk.

Accordingly, Manitoba Pork is strongly supportive of proposed section 1(1)(a) of Bill 63, that clarifies that trespassing offences will indeed apply to enclosed and signed premises that are intended to keep unauthorized persons out of and animals in farmyards and storage sites for agricultural equipment and premises used for the cultivation of crops or the raising of animals.

* (18:50)

Simply put, all livestock and poultry sectors adhere to strict biosecurity protocols to prevent the spread of serious diseases including ASF, foot-and-mouth disease, avian influenza and others.

In our view, Bill 63 supports our sector's rigorous biosecurity protocols as the bill would introduce legislation that would help deter trespassing on agricultural lands and in particular in agricultural premises.

Secondly, regarding the safety of our producers, their families and our stakeholders, Manitoba's hog farms are more than just barns, fields and trucks. A significant number of our producers also live on the same acreages where their barns are located. The potential of having individuals trespass onto the land or break into the facilities is not only a biosecurity

concern but it also threatens the safety and security of our producers and their families.

In Manitoba, we've been fortunate that we have not witnessed co-ordinated break-ins that livestock producers in some other provinces have experience in recent years. But our producers are not exempt from threatening behaviour.

There have been instances of Manitoba farm families witnessing unknown farm—or, unknown vehicles repeatedly driving past their properties particularly when they're loading and unloading animals. And in some extreme circumstances, Manitoba livestock and poultry producers have even found wireless video recording devices on their properties.

These actions cause stress, fear and anxiety in people's homes and workplaces and are completely unacceptable. Manitoba Pork is of the view that the proposed amendments under Bill 63 would help deter such criminal behaviour and would help ensure the safety of our farm families.

In closing, Manitoba Pork would like to reiterate our support for Bill 63 which together with Bill 62, The Animal Diseases Amendment Act, would help protect the integrity of our sector's ongoing biosecurity efforts and help ensure the ongoing safety of our—and security of our farm families and our producers.

I would like to thank the committee members for their time and consideration and appreciate the opportunity to provide our organization's input on this important legislation.

Thank you.

Mr. Chairperson: Thank you for your presentation, Mr. Melnychuk, and we will ensure that Hansard is correct to reflect the fact that you are presenting on behalf of Manitoba Pork.

Do members of committee have any questions for the presenter?

Mr. Friesen: Thank you, Mr. Melnychuk, on behalf of you and your organization, Manitoba Pork, for being with us this evening at committee to discuss Bill 63.

Thank you for the work of your members and for your participation in the very significant public-facing exercise that preceded this bill and these recommendations to improve Manitoba laws. So we thank you for you and your members' participation, almost 1,000 individual responses to that process.

There seemed to be some reflection at the table tonight by members opposite that somehow the problem's not real. There was a suggestion to the last presenter by one of the opposition members; they said, show us your stats.

And so I want to invite you to respond to that, understanding that Manitoba accounts for 7 per cent of rural population in Canada but, in Manitoba, it's responsible for 12 per cent of Canada's property and violent crime.

And I believe it was mentioned at the public-facing process, as well, that Manitoba's rural overall crime rate in 2017 was 42 per cent higher than the urban overall crime rate and that the rural property crime rate in that same year in Manitoba was 5 per cent higher than the urban property crime rate.

So, I thank you for being here. I wanted to know if you could express through your members to you: is this issue that we're trying to address real, in your mind?

Mr. Melnychuk: Yes, thank you for the question. In response, quite frankly, yes, the issue is real. I don't have stats to back it up. You've identified some stats there that do speak to the degree of the severity of the issue in rural Manitoba.

Our view and our analysis of this bill largely were done so through the lens of biosecurity. Like I mentioned in my notes, we are fortunate that we have not had a major biosecurity breach in Manitoba, but we feel that this bill and the accompanying Bill 62 would go a long way in ensuring that that doesn't occur, by deterring such behaviour.

Ms. Fontaine: So, let me just follow up on your question—so, you don't have stats either for apparently this rise in rural crime, but you are in support of Bill 63 because, I believe, probably like the last presenter, you've heard from your members that there's this increase in rural crime.

So, I just want to put that on the record: that you don't have those stats either for the committee. And that's fine. That's fine. I understand that people support bills sometimes by—based on what they hear from folks, so I get it. But I do also just want to have you comment a little bit further that—you've said that your—this—your support for 63 is in respect through—in respect of and through the lens of a biosecurity breach and trying to mitigate that.

But you did say that there hasn't been a biosecurity breach. Is that true?

Mr. Melnychuk: It's true in the sense that there hasn't been a co-ordinated biosecurity breach like there have been in other provinces across Canada in recent years—Ontario and Alberta, to name a couple.

We're supportive of this legislation because it's proactive in nature. It puts laws—it would put a law in place that would deter such behaviour before there is a biosecurity breach.

Ms. Fontaine: So—and again, I just want it clear for the record that you're in support of this as a proactive measure for something that hasn't occurred. I know that you said there it occurred—apparently it's occurred in other jurisdictions, but in Manitoba, there has not been a biosecurity breach on any of your members' farms.

So, I just want to have that clarified for the record, because I feel that when we're discussing these bills, it's important to put those facts on the record. So, that's in fact the case here—that there has not been a biosecurity breach here in Manitoba.

Mr. Melnychuk: No biosecurity breach that has led to foreign animal disease, thankfully. But, as I mentioned in my comments, there has been biosecurity threats where our members and members of other commodity groups have found wireless recording devices on their properties.

This is—activities does threaten biosecurity significantly.

Mr. Chairperson: I will now call on Carson Callum from the Manitoba Beef Producers, and ask the moderator to invite them into the meeting.

Please unmute yourself and turn your video on.

Floor Comment: Good evening. Can you hear me?

Mr. Chairperson: Yes, Mr. Carson Callum. Please proceed with your presentation.

Mr. Carson Callum (Manitoba Beef Producers): Well, thank you, Mr. Chairperson, and the members of the Standing Committee on Justice.

My name is Carson Callum, and I am the general manager of Manitoba Beef Producers, or MBP. On behalf of MBP, I am pleased to provide a few comments regarding Bill 63, the petty trespasses amendment and occupiers amendment liability amendment act.

MBP is the primary voice of Manitoba's beef industry, representing approximately 6,300 producers involved in the various aspects of the beef sector,

including cow-calf, backgrounding and finishing. MBP has a 14-person board of directors who represent producers in different geographical areas of the province. Our mission is to represent all beef producers through communication, advocacy, research and education, within the industry and to governments, consumers and others to improve the prosperity and ensure a sustainable future.

The importance of Manitoba's cattle industry to the economy cannot be understated. Manitoba cattle and calf sales accounted for 6 to 7 per cent of Canadian farm cash receipts from cattle and calves over the period of 2014 to 2018. Further, Manitoba cattle and calf sales accounted for 8 to 12 per cent of the total province's farm cash receipts. It is estimated that the Manitoba beef sector generated in the range of 14,500 to approximately 16,000 person years of employment or jobs in the provincial economy over that same period.

* (19:00)

A thriving beef industry generates considerable economic, environmental and social opportunity and benefits for Canada.

MBP's perspective on aspects of Bill 63, as well in regard to elements of Bill 62, The Animal Diseases Amendment Act, are similar in many respects. MBP recognizes the efforts by the provincial government to try to protect livestock from potential risk caused by people's actions upon entering agriculture operations.

These risks can include the introduction of a foreign animal disease and the devastating animal health, economic and trade consequences that could accompany them. For example, it's been estimated that a foot and mouth disease outbreak in Canada would cost approximately \$65 billion in losses, as it would affect not just the livestock industry but Canada's grain industry, the veterinary sector and other areas.

Another concern is the introduction of invasive species and noxious weeds, which can have production implications for cattle, as well as adverse environmental effects. It is therefore imperative that our rigorous biosecurity practices are followed by entering all agricultural operations to prevent damaging events like this.

There is also the need—the public safety aspects of both bills. Farm families and their employees need to be safe from those trespassing with ill intent, such as to commit crimes. The potential for harm to people or injuries to animals could arise.

Many producers live in more remote areas where access to rural police services is neither as swiftly or readily available to them as to people living in or closer to larger cities. Examples of trespassing activities which have adversely impacted MBP members and their farms and ranches include but are not limited to theft of property, including cattle; dangerous use of firearms, including shots penetrating private residences in other buildings; unexpected encounters with trespassers; gates left open or damaged, thereby allowing cattle to get out and to be placed in harm's way; damage to other farm infrastructure supplies and damage to forages, pastures and crops caused by people driving across them.

These types of scenarios are very stressful and disconcerting for beef producers and their families as well as their livestock. It can also have an economic and production impact on farms and ranches.

Producers live on their farms and ranches, and like many other Manitobans, they deserve to feel secure in their own homes. MBP is supportive of the provisions of this legislation, which removes the requirement for farmers and their employers to themselves have to confront trespassers, a role which would be better placed with law enforcement officials. This should help better protect the safety of all parties by discouraging confrontation.

MBP recognizes and respects that provincial law cannot override the legal rights of First Nations and other Indigenous people to exercise Indigenous hunting, trapping or fishing rights on lands where Indigenous and treaty rights can normally be exercised.

Similarly, MBP recognizes that other citizens have the right to access agricultural Crown land for purposes such as hunting, recreational use, berry and mushroom picking, et cetera.

