

Second Session - Thirty-Eighth Legislature
of the
Legislative Assembly of Manitoba
Standing Committee
on
Justice

Chairperson
Mr. Doug Martindale
Constituency of Burrows

Vol. LV No. 2 - 6:30 p.m., Thursday, November 18, 2004

MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Eighth Legislature

Member	Constituency	Political Affiliation
AGLUGUB, Cris	The Maples	N.D.P.
ALLAN, Nancy, Hon.	St. Vital	N.D.P.
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ASHTON, Steve, Hon.	Thompson	N.D.P.
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DOER, Gary, Hon.	Concordia	N.D.P.
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DYCK, Peter	Pembina	P.C.
EICHLER, Ralph	Lakeside	P.C.
FAURSCHOU, David	Portage la Prairie	P.C.
GERRARD, Jon, Hon.	River Heights	Lib.
GOERTZEN, Kelvin	Steinbach	P.C.
HAWRANIK, Gerald	Lac du Bonnet	P.C.
HICKES, George, Hon.	Point Douglas	N.D.P.
IRVIN-ROSS, Kerri	Fort Garry	N.D.P.
JENNISSEN, Gerard	Flin Flon	N.D.P.
JHA, Bidhu	Radisson	N.D.P.
KORZENIOWSKI, Bonnie	St. James	N.D.P.
LAMOUREUX, Kevin	Inkster	Lib.
LATHLIN, Oscar, Hon.	The Pas	N.D.P.
LEMIEUX, Ron, Hon.	La Verendrye	N.D.P.
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MARTINDALE, Doug	Burrows	N.D.P.
McGIFFORD, Diane, Hon.	Lord Roberts	N.D.P.
MELNICK, Christine, Hon.	Riel	N.D.P.
MITCHELSON, Bonnie	River East	P.C.
MURRAY, Stuart	Kirkfield Park	P.C.
NEVAKSHONOFF, Tom	Interlake	N.D.P.
OSWALD, Theresa, Hon.	Seine River	N.D.P.
PENNER, Jack	Emerson	P.C.
REID, Daryl	Transcona	N.D.P.
REIMER, Jack	Southdale	P.C.
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STRUTHERS, Stan, Hon.	Dauphin-Roblin	N.D.P.
SWAN, Andrew	Minto	N.D.P.
TAILLIEU, Mavis	Morris	P.C.
WOWCHUK, Rosann, Hon.	Swan River	N.D.P.

LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON JUSTICE

Thursday, November 18, 2004

TIME – 6:30 p.m.

LOCATION – Winnipeg, Manitoba

**CHAIRPERSON – Mr. Doug Martindale
(Burrows)**

**VICE-CHAIRPERSON – Ms. Kerri Irvin-Ross
(Fort Garry)**

ATTENDANCE - 11 – QUORUM - 6

Members of the Committee present:

Hon. Mr. Mackintosh

Messrs. Aglugub, Dewar, Eichler, Goertzen,
Hawranik, Mses. Irvin-Ross, Korzeniowski,
Messrs. Martindale, Penner, Swan

APPEARING:

Mr. Kevin Lamoureux, MLA for Inkster

WITNESSES:

Mr. Ken Mandzuik, Manitoba Association for
Rights and Liberties
Mr. Byron Williams, Public Interest Law Centre
Ms. Veronica Jackson, President, Manitoba Bar
Association
Mr. David Joyce, Legal Aid Lawyers'
Association
Mr. Allan Fineblit, Law Society of Manitoba
Mr. Sheldon Pinx, President, Manitoba Criminal
Defence Lawyers' Association
Mr. Michael Williams, Private Citizen
Ms. Sarah Inness, Private Citizen
Ms. Laura Friend, Private Citizen
Ms. Val McCaffrey, Private Citizen

MATTERS UNDER CONSIDERATION:

Bill 47–The Legal Aid Services Society of
Manitoba Amendment Act

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Mr. Chairperson: Good evening. Will the Standing Committee on Justice please come to order.

This evening the committee will be considering Bill 47, The Legal Aid Services Society of Manitoba Amendment Act.

We do have presenters registered to speak on this bill. It is the custom to hear public presentations before consideration of bills.

