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STANDING COMMITTEE
ON
LAW AMENDMENTS

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Speaker*



THURSDAY, 10 JULY, 1980, 8:00 p.m.

MANITOBA LEGISLATIVE ASSEMBLY
Thirty - First Legislature

Members, Constituencies and Political Affiliation

Name	Constituency	Party
ADAM, A. R. (Pete)	Ste. Rose	NDP
ANDERSON, Bob	Springfield	PC
BANMAN, Hon. Robert (Bob)	La Verendrye	PC
BARROW, Tom	Flin Flon	NDP
BLAKE, David	Minnedosa	PC
BOSTROM, Harvey	Rupertsland	NDP
BOYCE, J. R. (Bud)	Winnipeg Centre	NDP
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JORGENSEN, Hon. Warner H.	Morris	PC
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LYON, Hon. Sterling R.	Charleswood	PC
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WALDING, D. James	St. Vital	NDP
WESTBURY, June	Fort Rouge	Lib
WILSON, Robert G.	Wolseley	PC

LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON LAW AMENDMENTS
Thursday, 10 July, 1980

Time 8:00 p.m.

CHAIRMAN Mr. Gary Filmon (River Heights).

CLERK'S ASSISTANT, Mr. Richard Willis: Order please. We have a quorum. The Chairman of the Law Amendments is not present. Do I have any nominations for Chairman?

HON. NORMA PRICE (Assiniboia): I move that Mr. Filmon chair the meeting.

CLERK'S ASSISTANT: Is that agreed? (Agreed) Mr. Filmon.

MR. CHAIRMAN: Thank you very much, Mr. Deputy Clerk. To begin with, ladies and gentlemen, I will read the order of the Bills that we will be considering this evening. Bills No. 38, No. 47, No. 59, No. 76, 79, 81, 82, 84, 85, and 94.

A MEMBER: Hold it, hold it.

MR. CHAIRMAN: I'm sorry. 79, 81, 82, 84, 85 and 94. I will just read the names of those who have indicated that they wish to appear as delegates this evening, and if there is anyone who has not been placed on the list perhaps they could make themselves known to the Deputy Clerk and we will add them to the list. But firstly on Bill No. 76, An Act to amend The Consumer Protection Act, we have Ken Regier, Sylvia Guertin, Dick Martin; and then on Bill No. 82, which is An Act to amend The Clean Environment Act, we have Dick Martin; Bill No. 85, An Act to amend The Mental Health Act, we have the Manitoba Association for Rights and Liberties; the Canadian Mental Health Association Mr. Cohen; Mr. B. Kelly, Associate Professor of Psychology. Then on Bill No. 94, An Act to amend The Health Sciences Centre Act, we have Mr. W. T. Wright and Mr. P. Swerhone.

Are there any others who wish to appear as delegates addressing any of the other bills? If not, we will proceed then, beginning with Bill No. 38, I'm sorry. . . .

MR. A. R. (Pete) ADAM (Ste. Rose): On a point of order. I am wondering, since we have no representations on some of the bills, I am wondering why we don't have the presentations on those people that are here, so that . . .

MR. CHAIRMAN: Yes, I am sorry, I intend to proceed then with the representations by the people who are here to address the various bills, and is there any consensus of the Committee, in view of the number of representations, as to a time limit on the representations? Is there a consensus that it be 20 minutes? Mr. Jenkins.

MR. WILLIAM JENKINS (Logan): Mr. Chairman, I know that we have in the past and I have chaired this Committee on Law Amendments on many occasions, and we have talked as members of this Committee of making a time limit, but I think the fact that people have taken interest, that legislation is before this House. To say to people that you are going to be limited to five or ten minutes, I think, unless somebody is going to come here for six or seven hours, but I think if someone has a 20-minute brief or a half-hour brief, or even a 10-minute brief, I don't think that we should, as members of this committee, say to the public, who have taken the time to come here to make their concerns made to us this is the only forum that they can do it in and it's unique in the whole commonwealth that we have this situation and I would say let's hear the people, regardless of how long it takes them.

MR. CHAIRMAN: There is general agreement, then. The first thing, Mr. Ken Regier, on Bill No. 76.

BILL 76 - CONSUMER PROTECTION ACT

MR. KEN REGIER: Thank you, Mr. Chairman. I have with me Mr. James Penner, who is Vice-Chairman of the Canadian Federation of Retail Grocers, and if anyone is wondering who the Retail Grocers Federation is, it's a group that is a national body and just organizing in Manitoba and, due to the imminence or hopeful non-imminence of parts of Bill 76, there have been cards circularized and approximately 270 grocers all over Manitoba have responded. They are the smaller grocers in Manitoba, not connected with the chains at all. They account for approximately 50 percent of the retail grocery business in the province of Manitoba and I suppose, in many respects, they are more rurally oriented than in Winnipeg and Brandon.

The complaint that the federation has is basically that there has been an almost total absence of consultation with the government. Their views were not canvassed prior to the preparation of Bill 76 and the practical concern that the grocers have is that if Bill 76 is passed in its entirety and we are really only concerned with the definition section and Sections 2.1 and 9.6, which deals with the pricing of goods they take the view that, if the Legislature of the province of Manitoba passes the amendments, with the open-endedness of the regulations, that there could be such a set of regulations which would increase the cost of food. I haven't gone out to purchase food very often, other than when I go to the lake, and recently I paid 1.33 for a can of apple juice. I can remember even last year it was much less and it seems to me that prices are going up very rapidly in the food industry and I believe what the Legislature should be concerned about is not increasing costs, be they governmental costs or be they costs to the grocer, but what you should be concerned about is at least holding the line. And the complaint that we have about the inclusion of food products in The Consumer Protection Act is that, by

way of regulation, this could lead to itemized pricing. There are presently approximately 500 items in any basic grocery store that does not have item pricing, and that could be one of the results of the regulation.

Also, if regulation was passed, then what would happen in this province would be that we would have to have another layer of civil servants, because you would have to have persons to go out and make sure that the regulations were abided by, and we are talking about inspectors and sub-inspectors and whatever. It seems to me that a governmental trend should be to at least holding the line in civil servants and not increasing, and also I believe that governmental concept should be as to a deregulation rather than over-regulation.

The concern is that there will be an increase in the price of goods and also that Bill 76 as it is set forward is something where the Legislature is buying a pig in the poke because they don't know what the regulations are going to bring about. Then it becomes a matter of Order-in-Council, and then the consultative process with the people that are most directly effected would be ended.

I could go on at great length, but it is a hot summer day and basically that is the position and what we really ask you to do, by way of agreement, is to take your Clause 3 of Bill 76 and delete it. In other words, Bill 76 as it stands is probably a good thing, I haven't really studied it, I can't talk on it too long and you wouldn't be interested anyway. But we would ask that the two words "food products" be deleted from the Bill 76 and that would satisfy the independent retail grocers of Manitoba that I represent, and they are the people on the firing line.

MR. CHAIRMAN: Thank you, Mr. Regier. Will you accept any questions from the members?

MR. REGIER: Sure.

MR. CHAIRMAN: Mr. Adam.

MR. ADAM: Mr. Chairman, Mr. Regier, my understanding in speaking to some of the rural groceries, I am a rural member, that they don't oppose pricing of products, that is the majority of products in their stores are priced and they don't oppose that, because people come in and do their shopping and are able to compare and assess how much they can spend and so on in shopping. The people who have contacted me have said that they have no objections at all to pricing of goods, with the exception of some of the items that are not normally priced, that is pop and candy, one-cent candy, and bulk items such as bread and so on that have one price on the entire rack or the entire stock. But other than that those who have spoken to me are not opposed to having all those items such as flour, kilograms of flour and so on, price tags on the goods, so I am wondering, I understand this legislation, I don't support it to that great an extent because I think the government sees a problem and they don't know what to do about it, so they are covering themselves from the back, in order that if a problem arises with computer pricing or any other pricing of goods, that they would be able to address themselves to it. I would have preferred to see them

address themselves right in the legislation, and make it clear. Would you not agree? If I may have your comments on that.

MR. CHAIRMAN: Have you asked your question then?

MR. REGIER: I've got the question. I could, if I would have gone in longer, Mr. Chairman, I would have dealt with this point that Mr. Adam has raised. The people that I represent believe there should be things like proper shelf pricing, for example, but then what we're into is this computerized age where we're coming into the scanning in stores, so you don't have items marked on a can of soup, they label the shelves and they label them properly. Well, if this is what the government is trying to do, well then that's what they should say. But what you've got here is something that's a pig in the poke. There's one person, for example, because of this legislation, who's got a major supermarket wired up for a scanning process, has got an order in for 200,000 worth of this, and can't go ahead with the order. Now, if you have a scanning process, you save seven percent on your labour cost, just for example. And the complaint about this bill is, it's not that anyone wants to cheat the consumer or anything, heavens, you're talking about rural retail grocers who live with these people all the time, but they don't want the government to pass something that's a pig in the poke.

And what you've got is a statute which provides for regulations and no one knows what's going to happen with them, so you can't have that progress towards efficiencies that independent grocers have to have. I mean, they're in a tough, competitive market with Safeway and Loblaw and Dominion and everything. Those fellows can compete quite well, their mass purchasing and all other things, but these people would like to have efficiencies and they don't know if they can bring these efficiencies about to reduce or hold the cost of goods because they don't know what the statute is all about. I certainly can't tell them, and I would defy anyone in this room to tell me what this is going to lead to. No one knows.

If the government wants to do something, they should sit down clearly and concisely and spell it out, and tell people what they want to do.

I'm not trying to get political, Mr. Chairman, either. I'm just trying to say that the bill is frightening because people don't know which direction it can go in, and then once it's passed, it's beyond the control of the Legislature. There is no debate or anything.

So we're asking that it be set over and perhaps it should be reviewed with those people that are in the business.

MR. CHAIRMAN: Thank you, Mr. Regier.
Mr. Adam.

MR. ADAM: Yes, I agree with the points made by Mr. Regier that it would be much better if the intent of the bill was spelled out so that everybody knows where they stand, then you could debate it and you could make your representation. As it is, you do not know what is going to happen. I can't see any responsible government or even irresponsible government . . .

MR. CHAIRMAN: I wonder, Mr. Adam, excuse me. I wonder if I could ask that we reserve this time for questioning the delegates rather than giving opinions on the bill. We will be able to debate it clause by clause. Whether or not you agree with the gentleman, what I would ask you to do is have your questions answered while we have him here as a resource person so he can clarify his submission.

MR. ADAM: I believe that the grocers perhaps have more fear than they should have over this even though they don't the unknown. Because I can't believe that anybody would compel any grocer to itemize and price every item in the store. It's just unbelievable. I would like to ask if the federation has circulated a questionnaire to grocers in Manitoba. I am wondering where the questionnaires, if Bill No. 76, is passed, would result in immediate increase in costs of operation by legislating you to price or mark, pricemark every single item yourself, where in the bill do you see that?

MR. REGIER: It's not in the bill, but I believe the way that this bill was brought about is through pressure from some consumer groups who were pressing for itemized pricing, and putting two and two together, you come out to four, and that's why the card is worded that way.

MR. CHAIRMAN: Thank you, Mr. Regier. Mr. Corrin.

MR. BRIAN CORRIN (Wellington): Mr. Regier, you indicated in your remarks that you never shop except at the lake. I presume that means a couple of months of the year. But you have noted at the lake that there have been price increases of a rather dramatic nature. I am wondering whether you or your group have considered the plight of the consumer who, unlike you, does shop perhaps everyday or second day and is equally concerned about excessive food prices and that sort of problem, have you considered what position they would be in if unit pricing was done away with entirely? I ask you that because I am wondering, because I do tend to do a lot of shopping every week and month and I am wondering myself how it would be possible, given the many different types of consumer items and products that are available today, to keep in one's mind all the prices and all the changes that take place unit to unit, week to week and month to month, if the prices weren't on the material you took home, because that sort of in my opinion having the price on the can or whatever at home keeps you current. It reminds you, it reinforces the lesson. It tells you what the price was when you bought it last and you remember it. It just sinks in. Has your group put its mind to this problem and do they have any alternative type of solution so that people will be able to be reminded of the prices and that sort of reinforcement will take place?

MR. REGIER: The way this scanning process works, and I don't want that to be the main thrust of what I am saying, but in the scanning process you have the goods on the shelf marked very clearly by way of price, brand, and size of good and whatever. You go to a cash register and it gets punched in and it says Libby's tomatoe juice, so much. Then the person that

does the shopping takes this ticket home and easily can compare if you keep your tickets and in that way it is almost better than itemized pricing which is a quarter of an inch and people are we are talking about old age pensioners and whatever and what we are talking about is more efficiencies, the saving of money. We are in a world where we have to take advantage of things. Anyway, the person does have that record at home which is probably better than what you have now.

MR. CHAIRMAN: Thank you Mr. Regier. Mr. Corrin.

MR. CORRIN: You are suggesting, Mr. Regier, that technology now allows us to have a receipt which records the item purchased, it's brand name or some designation and the quantity as well as the price. You are saying that the grocers you represent would be using equipment that would provide all that information including quantity and unit price. In other words, it would say one pound of beef purchased, and then it would give you the price, 1.98, or it would say 1.2 pounds ground beef and the price. How much information does this equipment actually provide the consumer?

MR. REGIER: I would like to represent that I had the complete to answer to that, but frankly I don't. But I do know that it has what you have bought and it has the price, and I would suppose well no, I can't speculate, that's not fair. I am not applying this to all grocers or people that I represent because some obviously in a smaller 800 square foot setting probably couldn't do it, although they are developing equipment that's almost portable equipment for this purpose. But I don't want to go beyond my knowledge. I am sorry, Mr. Corrin.

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

MR. JENKINS: Thank you, Mr. Chairman. I take it from your brief then, Mr. Regier, that you are in favour of the universal pricing code scanning system.

MR. REGIER: Yes, but's not the thrust of the matter. What the real thrust of what I am trying to say is that the way the legislation is being put forward, we don't know whether scanning is allowed or not allowed or whether you are going into unit pricing or not having unit pricing. We don't know if shelf pricing is required or not required. The point is that we don't know what is says or what it can lead to, and it should be spelled out in fairness to the grocer.

MR. JENKINS: Thank you, Mr. Chairman. A further question through you, Mr. Chairman, to Mr. Regier. How many of your clients have installed the universal pricing code scanning system in the province of Manitoba.

MR. REGIER: I can't answer that.

MR. JENKINS: You are not aware of how many.