MBP does wish to restate its request for informed access for agricultural Crown land, whereby potential users would have to notify a leaseholder of their intent to access the lease. This is requested to help protect the safety and well-being of both livestock and land users. This would allow for discussion around biosecurity considerations to 'advise' the presence of livestock, dugouts, equipment in use, et cetera.

It would also help provide a means of reminding prospective land users of the importance of closing gates and not engaging in practices that might damage pastures and forages or sensitive areas on ACL.

As well, in the event of a disease outbreak, having knowledge of who accessed the land and when would be invaluable from a traceability and disease-management perspective.

With respect to the proposed changes regarding the limited duty of care applies, this information needs to be conveyed to landowners and the general public and easily understood by all, should a situation arise where duty of care has been—has to be considered. MBP requests that the provincial government undertake awareness activities in this regard.

MBP is supportive of the proposed exemption provision for listed authorized persons, such as instances where they are entering or remaining on lands or premises to fulfil their employment duties, to voluntarily provide emergency services and so on.

It would be beneficial to have more details as to how emergency services will be defined. MBP requests continued engagement with the provincial government as the regulations that will accompany this legislation are developed.

In closing, Manitoba Beef Producers supports efforts to ensure that there is a strong legislative and regulatory framework with respect to trespassing and occupiers' liability so that all parties are aware of their responsibilities and obligations when seeking to access private or public land or facilities. MBP believes there would be value in having public awareness campaigns about the changes when they are enacted.

Thank you again to the Chairperson and members of the Standing Committee on Justice for the opportunity to provide feedback on Bill 63.

Thank you.

Mr. Chairperson: Thank you for your presentation, Mr. Callum.

Do members of the committee have questions for the presenter?

Mr. Friesen: Thank you, Mr. Callum and the Manitoba Beef Producers, for your presentation this evening, for being with us this evening to discuss Bill 63. I appreciate your presentation today.

I've also appreciated, of course, your participation in our public consultative process that preceded this bill. I thank you and your members for your thoughtful presentations on issues pertaining to safety and trespassing and what constitutes notice and how to provide signage to indicate private property.

Thank you tonight, as well, for describing to us some of the impacts of your industry to the Canadian and Manitoba economy. I was flabbergasted to hear you indicate through your careful research that an event in the neighbourhood of \$65 billion, a negative event could be possible in the event of a biosecurity breach occurring in Manitoba.

Seems to be a suggestion at the table tonight from some members of the committee that we should not be proactive, that we should only wait for things to happen and then wring our hands and wonder how they happened, even if there's \$65 billion and countless jobs when it happens.

Could you just speak to the committee briefly about why we wouldn't want to wait for an adverse event and why we would care to be proactive with an approach through legislation.

And, once again, Mr. Callum, thank you for being with us this evening at committee.

Mr. Callum: Thank you very much for the question, and I think, as others have stated, it is very important to be proactive with any sort of disease, whether that's animal- or human-related, so ensuring that we can try to come up with preventative measures to stop the spread. Because once that spread can happen, it potentially is too late at that point and many of the losses will already be seen through the sector.

So I agree that it's really important to have that proactive approach.

Ms. Fontaine: Thank you for your presentation this evening. I do appreciate that you're actually, I believe, the only presenter that actually acknowledged Indigenous peoples and our rights to traditional territories. So, I actually want to thank you and say miigwech for that. You're the only one that did that.

And similar to questions that I've asked before: Has there been a biosecurity breach in Manitoba that you are aware of? So that's (1). And then (2), have you had discussion with the minister on this bill personally with him or anyone in his department?

I know that the minister has indicated with all of the presenters this evening that there were submissions and there was online consultation going on. I am just curious if you've had those one-on-one conversations with either the minister or any of his departmental staff—and, again, whether or not there's been—actually been any biosecurity breaches in Manitoba.

Mr. Callum: Thank you for both your questions.

I'll address your first one, and there hasn't been, you know, a transmissible disease outbreak yet. And that's why we just want to drive home the importance of these proactive measures, because they are spreading, you know, on a global scale, such as FMD or African swine fever, in other sectors. So it's really important to be ahead of the game here and proactive in that regard because we've seen impacts of non-transmissible diseases on—to our sector in the past on trade, for example. So we really want to try to be proactive with this approach.

And then your second question was personal communication: no, no personal communication. It was—it's been through the consultative process that we've provided feedback and our opinions on this approach.

Mr. Chairperson: Are there any other questions from committee members?

* (19:10)

Hon. Jon Gerrard (River Heights): Yes. Thank you for your presentation and for outlining the concerns relative to the beef industry. One of the issues with this act is to get the right balance. Do you—in this one section of the act, it makes it an offence to step on a residential lawn. Do you think it's appropriate that there should be the similar offence for somebody, you know, breaking biosecurity in an agricultural area and somebody stepping on a residential lawn?

Mr. Callum: Yes, thank you for your question. I think I would need some clarification on the definition of residential lawn or garden because in a—I guess a—if it's residential in an urban setting, this still could be used for different livestock grazing or anything like that over the course of the production year, so bio-security measures would still come into place in that regard. But that would be all I would comment on to your question.

Thank you.

Mr. Gerrard: Thank you.

Mr. Chairperson: The time for questioning from this presenter has expired.

I will now call on Chief Dennis Meeches, Treaty One Nation, and ask the moderator to invite them into the meeting. Please unmute yourself and turn your video on.

Chief Meeches, please proceed with your presentation.

Mr. Dennis Meeches (Treaty One Nation): Aaniin. Boozhoo.

[Anishinabe spoken. Translation unavailable.]

I'm just giving you a greeting in my Anishinabe language.

My name is—my spirit name is Strong Standing Thunderbird, from the Bird Clan and from the Long Plain. I want to thank you for the opportunity to speak to you today. It's interesting to hear different views on this particular piece of legislation, which will be highly contentious with the Treaty One Nation.

I am currently the Treaty One Nation spokesperson. I've been involved in politics for about 25 years. So, I grew up on the Long Plain and I just want to start off by saying that it's a little bit ironic. I mean, legislation has been always contentious for Anishinabe people, Dakota people, Métis, well, in terms of what's happening.

We've had to deal with very, very racist pieces of legislation for generations and generations, and, you know, we thought maybe we'd seen a move towards more reconciliation, whether that be land, economic, but we've always had to contend with legislation that's been designed, almost in some way, to suppress Indigenous right to not only sovereignty but lands and economic reconciliation.

So that really concerns me in terms of what's happened. I don't think proper consultation has taken place on this particular piece of legislation and others, I might add.

So, as we approach our 150th anniversary on August the 3rd of 2021, I look around and I'm thinking, okay, well, there's some good things happening, but there's still a lot of contentious, challenging times that we live in terms of what's happening globally, with what's happening down south, but in some ways how it's kind of seeped into Canada. And I'm talking about supremacy and racism.

So that needs to be challenged head-on, and it's no different in terms of legislation that we believe infringes on the right of Indigenous people. So that really concerns me when you think about the manner that we're moving forward. It seems to be there's a wedge and a divide that's actually playing out right before our eyes.

So, you know, the Premier, Brian Pallister, he has farmed on Long—he had—his family had farmed on Long Plain for practically a few generations and he grew up in my particular area. I got to share with you,

a couple of times—I know it's been quite some time we've been lobbying provincial governments, not only Conservative but NDP, when they were in power, about the repatriation of historic lands and Crown lands and how wildlife management areas and in particular three parcels of land, which I'll refer to as Round Plain; 1875, a treaty was broken there, that opened up settlement for southern Manitoba; Ogadake [*phonetic*] on Highway 242, a wildlife management area and the Eagles Nest which has been renamed the Hogsback which is an affront to Indigenous people, so we're actually working towards changing that name back.

But what concerns me is I, when I was a younger man and when I first got into politics, you know, I went to Round Plain and of course, you know, that's a very, very important historic area and we go there frequently.

But at that particular time, me and—we were confronted by a farmer. And the farmers says what the hell are you doing here, why are you here, you know, get off the land. So I reminded him that this piece of land is quite historic and sacred to Long Plain and asked him how did you get this land, how did you come to have possession of this property which rightfully should be under the auspices of Long Plain and the Treaty One Nation.

Anyway, we had a discussion on that.

But just recently I had another situation at Ogadake [*phonetic*], a wildlife management area just close by there we did purchase some land in that region. But we were travelling through there and, same thing, we were confronted. People were quite upset, they were just waving their arms and saying why are, like, what are you doing, why are you here, why are you trespassing?

So I look at them and I say, well, this is—once they found out who I was, their demeanour changed dramatically and they were more civil. So that concerns me: the evaporation of Crown lands and even how the Province is approaching Crown leases.

And so what's happening here in southern Manitoba—which we have, I guess, 90 per cent of the population practically within the Treaty One Nation, Treaty 1 territory—then you have, you know, issues related to petty trespassing which—and many of us believe stems from, most likely, the Stanley case out of Saskatchewan.

So what you're doing here is you're almost 'embolding'—emboldening, you know, farmers and

people on private property to give them a little bit more—basically—authority to, you know, to deal with trespasses—trespassers. So that concerns me on how those situations may arise. And, you know, I'm sitting here listening to the farmers, the cattle—you know, the people that spoke, and I'm aware of situations where Indigenous people were shot and killed exercising their sovereign right to hunt on lands that belong rightfully to Indigenous people.