Is it the will of the committee to hear public presentations on these bills? *[Agreed]*

I will then read the names of the persons who have registered to make presentations this evening: Ken Mandzuik, Byron Williams, Veronica Jackson, David Joyce or Allan Libman, Allan Fineblit, Sheldon Pinx, Michael Williams, Sarah Inness, Laura Friend, Val McCaffrey.

Those are the persons and organizations that are registered so far. If there is anyone else in the audience that would like to register, or has not yet registered and would like to make a presentation, would you please register at the back of the room?

Just a reminder that 20 copies of your presentation are required. If you require assistance with photocopying, please see the Clerk of this committee.

I would like to inform presenters that, in accordance with our rules, a time limit of 10 minutes has been allotted for presentations, and 5 minutes for questions from committee members. As well, in accordance with our rules, if a presenter is not in attendance, their name will be dropped to the bottom of the list. If the presenter is not in attendance when their name is called a second time, their name will be removed from the presenters' list.

I would also like to advise all in attendance that, in accordance with our rules, if there are fewer than 20 persons registered to speak at 6:30 p.m. the committee may sit past midnight. I would also like to advise that as of 6:30 there were 10 persons

registered to speak. Therefore, this committee may sit past midnight.

With prior agreement, arrangements have been made for staff from Information Services to be in attendance today, in order to videotape parts of this meeting for inclusion in *A Day in the Life of the House*, an educational video produced by the Assembly. If there are any presenters in attendance who do not wish to be videotaped, please inform our staff, and arrangements will be made to turn off the camera during your presentation.

Bill 47—The Legal Aid Services Society of Manitoba Amendment Act

Mr. Chairperson: Thank you for your patience. We will now proceed with public presentations.

Just for information, the last name that I read, Val McCaffrey, registered this evening. I would like to invite Mr. Ken Mandzuik from the Manitoba Association for Rights and Liberties to the podium, please.

Mr. Ken Mandzuik (Manitoba Association for Rights and Liberties): Thank you. Mr. Minister, honourable members, good evening. I am happy to appear, once again, on behalf of the Manitoba Association for Rights and Liberties. MARL is a non-profit group, founded in 1978, dedicated to advocacy and education in aspects of human rights and civil liberties affecting all Manitobans. This mission is based in part on contributions made by volunteers on MARL's charter rights and legislative review committee.

We are pleased to have this opportunity to present our thoughts on Bill 47. MARL is not adverse to changes being made to Manitoba's legal aid system, but we are concerned that those changes be made with care.

There are a number of groups presenting tonight with views similar to MARL's, and MARL echoes and supports the positions made by many of those groups. MARL's primary concerns that I am going to address tonight focus on the choice of counsel issue and the obligations on an applicant to disclose financial information.

We also have some other concerns that I will address more briefly.

The first and primary concern that MARL has is to do with the right to choose counsel. We recognize that the courts have held there is no constitutional right to choose counsel, but this does not mean that denying the choice of counsel is therefore preferable. There are a number of reasons that individuals want the opportunity to choose a lawyer if that lawyer is willing to work pursuant to the tariffs established under the Legal Aid act. Depending on the nature of the case, an individual may feel more comfortable with a male lawyer, or a female lawyer, or one that might have an intimate understanding of a certain issue, or their ethnic background, religion, or one with whom they worked previously.

Being comfortable with someone's lawyer is always important. The solicitor-and-client relationship is founded on so much more than competency. Trust, rapport and other factors can influence every aspect of choosing a lawyer. Now, it is possible to find all of these things in an arranged relationship. Not all arranged relationships work, though. In an emotionally charged domestic dispute, when one is facing having their children taken away, when one is facing deprivation of their liberty, the ability to choose one's counsel, especially one that one trusts, or has rapport, or has a relationship with, is all the more important.

The ability to choose counsel does not mean that legal aid applicants can choose any lawyer that they want. If there is a competent lawyer willing to work for legal aid tariff, then one should be allowed to choose that lawyer. Now, by definition, legal aid is designed for disadvantaged groups. MARL has advised, at least anecdotally, that in the criminal half or portion of legal aid, the majority of applicants are of Aboriginal background. The majority in the civil portion of legal aid, the domestic half, are female. These are the groups that are going to be most affected by depriving someone of the choice of counsel.