MR. REGIER: No, I know that two people there was a survey taken in two stores that had scanning and there was a petition taken I don't like talking about

petitions here because petitions can go either way but the Minister of Consumer and Corporate Affairs, Mr. Jorgenson, has a petition which was taken over a two-day period and where it was obtained from was from two scanning stores and from five warehouse market stores. Neither of those stores had prices marked on the goods, and 5,400 people signed that they opposed Bill No. 76.

MR. JORGENSEN: What was the wording on the petition?

MR. REGIER: You have it.

MR. JORGENSEN: The wording on the petition was it not, are you in favour of an increase in the price of food.

MR. REGIER: Yes, well we take the two things together.

MR. JORGENSEN: Do you not think that is kind of a misleading kind of a petition to send out, Sir. It's about as misleading as the one that you sent around to all your clients or your . . .

MR. JENKINS: Mr. Chairman, on a point of order. I might agree with the Minister and certainly I disagree with him on certain things, but he interrupted me. I had not yielded the floor.

Mr. Chairman, again to Mr. Regier, now I ask you in all sincerity, since Mr. Jorgenson, has now raised, and you admit it yourself, prior to answering the question, that how much stock you take in petition. It depends on how the question was worded and I think we have now found out that the question, as it was worded, for the shoppers, was loaded. Do you still beat your wife? That's the kind of a question you can't even answer, but I want to ask you sincerely, do you sincerely believe that I go to the shop today to buy something, I get this fancy list and I have seen your list that I am going to keep that. I don't have to buy salt, say, once every six months, the big package of salt. I am going to keep that cash-out receipt for six months, that I am going to compare what the price of salt was six months ago. But if I have it on the article, the package of Windsor of salt cost me, say I don't know how big the package was maybe 75 cents, I go back six months later and it might be 1.50, I have no way of knowing, but I know because I have the old package and I know approximately when I bought it. Under your system, people are going to have to set up an accounting system.

So I ask you, do you sincerely believe that people are going to keep those receipts?

MR. REGIER: I was responding to a question by Mr. Corrin. I was responding to a specific question, and in the answer to that specific question is can you keep track. I said yes, if you keep your tickets, you can keep track. If you're saying you're not going to keep track of your tickets, I can't help it.

MR. JENKINS: Do you not agree then, through you, Mr. Chairman, to Mr. Regier, the example that I pointed out to you? I bought that package of Windsor salt for 75 cents six months ago. I go into

the store six months later and it has risen to 75 cents. I know what I paid six months ago. I don't have to set up a filing system. It's there for me, and if I come into your store you said you went down to the lake and bought a can of apple juice; I imagine the can was marked, was it not?

MR. REGIER: Absolutely.

MR. JENKINS: Right. There was no compulsion or compunction upon you to buy that can?

MR. REGIER: Nor to go in that store.

MR. JENKINS: No, quite agreed, agreed. But supposing you had gone into that same store and there was nothing on the can, you picked it up and you walked to the cash register and the guy says, 5.00, would you have thought that was a fair price? Would you have bought that same can of apple juice?

MR. REGIER: I wouldn't have picked the can up, because if there wasn't shelf marking I wouldn't have been interested. I don't buy a pig in the poke, and it's the same with the bill.

MR. JENKINS: All right, you wouldn't buy a pig in a poke.

MR. REGIER: That's right.

MR. JENKINS: But then you're expecting the people that I represent out there, who are consumers, in the main you're a consumer you're expecting me to give you the right to throw stuff on the shelves, and I've seen some of that little fine print that you've got there. And you know, not all of us have perfect eyesight. We're all getting a bit older. A lot of our people are senior citizens. They are used to shopping and being able to see what the prices are. Do you not feel, nobody, I am sure and I'm not a member of the government; I can tell you I do not think that it is the intention of this government to ban, and it never has been the intention, as far as I'm concerned, as a member of the opposition I introduced a private members' bill last year. It was specific and it laid out certain things. It certainly had nothing to do with the banning of the scanning system whatsoever, but it said that items on the shelves would be marked. It also excluded certain items, certain items of small candies and various other little things that are impossible to mark. It was specific. Perhaps you would have liked it better; I liked it better, but I am not a member of the government.

But all the Minister is putting into his legislation now is, if there becomes an impass. I'm not trying to defend the Minister. I'll tear my strips off him when we get to the bill. All he's trying to do, as Mr. Adam said, is trying to put some mechanism in there, and I think he said when he introduced the bill that the regulations . . . And I agree with you, I detest regulations. I think if they are going to be of a nature that are going to put onus on the public out there, then they should be spelled out. However, that's a cross that Mr. Jorgenson is going to have to bear, not me.

But he said also when he introduced the bill that under no circumstances would those regulations be declared unless there was full consultation with the people who were selling these products and the people who were consuming the products. And I have to say that in fairness to him.

MR. CHAIRMAN: Okay, thank you, Mr. Jenkins.
Mr. Orchard.

HON. DON ORCHARD, Minister of Highways and Transportation (Pembina): Thank you, Mr. Chairman. Mr. Regier, your organization is a national organization?

MR. REGIER: Yes.

MR. ORCHARD: Primarily of independent grocers?

MR. REGIER: All independent retail grocers.

MR. ORCHARD: You mentioned a figure of a saving on labour costs, I believe, with the scanning system of pricing.

MR. REGIER: Yes.

MR. ORCHARD: What was that?

MR. REGIER: The best estimate that they can come to is a 7 percent factor.

MR. ORCHARD: On labour costs in a retail grocer operation.

MR. REGIER: If you don't have item pricing.

MR. ORCHARD: Is that accompanied then by prominent shelf markings per item, so at the time the consumer picks up the item he knows the price that he is going to be scanned and priced at.

MR. REGIER: Yes, as a matter of fact, we would like to see the government stipulate that there should be shelf pricing, which there isn't now.

MR. ORCHARD: Would this 7 percent saving on labour cost that's the best available estimate allow a retailer using a scanning system, would this allow that retailer to be able to afford a supply of grease pencils for consumers such as Mr. Jenkins, that he could mark the bag of salt so that he has his own record at the time he purchases it?

MR. REGIER: Yes, I think so.

MR. CHAIRMAN: Next I have Mrs. Westbury.

MRS. WESTBURY: Mr. Chairperson, I wonder if I could just ask a question here. We are talking about Section 3 of the bill. It say clause 1(1) of the Act, and I have the Act and I can't find clause 1(1).

MR. REGIER: It's the definition section of what's covered by The Consumer Protection Act.

MRS. WESTBURY: That's what I have here, and I can't find 1(1).

MR. REGIER: It's 1(l) actually.

MRS. WESTBURY: I wondered if it was 1(l), but it clearly is 1(1), so perhaps that can be corrected.

MR. REGIER: I am informed that it is 1(l).

MRS. WESTBURY: Okay, thank you. That's what I wanted to clarify at this point. Thank you, Mr. Chairperson.

MR. CHAIRMAN: Okay, thank you. I have the Minister, Mr. Jorgenson, did you wish to . . . ?

MR. JORGENSEN: Well, there is just one more question I would like to ask. On that survey that you did with members of your organization, I note that you have the words "and this is what they're asked to respond to. Bill 76, if passed, would result in immediate cost of operation by legislating you to pricemark every single item yourself". Surely, Mr. Regier, you don't honestly believe that.

MR. REGIER: I didn't prepare it and I'm not disavowing it. The point is, as I suppose, that people put two and two together. That's the best I can do. I'm not going to misrepresent that . . .

MR. JORGENSEN: That's all the questions I had, Mr. Chairman.

MR. CHAIRMAN: Thank you, Mr. Regier. Mr. Corrin.

MR. CORRIN: Yes, Mr. Regier, you indicated that the Minister did not consult with you prior to the tabling of this bill in the House.

MR. REGIER: No, I said not a meaningful . . . I'm sorry to interrupt.

MR. CORRIN: Yes, I just wanted to clarify that. Could you tell us what discussions you had?

MR. REGIER: I did not meet with the Minister other than yesterday, but Mr. Penner of the Federation met, I believe, last week or the week before last, and it was for somewhat of a session and didn't feel as if he was in a position to become prepared for the bill and for a meaningful discussion with the Minister.

MR. CORRIN: But you are aware that the bill was already in the House a week-and-a-half ago, that the bill had been printed and given first reading, if not second reading at that time.

MR. REGIER: Yes, but there was a lateness, the association had thought there should have been a good four or six-month time period so they could canvass people and perhaps come up with some assistance to the government. For example, I'm sure if the Minister would have consulted with them four months ago and they would have said, well why don't you make your regulation and provide for shelf pricing, and look out for the old age pensioner who can't look down, and certain colours people can see and certain they can't, and you go into the sizes and whatever, that's the kind of thing that I think the government should have done. But you can't throw something two or three weeks before and say, let's march through, you've got a pig in the poke and accept it. And that's going to increase costs.

Because it was done as a result of the certain consumer organizations. And that's why the thing came out that way. That's the perception of the individual grocer. You can't condemn him; he prepares it the way he perceives the situation to be.

MR. CHAIRMAN: Thank you, Mr. Regier.
Mr. Corrin.

MR. CORRIN: Mr. Regier, but you are aware, and I know you are, that the section with respect to disclosure of the price of goods does say that the manner of disclosure between the seller and the buyer is only as may be required by the regulations.

MR. REGIER: We'd like to see it done by the Legislature.

MR. CORRIN: You would prefer to see it all spelled out.

MR. REGIER: Sure.

MR. CORRIN: I see. Well, I'm not suggesting that's unreasonable. I am asking you these questions to determine that. I presume, as a matter of fact, if you would have had a chance to meet with the Minister as you said, four or five or six months before today, probably you would have made the same representation then as you have this evening. So what really bothers you is simply the arbitrariness of the provision. Would you not agree with me that from a consumer's point of view, it's equally precarious in that it doesn't tell the consumer what protection he or she will be afforded?

MR. REGIER: I can speak as a consumer of one. I would prefer to dodge that question, really.

MR. CORRIN: But I'm just asking you whether your group has a similar concern on the part of consumers.

MR. REGIER: You see, what you can't mistake here is this. The people I represent are out in the community. They're not trying to steal, cheat, or connive from anybody. What they want to do is, they want to sell groceries at the lowest possible price so they can make as big a profit as they can, and they do it through volume in that business. They've got to meet with people every day. And what part of this consultative process would be, if the Minister would go for it, would be that the individual grocers would speak to their customers, and there's nothing the matter with that. You don't have to have everything done through a consumers' organization. I mean, if you're serving the public, you've got to know what the public wants. So the way you find that out is, you ask them. But there's no opportunity to do it. And what you've got is a pig in a poke in this bill.

MR. CORRIN: It seems to me that we both agree, whether we come at it from the point of view of the consumer or the retailer, Mr. Regier, it seems that everybody comes to the same conclusion, that it's a pig in a poke and there's neither protection for the consumer or the retailer because of the lack of definition in the section.

MR. REGIER: I won't answer that question because I don't feel entitled to.

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

MR. JAY COWAN (Churchill): I would have a couple of questions for Mr. Regier, Mr. Chairperson, if I can. The figure was mentioned earlier that not having to put item pricing on each item would result in seven percent labour costs, a savings of seven percent in labour costs. I would ask Mr. Regier if he could elaborate upon that and tell us how that figure was derived and how exactly it will save the independent grocer, or any grocer as a matter of fact, save them that seven percent?

MR. REGIER: I can't produce that, but this is another example where it's unfortunate that we didn't have time to prepare.

MR. COWAN: My question, Mr. Chairperson, would be then, where does that figure come from?

MR. REGIER: It comes from I was advised of that by an independent grocer who had researched the scanning process and was about to install it before Bill 76 came, and that's the determination that he could make from I suppose what was represented to him.

MR. COWAN: So in fact, that figure is an example of one person's computations. It could be a larger saving, it could be a smaller saving. In other words, the question I'm asking, is that figure substantiated in literature so that we can make reference to it and know that it has been derived at by a logical, systematic process taking into account many considerations, not just the considerations of one grocer?

MR. REGIER: Well sure, what your Minister would do is he would look at the California example where they have scanning all over the place, in Ontario and other places, and part of the consultative process would be, well is this is a benefit to the consumer, is this a benefit to the grocer or whatever. But there is nothing provided for in the bill. It's a fait accompli.

MR. COWAN: In regard to the seven percent figure, and I'd like to just clarify it a bit more, I would ask Mr. Regier if the two stores that he knows of that have implemented a scanning system have been able to save seven percent in labour costs?

MR. REGIER: I don't have that knowledge.

MR. COWAN: I would ask Mr. Regier then if he knows and I realize that it may be a question that he doesn't have the information available for, but I would certainly like to see it at one time or another if he knows of any comparison in prices between stores of comparable size, comparable location, that have in Manitoba in other words, you would take the two stores that we know have computer standing and compare their prices to stores of similar locations, similar circumstances. Could he say now categorically that there would be a savings for the consumer shopping at the store with the scanning system?

MR. REGIER: I can't represent it that that is the fact but that is the expectation, that's the information I have. I won't go beyond my knowledge.

MR. COWAN: I wouldn't ask Mr. Regier to do so, but I would like to know if that seven percent labour cost takes into consideration the capital costs of implementing a scanning system, which would involve some fairly high, front-end start-up costs. In other words, perhaps they could save seven percent on labour, but they may have to pay seven percent more on interest to pay for the equipment. Is that seven percent above and beyond the start-up costs of the scanning system?

MR. REGIER: I don't have that knowledge, I'm sorry.

MR. COWAN: Well, given that, then I too do not wish to buy a pig in a poke and I can only suggest that that seven percent figure is representative of a pig in a poke if we can't substantiate it in any way. I'm not saying that it's not an accurate figure; I'm just saying that I would appreciate, and perhaps the Minister can supply that with us, more substantiation of any labour costs.

I would ask Mr. Regier if he is, in regard to placing shelf pricing into the Act, if he would be opposed to also stating that that shelf pricing must include per-unit cost figures?

MR. REGIER: You mean the size?

MR. COWAN: No, in other words, per litre, per millilitre, per ounce, per gram.

MR. REGIER: Yes, the size. That's what goes on it. It has on the name of the product, the size and the price, and in proper print and colour that everyone, even myself can read it.

MR. COWAN: I would ask then if he would be opposed to extending that to include the cost per unit, in other words the cost per gram, so that a person who is shopping and has to make a comparison against three items of different size packages, that they would be able to make the comparison immediately based upon the cost per unit of that package. If it was in grams, then they would say, if it was a five gram package, a seven gram package, a ten gram package, the shelf pricing would have included on it a cost per each gram.

MR. REGIER: I haven't thought that one out and I haven't consulted with my clients on that. This is part of the problem with the bill, there hasn't been a consultative process.