So there's a lot at stake here and these legislation end up—and I've seen it throughout this particular government's term and mandate and how they're slowly eroding, trying to erode and infringe on the rights of Indigenous people, which is quite concerning and it will go, you know, with the Treaty One Nation governing council, we will not allow those—that type of piece of legislation to go unchallenged.

We have no choice but to protect our rights as Indigenous people, especially, you know, with—at the 150 coming up and we're still witnessing these types of legislation that are affecting Indigenous people in a very negative way.

So this disturbs me on how you're moving forward with this piece of legislation and other legislation that I have to say.

So I guess, you know, when you take a look at Indigenous people, the, for example the judicial industry, Indigenous people are, well, I mean, you all know. We got—so, it's just, you're working towards creating more division through your legislation. And we thought maybe with the education and awareness that—and the recognition of what's happened and transpired over the century that people would, okay, have a better understanding of that.

And you know, I have to also apologize in some ways because many of you have not or don't know the history of Treaty 1. You have not been educated on Indigenous sovereignty or history. You don't really know. And it's not your fault in some ways because the education curriculum that was given to you avoided all of that.

So this is a cause for a great concern and we don't really want to experience another tragedy like what happened to Colten Boushie. For God's sake, the man was killed, and the farmer that shot and killed him walks free. And he was—you know, they were looking for help. People are sometimes in distress and they're looking for help; they're not looking for a confrontation or danger or, you know, to walk into situations of danger. So this concerns me, and it needs to be noted.

* (19:20)

So, in some ways, this legislation literally puts Indigenous people as targets, a target on their back. That's the way many of our people feel that this legislation is giving, you know, that type of, you know, to embolden people and farmers.

And, you know, the farming industry has changed considerably over the years. You have big corporate farms now. A lot of the small farms have dissipated over the years or they've been bought by big corporate farming. It's a whole different industry. The cattle industry, the hog industry, a lot of these are owned by big corporations now. There's not that—I mean, there is still, you know, small farm families but it's—we're losing a lot of that.

In Long Plain, really no different; we're an agricultural community but, you know, we—the ability to farm land, it's important, but to also to protect, you know, our access to Crown lands is also important. So, I can—you know, there's so much issues that we're facing right now with this particular government and this legislation that they're proposing. It's really a disconnect between who we are and what this Province is intending to do.

So that's pretty much it. I'm hoping that you'll see the light and be able to look at revoking this bill. It's—you will have a fight on your hands with it, and I really, you know, I'm sorry to say that to you, but it is some legislation that we can't allow, you know.

And it's in some ways designed—and I know we're talking about this particular piece of legislation, but I know some previous speakers spoke about the connection to other pieces of legislation, and, really, you know, we can see through what exactly the government is doing and how they're working towards dividing this province, with Indigenous people, when they should be celebrating with us the 150th anniversary to allow you to be settlers in our country.

So that's pretty much all I have to say. If you have any questions, I'm open for them.

Mr. Chairperson: Thank you for your presentation, Chief Meeches. I do need to apologize on the mispronunciation of your name when I introduced you earlier.

Do members of the committee have questions of the presenter?

Mr. Friesen: Thank you, Chief Meeches, for being here this evening and presenting on behalf of your First Nation leadership and your tribal council and

others this evening at our committee on Bill 63. I appreciate your views. I listened carefully to your presentation.

I think I first met you—it might've been 15 years ago, one time in the city of Portage la Prairie, and so it is good to see you still active and in First Nations leadership and continuing to serve your people. I hear your name from time to time, I see you at public events, but it's nice to see your face tonight and have you join us, even if it has to be virtually through this channel.

I do thank you for your presentation. I thought long and hard about some of the issues that you raised as well this evening. I don't agree that the bill brings more confrontation. I respect your view to say so. I'm hoping that the provision of the bill that actually withdraws the right of landowners to intervene personally and to essentially act to detain someone, that the removal of that provision is a step in the right direction of lowering the temperature.

I believe that the presumption of trespassing in certain cases can help to lower that temperature. And I believe that the measure in the act that no longer requires a verbal warning to someone that they are trespassing, I hope that, as well, seeks to be a measure that would cool temperatures. We do not want to see a repeat of a loss of life on property as we have seen to our province to the west.

I also wanted to indicate that provincial law, as you know, cannot eliminate the legal rights of First Nations and other Indigenous persons to exercise Indigenous hunting, trapping, or fishing rights on lands where Indigenous and treaty rights can legally be exercised, which includes land not put to a visible incompatible use.

So, Bill 63 will not interfere with those rights. It's directed to clarify when entry on specified, identifiable properties without permission amounts to trespassing, and then the process by which owners or occupiers or tenants can require persons on the property without permission to stay off that property or leave.

And then finally I just wanted to make the point and then ask you to respond, that it should be noted that existing Indigenous hunting rights recognize that Indigenous hunters cannot enter private land on which there is visible incompatible use.

So I wanted to make those points. We believe in reconciliation, very proud of the records so far in

terms of our restorative justice hubs in the North.
[interjection]

And while members across the table laugh, they're laughing at efforts by the grand chiefs, by the chief justices, by the chief judge and the Department of Justice, to further the idea of—

Mr. Chairperson: Minister Friesen—[interjection]—Minister Friesen, we're running short of time. Could you pose your question, please?

An Honourable Member: And I have a question, as well.

Mr. Friesen: They're laughing at the rights that we're trying to extend to Indigenous persons in the North to have avenues to justice other than the courts. We think it's important.

So I ask you to respond to what I've put on the record this evening.

Mr. Meeches: Okay. Thank you very much.

Again, I go back to Crown lands, the evaporation of Crown lands and the Treaty 1 territory. As you know, with everything that's gone on with the social policies and experiments of governments—federal governments, provincial governments—what we're facing right now is a real crisis in Indigenous communities. So—and we're not able to, you know, to expedite, you know, towards a strong reconciliation with governments because of legislation such as what you're proposing.

And for us, the big concern is that, yes, we're, you know, we've been negotiating for years for Crown lands. We're looking for cultural lands, we're looking for recreation lands.

And, you know, we—when we recently—when I went to the property on Ogadake [phonetic], like, I was quite disturbed by the hostile reception just because they recognized that I was a visible minority. I mean, I don't think the same kind of greeting—in my personal opinion, I don't think that same kind of greeting would have been given to a non-Indigenous. So, there is still a big divide.

There's a little—I mean, there's a lot of challenges that we're facing with that particular piece of legislation. In that wildlife management area in Ogadake [phonetic] you'd see domestic cattle in that—on those lands. So it concerns me that these Crown leases, too, when they become privately held, the ability for Indigenous hunters, gatherers, to go into those Crown lands becomes off limits because—

Mr. Chairperson: The time for questioning the presenter has expired.

Is there leave of the committee to allow Chief Meeches to continue with his answer, and allow a question from Ms. Fontaine?

An Honourable Member: Yes.

Mr. Chairperson: I heard a yes. So continue, Chief Meeches.

Mr. Meeches: Okay. Thank you very much, Chair.

So, again, I go back to the evaporation of Crown lands. It's a huge concern for Treaty One Nation governing council. And, you know, for our hunters, they have to travel further greater distances to go and hunt and gather, so there's a lot of concerns related to that.

So I just want you to reconsider that, because this legislation really does no justice to Indigenous people. It actually is going to create some very, very challenging times for Indigenous people. And I think you'll actually probably see a rise in confrontation with legislation—a piece of the legislation such as what's being proposed.

So, that's really all I have to say. I'm quite concerned by it. There was no proper consultation, and it most likely will be challenged. Unfortunately, we hate to go to courts, but we have no choice but to protect our sovereign relationship. We are a sovereign nation within a sovereign state, and I hope people understand what exactly that means.

* (19:30)

Ms. Fontaine: Aaniin, Chief Meeches. It's good to see you. Miigwech for coming to present this evening. I also do have our colleague, Ian Bushie, here with us this evening, and he also says hello and says miigwech for being here.

So, let me just say a couple of things. First, I think it's important to put on the record that, actually, Chief Meeches is the only Indigenous person that has presented this evening. And I would suggest to the committee that that's a testament to how little this government has actually attempted, in any way, to engage First Nation leadership and Indigenous peoples within the totality of who we are on Bill 63 or even Bill 57—I'm sure we'll see a little bit of difference there.

But, you know—so, I think it's important to put that on the record that we haven't seen any consultation in respect of Bill 63 and yet Bill 63—let us be very clear:

Bill 63 is specifically targeting Indigenous peoples. Throughout the whole evening this night, we've heard about, you know, increased rural crime and trespassers on private property. We haven't seen any stats to support that. Nobody came with that. The minister hasn't presented that stat.

And so it feeds into and it builds on that narrative that is a colonial narrative as Indigenous people as savage and, you know, that, you know, settlers and farmers need to be protected from Indigenous peoples. It's the same narrative that we saw throughout the Colten Boushie—it's not even a trial, it's not even an act of justice. But it's the same narrative where the, you know, Colten Boushie ended up being on trial and not the—

Mr. Chairperson: I just want to remind the MLA that we've given leave to ask a question. So, if you could, you know, fast track to your question, we'd appreciate that.

Thank you.

Ms. Fontaine: So, it's the same narrative that is being built and kind of, you know, shared here as part of the official record for the province, that Indigenous peoples, you know—settlers, farmers, have to be scared of Indigenous peoples because they are inherently criminal and all of those things.