MR. COWAN: You would then appreciate more time in regard to being able to talk to the Minister, in regard to consumers being able to make direct representation to the Minister so that this could be sorted out better. You feel that the ambiguity of the bills as it stands now is a disadvantage. I don't want to put words in your mouth, but this is what I seem to hear, is that you think the ambiguity is a disadvantage that leaving the process in the hands of a Minister by regulation can lead to problems further on down the road, in that it is not an open

consultation, but it is a decision that is made behind closed doors. Is that basically your representation?

MR. REGIER: What we have asked is that two words be deleted from Bill 76, that is all we are asking for.

MR. COWAN: But while you are asking for that, you are obviously asking for that for a reason, and that reason I would hope would be for consultation, would be for a more open mechanism of dealing with what seems to be a technological problem I hesitate to use the word "problem" because it doesn't have to be a problem but seems to be a technological change that may have, as well benefits, certain problems, and you would also like the consumers to have more opportunity to make representation.

MR. REGIER: Absolutely, they are the customers of my clients. They have to serve them. There is no cross-purpose between consumers and independent grocers at all.

MR. CHAIRMAN: Thank you, Mr. Cowan. Mr. Evans.

MR. LEONARD S. EVANS (Brandon East): Just a couple of questions. Mr. Regier stated, I believe, that he represents primarily rural retail food outlets and, therefore, these are likely to be smaller ones, I would image. These are likely to be of a smaller size, by and large, and maybe you could clarify that because I don't want to put words into the delegate's mouth, can he describe again therefore essentially the kinds of retail food outlets he represents in this association?

MR. REGIER: Well, first of all, you eliminate the major chains and then it would be a cross-section of city and rural stores, some of them, I suppose, go in the 20,000 and 30,000 square feet range. I know one specifically is over 30,000 square feet, but it is sort of a cross-section and part of the problem is we haven't been able to identify past the 270, because of the time factor again, but there are more cards coming every day, and the Minister has the cards and I think the Premier has some of the cards, and Mr. Penner has some of the cards here and you can just leaf through them to see who these people are.

MR. EVANS: Well, what percentage roughly would you say, of your membership, would be interested in installing electronic scanning devices?

MR. REGIER: I can't answer that. It is such a new thing, Sir, that people are going into it and it is being tested in Manitoba. That is part of the consultative process where the government should determine where the bill fits. It should be looked into more.

MR. EVANS: Leaving aside the question of scanning. As I understand, you object to having food included in the list of consumer products that must be priced in the marketplace.

MR. REGIER: Yes, for the time being.

MR. EVANS: Mr. Chairman, could the delegate advise whether it is not customary for his clients,

that is for the bulk of the retail outlets that he represents, to already price items. That is, would not the bulk of the retail outlets he represents already be putting prices on their packages and on the items?

MR. REGIER: Except for 500 items. Things like grapes and peaches and bubble gum and other things and cigarettes.

MR. EVANS: Is it customary for your membership, when they put prices on shelves, is it customary for them to show the unit price as well as the item price? You understand what I am talking about by unit price.

MR. REGIER: By having it on the shelf as well as marked on the goods.

MR. EVANS: Okay, I will ask you that question first. Is it not customary to have a price shown on the shelf for the items as well as on the goods?

MR. REGIER: I would like to answer that, but I really can't.

MR. EVANS: Well, then the follow-up question is and I guess this you may not be able to answer either, but distinguishing the price per unit as opposed to the price of the item. In other words, if you compared two cans of peaches, let's say, and they may be in varying sizes, so in order to compare the relative prices, you would want to know the cost per ounce, per gram, or whatever the unit is. Is that customary for your stores to indicate in the shelving? If you put a price on the shelf, is it customary to also put the unit, and I guess you don't know the answer?

MR. REGIER: If I had had more time to appear here, four or five or six months, then I could answer more questions, but I can't even give a meaningful presentation today, because I don't know what the Bill is all about.

MR. EVANS: Mr. Chairman, then I gather in essence Mr. Regier does not want to have food brought under The Consumer Protection Act umbrella, inasmuch as once it is, then his members will be required to put prices on the goods that they sell, and therefore, as I understand his argument, with some exceptions like bulk fruit, etc., that because not all his members do this for whatever reason, but now they would be required to do so if this legislation passed, that this would be an additional labour cost and therefore it would be reflected in the final selling price. Is that the gist of your argument?

MR. REGIER: That is the fear. I mean the Bill isn't going to say that this is what is going to happen, but that is the fear on the part of the people that I represent. Am I being clear?

The Minister hasn't represented that this is what is going to happen. He is saying he is going to pass a set of regulations, so the fear on the part of my clients is that the regulations could result in there being more costs on their part; therefore food would go up. This is their perception.

MR. EVANS: Well, therefore, just this last question, Mr. Chairman. Therefore, what Mr. Regier is saying is that he is not entirely opposed to food items being included as an item that must be priced according to the Act, but that he would like to have more time for consultation with the Minister and his department to ensure that if this comes about, that it comes about in a way that ensures that any costs involved will be kept to a minimum.

MR. REGIER: And that the Legislature as a whole would participate in that.

MR. EVANS: Yes. You are aware, of course, that it is difficult by legislation to foresee every possibility, and, of course, this is why we have regulations just about under any Act. Ideally, the Legislature or the people's representative should see every item and every point of regulation, but it seems, I guess, since time immemorial that this not a practical matter, so would you agree with that?

MR. REGIER: Yes.

MR. CHAIRMAN: Thank you, Mr. Regier. Mr. Corrin.

MR. CORRIN: Mr. Regier, I just want to be abundantly clear that we are talking about the same thing, because you have suggested certain deletions and amendments. You indicated, I think, early in your first presentation that your group sought the deletion of Clause 1.1 of the Bill. Later on you discussed that, but in the context of Clause 8, Section 2.1 of The Consumer Protection Act. You see, the first point, Clause 1.1 of the Consumer Protection Act talks about goods that are included and that's Clause 3 of the bill, and then subsequently you have Clause 8 of the bill dealing with section 2.1 of the Act. And I just want it to be clear. Did you feel that in order to address the concerns of your group that both those clauses would have to be deleted, or is there some distinction as between the effect of those two?

MR. REGIER: No, we're only concerned about groceries. So if the word, food products was taken out, that's your amendment to Clause 1(l) of the Act, if that was taken out, you know if they want to have Clause 8 amending Section 2(1) of the Act in there, that's fine. But it wouldn't affect my clients for the time being, until there was that consultative process. So all we're seeking is that the government consider deleting Clause 3 of Bill 76.

MR. CORRIN: How about if we left "food products" and deleted for the time being 2.1, because that seems to be the cause of most of the difficulty. In other words, if we left the enabling legislation that would allow the government to deal with food products within the Consumer Protection Act, but simply for the time being provided a better mechanism or perhaps no mechanism in the interim relative to price disclosure, because it seems to me it's only the latter price disclosure that really is a problem. I presume your group wouldn't be offended if we left "food products" within the ambit of the Consumer Protection Act. That wouldn't concern your group, would it?

MR. REGIER: It would concern them right now because they don't know about the pricing of goods, and the manner of disclosure.

MR. CORRIN: But I said, if we took out 2.1 then you wouldn't have that problem. So I'm asking you, would you be opposed to food products being left within the Act and just that offensive section being temporarily removed?

MR. REGIER: Then you'd have to take out Section 15 also.

MR. CHAIRMAN: Mr. Regier, unless you stand in front of the mike, we can't pick it up.

MR. REGIER: I apologize, I'm sorry.

MR. CHAIRMAN: Would you repeat the answer, please?

MR. REGIER: I was going to say, there is also Clause 15 which affects the point that Mr. Corrin raised.

MR. CORRIN: Okay. So if that's true, and if those two clauses then were deleted and food products were allowed to stand within the Act, would your group be opposed to that? Can you just tell us?

MR. REGIER: I don't have instructions on that. We haven't had time to consider that point.

MR. CORRIN: It seems to me that's a fairly substantive point.

MR. REGIER: We'd like to see "food products" deleted, have consultation with the government and the Minister and with the customers of the stores and with the group as itself, because they haven't even had a chance to meet to work it out properly, so that's why we'd like to have Clause 3 deleted. The other clauses you mention, Mr. Corrin, are so broad, I don't know what products or goods they cover. I just haven't studied that.

MR. CORRIN: But for the record, you're going for the whole ball of wax. Not a half-a-loaf.

MR. REGIER: Well, no, we're just going for those two words.

MR. CORRIN: Those two words are the whole ball of wax, and you should understand them.

MR. REGIER: Yes.

MR. CHAIRMAN: Thank you, Mr. Corrin.
Mr. Adam.

MR. ADAM: Thank you, Mr. Chairman. Just the one further question, in regard to the survey that you made, Mr. Regier, would you agree that the wording that you had in your survey was, I don't want to use the word "deceptive" but did that not induce a lot of your clients to support . . .

MR. REGIER: That could well be. Again, I go back to the words I didn't word the thing, and I'm not

stepping away from it, it was worded as best as was possible in the short time frame, and I suppose the person that worded said, well gosh, if the government passes this and we get that, then food costs are going to go up, and so they tied it together. I don't think you can fault anyone on the petition or on the blue cards or anything because they haven't had time to prepare and consult. I'm getting nauseating on that point, but that's why I'm here.

MR. ADAM: I agree, Mr. Regier, that there is quite a bit of unknown. Everybody is in the dark as far as the bill is concerned in its present form, but I want you to know that the clients that were in touch with me, one of them said that she was really scared into supporting by the wording. If it had been worded in the proper way that she may have not supported, but the fact that it was worded in such a way, she said, oh, well, we've got to support it.

MR. REGIER: This was a thing done in a scrambling way because of the time factor.

MR. CHAIRMAN: Thank you, Mr. Regier. Mr. Jorgenson.

MR. JORGENSON: Mr. Regier, I wonder if you could tell the committee if you are aware of any difference in prices between those stores that are using the universal product code now and those retail outlets that are not using the universal product code. I'm not asking you to compare a Loblaws supermarket in Charleswood or Garden City with a small country store, but with a comparable size store not using the universal product code.

MR. REGIER: I have no knowledge of that, I'm sorry.

MR. JORGENSON: I wonder if you could tell the committee the length of time that is required to write off, in savings to the supermarket, to write off the full cost of the scanning system.

MR. REGIER: I have no knowledge of that.

MR. JORGENSON: Okay.

MR. CHAIRMAN: Okay, thank you very much. There being no further questions, thank you for your presentation, Mr. Regier.

Our next delegate is Sylvia Guertin on the same bill. Is Ms Guertin here? Okay, is Ms Sylvia Guertin here? If not, then Dick Martin of Manitoba Federation of Labour. Is Mr. Martin here? No? Okay, then that is all the delegates that we have listed for Bill No. 76.

We'll next go to Bill No. 82, An Act to amend The Clean Environment Act, and again I have Mr. Dick Martin of the Manitoba Federation of Labour who is not here. Are there any other delegates to appear on that bill? If not, then we move to Bill No. 85, An Act to amend The Mental Health Act.

**BILL NO. 85
AN ACT TO AMEND
THE MENTAL HEALTH ACT**

MR. CHAIRMAN: I have Professor Dale Gibson of the Manitoba Association for Rights and Liberties.

MR. DALE GIBSON: Thank you, Mr. Chairperson. As you said, my name is Dale Gibson. I'm appearing on behalf of the Manitoba Association for Rights and Liberties. I have with me Mr. Norman Rosenbaum. I was asked by the association to appear briefly because I had some previous association with the Law Reform Commission recommendations which stand behind Bill 85 to a large extent. Mr. Rosenbaum is with me because he, on behalf of MARL, has done a study of the legislation and we will both, if permissible, be saying a few words to you.

MR. CHAIRMAN: Certainly.

MR. GIBSON: Mr. Chairperson, we have a written brief, has it been distributed to the members of the committee?

MR. CHAIRMAN: Not that I am aware of, Professor Gibson.

MR. GIBSON: We left a quantity, I believe, with the Clerk. Oh, yes. Well, while they are being distributed, I think I might begin, Mr. Chairperson, because we don't want to take longer than necessary.

The Manitoba Association for Rights and Liberties congratulates the government of Manitoba for bringing forward legislation designed to improve the rights of persons detained for medical examination and treatment. Legislation of this nature has been long needed, and the 1979 report of the Manitoba Law Reform Commission on the subject has proposed legislative reforms which in the view of MARL, if implemented, would be highly satisfactory. Regrettably, Mr. Chairperson, it is the view of the Manitoba Association for Rights and Liberties that the attempt in Bill 85 to translate the Law Reform Commission proposals into specific legislation falls so far short of the target that MARL is unable to support the bill in its present form.

The brief that we will be presenting to you is in three parts. The first is a kind of an introductory overview. We then will look at some of the detailed sections that concern us most, and then there will be a brief concluding section. I will be dealing with the first and the last items of the brief and Mr. Rosenbaum will be dealing with the section-by-section provisions.

Mr. Chairperson, this legislation comes before us because of a request that was made to the Law Reform Commission some five or six years ago. The Law Reform Commission was asked to make it easier to apprehend persons who are in need of compulsory medical treatment or medical confinement. When the Law Reform Commission was given that request by Manitoba's Mental Health officials, the commission took the view that it would not want to proceed to make it easier to apprehend people needing treatment unless, on the other hand, it also improved the protections and rights to make sure that someone is not improperly apprehended or is not kept beyond the time that is necessary. So the commission took a good deal longer than it normally does to come up with suggested changes in the Act.

What it eventually arrived at in a report made in 1979 was a study which, I submit, is Canada's most carefully considered proposal for legislative reform in this very very difficult area.

Because the existing apprehension and protection provisions of The Mental Health Act were regarded as being wholly unsatisfactory by the commission, the proposal made by the Law Reform Commission was to remove that entire portion that dealt with the apprehension and compulsory detention of mental patients and to replace it with a completely redesigned procedure which was very carefully worked out by the commission in its report. Unfortunately, at the drafting stage the draftspeople chose, instead of a complete revision of that part of the Act, to adapt a patchwork kind of an approach amending this section, altering that section, removing this, adding that and the result, unfortunately, is so confusing and inadequate that much of the substance and I'm afraid the basic spirit of the Law Reform Commission proposal has been lost in the drafting process. So the attempt that I will making in this introductory talk is to try to give you a bird's eye view of what it was the Law Reform Commission was trying to do on the one hand and the way in which the legislation seems in view of MARL to fall short on the other.

The first of the items that the commission addressed itself to was the question of apprehending, actually taking somebody by the arm and making sure that they get to a mental health facility. They very carefully set out four ways in which that might be done, all of which were rather carefully considered with appropriate protections at each stage. I won't bother going into the details. You can read them in the brief. To a considerable extent, the legislation follows along and does some of the same things, but unfortunately there are substantial differences.

Probably the most hurtful differences are that some provisions are left in the existing Act which are, it seems to me in the late 20th century, absolutely unacceptable. Let me point out, for example, Section 13 of the present Manitoba Mental Health Act. Section 13 is in the present Act and has been unaltered by the new legislation. Section 13 is a section which says that the Lieutenant-Governor-in-Council, which as you know means the Cabinet, may commit anybody for any length of time to a mental institution if they happen to have been convicted of a criminal offence, or happen to be in prison. That, Mr. Chairperson, is utterly unacceptable in this day and age, and how a supposedly informed and humane Act, such as proposed to us, contains still a medieval relic like that, and indeed a politically dangerous relic remember how these similar provisions are used in the Soviet Union is beyond me and beyond MARL.

To choose just at random another rather horrendous section that remains from the old legislation, and has not been addressed in this Bill, there is a Section, Section 19(1), which states, that an Indian or an Eskimo person in the province of Manitoba, that is a Manitoba citizen of Indian or Eskimo ancestry, may be refused treatment in a Manitoba Institution, unless there is a satisfactory agreement worked out between the province and the federal government as to who is to pay. And what we

point out in the brief is that since this same Bill gives to police officers the power and the duty to retain in custody people who appear to the police officer to need treatment, one could end up with a situation of an Indian being held in some police holding facility at some point, while the federal and provincial financial people squabble as to who is to pay for his treatment.

Moving from the question of the initial apprehension to the question of the first examination that takes place once a person gets to a facility, there are substantial differences again between the Law Reform Commission proposal and the bill. The Law Reform Commission proposal proposed that once somebody has been brought to a facility there must be a treatment within 48 hours, that is within two days that person who is compulsorily in the mental home must have an examination by psychiatric staff. Which seems, I would submit, entirely fair. The present bill permits a person to be held without such examination, for at least 14 days. Indeed, if you look at Section 9(1) and then at the old Section 10(1), it may be that the period is 21 days. There appears to be some confusion in the drafting of these two sections, the new 9(1) and the old 10(1), with the result that the period is either 14 or 21, but whichever it is, Mr. Chairperson, surely a person is entitled to a proper psychiatric examination in much less than either of those periods and I would submit that the 48 hour period, proposed by the Law Reform Commission, is plenty long enough.

Sometimes people come to these facilities on a voluntary basis, rather than a compulsory basis and it may surprise some of you to know that even a voluntary patient is there under compulsion, or can be under compulsion for a period of time. When you think about it, this may be necessary because once a person is there, and has a sudden change of mind, the staff may want an opportunity to examine them with a view to seeing whether they need to be detained or not. So the Law Reform Commission proposal stated that an eight-hour period might elapse from the time that a person requested to leave the facility, to the time that he was permitted to leave. Eight hours in which, if treatment were necessary, or examination were necessary it could be provided.

The present legislation, the bill plus the present legislation, calls for a 48-hour period plus a further 36-hour period, before a voluntary patient may be released. In other words, a person may be held a voluntary patient, may be held in one of these facilities for three and a half days before being permitted to leave. That we submit is utterly unacceptable.

The Law Reform Commission stipulated that the initial examination and indeed all examinations as to whether a person should or should not be confined by compulsion, should be carried out by two psychiatrists, operating independently. I don't mean private psychiatrists but two psychiatrists making independent, professional judgments.

The present legislation tends to rely on judges to do this sort of thing and it was the Law Reform Commission's view, after a lot of thought and a lot of consultation with people in the profession, that the judge almost invariably, will rubber stamp whatever the psychiatric evidence tells him and the

Commission's submission was that it would be much better to have two independent experts, who know something about the subject, make the certification order in the first place, so that what was proposed by the Law Reform Commission. The present legislation calls only for a certificate issued by one qualified medical practitioner. Now that person could theoretically be a foot doctor, surely if the thing is being applied properly it will be a doctor who knows something about psychiatry but there isn't even that requirement and there is no requirement for a second opinion.

Further the Law Reform Commission proposed that an individual who is in these circumstances should, if he or she wishes, be examined by their own private psychiatrist in order to compare that result with whatever the official psychiatrists had to say. The present bill has no such right. It may be that such persons are permitted but they have no right to have that kind of examination carried out.

Finally, so far as this initial examination period is concerned, the Law Reform Commission proposed that within that first 48-hour period when the patient was being considered, that the only treatment permitted should be emergency treatment to protect himself or to protect others; absolutely necessary emergency treatment. The present legislation has no such safeguard as that either.

Moving to the question of time limits, I've already mentioned the 48-hour initial period as compared to the present legislation which has longer initial periods. After that initial certification, the two pieces of legislation are different again. The Law Reform Commission proposal was that after there is an initial certification, that certification should be valid for 30 days and then at the end of the 30 days, the person would have to be re-examined by a psychiatrist or two psychiatrists again, and another 30-day certificate could be granted and then there was a kind of timetable with gradually lengthening periods that had to be followed, so that there was, at the beginning at any rate, a rather frequent re-examination of the individual being confined.

The bill plus the present legislation proposes only this. That the first certification is either for 14 or 21 days, whatever those sections mean. Then if there is to be an extension, maybe a doctor can give another 14 or 21-day certificate, it's not too clear. But probably what's intended is that you would then go to the judge and there would be a hearing and the judge would then, on the basis of psychiatric evidence, under your present proposal, make an order for any period or an indefinite period as the judge saw fit. I submit that this is not an adequate safeguard. You may think that appearing before a judge is something of a safeguard, having a hearing and all that sort of thing and undoubtedly there are some advantages to that, but I would submit that the real decision is made by the psychiatrist who appears before the provincial court judge and says, this man needs to be put away for 18 months or whatever it may be and the judge will in 99.9 percent of the cases say, yes, 18 months. Sorry, 18 months, I'm exaggerating slightly, there has to be, under the present legislation an annual review, so it could not go beyond one year but one year is an awful long time to be confined against your will, if you're not in need of treatment.

I now come to what was undoubtedly the most important of the Law Reform Commission proposals with regard to this subject and it has been totally ignored in this legislation. The Law Reform Commission proposed the establishment of an office in each psychiatric facility known as a patient's advocate. The purpose of this patient's advocate, and by the way when I use the term "advocate" I'm not talking about a lawyer, I'm talking about somebody on the staff of the hospital whose duty it is to explain to each patient what their rights are, to hear complaints that the patient may make and to assist the patient carrying forward any complaint or requests that they may have to the proper authorities.

If I may deviate just slightly to personal experience, this last year or so, I had a very unhappy family experience with a General Hospital here in Winnipeg, which ultimately I was assisted with by the Minister of Health. It was a situation in which there were continuous lapses of communication and understanding between the hospital staff, the patient and the patient's family. The patient's family were intelligent, dedicated, vigorous people and yet these misunderstandings developed to a degree that in the family's view anyway, the patient was fatally mistreated. After a lot of discussion with the hospital staff, eventually with representatives of the hospital board, the hospital board agreed with the family, that the problem would not have arisen had there been, in that general hospital, a patient's advocate, a person who could hear initial complaints by the family and take them to the right authority. Now that's a general hospital. The patient in question was not a mental patient and yet a tragic error occurred by reason of lapse of communication.

MARL submission is that every hospital ought to have a patient's advocate but at the very least, let's start somewhere, let's start with the mental hospitals, with the people who are least able to understand their rights and to speak and represent themselves.

So, Mr. Chairperson, if there is anything, and there are many things, that need to be added to this legislation, it is a stipulation calling for the establishment of a patient's advocate in each mental institution.

Notification to the patient of his rights, is an extremely important part of the recommendations made by the Law Reform Commission and I have to say that the legislation has gone a fair distance toward fulfilling that right. The legislation calls for the handing to the patient of a document setting out his or her rights to appeal and so on. And that is obviously commendable and good. But you know when you are a disturbed person, disturbed enough and emotionally wrought up enough to be thought necessary for confinement in a mental institution, your ability to understand, digest and act upon a piece of paper that's stuck into your hand at a very emotional moment, is not going to be very great. The Law Reform Commission understood this and it was for that reason, to a large extent, that the patient's advocate was proposed. What's needed at this time is for another human being, the patient's advocate, to sit down and quietly explain to the patient, in terms that that particular patient can understand, what their rights are now and what their rights will be in the future.

The best part of this legislation, Mr. Chairperson, and I almost wholly commend the government for introducing it, is the addition to the legislation of an appeal process for persons who are detained. There is a provision for the establishment of a mental health review board and that the Manitoba Association for Rights and Liberties loudly applauds. We are slightly less than total in our support of that provision simply because there are some major problems, as we see it, with the time limits and my colleague will say a word or two about that. But other than that, we commend the legislation for its provisions relating to the review board.

Finally, so far as my part of this presentation is concerned, the Law Reform Commission proposal contained a number of provisions relating to treatment. There were three that I mentioned in the brief. First there was a provision, and I've already mentioned this, that only emergency treatment ought to be given within that 48-hour initial assessment period.

Secondly, there was a provision that every voluntary patient, voluntary patient, should have the right to refuse any treatment that is put forward. That is a provision which one submits ought to be in the legislation, could be simply put into the legislation, but it's missing. Finally, in the case of compulsory patients, the Commission was concerned that radical forms of treatment, unusual forms of treatment, psychotherapy, shock treatment and things of this kind, ought not to be employed unless there is some kind of independent review. The Commission was a little foggy about what kind of independent review ought to be put forward and I think the commission was remiss in that, but some form of independent review is necessary. That requirement is missing from the present legislation.

Mr. Chairperson, I have reached the second section of the brief, which is a comment in somewhat more detail on certain provisions that the Association finds difficult and my colleague, Mr. Rosenbaum, will deal with that.

MR. CHAIRMAN: Thank you, Professor Gibson. Mr. Corrin.

MR. CORRIN: Before Professor Gibson departs, Mr. Chairman, I wonder if we could ask him just a few brief questions for explanation before we hear the detailed submission, just on the general submission.

MR. GIBSON: I am in your hands, Mr. Chairperson. I will be coming back with a brief little final chorus. I think it might be wise to hear the whole thing, otherwise there may be duplication.

MR. CHAIRMAN: Mr. Rosenbaum.

MR. NORMAN ROSENBAUM: The Application of Patient for Discharge: The Proposed subsection 8(3) We suggest that the non-compulsory patients be informed upon admission of their right to make application for discharge. This information should be supplied to the patient in writing as well as verbally in simple language that the patient can understand. Translation should be provided if necessary. As many members of the patient's family as practicable and

the Public Trustee, through the office of the Patients' Advocate, should be informed forthwith of the patient's admission.

Objections to treatment by patient: subsection 8(4) Non-compulsory patients should, upon admission, be informed both in writing and verbally of his right to refuse treatment. As many members of the patient's family as practicable should be informed of this right of refusal. Both the compulsory and non-compulsory patient should have the right to independent opinion of a psychiatrist of his or her selection when drastic treatment such as electro-shock or heavy drug therapy is contemplated. Where the opinions of the psychiatrists vary, the treatment should not be permitted without the prior approval of the provincial review board. Extraordinary or controversial treatments, such as psycho-surgery, should be subject to independent review before they are permitted.

Compulsory Admission The Association notes with disappointment that the Law Reform Commission recommendations vis-a-vis subsection 9(1) have not been incorporated in Bill 85. In particular, the certification of "a duly qualified medical practitioner" is still only necessary for commitment. We suggest, as did the Law Reform Commission, that the certificates of at least two duly qualified practitioners should issue, prior to confinement of the patient. The phrase "duly qualified medical practitioner" currently allows any medical doctor in the province to sign the certificate. This specification should be abolished in favour of a provincial registry of psychiatrically qualified practitioners authorized to sign certificates. The current sole criterion of confinement indicated in subsection 9(1) i.e., "that the person should be confined as a patient at a hospital" is far too wide, allowing, for instance, the committal of eccentrics.

The Association suggests criteria such as those set forth by the Manitoba Law Reform Commission, that the practitioner be required, on the certificate, to certify that in his opinion the person is suffering from mental disorder of a nature that likely will result in serious bodily harm to the person, serious bodily harm to another person, or imminent and serious physical impairment to the person unless that person remains in the custody of the hospital and that person is not suitable for admission or confinement as a volunteer patient.

Emergency Action by Peace Officers: proposed subsection 15(4) Attempted suicide is no longer an offence under the Criminal Code. Given this fact and the continuing philosophical debate between those who favour the protection and security of the person, even against self-inflicted harm, and those who favour as little interference as possible by the forces of the state with the liberty of the individual, the Association takes no final position upon the proposed subsection 15(4). It does suggest, however, that the proposed condition (c) of subsection 15(4), that a person may be apprehended where he "has shown or is showing a lack of competence to care for himself. . ." is an ill-defined and significant intrusion of the state into the private affairs of the individual. At the least, this should be restricted to where the individual's health is endangered.

The Association would like to suggest in any case that wherever a person arrives in a psychiatric facility or for examination pursuant to a certificate, judicial

order or emergency police apprehension, should be examined forthwith upon his arrival at the facility, but in any event not later than within 48 hours of arrival.

Period of Detention May Be Extended: proposed subsection 11(1) The Association points out that the proposed subsections 9(1.1) and 11(1) are unclear whether the medical certificate is to remain valid for 14 days or 21 days. The Association favours validation for a period of 14 days only. In any case, it wishes to suggest that the extension be subject to some limits, at least those limits suggested by the Law Reform Commission. It suggests that the first extension should be for 30 days, two months for the second, with subsequent extensions to be valid for periods of three months apiece. Next of kin, the patient's legal representative and the Public Trustee, through the office of the Patients' Advocate, should be notified of any application for extension. There should be a right of the patient or his representative to present evidence and cross-examine, and the applicant should be required to prove to a judge on a balance of probabilities that "the person is in need of treatment" before granting the order.

Review and Hearings by the Board: Persons entitled to attend hearings: proposed subsection 26(9) The specification in the proposed legislation that hearings of the board "shall be in camera" except where held pursuant to subsection 26(8) is extreme. Persons indicated in subsections 26(9)(a-d) as having a right to attend, to adduce evidence and to examine and cross-examine witnesses, should also have such rights in subsection 26(7) for annual reviews.

Further, it is felt that subsection 26(8) does not specify sufficiently that hearings are to be held expeditiously. The requirement that "the board shall not later than 15 days after the receipt of the application fix a date for the hearings" should be amended to specify that the date fixed for the hearing be as close as possible to the date of the receipt of the application. In other words, the board should not be permitted to, in effect, "sit" on applications for hearings. This section as drafted does not set any limit to when the hearing must be held; presumably, the hearing could be held years after the application. The specification that the board "shall endeavour to complete any of its hearings not later than 28 days after the date of the hearing" is extraordinarily vague and open to abuse.