And so, Chief Meeches, you did allude to it. You said it very briefly, but I would like you to expand on that. You said that this bill actually puts Indigenous peoples' lives at risk. Can you share a little bit about what you mean about that? *[interjection]*

Mr. Chairperson: Chief Meeches.

Mr. Meeches: Thank you.

So, you go back to, I mean, the most high-profile case we have is the Boushie case. So, is it—some ways, it's a little bit ironic that the timing of this legislation is in—almost streamed from what happened over there. It's an unfortunate incident that should not have happened. An innocent man was killed because he—they were—they had car problems.

So, that's what concerns me, that if this legislation passes, that people—I guess farmers or people that are living in the rural countryside—they—okay—they'll have a piece of legislation that they may potentially believe that, okay, this gives us the right to defend our property and, of course, that means, you know, sometimes mistakes are made.

And we're witnessing that right now—quite—I mean quite—on a daily basis. Somebody could get killed again. And somebody could get shot. Somebody can get injured because they will believe that, I have a right to protect this property and that person is trespassing. I'm going to shoot that person. My God, that's quite scary.

What you're setting up for allowing this type of legislation to proceed. That's what scares me.

Mr. Chairperson: The time for questioning this presenter has expired.

I will now call on Catherine Kroeker-Klassen, Manitoba Egg Farmers, and ask the moderator to turn them—to invite them into the meeting. Please unmute yourself and turn your video on.

Please proceed with your presentation, Catherine Kroeker-Klassen.

Ms. Catherine Kroeker-Klassen (Manitoba Egg Farmers): Thank you for the opportunity to speak today on Bill 63. I have appreciated hearing all the perspectives presented this evening.

I am chair of the board of directors for Manitoba Egg Farmers and I represent 170 egg and pullet farmers. I myself am also an egg, pullet and grain farmer from southeastern Manitoba

As egg and pullet farmers, our top priority is to protect our flocks and, of course, our families. Farming is not strictly a business; it is a lifestyle, and most of us live on the land we farm. It is important to recognize that it is not just a barn; it is our home and we deserve to feel protected. We are grateful that this bill goes a step closer to doing just that.

My family has been farming the same land for 95 years. Our farm has evolved from a small, mixed homestead in a swampy, sparsely inhabited area to our current operation, where we grow thousands of acres of wheat, oats, canola and soy beans, as well as pullets and laying hens that produce omega-3 eggs.

Our farm is now located on a paved road with a little village having grown up around us. We have three generations actively living and working on our farm every day of the year. We work together and we play together, instilling a love for the land and growing food that we want to pass along to the next generation.

Our more urban neighbours often see our vast, open fields as an invitation to ride their ATVs and snowmobiles across our land, not realizing the

damage that they're causing when we have winter wheat or alfalfa growing beneath the snow, picking up diseases and moving them from one field to another, or even the fact that they're trespassing on private property.

We have folks wandering onto our farmyard wanting to purchase a few dozen eggs, or lost travelers trying to find directions back to the city. These type of encounters are not out of the ordinary; they're generally friendly and they can provide opportunity for good conversation about farm practices.

It's been said by some that Bill 63 stops people from exposing animal cruelty. We would disagree. As farmers, we're very aware of treating our flocks with the respect and the care that they deserve. Good research and science have gone into why and how we raise our hens the way that we do.

Commercial egg farmers like myself follow strict food safety and animal welfare standards. We have no interest in seeing animals hurt, but we recognize the value that farm animals provide in adding high-quality protein and nutrients into our diets and the added benefits of many byproducts.

Growing up on the farm as a child, I recall my father bravely going into our laying-hen barn late one night to confront intruders who were intent on stealing eggs out of our barn. My mother woke us older children to watch the barn entrance from the upstairs windows of the house, praying for our father's safety as she phoned the RCMP.

The terror for us as children and my mother as we waited and watched for dad to reappear, unharmed but badly shaken, stays with me more than 40 years after the occurrence.

This bill would not necessarily stop these type of occurrences from happening on farms, but it does add a sense of not being alone and carrying out justice on our own properties. Farmers know how to grow food and care for animals. We don't have the skills or the training that an RCMP officer has to confront and arrest trespassers and nor should we be expected to carry out vigilante justice.

Nowadays, most farmers are proactive and they lock every entrance, post keep out signs on buildings and fences, and security cameras dot our yards. The biosecurity measures we have utilized in our barns to keep our flocks safe from harm are commonplace. Egg farmers have been utilizing PPE long before COVID protocols came into effect, not necessarily to

keep ourselves from harm but to keep the hens in our care safe.

Unwanted visitors in our barns bring with them the potential of highly contagious and lethal viruses like avian influenza or bacteria that harm our hens. To have Bill 63 in place means farmers have another tool in our toolbox to ensure the safety of our families and our livelihood.

Thank you for giving us the time to provide feedback on this very important bill.

Mr. Chairperson: Thank you for your presentation.

Do members of the committee have questions for the presenter?

* (19:40)

Mr. Friesen: Good evening, Ms. Kroeker-Klassen. I want to thank you for being with us this evening at the Standing Committee on Justice to discuss Bill 63. Thank you for your work as a farmer, but also on behalf of the Manitoba Egg Farmers that you represent here this evening.

Thank you for the anecdotal evidence that you provided that gives us better context in terms of what it means to be a farmer in a modern context. I've learned a lot in the last number of years as a legislator about animal disease and even about the dangers of unintended importation of disease onto farmer's land, onto—into the barns.

And so it's a very serious issue, as you've helped us, again, to understand this evening—as is safety and as is rural crime. And so thank you for sharing your own personal story. I thought it was appropriate that you spoke also about the need to balance these things and how it is that this—in your mind, that this bill helps to achieve that better balance.

So I wondered if you could just speak to us just briefly about specifically how this bill then changes things so that a warning is not required by a farmer in order to indicate, legally, that someone is trespassing? Is that a meaningful mechanism for your members to know that this bill would change things so that there would be that reasonable presumption that private property means private property?

Ms. Kroeker-Klassen: Yes, for sure. And I would respond back and refer back to my own childhood experience. Those experiences can happen any day for any of us as farmers, not just 40 years ago for me. And had something been different at that time, we would not have expected Dad maybe to, you know, go into

the barn. We would have called the RCMP right away to step in and not had scared children and wives, you know, standing at windows and waiting and wondering, is Dad going to be okay?

Generally, the encounters we have on our farms, like I say, have been very friendly, but that doesn't always happen. And we can't take justice into our own hands; we're farmers. We're good at growing food; we're not good at arresting people.

Ms. Fontaine: Miigwech for your presentation.

I appreciate the story from 40 years ago. I guess, you know, I would ask you though if that—and I think you just answered it, where you said that that, you know, hasn't occurred, that most of the interactions that you have had are friendly and safe.

And so, you know, I know that you had that one incident 40 years ago, so I'm curious—you know, and I'll—you know, I'm trying to be consistent tonight and ask all of the presenters, you know, have you had a biosecurity breach on your farm and have you had, you know, any other incident other than the one 40 years ago—since then?

Ms. Kroeker-Klassen: I know of a few incidences that have happened, not on my farm but in other farms in the area where we will get a news bulletin saying, you know what, suspicious activity happened on this farm. It's, you know, maybe a couple miles away from you. Just be aware of, you know, vehicles driving by at a slow rate or somebody even being on a property and looking around.

So not necessarily somebody coming directly into a barn, although there was an incident not long ago in Alberta in a turkey farm that some of you may have heard about with animal activists breaking in and sitting in a turkey farmer's barn when he arrived in the morning to do his chores. I would hate to see that happen in Manitoba.

And we've got farmers who are very proactive. We've got cameras, we've got locked doors, we've got signs. That doesn't stop people necessarily, but we try and be proactive to make sure those things don't happen.

Mr. Chairperson: The time for questioning the presenter has expired.

Thank you for your presentation, Ms. Klassen, and that concludes the list of presenters I have before me.

* * *

Mr. Chairperson: In what order does the committee which to proceed with clause-by-clause consideration of these bills?

Mr. Friesen: Mr. Chair, I'd make a recommendation that we consider clause-by-clause for Bill 63 first, knowing that we've had the most presenters on that bill and some who may still be on the line waiting for the consideration of that bill.

If that would be acceptable to all members?

Mr. Chairperson: Is that acceptable to the members of the committee; to proceed with Bill 63 first? *[Agreed]*

Bill 63—The Petty Trespasses Amendment and Occupiers' Liability Amendment Act
(Continued)

Mr. Chairperson: We will now proceed with clause-by-clause of Bill 63. Does the minister responsible for Bill 63 have an opening statement?

Hon. Cameron Friesen (Minister of Justice and Attorney General): I'm pleased to make a few comments tonight in respect of Bill 63, The Petty Trespasses Amendment and Occupiers' Liability Amendment Act.

And we thank all of those presenters who have joined us here this evening and have availed themselves to the opportunity to be at the Legislature in this very unique process, made more unique now by the fact that we hear our presenters in a virtual way. So, we do continue to want to thank those who support us in this task here in the Legislature—all staff who are here to help Manitobans have this opportunity.

Bill 63, as we know now, proposes important amendments to two separate acts: The Petty Trespasses Act and The Occupiers' Liability Act.

The amendments to The Petty Trespasses Act replace Manitoba's existing trespass act with two categories of offences. There's, first, a general offence that makes it an offence to enter, without permission of the owner, occupier or tenant or without lawful excuse, a fully enclosed premises, partially enclosed property with signage or other indications of an intent to exclude others, construction sites and other listed premises, or (b) an offence of ignoring a request from the owner, occupier or tenant, other than those covered by the general offence, to not enter the property or refuse to leave when asked to leave.