Decision of Court Final: subsection 27(3) It is felt that the process of appeal from decisions of the board should not be limited to de novo trials in County Court. At least on questions of law and jurisdiction, right of appeal should be preserved to the Manitoba Court of Appeal.

Confidentiality of Records The proposed legislation should be amended to acknowledge the confidentiality of private records and testimonies before review boards, as well as clinical records.

Rights of Patients: proposed subsection 28(1) It is felt that the proposed legislation provides insufficient acknowledgement of the rights of patients. In particular, Part (b) should be amended to acknowledge the basic right of the patient to an unrestricted right to communications, to be able to send and receive mail from the facility without censorship. Where censorship is required, the institution should be required to show to a provincial

review board that the censorship is required. The Patients' Advocate should be informed of the particulars and the reasons for censorship. Communications in question should be retained for eventual return to the patient or patient's representative. Communications written by or to a patient in a facility by or to:

- 1) a barrister or solicitor;
- 2) by a member of the Mental Health Review Board;
- 3) a member of the Legislative Assembly;
- 4) a member of the Parliament of Canada;
- 5) the Ombudsman;
- 6) the Patients' Advocate;
- 7) the Public Trustee; or
- 8) a psychiatrist duly qualified to practice in Manitoba;

should not be opened, examined, censored, withheld or delayed.

MR. GIBSON: And here am I again, Mr. Chairperson. I'm on the second last page of the brief. I apologize for the fact that the brief has no page numbers. It was the consequence of having it prepared in two different places by two different people simultaneously. The second last page we arrive at Conclusions, and we say in the first sentence of that section that it is very difficult to know what action to recommend to this committee with respect to this very badly flawed, though necessary, legislation. On one hand there are some very useful items in the legislation, in particular, the Review Board provision would be very very valuable to have right now. On the other hand, most of the rest of the legislation leaves patients' rights in such bad shape that some substantial improvements would be necessary in the future and we are fearful in a realistic world that if this bill is passed now, it will be the last time that we'll see a bill on The Mental Health Act for some years to come.

So we appear before you, feeling rather involved in a dilemma, and what we are suggesting to you, Mr. Chairperson, by way of resolving this dilemma, is this, that only section 25 of Bill 85 be passed at this session of the Legislature. Section 25, there may be a need for some ancillary interpretative sections and so on, but basically Section 25 is the section which establishes the Review Board, and it would appear to us that new provision is quite capable of being enacted independently, added to the present legislation, and therefore, Manitobans could have the benefit of that very valuable reform right now. Then we would submit the remainder of the bill be withdrawn and that it be referred either to an intersessional committee, if that's the way you choose to operate, or to the drafting people, to make another attempt to come a little bit closer to the spirit and I hope also to the substance of the proposals that were so painstakingly worked out by the Law Reform Commission over such a long period of time as a result of a good deal of study, in fact, an awful lot of study. It would be a tragedy, Mr. Chairperson, if because of a legislative speed-up, legislation that we have long wanted, legislation that you have had experts work carefully, very carefully on, over several years, is spoiled by reason of what I have to submit is a careless translation into actual legislation.

So our submission, Mr. Chairman, simply is pass section 25, withdraw the rest, reconsider it, and reintroduce the legislation next year in some form that approximates the Law Reform Commission proposals which I believe is what the government thought it was introducing.

During the interim, the Manitoba Association for Rights and Liberties would welcome the opportunity to meet with the Minister involved, or the committee involved, to offer any assistance that we can.

Thank you, Mr. Chairperson.

MR. CHAIRMAN: Thank you, Professor Gibson. Now we have questions. Mr. Corrin. I assume you will permit questions.

MR. GIBSON: Certainly.

MR. CORRIN: Professor Gibson, I wanted to query . . . you don't have page numbers, so I can't refer you to any particular page. I can just tell you that it deals with the question of treatment which is No. 7 in the first part of the general brief.

Number (c), you discuss the question of independent review of controversial, experimental or surgical psychiatric procedures, and you suggest that the protection that would be conferred by such review is not provided either in Bill 85 or the existing legislation. My problem with this and I must say that I'm wholly supportive in principle; I think the concept is exceedingly sound, but my problem is implementation and I would like your guidance.

MR. GIBSON: You would pick the section that I can probably offer least guidance on. This was one of two or three implementing-type questions that the Law Reform Commission divided on. It happened that this report came to report stage at a time when the commission was lacking a chairman and we had an equal number of people, and as it happened, we divided equally on three or four items and this was one of them. The best that I can offer is that people who are closer to the actual psychiatric problem, that is to say, a team of some people who work in this area from the medical side, be consulted as to the right kind of review procedures which would be both expeditious on the one hand, because you can't delay necessary treatment and on the other hand, protective of the rights of the individual. But I can't offer specific suggestions.

There are some in the Law Reform Commission's report. There are two sets or there may even be on that one, three different sets of detailed suggestions. I submit that they all require some considerable rethinking and one would hope that if these provisions are withdrawn that there will be opportunity to do that before the next session.

MR. CORRIN: I was wondering in this regard, Professor Gibson, whether any other jurisdiction has attempted to place such controls in legislation. Has anybody else tried to define by legislation or more appropriately, I guess, by regulation, what constitutes controversial or experimental treatment?

MR. GIBSON: No. There are similar provision in other Canadian Acts, but they are all provisions of a rather all of the proposals that have been made use

waffle words of this kind. At least as of the time that I was last involved with this study, which was a couple of years ago, I was not aware any easy answers in the field.

MR. CORRIN: In this regard, you indicated that there were certain sorts of treatment procedures that were deemed to be experimental in nature. I'm wondering whether or not your group or the Law Reform Commission in its deliberations were able to identify whether any of these types of experimental treatment processes were actually taking place in Manitoba's facilities. Is there any evidence in that regard?

MR. GIBSON: We made no attempt to search for abuses. We examined the legislation. We had a few small horror stories come to us gratuitously, but nothing in this particular area. It's like so many of these problems. At the extreme, we find it easy to say what we're talking about in this one provision about extraordinary treatment. We can tell you that we're talking about psycho-surgery, about lobotomies. We're clearly talking about that. We can tell you that we're talking about shock treatment and that's well known. We can tell you that we're talking about anything that is experimental in the sense that its immediate purpose is not to benefit the patient, but to gather general knowledge for medical science. Those three things we know. But we know also that are forms of treatment, and new treatments are being developed all along, that fall into a grey area that are perhaps not quite as radical as that but nevertheless may need to be covered.

At the very least, if no other better definition were to be found and you were to exclude only shock treatment, purely experimental treatment and psycho-surgery, you would have gone a long distance. So it's a problem to do the job absolutely, but it's not a problem to cover about 95 percent of the forms of treatment that we're concerned about.

MR. CHAIRMAN: Okay, thank you, Professor Gibson.

Mr. Parasiuk.

MR. WILSON PARASIUK: Just to continue on a point we were just discussing, the situation right now does appear that a psychiatrist can prescribe electric shock therapy for people, even though the patient to the best that patient's ability doesn't want it, and even though the parents don't want it. I have a particular case of a constituent, that I have raised before with the Minister of Health, from Transcona, who was a very vibrant youth. He was president of the Transcona Collegiate. He became a schizophrenic; he was committed. He was given electric shock therapy. He is just a shell of his former self and he's about 22 years old. He sort of hovers between social assistance, parental care and treatments in hospitals and it's tragic. At the same time this person has tried, or the parents have tried to have megavitamin therapy prescribed to him, and the doctors have gotten together and said none of them will prescribe megavitamin therapy in Manitoba which, frankly, the side effects of which seem rather harmless. Yet the side effects that I've been able to ascertain of the

electric shock therapy to this individual have been tragic, to say the least, and yet that continues.

So I agree very much with this particular point, and although it may be difficult to implement in practice, it certainly strikes me as being very critical in terms of the patient's right. So I commend you for that presentation. In fact, I'd like to commend you generally for the presentation that you've made to date. I think it's very well researched; I think it's logical. I think it's thorough and I think its conclusion is one that certainly merits attention from people on this side of the House. Given the fact that you have been able to point out so many flaws in this legislation to the point of recommending that only one particular part of it, namely, the review board, which I think everyone around this table agrees with and would like to see implemented this year. Apart from that, you are saying that the legislation is so badly flawed that it should be held over to an intersessional committee, or redrafted over the summer, brought back in the fall if there is a session in the fall, or brought back next year. Could you tell me if the Law Reform Commission was consulted in the drafting of this legislation?

MR. GIBSON: No. I mean I can tell you that it was not. That's not unusual because the commission has not made it a practice to become involved in drafting. If I may offer an aside, it seems to me it may be that the Law Reform Commission should become involved in that side of it from now on.

MR. PARASIUK: To your knowledge, if the Law Reform Commission had been asked to at least sit down in discussions with the draftspeople and with the Minister, would the Law Reform Commission have done so?

MR. GIBSON: I may have misled you just a moment ago, Mr. Parasiuk. I have no knowledge as to what went on between the drafting staff and the Law Reform Commission after I left the commission.

MR. PARASIUK: When did you leave the commission?

MR. GIBSON: Oh, over a year ago.

MR. PARASIUK: Oh, yes, right.

MR. GIBSON: So it is possible that those consultations took place.

MR. PARASIUK: Do you know if MARL was consulted at all in the drafting of the legislation?

MR. GIBSON: No, not to my knowledge at all.

MR. PARASIUK: Okay. I'd like to raise some points with respect to the apprehension and admission for compulsory examination. One point that seems to be excluded, and I would like to get your comments on, is what should parents do with children. What the Law Reform Commission recommends doesn't seem to be adequate to cover their particular case, and the reason why I raise this is that I had first-hand experience with this about two weeks where some young man wandered into the Legislature completely disoriented, desperately wanting some help. He was

having difficulty with his parents and his parents had an exceptionally difficult time getting him to a psychiatrist for an examination.

MR. GIBSON: Yes. One of the ways in which the Law Reform Commission proposal would be slightly better, in fact, I think considerably better than what this legislation proposes, is that in that case the family doctor or any doctor could make an order, and I mean an order that is immediately enforceable by whoever has to, kind of, carry the individual to the hospital. Under the present law a doctor, any doctor, may certify, but that certification cannot be acted upon legally if a person is kicking and struggling, unless you go to the director or you go to a court, which makes it very difficult for the ordinary doctor in his office, when a family brings in a child that's apparently in need of treatment. What the Law Reform Commission proposal suggested in its first form of apprehension was that any medical practitioner or, indeed, a psychiatric nurse some people think they went too far in that but a medical practitioner or a psychiatric nurse could make an order that would be enforceable, to take the individual to a psychiatric facility where they would then be subject to proper examination.

The commission's proposal was trying to do two things. On the one hand, it was trying to make the apprehension of people who need treatment more expeditious; but at the same time it was trying to provide protections. Now this legislation doesn't, I submit, go as far as it needs to go in either direction.

MR. CHAIRMAN: Mr. Parasiuk.

MR. GIBSON: By the way I'm sorry to be fair, under this present legislation in that case, the parents could do a couple of things. They could go to a police officer and the police officer could so the man who wandered into the Legislative Building could have been grabbed by your commissioner staff.

MR. PARASIUK: Just for clarification on that, in this case the child ran away from home. They were trying to get him to a doctor so that he may be referred to a psychiatrist for examination and they could not really apprehend the young man. He was 16 years old; he was fairly robust. As it turned out, two brothers had to virtually assault him and drag him off in the middle of the night to a doctor. It struck me that there must be a better way of proceeding with this. So that means then, just to clarify what the Law Reform Commission or MARL was proposing, a family doctor could issue the order even though he has not examined the person right then.

MR. GIBSON: No. I'm slightly foggy on this, but my recollection of the commission's proposal was that the doctor would have to have examined the patient, so you've still got the problem of the person who won't go to the doctor. The commission's proposal would be the same as this present legislation or the proposed legislation that, in that case, you would have to fall back on a peace officer and you would have to go to the peace officer and say, "Look, this person needs to be taken to a doctor and please exercise your authority under the Act." Now there isn't any such authority under the present

legislation, but there would be under Bill 85 and there would be under the Law Reform Commission proposal.

MR. PARASIUK: Is there sufficient authority under Bill 85, because the way I read Bill 85, that necessarily isn't the case in that the police officer has to make the judgement that this person should be apprehended. In this particular instance the people did, in fact, go the police and ironically this young man had been held in police custody for eight hours and then released. They spent a tortured two days trying to get this . . .

MR. GIBSON: Yes, but remember that Bill 85 isn't in effect and so there isn't any such power on the part of the police now.

MR. PARASIUK: But if Bill 85 was in effect, they still would have the opportunity then to go to this police officer and seek to have their son apprehended or this person apprehended so that . . .

MR. GIBSON: That's right. Now, alternatively, if the police officer said, "God, I don't know anything about these things, I'm not going to say that this man or person needs to be confined," then your alternative would be to find a doctor. You would have to get a doctor who would leave his office, come and find the person, look at the person and say, "Yes", then the doctor would issue an order which any police officer would carry out without any further authority.

MR. PARASIUK: Right. The reason, Mr. Gibson, why I am belabouring this point is that over the last three years of my being a MLA, I've had three instances of this, and the parents, who knew their children fairly well . . .

MR. GIBSON: If I weren't in the same political party, I'd say maybe it's your politics.

MR. PARASIUK: That's right. But it was a tragic situation for the parents and I can understand trying to safeguard the rights of children, as well as adults. It's just, that it struck me that in these instances, there was really no way for the parents in my estimation to really exercise what I would consider to be parental duties. There weren't trying to hurt their children; they were desperately trying to help their children. In one of the instances, drugs had been involved but it was determined that in all three cases the children did have psychological problems.

MR. GIBSON: I would submit, Mr. Parasiuk, that Bill 85 will improve that situation, but not as much as the Law Reform Commission proposals would have.

MR. PARASIUK: Okay. I think your proposal for a patient's advocate is an excellent one and I'm wondering when the Law Reform Commission first made this proposal, because I assume that this comes from the yes it is from the Law Reform Commission. Were there any people involved from the department or from the Minister's staff at that particular stage? You were saying that it's really probably the most important proposal of the Law

Reform Commission and yet, for some reason, its excluded and I guess what I'm trying to say, not having read the Law Reform Commission submission, is to what extent did you highlight this particular proposal because it is, very definitely, highlighted in your brief here, I'm wondering to what extent it was highlighted in the Law Reform Commission submission in that it seems to be a rather glaring omission on the part of this particular piece legislation.

MR. GIBSON: Our report was, as you can see, a rather substantial report dealing with a lot of different items but the patient's advocate technique was one of the major reform proposals made by the Law Reform Commission. You asked whom did we consult. There's a list at the back of the report of the various individuals, many of them in the medical profession, working in this field that we consulted. This was not a report tossed off lightly, it was a report that resulted after years of study and discussion with people in the field.

MR. PARASIUK: A patient's requirement for a patient's advocate which you're saying would be started in mental institutions, and I think the thought is that this type of proposal would be extended into other medical facilities. To me it is an excellent idea. There are some staff implications, this type of proposal runs completely counter to the concept of restraint, if not counter to the concept of acute, protracted restraint, and perhaps that is one of the reasons. I'm not asking you, but I'm just saying that in my estimation this may, in fact, be one of the reasons why this very important proposal has been excluded. I just want confirmation from you as to whether in fact this proposal would entail some staffing in medical institutions.

MR. GIBSON: Oh, there's no question that it would have some financial implications because it means making it part of a staff person's job to keep a weather eye for patients' problems. Now in the case of a large institution, it would probably mean that would be that person's sole job. But we're talking about one employee in a large psychiatric hospital or large psychiatric ward. In the case of smaller institutions, small wards and smaller hospitals; what we're undoubtedly talking about is a person who has those duties among others. I can't make an estimate as to how many staff people would be involved but my submission is that, relative to the importance of the problem of having patients know what their rights are and being able to enforce them, the cost is minuscule. Just let me add this one thing and perhaps it wasn't clear in my initial brief. That I know from personal discussions with members of the board that, for example, the St. Boniface General Hospital board highly favours the principle, even in a general hospital, of a patient's advocate. It's not a new radical idea with us, it's an idea that has really come to its time and is being recognized by hospital authorities across North America.

MR. CHAIRMAN: Thank you, Professor Gibson. Mrs. Westbury.

MRS. WESTBURY: Thank you, Mr. Chairperson, I too was going to ask about the patient's advocate. I wonder if Professor Gibson has any knowledge of any in the province of Manitoba or, if the answer is no, within Canada.

PROFESSOR GIBSON: I have no knowledge. My understanding is that there are some in some hospitals but don't ask me where they are.

MRS. WESTBURY: In Manitoba?

PROFESSOR GIBSON: I don't know.

MRS. WESTBURY: You don't know. No, because I have had experience in the United States with a patient's advocate in a general hospital and I can certainly see how they would be extremely valuable, especially in a psychiatric facility and I like that idea very much. And I also want to commend you on the brief, it's brought some horrors to light of which I was unaware and I thank you for that.

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

MR. CORRIN: Thank you, Mr. Chairman. Professor Gibson I was particularly interested in the remarks you made relative to the internment of prisoners in mental institutions. It put me in mind, as a matter of fact, of the celebrated film "One Flew Over the Cuckoo's Nest", and the situation that the leading character and figure in that film found himself in. I'm just checking some of the provisions of the Mental Health Act and I must say that I'm just slightly confused because there appears to be an ambiguity. I'll refer you to them but I'm wondering whether you studied them or whether the Law Reform Commission studied them in their considerations. Section 13 says that only the Cabinet is empowered to discharge a patient who is a prisoner from a mental hospital. Section 24 deals generally with discharge of patients and that's what I'm wondering, which one takes precedence, which supersedes. Section 24(1), (2), (3) well I guess (1) and (3) are I think relevant. 24(1) talks about the director being empowered to discharge compulsory patients and 24(3) talks specifically about the discharge of prisoners who have not yet completed their prison terms.

PROFESSOR GIBSON: You've caught us in an error in the reading of Section 13, for which we apologise to the committee.

MR. CHAIRMAN: Your question is finished, Mr. Corrin?

PROFESSOR GIBSON: Mr. Corrin pointed out that we had misread Section 13, Mr. Chairperson, and indeed he is correct, we have misread Section 13.

MR. CHAIRMAN: Thank you very much, Professor Gibson and Mr. Rosenbaum.

PROFESSOR GIBSON: There was one comment that perhaps I ought to make in further response to Mrs. Westbury's question about whether there is a patient's advocate. I was informed by somebody at

the back of the room that there is indeed a patient's advocate operating at St. Boniface Hospital now. I sure wish they'd been operating when my family had its problems a year ago. Thank you, Mr. Chairperson and members of the committee.

MR. CHAIRMAN: Thank you for your presentation. Next on the same bill we have representatives of the Canadian Mental Health Association, Kay Kerr and Wade Juneke.

DR. KAY KERR: I'm Dr. Kay Kerr, I'm the Vice President of the Canadian Mental Health Association. Unfortunately Dr. Juneke was called off on an emergency mental health situation. He may end up coming back and being able to fill us in on some of the issues that he has his own experiences with.

The Canadian Mental Health Association, specifically the Manitoba division, has been very concerned about the . . .

MR. SHERMAN: On a point of order. I wonder if the delegate has a brief to be distributed.

DR. KERR: Yes, we do, I have extra copies back there but not a sufficient number I don't think to go around. Unfortunately because of this short notice and the executive director was called out of town and we had to fill in in an emergency situation, we don't have enough to go around, maybe extra copies can be made. Is it okay if I continue?

We have been very concerned with the Mental Health Act over a period of years. The Law Reform Commission's Report was received by us with encouragement and quite a great enthusiasm. The professional advisory committee, which is composed of psychiatrists, psychologists, social workers, lawyers and judges, within our association, looked at the Law Reform Commission's Report; we submitted a brief when the bill was going to be considered and we were hopeful that a different bill would appear. We agree with MARL on this that indeed the Act is far below being acceptable.

There are a few provisions within the bill that we can support, however, we support these primarily in their concept but not in their implementation. We are primarily concerned with the civil rights of people. We are concerned with the treatment and the return to the community of the mentally ill.

We see that within the current bill there are certain provisions that will improve the existing Act. The first of them is the Mental Health Review Board which has been started by MARL also as being an improvement. However, I will come back to that and also state some of our concerns about it.

We also see the establishment of a Standards Committee as being an improvement. The Standards Committees are to be established in each of the hospitals to look at the general facilities and, certainly in north America, there has been a concern about the adequate facilities within a hospital, in order to have the appropriate treatment for individuals. So that is an important concern, not only how an individual is put into, how they are treated there is an important element and the treatment is certainly dictated by the provisions within the facility. So the Standards Committee is something that we

do support. However, the implementation of this must be looked at more carefully.

The mandate for police officers to make emergency apprehensions would be acceptable under the provisions that have been stated by the Law Reform Commission. However, to have this provision go forward in its stated basis in the current bill would not be appropriate.

The changes that we believe are needed, that are not part of the amendments to the new Mental Act are and some of these are redundant in the sense that Professor Gibson has already mentioned some of these but we would like to underline certain ones of them that we are particularly concerned with. As was stated there is no time limit within which the review process of a committed person must be completed. It only states that a date must be set for a hearing within 15 days, that date could be at any time in the future and we feel that this is unacceptable.

If an extension of the initial 21-day committal certificate is requested there is no limit on the validity of the new certificate. This should be on a graduated basis. These could be in terms of successive certificates; three months, three months again, six months, but on some accepted graduated term, rather than an indefinite basis.

The suggested Law Reform Commission's criteria for committal should still be in the Act. This criteria should include the concepts of the presence of a mental disorder, refusal of voluntary admission, dangerousness to self or others or showing gross lack of competence to care for oneself.

The fourth one that we feel is considerably important, is that there is no change in the amendment, that any physician, gynecologist, dermatologist can sign a commitment order which is then sanctioned by a judge. The Association believes that an order committing someone for compulsory treatment should be signed by qualified personnel who maybe physicians or other mental health personnel. In order to implement this procedure a registry of qualified people should be established who are competent to act in this regard, whose training and verifiable competence fits specific criteria.

The section on confidentiality is an important and welcome addition. However, this is in the new section that was not presented to the public for discussion and should not be included in the Act without a chance for public scrutiny. The certificates in the Act should be presented in the Act itself. These are legal documents that should be accessible to public examination. At the moment, individuals are not aware of what types of documentation are required. Back to the Standards Committee, when a Standards Committee is requested by the Minister, we suggest that there be members of the public on the Standards Committee. The current suggested Standards Committee is to be named by the College of Physicians and Surgeons, which should indeed have representatives and we agree with that. However, representatives from the public who are concerned with the broader issue of treatment, we believe should be included as well.

Since this document has recommended the use of only one physician for a committal, not following the Law Reform Commission's recommendations, it

should at least grant the committed person a right to a second opinion upon request. That is a minimal protection. The Law Reform Commission's recommendation number 7(b) stated that when a person is brought for examination under judicial order, that no general powers to treat, other than specified for the examination or reduction of dangerousness, be granted for 48 hours. This has been dropped. We believe this recommendation should remain in the new Act.

The Law Reform Commission, the Canadian Mental Health Association, and numerous others have been concerned over a time period with The Mental Health Act. The recommendations of the Law Reform Commission came out in February 1979. Although we feel that a new Act is desperately and urgently needed, we do not wish to have an Act rushed through, if indeed we cannot have an Act that is exemplary. We urge that the Law Amendments Committee consider the recommendations that have been put forward to it and we would support this recommendation of MARL that has been presented to you already.

MR. CHAIRMAN: Thank you, Dr. Kerr. Would you undertake to answer any questions?

DR. KERR: Yes, fine.

MRJ CHAIRMAN: Okay, first Mr. Parasiuk.

MR. PARASIUK: I'd like to ask if the Canadian Mental Health Association Manitoba branch was consulted at all in the drafting of this legislation.

DR. KERR: No, we weren't.

MR. PARASIUK: You weren't. There was some thought that there would be some attempt to provide for at least yearly reviews of people in mental health institutions and when there was some speculation on this bill, I'd say about two or three months ago, that was the thought. Now both you and the Manitoba Association of Rights and Liberties are saying that, in reality, this isn't provided for in the legislation. You in fact could have an application for a review, but it might not necessarily take place and that in the absence of an application you wouldn't have, in a sense, a compulsory yearly review anyway. Would you recommend that there be at least a yearly review of people?

DR. KERR: I would recommend there be at least a yearly review and personally, not speaking necessarily for the Mental Health Association, I feel that there should be a review upon application from individuals as well. I think that individuals should have a right for a review earlier than that time, but that everyone should be reviewed at least yearly.

MR. PARASIUK: In the absence of a Patients' Advocate, it may be the case, say, with elderly patients or patients who don't speak the language, don't speak English that well, that they may not know that they have the right to make application for a review and in the absence of a Patients' Advocate, they wouldn't do it. So we're sort of caught in the situation, where in the absence of a Patients'

Advocate, would you agree that we should at least legislate a yearly review whether there is an application or not?

DR. KERR: Yes, I would believe that.

MR. CHAIRMAN: Thank you. Mr. Wilson.

MR. ROBERT G. WILSON: Yes, I'm interested if you could maybe advise me, what safeguards are there when, for instance, people are brought in under a judicial order to examine. If one takes the theory that a lawyer is hired to get his client off and he is attempting to prove that his client has some mental disorder, are you advocating now or suggesting a second opinion in order . . . what I'm saying is, there may be instances where people receive a certificate of mental disorder in order to seek their freedom in a short period of time but without a review process, they are in fact really sentencing themselves to life in an institution unless there is a review process which would allow them to be declared cured or sane at some later date, and I'm wondering, have you given that area any thought?

DR. KERR: I think there are two different issues that you raised, and one was, the first, when an individual is initially committed, that there should be two independent assessments that are dated and remain independent in the sense that they are not a connection with each other. So that there are real problems because certainly individuals who are assessing and being part of a profession that's involved in this, I know that given your training you pay attention to different things so it certainly is advisable to at least have two different individuals coming up with a statement if indeed this is true that it is believed that this individual is suffering from a disorder. And the question of a review is at given time periods throughout the individual's time within an institution, because people's behaviour changes and that's one of the reasons they are there, is to change, and in many situations it may be a situational reaction. An individual may have found that they were under considerable stress and they weren't able to cope and within two or three months they may find that they are able to and they have made sufficient progress that it's time that they be out in society and attempting to deal with the problems that one does face in society.

MR. CHAIRMAN: Thank you very much, Dr. Kerr. Mr. Parasiuk.

MR. PARASIUK: I don't have a copy of her brief in front of me and I can't recall your words on treatment, but in the Law Reform Commission and the Miles submission, there were some concerns about voluntary patients having the right to refuse any treatment and in the case of compulsory patients they were proposing that there would be some type of safeguard mechanism against these patients being subjected or having controversial or experimental type of procedures imposed upon them involuntarily. What is the position of the Mental Health Association on that?

DR. KERR: Speaking as a representative of the Association and realizing that there are psychiatrists and psychologists where there are different opinions on this issue and it's a very heated topic and I sat in on a number of these discussions, it becomes most difficult, I think, for us to state which types of treatment would be considered controversial or experimental. Certainly psycho-surgery is one that I think most people will agree on; to make blanket statements about other forms of treatment, I think, would not be considered professionally competent because there are certain types of disorders for which those treatments that are considered to be controversial have been shown to be the best we know of at this time. And it's always the best that we know of at this time, but it's for a restricted number of disorders. So it would be a qualified statement that one would have to make on that issue.

MR. PARASIUK: Given the fact that you've had to make a qualified statement, given the fact that you do say that there is mixed opinion within the profession on this, doesn't that suggest that there should be some other opinions involved before some final decision is made with respect to, say, lobotomies or electric shock therapy?

DR. KERR: Certainly, if you're going to safeguard the rights of individuals and it is debatable and it may be questionable about the type of disorder that an individual is experiencing, then the idea of putting this forward to some sort of panel, I think theoretically, is a good idea. Now people on the front lines may not necessarily agree with that when they say some emergency action must be taken.

MR. CHAIRMAN: Thank you very much, Dr. Kerr. The next presentation we have is from Professor B. Kelly.

MR. BARRY KELLY: Mr. Chairman, first of all perhaps I should introduce myself. My name is Barry Kelly. I'm an associate professor of psychology at the University of Winnipeg. My special concerns are with child development, social development, and so on.

MR. CHAIRMAN: Excuse me, Professor Kelly, do you by chance have copies of your brief for members?

MR. KELLY: No, not at the moment, but I can provide that later.

MR. CHAIRMAN: Thank you.

MR. KELLY: I'm here I suppose in a rather different capacity from the capacity that Professor Kerr and Professor Gibson are in because they are representing particular groups of people, and perhaps I'm here as a kind of token professional. I think it's a very significant fact and one that this group should keep in mind, that the bill that you are dealing with at the moment was introduced perhaps three weeks ago, and I think if it had not been introduced in the middle of a long hot summer, with many other things happening, that there might be quite a long line of people behind me, psychologists and psychiatrists, and so on, who both as individuals

or as representatives of particular groups would wish to comment on it.