The difference between the offences is that when the general offence applies, the owner, occupier or

tenant of the premises will not have to confront the trespasser and ask them to leave, in order for their presence on the property to be a trespass offence. This is important. The law in Manitoba now requires, in this context, for the owner or the occupier or tenant to verbally or otherwise warn an individual. And we believe that removing that clause or that capability makes everyone safer.

This approach clarifies and simplifies the definition of when trespassing occurs, makes it easier to request police assistance in appropriate circumstances. It reduces the danger inherent in potential conflicts between landowners, occupiers and trespassers.

We heard tonight numerous presenters talk about their concern about those negative interactions between landowners and trespassers. And so we believe that this bill reduces the dangers inherent on those interactions by reducing the need for confrontation, and by reducing that need to demand to leave the property.

In terms of amendments to the The Occupiers' Liability Act, those amendments will provide occupiers of premises with greater protection from civil liability for death, injuries and property damage suffered by people who are on their property without their knowledge or consent. And while we didn't have people speak tonight to that part of these amendments, they are equally important.

Currently, the The Occupiers' Liability Act provides that occupiers of premises owe the same duty of care or level of civil legal responsibility to criminal and non-criminal trespasses as they owe—trespassers as they owe to persons who have permission to be on the property, despite the fact that the act imposes a lower duty of care in relation to ATV, off-road vehicle operators and people who are hiking, for instance, on recreational trails.

So, the lower duty of care still requires the occupier of the premises to not create a danger with the deliberate intent of doing harm or damage to persons on their property.

* (19:50)

The proposed amendments ensure that the lower duty of care will apply to anyone who is 12 years of old—12 years of age or older, and who is entering the premises without permission for the purpose of committing a criminal act or entering a specified category of premises, without permission, that is either not

usually available for public use or is not usually maintained for public use.

And we believe that the proposed amendments will achieve a better balance between protecting the safety of people who enter premises without lawful excuse and ensuring a fair level of legal responsibility for occupiers of the premises who had no idea that the person would be on the property and no opportunity to intervene, to warn or stop them before they were injured.

I want to, once again, underscore that a very significant public consultation process predated this—the introduction of these amendments, that almost 1,000 persons were heard and we received opinions from, and the vast majority of those supported the direction of this legislation. And that includes, of course—I would want to say for our presenters this evening—a consultation with Indigenous leadership as well: MKO, MMF and other Indigenous leaders and groups were consulted in the lead-up to these amendments.

Mr. Chairperson: We thank the minister.

Does the critic from the official opposition have an opening statement?

Ms. Nahanni Fontaine (St. Johns): Miigwech. Under the current act, a verbal or written warning is required to make out a trespass offence unless a property is fully enclosed. Bill 63 amends the act so that a warning is no longer required under certain circumstances.

Bill 63 also gives landowners a reduced duty of care towards anyone who may enter their property that is not available for public use.

We know that Manitobans respect private property. When people are out hiking or berry-picking, we know not to cross fences or go onto farmers' fields. And if an area is marked with signs as private property, Manitobans know not to go on it because that's the law.

Now the Pallister government wants to make inadvertent crossings on unoccupied private land illegal. Accidentally crossing someone's land, and you can now be fined for doing so. This is completely unenforceable and quite honestly just absurd.

And sometimes signs are hidden or non-existent, meaning that inadvertent crossings are bound to happen, or parts of a property may be well marked while others are not. These are oversights that this

government has not thought about or simply does not care about.

Bill 63 invites property owners to act first and ask questions later. The law in Manitoba is that you are considered innocent until proven guilty. Bill 63 promotes just the opposite. Manitobans should be offered a warning before punitive action is taken against them, and Bill 63 removes the requirement to do so.

Bill 63 also limits landowners' legal liability for persons who enter a property not usually available or maintained for public use. This kind of reduced legal liability is a slippery slope towards situations where people can be injured or killed for accidentally trespassing, and the landowner faces no consequences.

I do want to, you know, just disabuse the minister what he just put on the record that there was significant consultation with Indigenous leadership. That's not true. We know that there are many Indigenous leaders who are opposed to Bill 63. We heard from Chief Meeches this evening who asked the minister who asked the committee to reconsider Bill 63.

We know on this side of the room here that obviously the minister's not going to reconsider Bill 63 because they are bent on ensuring that this sweep of legislation that they currently have before the House which includes 62 and 57 and 63; it's important for anybody that goes back into Hansard or in years from now and looks at the state of affairs in respect of land in Manitoba to understand that the Pallister government and his Cabinet all willingly endorsed and celebrated and ensured that Bill 63, Bill 62 and Bill 57 were passed.

And let me be perfectly clear tonight, I don't—what's the date here—it's Tuesday, April 13th on 2021—that this sweep of legislation is meant to—it is all about land; it is all about ensuring the colonial project is confirmed and affirmed and maintained here in Manitoba and that Indigenous peoples are kept off of the lands that are rightfully our traditional territories where our peoples have been for generations and generations and generations.

And as we sit here tonight to discuss Bill 63, and while the minister puts on the record that the Pallister government and all of his PC caucus apparently care about reconciliation—yes, it is absolutely laughable to think that in any, any small way that this government

cares about reconciliation when we're here debating or talking about Bill 63.

If the Premier (Mr. Pallister) and his Cabinet and those on the backbench actually really cared about reconciliation, they would withdraw Bill 63, they would withdraw Bill 57 and they would withdraw Bill 62.

This is nothing more about ensuring land in Manitoba stays out of the hands of Indigenous peoples and that Indigenous peoples' movements on our territories is severely restricted. And if we even think about moving outside of the boundaries that are set by this state, we will be punished either with fines or with jail time or, as in the words of Chief Meeches, we can be fined with our very life.

And I know that the Minister of Justice (Mr. Friesen) isn't listening right now. He seems to, you know, dismiss the concerns that are brought forward by Indigenous members in this House, by the Indigenous community.

But let it be known on this evening that if an Indigenous person is shot and killed because of the permission and the authority that Bill 63 gives to land owners, it falls on the shoulders of the Premier and every single one of his PC caucus.

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 pose.

Is that agreed? [*Agreed*]

Clauses 1 through 3—pass; clauses 4 and 5—pass; clauses 6 and 7—pass; clauses 8 and 9—pass; enacting clause—pass; title—pass.

Shall the bill be reported?

Some Honourable Members: Agreed.

Mr. Chairperson: Agreed, the bill shall be reported—

Ms. Fontaine: On division.

Mr. Chairperson: The bill shall be reported, on division.

Is it the will of the committee to debate Bill 26 or 58 next?

Mr. Friesen: I recommend we consider Bill 26 and then Bill 63—no, Bill 26 and then Bill 58.

Mr. Chairperson: Is it the will of the committee to do Bill 26 followed by Bill 58? *[Agreed]*

Bill 26—The Human Rights Code Amendment Act
(Continued)

Mr. Chairperson: We will now proceed with Bill 26.

Does the minister responsible for Bill 26 have an opening statement?

* (20:00)

Hon. Cameron Friesen (Minister of Justice and Attorney General): In 2020, the Manitoba Human Rights Commission completed 129 investigations. We thank them for their work. There were another—almost 90 complaints resolved through mediation. Despite those excellent efforts, there were 577 files awaiting investigation.

As a matter of fact, when we took government, there was a determination that the complaint process to move a decision with the Manitoba Human Rights Commission could take as long as four to five years. We believe that this amounts to an important issue of access to justice that must be addressed.

We thank all of those who have been helping to address the issues of access to justice to make sure that people who bring a claim because they feel strongly that a claim should be brought have a reasonable assurance that their claim will be heard in a reasonable amount of time.

Therefore, we are pleased to have introduced amendments to The Human Rights Code act in Manitoba. The goal of these reforms is to safeguard access to justice and procedural fairness in the human rights complaints system by addressing these inordinate delays and enhancing the effectiveness of the commission's operations.

The amendments build on recommendations set out in a review of the Manitoba Human Rights Commission and Manitoba Human Rights Adjudication Panel. That review was undertaken in 2018 by Allan Fineblit, which is a name well known to Manitobans. These amendments streamline decision making in the system by moving the authority to dispose of complaints from the board to the executive director. That approach aligns with commissions across Canada. It strengthens the capacity of the executive director to efficiently and effectively deal with complaints.

It includes safeguards, of course, within this realigned model, to ensure the commission's board provides oversight to the executive director. It allows parties to apply to the board of commissioners to review decisions by the executive director if they do not agree with a decision that was reached.

The bill also allows the commission to deal with complaints more quickly by providing the executive director with the authority to dismiss complaints without investigation where they fall outside of the statutory authority of the commission, have dealt—have been dealt with in another legal forum or where additional proceedings in respect of the complaint would not benefit the person who allegedly experienced the discrimination. That frees up the commission's resources. It ensures that they are dealing with those complaints that fall within its legal authority and are not additional unnecessary duplicative proceedings.

And then Bill 26 will also promote efficiency in the conduct of human rights hearings by allowing the adjudication panel to develop procedures for the conduct of hearings, introduce time limits for the commencement of hearings and issuance of decisions just to make sure that things are done in a timely manner.