I don't wish to comment on the issues of patients' rights and so on and various legalities, which I think have been very well dealt with in the previous briefs, but perhaps just to make a couple of other points, from the point of view, I suppose, of a psychologist, who is not directly involved in psychiatric work. I just simply don't do that kind of thing.

Professor Gibson, I think, made the very strong point that the legislation as presently drafted has not made use of the very extensive research that has gone into the work of the Law Reform Commission, and I think that a very fundamental and very basic point, I think he's absolutely right.

More important perhaps, or equally important, the legislation as presently drafted does not make use of what we know about psychiatric and psychological disorders. It is frankly very simple. Now I know, and you probably know better than I, that there are times when legislation should be simple. But one of the things that has become very evident, and this is especially evident in various constituencies perhaps in the United States where they have been working on this for a while, is that the complexities of judgment and then of treatment that are concerned with psychiatric disorders, simply have to be acknowledged. I will simply reiterate what Professor Gibson and what Professor Kerr have said already with respect to the importance of independent assessment. The very notion that an individual could be committed for psychiatric examination on the assessment of one medical practitioner, without necessarily having any experience in psychiatry, is just horrendous. That goes against just about everything that we know about how these kinds of assessment procedures should be made.

Just to underline one other point with respect to perhaps some of the limitations with respect to the bill, I think it is important to realize that the medical health professions involve many many people other than psychiatrists and I believe, at the moment, there are 84 psychiatrists in Manitoba. What you have here then is a situation in which this bill is to be implemented on the basis of the judgments of a very small number of people and I think the recognition that there are many other resources, non-psychiatric individuals, psychiatrists, social workers or what have you, who are very much involved in this process is something that should be incorporated into it.

So again, without wanting to go into a lot of detail or reiterate points that have already been made, I want to make the basic suggestion to you that the real complexities of implementing a Mental Health Act have not really been adequately acknowledged in the document as presently drafted. I think because of this fact it is especially important that the notion of review and appeal be stressed and I would agree with Professor Gibson that the notion, if you wish to move forward on some portion at this time, the notion of moving forward with respect to the review board is probably a very good one. The notion of having a variety of methods of appeal and review throughout the process of an individual being hospitalized and so on, I think is also something that should be stressed very dramatically and with this regard the general notion, I think, of a patient's advocate is extraordinarily important.

Perhaps one thing again, focusing on some of the complexities from the point of view of psychology, I think there's a tendency often to think of people who are going to have psychiatric difficulties or what have you, of sort of being adult and a particular age or what have you, and I think it should be recognized that the developmental changes over time, the fact that there are many children, many adolescents, many old people, who run into very special kinds of difficulties, should also be stressed. And I don't think the special difficulties that can arise in this context have been adequately outlined or hinted at in the course of the present legislation that you have.

As you may know, the whole notion of children's advocacy is as much a relevant issue as the whole issue of patients' advocacy as it's been introduced, and I think the complexities that are hinted at in the bill are just simply not spelled out with adequate detail.

I think probably those are the only major points I wanted to make. Perhaps there are questions.

MR. CHAIRMAN: Okay, thank you, Professor Kelly, will you permit any questions? Any questions from the committee? If not, thank you very much for your presentation. Sorry, one moment. Mr. Parasiuk.

MR. PARASIUK: I want to ask one. You are agreeing, in a sense, with the other two presentations that were made with respect to proceeding with the review provision, but in your considered opinion, do you think we should proceed with the other aspects of this legislation, because you tended to speak mostly against it?

PROFESSOR KELLY: I think you have the information in a variety of sources, in particular from the work of the Law Reform Commission, but I don't think the information is presently incorporated.

MR. PARASIUK: So what you're saying is, that in your estimation you could draft a good piece of legislation if you used the Law Reform Commission as a base systematically and proceeded with that.

PROFESSOR KELLY: That, plus I think, consultation with the various mental health associations in the province.

MR. PARASIUK: To your knowledge, did this consultation take place in the drafting of this particular legislation that we are faced with today?

PROFESSOR KELLY: To my knowledge, no, but I wouldn't have been involved in that directly.

MR. PARASIUK: Thank you.

MR. CHAIRMAN: Mr. Corrin.

MR. CORRIN: Professor, I'm wanting certain information relative to the area you described yourself as a specialist in. I think you said that you did considerable amount of work and research in the field of child psychiatry?

PROFESSOR KELLY: No, child psychology. I'm not a psychiatrist, I don't do clinical work at all.

MR. CORRIN: In this regard, I was curious as to whether or not you felt that the bill and, of course, the legislation itself, the Mental Health Act itself, sufficiently addressed the problem presenting to children who are in care.

PROFESSOR KELLY: Doesn't get even close.

MR. CORRIN: Well, that's what I wanted to know, and I wanted to know principally what deficiencies do you perceive in the legislation.

PROFESSOR KELLY: Oh dear. You invited a very long speech, which I don't feel would be appropriate for me to give at the moment. Let me simply say that I think, throughout North America, the realization that children have not only special psychological problems that are quite different from those of adults, but have special problems in terms of having their rights acknowledged and recognized. That realization is becoming quite vivid. For example, one of the major contexts in which perfectly normal, healthy, happy children run into psychological problems, is the very prevalent context of separation and divorce, and when that happens, the problem is not simply that there are enormous kinds of psychological strains but there are enormous kinds of legal problems that arise with respect to the rights of children and how those rights are going to be represented, and I would suspect an adequate Mental Health Act would attempt to address those problems. I know that's a dreadful problem to have to address, but I think that kind of thing is something that one should seriously look at.

MR. CORRIN: Through you, Mr. Chairman, could you tell me just a little about how you would want us to do? I'm curious as to how we would do it.

PROFESSOR KELLY: Quickly.

MR. CORRIN: I'm very curious about this area, and I'm sure others here are as well. How would you suggest that we accomplish this goal?

PROFESSOR KELLY: Frankly, I don't know a thing about the political background that has led you people to get into this room at the same time, and me here as well. But I am really rather surprised that the very extensive research of the Law Reform Commission hasn't been more centrally introduced into the drafting of this bill, and I'm rather surprised that the extensive work that happens with Mental Health Manitoba and Mental Health Canada has not also been consulted. In a sense I really only had one thing to say, and I'm taking a very long time to say it. I only had one thing to say, which is that there's a lot of information there that is very relevant that somehow has not got pulled together, and I suspect what has happened frankly, is you've used the old law, the old Mental Health Act, to draft the new one, and you haven't put anything in the middle.

MR. CORRIN: Okay, thank you very much, Professor Kelly.

MR. CHAIRMAN: Are there any other persons present who wish to make presentations this evening on any of the bills that we have indicated we

were considering? If not, that brings us to the end of public representations on these bills and we'll therefore proceed to consider the bills before the committee, commencing with Bill 38. There are a number of bills on which we've had no presentations, so I think that those are ones that we'll be able to deal with, and then the others on which there were presentations; in case there were amendments we can proceed with them.

MR. JENKINS: Well, I've just had a discussion and I'd like to wait till the House Leader comes back. But we did agree that we would deal with Bills Nos. 38, 47, 76 and 84.

MR. CHAIRMAN: 38, 47, 76 and 84.

MR. JENKINS: I'll wait for the House Leader to come back to confirm that's the agreement.

MR. CHAIRMAN: Okay, we'll begin with Bill 38 then.

MR. JENKINS: Mr. Chairman, I had the understanding that the Minister had asked me especially to deal with Bill 84 in order to allow Mr. Banman to be able to leave.

MR. CHAIRMAN: If he's available we're prepared to deal with Bill 84 first.

MR. BANMAN: Go ahead with the other one.

MR. CHAIRMAN: Okay, Bill No. 38. Do you propose to deal with it page by page or clause by clause? Page by page?

Bill No. 38 is An Act to amend The Highway Traffic Act. We have some amendments I understand, some proposed amendments? Mr. Einarson.

MR. EINARSON: Not till we get to page 5, Mr. Chairman.

MR. CHAIRMAN: I understand that none of the proposed amendments occur until we arrive at page 5, so would you like to proceed with page 1 pass; page 2 pass; page 3 pass; page 4 pass; page 5 Mr. Einarson.

MR. EINARSON: Mr. Chairman, the motion that section 25 of Bill 38 be struck out and the following section be substituted therefor: Section 19, subsection 25 of the Act is repealed and the following section is substituted therefor: "Certificate of safety of used motor vehicle, 19(1) subject to subsection (3) every dealer who sells a used motor vehicle shall provide the purchaser of the motor vehicle at the time of the purchase, a certificate in the form prescribed by the registrar and signed by a qualified mechanic . . .

MR. CHAIRMAN: I'm just wondering if the committee is willing to accept the amendment as printed and distributed? Is that okay? All right then, shall we vote on the amendment first? You want page 5 with the amendment. Okay?

MR. JENKINS: Mr. Chairman, I have just seen this amendment and I would like to have perhaps a moment it's the same? Well then I would prefer to

deal with the amendment 19(1)(a) just so that I can have an opportunity to go through not that I'm not believing.

MR. CHAIRMAN: Then shall I proceed to have Mr. Einarson read it, and we'll go through it. No?

MR. JENKINS: No, just call bill call one at a time 19(1)(a).

MR. CHAIRMAN: Okay, then may we vote on first the amendment 19(1)(a). All those in favour? (Agreed) (b) pass.

MR. JENKINS: Just a moment, Mr. Chairman. You don't have to read it. I'm just going to check. That's fine.

MR. CHAIRMAN: (b) as agreed pass; 19(1) pass; 19(2), the amendment pass; 19(3)(a) pass; (b) pass; (c) pass.

MR. JENKINS: That's the one I raised the issue with the Minister. I'm not that hung up on it, but I just want to point out what I said in discussing this bill before it came to committee, that there is an anomaly here, that a vehicle of a current vintage year could be in some cases maybe an unsafe vehicle.

MR. CHAIRMAN: pass; (d) pass; (e) pass; clause 19(3) pass; 19(4) pass; 19(5) pass; 19(6) pass; 19(7) pass; 19(8) pass.

MR. JENKINS: Mr. Chairman, this is something new.

MR. ORCHARD: 19(8), there is a printing error. It should read subsection 6, instead of subsection 5.

MR. BALKARAN I think the amendment was corrected.

A MEMBER: It was corrected in the . . .

MR. ORCHARD: Yes, just as long it's corrected on all of them.

MR. JENKINS: Oh, yes. That's agreeable as far we're concerned.

MR. CHAIRMAN: 19(8) pass; Page 5 as amended pass; Page 6 pass.

MR. EINARSON: Mr. Chairman, that the proposed motion, new subsection 62 (8.1) to The Highway Traffic Act, as set out in Section 29 of Bill 38 be amended by striking out the word "right" in the third line thereof and substituting therefor the word "rear".

MR. CHAIRMAN: Mr. Orchard.

MR. ORCHARD: The amendment is designed to limit the length of a trailer, and extreme right was to mean extreme rear. In other words, from the fifth wheel pin to the rear of the trailer, rather than to the right of the trailer; it was just a misnomer.

MR. CHAIRMAN: Okay, Page 6, as amended pass; Page 7 pass.

MR. EINARSON: Motion that proposed new subsection 213(7) as set out in Section 34 of Bill 38 be struck out and the following subsection be substituted therefor: Payment of fine before licence is issued.

213(7) Where an order remitting a suspension of a licence of a person is made under Section 253, and the person's licence is suspended for the non-payment of a fine with respect to an offence under this Act, the registrar shall not issue any licence authorized to be issued by the order until the fine owing by the person is fully paid.

MR. CHAIRMAN: Okay. The amendment in favour? pass; Page 7 as amended pass; Page 8 pass.

MR. EINARSON: That Section 44 of Bill 38 be amended by striking out the figures "24" in the first line and again in the second line thereof, and substituting therefor, in each case, the figures "25".

MR. CHAIRMAN: In favour? pass; Page 8 as amended pass; Preamble pass; Title pass.

MR. JENKINS: Mr. Chairman, I want to thank the Minister for holding the bill over from Monday evening when I was ill and not able to be here. I want to also say that I am glad to see that the Minister did take cognizance of the concerns that we had. I commend the Minister and I'm prepared to see the bill pass.

MR. CHAIRMAN: Bill as amended be reported?

MR. ORCHARD: I want to . . .

MR. CHAIRMAN: Don't press your luck.

MR. ORCHARD: No, Mr. Chairman. I certainly want to thank the Member for Logan for his most co-operative attitude in providing some recommendations for this bill. This is democracy in action, where opposition in government can work in tandem to develop better laws for the people of this province.

MR. CHAIRMAN: Bill as amended be reported. Pass.

BILL NO. 84 THE LOTTERIES AND GAMING CONTROL ACT

If we may, we'll move to Bill 84. I see that the Minister of Fitness and Amateur Sport is here.

A MEMBER: What bill are we on now?

MR. CHAIRMAN: Bill 84. There's one amendment.

MR. ALBERT DRIEDGER (Emerson): Mr. Chairman, we have an amendment on Page 1.

MR. CHAIRMAN: Page 1? Okay.

MR. DRIEDGER: That Bill 84 be amended by striking out the word and figure "Part II" in the second line of Clause 1(b) thereof and substituting

therefor the word and figure "Part I". It is just a printing error, really; it's a technicality.

MR. CHAIRMAN: Amendment passed? pass; Page 1 as amended pass; Pages 2 to 7 were each read and passed; Page 8 pass Sorry?

MR. BANMAN: There is no Page 8.

MR. CHAIRMAN: We were going so well, I didn't want to stop. Preamble pass; Title pass. Bill as amended be reported pass.

BILL NO. 47 THE LAND ACQUISITION ACT

MR. CHAIRMAN: We'll now proceed to Bill No. 47, An Act to amend The Land Acquisition Act. Are there any amendments? Page by page. Page 1 pass; Page 2 pass; Preamble pass; Title pass. Bill be reported pass.

BILL NO. 76 AN ACT TO AMEND THE CONSUMER PROTECTION ACT

MR. CHAIRMAN: We will now proceed to Bill 76, An Act to amend The Consumer Protection Act. Do you wish to proceed on a page-by-page basis?

Mr. Wilson.

MR. WILSON: I have an amendment on this bill.

MR. CHAIRMAN: Before we proceed with consideration of the proposed amendment from Mr. Wilson, would committee agree to making a correction to Clause 3, where it says Clause 1, it appears to be (1), it's supposed to be (I) in two places there, the title line in the first line? Agreed? pass. Okay, now the amendments.

Mr. Wilson.

MR. WILSON: Mr. Chairman, I was away when this bill was held up. It was initially presented by the opposition and held in the name of the Member for Logan as simply a housekeeping bill. I had become slightly over-sensitive to the bill because it affected the credit industry. Inasmuch as my comments may probably fall on deaf ears, but the amendments are made with the idea of asking the committee to consider the advisability of taking it only from 7,500 to (Interjection)

MR. CHAIRMAN: Mr. Jenkins.

MR. JENKINS: Mr. Chairman, on a point of order, I think it is the procedure in committee that you move your amendment and then speak to it. I mean, what is he speaking to? I would suggest, Mr. Chairman, respectfully through you to the Member for Wolseley, that if he has some amendments to move the amendments. Does he have copies so other members of the committee will know what he is speaking . . . ?

MR. CHAIRMAN: Mr. Wilson, would you like to move your amendment and then you can proceed with the discussion?

MR. WILSON: I move that Bill 76 be amended by striking out Sections Nos. 4, 5, 6, 7 and 10. I wanted to amend those to read, if I could, the figure 15,000. I explained that because . . .

MR. CHAIRMAN: That's just with respect to Clause 4.

MR. WILSON: 4, 5, 6, 7 and 10, wherever it mentions the word 25,000, I would like that decreased to 15,000.00.

MR. CHAIRMAN: Your amendment hasn't replaced the 25,000 and 15, it just says strike out the sections entirely.

MR. WILSON: I, unfortunately, Mr. Chairman, do not have stenographic staff, and I am proposing the amendment either verbally or whichever way, but that's the amendments that I want. They deal with the 25,000 figure and that's the figure that I want reduced to 15,000.00. Whenever you guide me, I shall give an explanation.

MR. CHAIRMAN: What you want to say is, that in Bill 76, Sections 4, 5, 6, 7 and 10 be amended by striking out the figure 25,000 where they appear in each section and replacing with 15,000 where they appear in each section. Okay?

MR. WILSON: All right, Mr. Chairman, that Bill 76 be amended by striking out Sections 4, 5, 6, 7 and 10.

MR. CHAIRMAN: Okay. Mr. Wilson.

MR. WILSON: Thank you, Mr. Chairman. I would propose to move an amendment to Bill 76, striking out the figure 25,000 where they appear in Sections 4, 5, 6, 7 and 10 and substituting the figure 15,000.

MR. CHAIRMAN: Now do you wish to speak to that?

MR. WILSON: Yes, I do.

MR. CHAIRMAN: Please proceed.

MR. WILSON: I have watched with amazement further intrusion into the marketplace, and there are a couple of bills coming before us, Bills 76 and 78, I believe, which is the Attorney-General's responsibility, which are further making and maybe I'll be seeking some clarification because my thoughts may not be accurate Manitoba a debtor's haven. Because we are putting up a disposal, and the Member for Wellington spoke today on it, we are putting on the disposal, not only this Consumer Protection Act which is becoming larger and larger each year as you examine the some 116 to 118 sections of it, they deal with absolutely everything from direct selling to licensing to you name it. Then, if that fails, the person who has had no control over their ability to control their spending, and who by design, may have decided that without the very fibre of our community, which is the work ethic, that they are going to have absolutely everything that the person who has worked hard all their lives are going to have.

The Member for Wellington spoke about the person with two cars, two coloured televisions, and a plastic world of plastic credit cards and everything. These people are on a spending binge which is unparalleled in the history of the very things that we talked about, and the Consumer Protection Act is a vehicle, together with legal aid in the court system, for people to avoid paying their just obligations. I just wonder whatever happened to the marketplace, because for the very few aggrieved people, the very rare cases, when we're dealing with chattels and other items, they have the simple replevin action, and I would hope that the Minister of Consumers Bureau and others would recommend to the Attorney-General that if they could simplify the replevin action so that a clerk could take the security from the person who felt they were aggrieved, pay a small fee, the goods that were repossessed from him would be returned forthwith. We don't need this mass of bureaucratic, spaghetti-type of thing, or octopus type of thing that throws so many road blocks in the way of the marketplace and business community that they simply write-off these debts, write-off these outstanding accounts, encourage people not to pay and pass it on to the honest consumer. They do this simply at the end of the year.

We'll take T. Eaton Co. for instance, approximately 3 percent of their gross sales are bad debts. They figure this out every year and they figure it into their profit and loss statement, and if profits drop off, they simply increase the cost of goods and services to the honest consumer. And we, in this government, having and I believe, Mr. Evans, in a speech that he gave pertaining to this bill, which I had underlined, said that, and admitted, that consumer protection is relatively new and subject to a lot of types of concerns.

So my amendments are simply to say, and I appreciate that clause 1 deals with businesses, my concern is that we are now moving into the area of the sophisticated debt dodger; we're moving into the area of the sophisticated con artist; we're protecting the very very people that I don't think need protection. I think we should be protecting the uninformed, the working man, the man that is subject to in other words, I don't see why we're moving this bill up into an area where we need a massive army of civil servants protecting the elite and wealthy people of society. When you move it into 25,000 bracket, you are moving it into an area that, in my opinion, is far excessive. The word inflation, used by the Minister in his letter to me, a normal inflationary increase, I can't buy it, from 7,500 to 25,000 is a normal and I see nothing wrong with leaving it 15,000. Because what it does is, it's like eventually being told by a dentist you have to lose all your teeth. We know that eventually we're heading for an area where the buyer will be absolutely protected above and beyond any particular imagination that we could imagine.

When you look at Bill 78 and others, you will see that absolutely nobody has to pay. Manitoba is an area where if a person chooses to, after a buying binge, judgments are a joke, they are unenforceable, they're cumbersome and they are just really a feeding pattern for lawyers. You notice most debtors owe about 5 or 6 thousand, will go to a lawyer, they'll pay him a 500 retainer and then all the debts

are forgotten about. We have now the phenomena where a fellow can go to university and all through his university because he's going to graduate as an engineer, firms extend him credit because of his possible earning power in the future. He goes through university, has 30 to 50 thousand in debt, and just before he graduates he files for bankruptcy and pays 50.00. Because once he gets his degree, he no longer needs credit, he's making himself a fantastic wage, and before long you'll find that assignments under bankruptcy are forgotten about by the credit granters because of competition of the marketplace and he's right back on another buying binge again. Or he goes under the government phenomena of OPD where every one of the particular businesses receives a letter that advises them that little Johnny is going on OPD. They immediately throw his bad debt into the wastepaper basket for the accountant to use as a write-off and pass the cost of his loss onto the honest purchasers . . .

MR. CHAIRMAN: On a point of order, Mr. Wilson, can you please try and confine your remarks to the amendment.

MR. WILSON: All right. Then getting back to the bill and the amendment, I would like clarification under section 1, carrying on a business, does that also include a farm? Are we going to consider a farm as a business? In other words, are we going to leave the repossession of chattels, large construction equipment in northern Manitoba, large farm machinery, large three-ton trucks and other expensive pieces of equipment in the construction industry, are we going to leave those in the marketplace or are we going to have those under the control of the civil servants under the Minister's department? That I would like clarified.

I express the concern of, speaking only to my amendment, and I'm sorry that I wasn't here to speak on the bill, because I see more behind this bill, because when you get Bill 76, An Act to Amend the Consumer Protection Act, you have to include the whole bill. The Member for Transcona carries around his book, which includes the Consumer Protection Act, and when you add another series of clauses to that already most questionable Act, one of the most vague Acts, an absolute bonanza to the legal profession, then I have to express concern.

But if I'm restricted to only speaking to my amendment, I'm saying that if the sole purpose of this bill is a housekeeping bill, is to bring the matters in line with inflation, I cannot see why my amendment cannot be supported, because to me 7,500 to 15,000 is doubling the amount and it does, in my opinion, keep the civil servants of the Consumer Protection Act out of the Rolls-Royce field. I think those sophisticated buyers of very elitist type objects, do not need the protection of government, can well afford a lawyer. I'm not holding out any tag day for them, so I'm proposing the amendments to be realistic I would have liked to have struck out the entire sections, but I realize that there is some validity for moving it up in some areas. I concur with the Minister under recreational vehicles, that some of them do run into the area of 10,000.00. So with those few remarks I place the amendment before the committee.

MR. JORGENSEN: Well, Mr. Chairman, I'm going to respond to the amendment. The consumers' branch, the bulk of the complaints that come before the consumers' branch are dealing with automobiles, vehicles and the like. I don't think I have to tell this committee that the price, for example, of caravan homes, recreation vehicles, and some cars, are considerably more than the 7,500 limit that is currently in the Act. The intention is to raise it so that we can cover all of these vehicles and do an adequate job of providing consumers' protection service to the purchasers of these vehicles. I don't think that the limit of 25,000, in today's terms, is unrealistic at all. So, therefore, I recommend that the amendment be voted down.

MR. CHAIRMAN: All those in favour of the amendment? Oh, I'm sorry. Mr. Boyce, I apologize, I had your name down.

MR. BOYCE: Actually it's just a question of clarification, and the Minister answered part of it. Mr. Chairman, through you to the Minister, when we were discussing this bill in the House, I thought perhaps 25,000 itself was rather low. With some of the off-road vehicles, and I don't know why it comes to mind, I don't want to advertise Winnebagoes, but nevertheless from that type of an expenditure, I agree with what the Minister has said, that the cars themselves are up 7, 8, 10 thousand. The Member for Wolesley said that recreational vehicles and things like that should be covered, so are we not talking about over 25,000 even as we amend the Act?

MR. JORGENSEN: In many cases, yes. We reasoned that the 25,000 limit was a reasonable one that would cover the bulk of the vehicles that come before us for attention.

MR. CHAIRMAN: Mr. Wilson.

MR. WILSON: Well in closing the comments on that, I didn't want to give the impression that I was under the opinion that recreational vehicles, large highway transport vehicles, large pieces of farm equipment and machinery, large road construction equipment and that type of thing should be covered. I think that we have an intrusion into the lives and the marketplace by people which goes against my conservative philosophy, and I watch with amazement as we out-socialize the socialists in many many areas. If we're going to have universal protection for everyone, then we might as well have legal aid available to everyone.

With those few comments, I'd simply say that I cannot concur that I think 7,500 in this particular Act was designed to protect the mass, the largest percentage of the population out there, against unscrupulous and the questionable dealing in the buying and selling of items. And I don't think we're talking about the ordinary working man, when the Member for Winnipeg Centre says he wants to increase it to a 40,000 Barth or Winnebago motor home. You know, next thing we know we'll be looking at Southdale to protect people in their homes, and we'll be looking at Tuxedo, because where does the interference in the marketplace stop.

I simply say, in my opinion, 15,000 covers the majority of items; if you're going to add items each year, this year motor homes, next year helicopters, next year space vehicles, next year wet bikes and all these other trinkets and toys that are out there, then I don't know where consumer protection is going to end. I thought it was there to protect a buyer and seller transaction, the uninformed purchaser, he was to have some form of government protection against the buyer in the marketplace. In my opinion, when you keep adding items under the Consumer Protection Act, and keep increasing the amount of commercial transactions that you are going to involve government in, then in fact, you are increasing the involvement of government in the marketplace. I leave that to history to decide, but I still maintain Manitoba's become a debtor's haven and there is just no way that people on a buying binge can be stopped. It's going to have to rest with the Chargex and Mastercharge people and the tightening of credit, and I'm afraid the wedding is over. I'm going to vote for my amendment, and if I don't get support, I just leave a crystal ball on the record that what is going to take place in the future.

MR. CHAIRMAN: Are you ready for the question? All in favour of the amendment? Opposed, if any?

The amendment is defeated.

May we go page by page now? Page 1 pass; Page 2 pass; Page 3 pass; Page 4 pass; Preamble pass; Title pass. Bill be reported pass.

Now, are there any other bills that the committee is willing to consider this evening?

MR. SHERMAN: Mr. Chairman, it's my understanding we're going to deal with Bill 94, An Act to amend The Health Sciences Centre Act, or was there a committee decision not to deal with it?

MR. CHAIRMAN: There's been no commitment that I'm aware of. It's up to the committee. There hasn't been any presentation on that bill. Does committee wish to deal with it?

BILL 94 AN ACT TO AMEND THE HEALTH SCIENCES CENTRE ACT

MR. CHAIRMAN: Okay, ready to proceed? Page by page. Page 1 pass; Page 2 pass; Page 3 pass.

MR. SHERMAN: Mr. Chairman, there's an amendment on page 3.

MR. DRIEDGER: Mr. Chairman, I move that the proposed section 16 of The Health Sciences Centre Act as set out in this section 6 of Bill 94 be amended by striking out subsection (2) thereof by striking out the figure (1) in the first line thereof.

MR. CHAIRMAN: All those in favour of the amendment? pass. Page 3 as amended pass; Page 4 Mr. Sherman.

MR. SHERMAN: Mr. Chairman, there's an amendment on page 4, section 8.

MR. DRIEDGER: Mr. Chairman, I move that proposed section 22 of The Health Sciences Centre

Act as set out in section 8 of Bill 94 be amended by striking out the words "or a committee thereof".

MR. CHAIRMAN: All those in favour of the amendment? Oh, I'm sorry.

MR. JENKINS: Could we just have a brief explanation from the Minister just what this entails? I mean, I don't like to buy a pig in a poke.

MR. SHERMAN: Certainly, Mr. Chairman. Does Mr. Jenkins want an explanation of the first amendment? The second amendment; the proposed legislation as it's in front of the committee specifies that the chief executive officer of the corporation who is the president of the corporation, would not be entitled to vote at meetings of committees. The existing legislation excludes that officer from the right to vote at a meeting of the board, but provides him with the right to vote at committee meetings. The addition of the final phrase in that section is an inadvertent addition and one that we think is not practical or useful. It would be an administrative inconvenience at the committee level if the chief executive officer could not vote.

MR. JENKINS: Mr. Chairman, just briefly through you to the Minister, that is the status of the chief executive officer at the present time, in the Health Sciences Centre Act, that the chief executive officer is able to participate and vote at board meetings?

MR. SHERMAN: No, he cannot vote at a meeting of the board, but he can vote at committee meetings.

MR. JENKINS: Can he now?

MR. SHERMAN: The answer is no. He cannot vote at a meeting of the board, but he can vote at meetings of the committee.

MR. JENKINS: At the present time?

MR. SHERMAN: At committee meetings at the present time.

MR. JENKINS: So then we really go back to what it was.

MR. SHERMAN: That's right.

MR. CHAIRMAN: In favour of the amendment? Agreed? Pass. Page 4 as amended pass; Page 5 pass; Page 6 pass; Preamble pass; Title pass. Bill as amended be reported pass.

Committee rise.