Finally, the bill promotes the use of restorative justice approaches for addressing human rights complaints by providing adjudicators with the authority to mediate complaints at the hearing stage. And I think that, Mr. Chair, it's important to dwell there for just a moment because, perhaps, even though that measure has not drawn a lot of attention, we will take that as tacit agreement.

This is the right direction for the Manitoba Human Rights Commission. It is the direction that other commissions are going in. We should provide that opportunity to have full consideration made of the opportunity to mediate disputes. That also preserves capacity for adjudicators to be able to hear cases on a more efficient basis.

There's been a discussion as well about the cap on damages for injury to dignity, feelings and self-respect. That cap is set at \$25,000. I would note for the committee and for all Manitobans that are peering into this process that we are not the only province to do so. And also the Canadian Human Rights Commission contains a cap, albeit our cap proposed would be higher than the Canadian cap for that category.

And, of course, there exists no cap in respect of decisions of the Human Rights Commission that an adjudicator may award when it comes to rectifying any circumstance, making just amends, when it comes to deciding financial losses sustained, expenses incurred, benefits lost for any reason.

In those cases, there is simply no cap whatsoever. So we believe that these changes are reasonable. They are designed to speed up the process. We have confidence that these changes will remediate existing inefficiencies and delays.

No member of the Manitoba Legislature should be satisfied with a four-to-five-year process to hear a Human Rights Commission challenge or case, and, therefore, all members should agree to changes that are designed to safeguard our Human Rights Commission and make sure that Manitobans can access the vital rights and protections of The Human Rights Code.

Mr. Chairperson: We thank the minister.

Does the critic from the official opposition have an opening statement?

Ms. Nahanni Fontaine (St. Johns): Bill 26 allows the Pallister government to avoid its responsibility to Manitobans who face discrimination or a violation of their human rights.

So, instead of creating legislation that promotes human rights and protects Manitobans, the Pallister government and every single one of his Cabinet members and all of those on the backbench is deciding to actually fight victims and actually make it harder for the actions perpetrated against them to be remedied.

It caps awards and it gives more ability for claims to be dismissed. So, rather than protecting Manitobans, the same Manitobans that voted them in, this Pallister government just wants to protect itself from taking responsibility for poor staff training and workplace cultures of intolerance.

Bill 26 will discourage victims from disclosing violations of their rights and coming forward 'whin' cases. Victims who have a complaint that has not been handled properly through other channels will often need to seek legal advice before proceeding with their complaint.

Caps and other limitations will unfortunately make some Manitobans think twice when seeking a remedy, which is obviously this Pallister government's intention with Bill 26. It puts marginalized and low-income peoples in a particularly unjust position.

Consequently, Manitobans will be less likely to seek remedy for their grievances and it opens the door to those who might flout human rights. And this is the message that the Premier (Mr. Pallister) and his PC caucus want to send to Manitobans, and that only those with the financial means can seek remediation when their human rights are violated.

Twenty-six is certainly a step backwards.

And that's it. Thank you. Miigwech.

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 have comments, questions or amendments to propose.

Is that agreed? [*Agreed*]

Clauses 1 and 2—pass; clauses 3 through 5—pass.

Shall clauses 6 and 7 pass?

Some Honourable Members: Pass.

An Honourable Member: No.

Mr. Chairperson: I hear a no.

An Honourable Member: Sorry, we'll wait 'til 13; yes, sorry about that.

Mr. Chairperson: We'd heard a no, so we're going to go through these individually.

* (20:10)

Clause 6—pass; clause 7—pass; clauses 8 through 10—pass; clause 11—pass; clauses 12 and 13—pass; clauses 14 and 15—pass; clause 16—pass; clauses 17 through 19—pass; clauses 20 through 22—pass.

Shall clauses 23 and 24 pass?

Some Honourable Members: Pass.

An Honourable Member: No.

Mr. Chairperson: I hear a no.

Clause 23—pass.

Shall clause 24 pass?

Some Honourable Members: Pass.

An Honourable Member: No.

Mr. Chairperson: I hear a no.

Voice Vote

Mr. Chairperson: All those in favour of clause 24, please say aye.

Some Honourable Members: Aye.

Mr. Chairperson: All those opposed, please say nay. [*interjection*]

The request has been made that we revert back to clause 23.

Mr. Friesen: I heard you ask for the vote on clause 23 and I heard you say clause 23 is thereby passed. I consider this clause of the bill considered.

Mr. Chairperson: It has been requested to revert back to clause 23. Is it the will of the committee to revert back to clause 23?

Some Honourable Members: No.

Mr. Chairperson: I hear a no.

Leave has been denied. We will continue with clause 24.

Clause 24—pass; clauses 25 through 29—pass; clause 30—pass; enacting clause—pass; title—pass. Bill be reported.

Bill 58—The Criminal Property Forfeiture Amendment Act (Continued)

Mr. Chairperson: We will now proceed with clause by clause of Bill 58.

Does the minister responsible for Bill 58 have an opening statement?

Hon. Cameron Friesen (Minister of Justice and Attorney General): I appreciate the opportunity to put a few brief comments on the record in respect of Bill 58, The Criminal Property Forfeiture Amendment Act.

The purpose of the Criminal Property Forfeiture branch is to seek civil remedies to prevent people who engage in unlawful activities and others from keeping property that was acquired as a result of or used in those activities, and then through a distribution process, we pay out or commit funds acquired to others. And that has been a successful program in Manitoba.

Through the distribution process, a total of \$16.67 million has been paid out or committed from the Criminal Property Forfeiture Fund, or the CPF fund, and that is a good thing for Manitobans. That

money goes to provide safer communities through payments to law-enforcement agencies.

I would want to indicate that almost \$5 million has been distributed or committed to victims associated with specific files. The Victims Assistance Fund in support of programs or services that support victims of crime, and to support crime-prevention programs, such as Cybertip and Crime Stoppers.

A donation program was initiated a number of years back, which was—which has, so far, seen horticultural grow-op equipment, electronics, and a vehicle with a total value of over \$158,000 donated to Manitoba greenhouses, schools and Crime Stoppers.

So, criminal property forfeiture process continues to be a critical tool in the fight against organized crime in Manitoba, and in many ways, Manitoba has led the way in using civil means to take the profit away from those who commit unlawful activities. And specific victims in the victim services receive much-needed compensation and funding through the successful actions of the Criminal Property Forfeiture branch.

I'm pleased to bring amendments through this bill that would help improve operational efficiency to the Criminal Property Forfeiture branch. As a result of practical experience it's become apparent that amendments are required to update the legislation to be consistent with recent changes in other civil forfeiture jurisdictions.

Some updates are necessary in keeping with court decisions in the area of civil forfeiture. Bill 58 makes a number of key changes to The Criminal Property Forfeiture Act by providing the legal tools and authority to identify and secure unlawful money before it can become untraceable and disappears.

Under current law, forfeiture proceedings have to begin before a person may be required to answer questions about the property that is believed to be an instrument or proceeds of unlawful activity and before a court may make an order preventing the person from disposing of the property.

So this bill contains provisions that allow the court to make two new types of order before forfeiture proceedings begin.

First, a preliminary preservation order prevents a person from disposing of the property if the court's satisfied that there is a serious issue to be tried in forfeiture proceedings. And second, a preliminary disclosure order requires a person to answer questions

related to how they acquired property that's believed to be an instrument or proceeds of unlawful activity.

The proposed amendments also clarify presumptions in the current act and contain new presumptions. The court is to presume, unless the contrary is proven, that cash found in close proximity to a controlled substance or bundled in a manner that's not consistent with standard banking practices, is proceeds of unlawful activity.

And the court is to presume that a vehicle that's being used to flee from the police or a peace officer, or contains a restricted or prohibited firearm, a controlled substance; in circumstances consistent with trafficking, a concealed compartment or equipment or devices related to trafficking in controlled substances is also an instrument of unlawful activity.

And, finally, the court is to presume, unless the contrary's proven, that property that was the subject of a preliminary disclosure order is liable to be forfeited if the person did not provide all the information required to be disclosed by court order.

A few other things: The bill contains a provision that allows the director to collect information from financial institutions about the person's account and dealings with the financial institution. It's allowed only if the director has reasonable grounds to suspect that property of the person is an instrument or proceeds of unlawful activity. The information is to be used to determine whether to seek forfeiture of the property. So I know that many people will take note of that provision.

And the proposed amendments also create offenses if a person knowingly provides false or misleading information or fails to comply with the requirements to provide information under the act. And the amendments contained in Bill 58 are designed to further strengthen the fight against organized crime by ensuring criminal organizations are deprived of their unlawfully-acquired property and profits.

Like I mentioned, the forfeited money is then provided to support initiatives focused on reducing and preventing crime, supporting programs and services that benefit victims of crime, and promote safer communities in Manitoba.

* (20:20)

Mr. Chair, I'll wrap up by saying that in Manitoba, clearly, over time, criminals have evolved. Organized crime has evolved. The use of technologies, hand-held

banking capabilities on smartphones—all of these enable criminals to be able to hide or stow away or distribute proceeds of crime in a manner that will not allow crime—or police agencies to get at those amounts. We want to make sure that crime doesn't pay. We want to make sure that we're following the lead of other jurisdictions. We believe that these amendments will make Manitoba, again, a leader when it comes to criminal property forfeiture rules, and we commend these rules to the Legislature and look forward to the passage of this bill after third reading.

Mr. Chairperson: We thank the minister.

Does the critic for the official opposition have an opening statement?

Ms. Nahanni Fontaine (St. Johns): Well, once again, you know, it's well known the legal principle that we consider all people to be innocent until proven guilty. Yet, again, with Bill 58 we see the Pallister government and every single one of his Cabinet ministers and every single one of his PC caucus are using their legislative agenda to flip this on its head and treat people like they're automatically guilty. Bill 58 amends The Criminal Property Forfeiture Act so that it is easier for police to seize property by having the court presume that the property, such as cash or a vehicle, is connected to unlawful activity unless the contrary is proven.

Bill 58 is a change that no one asked for but that the Premier (Mr. Pallister) and every single one of his PC caucus thought was important in the midst of a global pandemic. And they know that Bill 58 will disproportionately impact on Indigenous, Black and persons of colour here in Manitoba, who they should already know, face unfair scrutiny and bias from law enforcement. They should know this, and yet they still have pursued Bill 58.

Bill 58 will also harm people who are not involved in criminal activity, as they could have their property seized for no reason. For example, if a young Indigenous teenager or a young Black teenager or a young person-of-colour teenager is stopped with a small amount of an illicit substance while driving his mom's car, his aunt's car, his dad's car, grandma's car, those cars can be seized.

And so the question is, how is that fair? How is that fair if an individual who is most likely to be stopped by the police is—then have his family relative's vehicle seized? And the Premier and every single one

of his PC caucus know this; they know that this Bill 58 will over-police BIPOC Manitobans.

Bill 58 also incentivises police officers to seize more property, as they'll directly benefit from the revenue generated. The revenues from forfeiture could go to community organizations, not the police, and that's why we brought forward Bill 209, The Criminal Property Forfeiture Amendment Act (2). Our bill would enable the money to go instead to non-profit community organizations for social programs, such as affordable housing or restorative justice or healing circles, a whole range of very needed activities in the community.

We know that—unlike the Pallister government and every single one of his PC MLAs, we know that the root cause of crime is poverty, and we are serious about addressing it through affordable housing, addictions, mental health supports and ensuring that Manitobans are living—have a living wage and live in a province that is equitable and fair and just for all Manitobans and not just those that the Premier and his PC caucus seem to care about the most.

So we know that Bill 58 is a step backwards for justice in Manitoba. We know that the minister has put it on the record several times that he wants peoples to come into contact with the police. He wants the police to come into more contact with Manitobans, particularly Indigenous, Black and people of colour, because he knows that that's exactly what's going to happen with Bill 58, and he is a proud supporter of that. And I think that's important for Manitobans to know that, that this current Justice Minister wants more and more Manitobans to come into contact with the police.

An Honourable Member: They are gang members.

Ms. Fontaine: And as the minister just said right now—he just said that they are gang members. This, Madam—or, this—Manitobans who are going to be watching this video when I post it, this is exactly what the Minister of Justice just said: that everybody here in Manitoba that comes into conflict with the law or comes into contact with the police are all gang members.

This is a sad state of affairs for Manitoba that this man over here is the Justice Minister. This man over here sitting directly across from me is going to be the reason why we have an increase in numbers of Indigenous, Black and POC Manitobans incarcerated

and in conflict with the law. It is such a sad state of affairs here in Manitoba.

Miigwech.

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*]

Clause 1 and 2—pass; clause 3—pass; clauses 4 and 5—pass; clause 6—pass; clauses 7 and 8—pass; clauses 9 and 10—pass; clauses 11 through 14—pass; clause 15—pass; clauses 16 and 17—pass; clause 18—pass; clauses 19 and 20—pass; clauses 21 through 23—pass; clauses 24 through 26—pass; enacting clause—pass; title—pass. Bill be reported.

The hour being 8:20, what is the will of the committee?

Some Honourable Members: Rise.

Mr. Chairperson: Committee rise.

COMMITTEE ROSE AT: 8:20 p.m.

WRITTEN SUBMISSIONS

Re: Bill 26

The Manitoba Human Rights Commission is an independent agency of the Government of Manitoba. The mandate of the Commission is established by The Human Rights Code and is premised on the United Nations Paris Principles, which establish the role and function of human rights institutions to promote and protect human rights in the public's interest via an independent complaint mechanism, education, advocacy and research.

A key aspect of the Commission's mandate is the administration of our human rights complaints mechanism. While this system resolves countless human rights concerns each year, we recognize that delays within the current system pose significant access to justice concerns and undermine public confidence in Manitoba's human rights system.

Our system must evolve in response to these challenges, driven by principles of access to justice, efficiency and innovation in the justice system.

The search for greater efficiencies to address delay was at the heart of Allan Fineblit's 2018 Review of the Manitoba Human Rights Commission and Manitoba Human Rights Adjudication Panel. We understand that Mr. Fineblit's recommendations form the basis of many of the legislative reforms proposed in Bill 26. Our Commission is generally supportive of amendments that support the efficient use of our resources, including streamlined decision-making, powers for early dismissal of complaints and the proposed "appeal" mechanism that will serve as a check and balance on the reformed complaints disposition system. To ensure that these changes do not compromise access to justice for parties in this system, we will continue to provide strategic direction to Commission staff through policy and procedural development.

While most of the legislative reforms outlined in Bill 26 build upon Mr. Fineblit's recommendations, the Commission is deeply concerned with the implications of section 43(2.1) of the proposed Bill, which will cap damages for injury, feelings and self-respect at \$25,000.00. We note that this recommendation was not included in Mr. Fineblit's report and we are not aware of any public consultation or analysis process examining the implications of this amendment. As such, we offer the following analysis and recommendations to the Standing Committee on Justice, to inform your deliberations on this section of the proposed amendments.

Background on Human Rights Remedies

Human rights legislation in all Canadian jurisdictions reflects broad, public policy objectives namely the recognition and rectification of discrimination in society. To achieve this end, human rights legislation takes a remedial rather than punitive approach. This was perhaps best stated by the Supreme Court of Canada in Ontario (Human Rights Commission) v. Simpsons Sears [1985] 2 S.C.R. 536:

The Code aims at the removal of discrimination. This is to state the obvious. Its main approach, however, is not to punish the discriminator, but rather to provide relief for the victims of discrimination. It is the result or the effect of the action complained of which is significant (at para 12).

In *Walsh v. Mobil Oil Canada*, 2013 ABCA 238 the Alberta Court of Appeal noted that the remedial authority under human rights legislation not only addresses the impact of discrimination on the complainant, but also protects against future discrimination and serves as a "deterrent and an educational tool" (at para 31).

In every jurisdiction across Canada, human rights tribunals are provided with the remedial authority to make monetary awards (including compensation for financial loss, compensation for the impact of the discriminatory treatment—often referred to as damages for injury to dignity, feelings and self-respect—and compensation in cases of willful misconduct, malice or recklessness) and non-monetary awards (remedies that will end the discriminatory behaviour, secure future compliance with the law and reinstate any opportunities or privileges lost or denied as a result of the discrimination).

Damages for injury to dignity, feelings and self-respect are a remedial award aimed at compensating the complainant for the harm caused by discrimination. In *Arunachalam v. Best Buy Canada*, 2010 HRTO 1880, the Human Rights Tribunal of Ontario noted that "the harm [...] of being discriminatorily denied a service, an employment opportunity, or housing is not just the lost service, job or home but the harm of being treated with less dignity, as less worthy of concern and respect because of personal characteristics, and the consequent psychological effects" (at para. 46).

Moreover, as noted by Ranali and Ryder, injury to dignity is not a loss that is ancillary to the range of harms that are caused by discrimination – rather, it lies at the core of what makes discrimination harmful (see Ranalli, Audra and Ryder, Bruce, "Undercompensating for Discrimination: An Empirical Study of General Damages Awards Issued by the Human Rights Tribunal of Ontario, 2000-2015" (2017) Osgoode Legal Studies Research Paper Series).

The Manitoba Human Rights Adjudication Panel has relied upon the following factors in assessing the quantum of damages for injury to dignity, feelings and self-respect:

Objective seriousness of the conduct

Effect on the person experiencing the discrimination

(Arunachalam v. Best Buy Canada, 2010 HRTO 1880 (CanLII), cited with approval in Emslie v. Doholoco Holdings Ltd, 2014 CanLII 71723, and A.B. v. Andrew Jasnikowski and Jefferey Jasnikowski o/a Jazco Management, 2019 MBHR 1).

Additional factors include:

Humiliation experienced by the complainant
 Hurt feelings experienced by the complainant
 A complainant's loss of self-respect
 A complainant's loss of dignity
 A complainant's loss of self-esteem
 A complainant's loss of confidence
 The experience of victimization
 Vulnerability of the complainant
 The seriousness, frequency and duration of the offensive treatment
 (Sanford v. Koop, 2005 HRTO 53 (CanLII), cited with approval in A.B. v. Andrew Jasnikowski and Jefferey Jasnikowski o/a Jazco Management, supra)

In relation to compensation for injury to dignity, feelings and self-respect, the Alberta Court of Appeal went on to state in Walsh v. Mobil Oil that remedial awards that do not provide appropriate compensation can "minimize the serious nature of the discrimination, undermine the mandate and principles that are the foundation of human rights legislation, and further marginalize a complainant. Inadequate awards can have the unintended but very real effect of perpetuating aspects of discriminatory conduct" (at para 32).

The Manitoba Human Rights Adjudication Panel (MHRAP) has also recognized that the quantum for damages should not be too low, as it would "trivialize the importance of the Code by effectively creating a "license fee" to discriminate" (Vetricek v. 642518 Canada, 2010 HRTO 757 (CanLII), cited with approval in A.B. v. Andrew Jasnikowski and Jefferey Jasnikowski o/a Jazco Management, supra). Similar statements have been made by human rights tribunals in Alberta, Ontario, Nova Scotia and Prince Edward Island.

There are currently two jurisdictions in Canada that have caps on damages for injury to dignity, feelings and self-respect: Canada and Saskatchewan. In The Canadian Human Rights Act, damages for pain and suffering (akin to the remedial heading of damages for injury to dignity feelings and self-respect) are capped at \$20,000.00. In addition, the Canadian Act provides for remedial compensation for malice, wilful

misconduct and disrespect, also capped at \$20,000.00. In 2000, a review of The Canadian Human Rights Act chaired by Justice La Forest, recommended the removal of all monetary caps in the Act, noting "this signals the importance of these kinds of compensation in human rights matters. The Tribunal can be expected to develop its own views on the damages that are appropriate for discrimination in each case." While these recommendations were made in 2000, the LaForest review was ultimately not implemented and the cap remains in place.

In Saskatchewan's Human Rights Code, damages for injury to dignity, feelings and self-respect are similarly capped at \$20,000.00. Like Canada, in cases of wilful misconduct or malice, the tribunal may order up to an additional \$20,000.00 in compensation.

Prior to 2008, Ontario had a similar prescribed limit under its former human rights act, however this limit was removed upon introduction of Ontario's Human Rights Code, to uphold the broader policy objectives of Ontario's human rights law and provide restitution to the complainant (see Ranalli and Ryder, 2017).

In Manitoba, the median award for injury to dignity, feelings and self-respect is \$9,906. The highest award in this remedial category is \$75,000.00 (see T.M. v. Government of Manitoba (Justice), 2019 MBHR 13). In arriving at this remedy, the Adjudicator noted that the award reflects the particular egregiousness of the conduct, the vulnerability of the respective complainant, the frequency and duration of the discrimination, and reinforced the importance that employers uphold their human rights obligations.

In Kvaska v Gateway Motors (Edmonton) Ltd., 2020 AHRC 94, quoting with approval Simpson v. Oil City Hospitality Inc., 2012 AHRC 8 at para 63, the Alberta Human Rights Tribunal emphasized the importance of this last point in the assessment of general damages. "There is clear authority that an award of damages must be high enough to encourage respect for the legislative decision that certain kinds of discrimination are unacceptable in our society and should not be so low as to amount to a mere 'license fee' for continued discrimination".

Recent decisions have also emphasized other factors relevant to the assessment of general damages. There is clear authority that an award of damages must be high enough to encourage respect for the legislative decision that certain kinds of discrimination are

unacceptable in our society and should not be so low as to amount to a mere 'license fee' for continued discrimination.

Analysis

The Commission remains concerned that capping damages for injury to dignity, feelings and self-respect may undermine human rights protections in the following ways:

1) Capping damages for injury to dignity, feelings and self-respect may act as a deterrent to filing human rights complaints. There is a risk that potential applicants may choose to pursue their human rights claims before the courts, where possible, in order to obtain a greater award of damages in the civil context. It is worth noting that there remains some contention as to whether complainants can pursue claims of discrimination or harassment via civil litigation (i.e. whether there exists a common law tort of discrimination or harassment, see *Seneca College v Bhaduria*, [1981] 2 SCR 181). Notwithstanding this, one of the purposes of Manitoba's human rights system is to provide an efficient, inexpensive and expert forum for adjudicating human rights matters. By introducing a statutory cap on damages for injury to dignity, feelings and self-respect, this may discourage complaints through our system and cause complainants to pursue civil remedies before the courts, where such a forum is available to them.

2) A legislated cap may limit the ability of Adjudicators to account for inflation in assessing awards in future years. In the context of civil litigation, the "rough" upper limit on non-pecuniary damages is adjusted for inflation (see *Lindal v. Lindal*, [1981] 2 S.C.R. 629) and the Ontario Superior Court has held that the rough upper limit does not apply to intentional torts — in this case, assault, sexual assault and other misconduct of a sexual nature. This not only affirms that assessments of damages are context dependent, but also that establishing a "fixed" limit, such as a statutory cap, risks artificially low awards that do not reflect present financial conditions.

3) A legislated cap may limit the ability of Adjudicators to account for particularly egregious, long-lasting or serious circumstances of discrimination, and may not allow for adjudicators to account for complainants in particularly vulnerable circumstances. The case of *A.B. v. Joe Singer Shoes Limited*,

2018 HRTO 107, emphasizes the vulnerable circumstances that some complainants may find themselves in.

4) The legislated cap will further result in inconsistencies and misalignment in remedial awards across Canada. In other words, should the cap be enacted, a complainant in Ontario may receive greater remedy for comparable discriminatory conduct than a complainant in Manitoba, for example.

5) While there are no limits on other remedial headings, such as damages for financial loss, not all complainants incur financial losses in their particular circumstances of discrimination. For example, an individual who experiences racial profiling in a consumer setting may not incur financial loss but would undoubtedly suffer an injury to their dignity, feelings and self-respect. In other words, injury to dignity is not a loss that is ancillary to the range of harms that are caused by discrimination.

6) A legislated cap may have a particular impact on the rights of persons with disabilities, particularly those in need of reasonable accommodation. Capping damages for injury to dignity, feelings and self-respect may encourage employers not to pursue accommodation on the basis that incurring a potential liability under The Human Rights Code is less costly and more convenient than pursuing a complex, higher cost accommodation (for example, alterations to a built environment).

While we are not aware of the policy objectives that the cap on damages is attempting to achieve, we are surmising that the goal is to ensure that damages under this remedial heading remain reasonable and proportionate.

While this is an understandable concern, we note that there is no evidence to suggest that damages for injury to dignity, feelings or self-respect are disproportionate or unreasonable under the current statutory regime. To date, the median average of this type of damage award in Manitoba is less than \$10,000.00, therefore falling well below the proposed cap. The Commission does not believe there is sufficient evidence to suggest that the effect of the Bill will be to deter adjudicators from awarding "unreasonable" remedies, as their awards generally appear to be reasonable and have been upheld by the Courts.

We also surmise that the basis of the cap may be to encourage alternative dispute resolution approaches to resolving human rights concerns. While there is no

evidence to suggest a correlation between a cap on damages for injury to dignity, feelings and self-respect and increased levels of involvement in mediation (i.e. we have not seen increased uptake of mediation or alternative dispute resolution in jurisdictions with a cap), we further note that the Commission's mediation program has been successful in resolving many of our cases each year, resulting in very few matters proceeding to hearing. Our mediators rely upon existing case law and precedent to assist parties in achieving a reasonable resolution. Moreover, The Human Rights Code has other safeguards, including the settlement offer assessment process to ensure that proposed remedies are reasonable and proportionate.

Recommendations:

- 1) In accordance with the analysis set out above, the Commission respectfully submits the following recommendations to the Standing Committee:
- 2) That the Committee choose not to recommend the advancement of proposed section 43(2.1) which will limit damages for injury, feelings and self-respect at \$25,000.00.
- 2) In the alternative, the Commission recommends that the cap proposed in section 43(2.1) be increased to account for particularly egregious cases of discrimination. The Commission also recommends that the cap be indexed for inflation and/or that Bill 26 require a regular review of the cap at least every 3 years to ensure it reflects current conditions.
- 3) The Standing Committee may wish to consider setting the cap by regulation, as opposed to in statute, to allow for more timely and responsive review and amendment.
- 4) Should the Standing Committee decide not to eliminate the proposed cap, or not increase the cap, the Committee may wish to consider increasing the cap on exemplary damages currently in place under

s. 51(1) giving an adjudicator the discretion to order greater exemplary damages under s. 43(3) where the conduct warrants it.

Karen Sharma
The Manitoba Human Rights Commission

Re: Bill 63

We, the First Nations of Island Lake residing in the Garden Hill, St. Theresa Point, Wasagamack and Red Sucker First Nation, do hereby affirm that we have never relinquished our inherent right to govern ourselves and continue to maintain the freedom and spirit of the First Nations Self-Governance as practiced by our ancestors.

We, the members of the First Nations of Island Lake, do hereby declare the right to exercise and assert our sovereignty of self-governance and self-determination by opposing the Province of Manitoba's attempts to insert itself into our inherent First Nations jurisdiction through Bill 63.

Island Lake First Nations have never rescinded our rights to govern ourselves and therefore we stand by our inherent sovereign right to nation-to-nation relationships with the Crown in Right of Canada as was recognized in the signing of the Island Lake Adhesion to Treaty 5 in 1909. It is the Crown's responsibility to fulfill its obligations such as to provide the Medicine Chest as per the treaty process.

The Province of Manitoba is violating our Inherent and Treaty Rights that are affirmed in Canada's 1982 Constitution that have been protected by many Supreme Court of Canada rulings. Therefore, we reject and will not affirm any attempts by the Province of Manitoba to violate our jurisdiction and our right to enact our own laws for the wellbeing of our people.

Sincerely,

Chief Dino Flett
Island Lake First Nations

The Legislative Assembly of Manitoba Debates and Proceedings
are also available on the Internet at the following address:

<http://www.manitoba.ca/legislature/hansard/hansard.html>