This is not about guaranteeing every legal aid applicant Cadillac representation, but simply choice. There is no reason that the rich should be the only ones allowed to choose their representation. Taking away this ability to choose only perpetuates the perception that the poor, or the impecunious, are second-class citizens.

Another primary concern that MARL has with the proposed changes to the act are to do with the

authorization to disclose financial information in the new proposed section 11(2). We do not like that the bill is requiring mandatory consent authorizing third parties to disclose financial information about an applicant. In this age of scarce resources, MARL understands and appreciates the government's need to verify financial eligibility of applicants for legal aid, but at the same time, that has to be balanced with everyone's fundamental right to privacy.

The consent contained in the bill we submit is too broad. The Supreme Court has defined or a fundamental value underlying our dignity, our integrity, and our autonomy. The Charter seeks to protect the biographical core of personal information which individuals in a free and democratic society would wish to maintain and control from dissemination to the state. This would include information which tends to reveal intimate details of the lifestyle and personal choices of an individual.

There is no doubt that financial records and information about spending habits can reveal much about a person's life that one may legitimately wish to keep private. Now, currently the wording of the bill is too broad. The scope of consent required is limitless in the new act. It leaves to the discretion of Legal Aid, and whoever holds the records or information sought, to determine in their eyes what information might be relevant to an applicant's eligibility. There is no limit on what persons or organizations are being authorized to disclose, or the kind of financial information being sought. For example, Legal Aid should not be allowed to obtain information for an individual from their relatives, from their friends, from their employer, or even their lawyer.

*(18:40)

We recognize that government can legitimately require an individual to disclose private information to determine eligibility, but great care must be taken to safeguard an applicant's right to privacy and ensure that no more personal information is being sought or gathered than is absolutely necessary. In this regard, we submit that the bill should be amended to particularly spell out important limitations on the written consent required.

It should specify that the consent is solely for the purpose of determining eligibility for legal aid, and that no other use of the information is permitted. The

consent should only authorize Legal Aid to contact third-party institutions in order to verify financial information actually provided by the applicant. The consent must specify the institutions or third parties being authorized to disclose financial information, for example, credit unions, banks, CCRA or CRA, or whatever they are called today.

It should not be left open-ended. The consent should also only authorize release of financial information that is actually relevant to eligibility for legal aid, like a bank account balance or the value of someone's home. These limitations strike an appropriate balance between the public's interest in ensuring legal aid is made available to those truly in need, while protecting the individual's fundamental right to privacy.

MARL also has a concern with the offence created in subsection 11(4) of the new act, which would create an offence for failing to promptly advise of a change in financial circumstances affecting someone's eligibility for legal aid. Our concern is with the use, "promptly." We find that to be too vague when one is creating an offence. We recommend substituting a defined period whether that period is 15 days or 30 days, but something certainly definite needs to be in the act.

We have a concern with investigating an applicant's finances in proposed section 11(1). Naturally, Legal Aid has the right and the obligation to examine an applicant's finances. People with money should not be getting legal aid. We have a concern with individuals accused of a particular offence being singled out for an apparently more thorough investigation. While it is true it does not necessarily infringe on one's presumption of innocence, MARL submits that it is improper to hold someone to a higher standard of investigation or accountability based solely on the nature of the offence one is accused of, and not convicted.

We suggest that this section be removed in its entirety while acknowledging that Legal Aid Manitoba should have the discretion to investigate and, certainly, more thoroughly investigate cases where warranted.

The final concern that I will be raising has to do with conflict of interest. MARL has a concern with the perceived legislating away of conflict of interest, or creating a second standard of a conflict of interest

for those working at Legal Aid. The section has the effect of removing a conflict of interest that would be existent at a Legal Aid office that would be existent in a private office.

One of our concerns is that a client being represented by a Legal Aid lawyer that would otherwise have a conflict of interest, but for this provision, is up the creek, so to speak. How is that person going to get rid of their lawyer? How are they going to choose another lawyer when the choice of counsel has been legislatively removed, and the only reason they are at Legal Aid is because they cannot afford to hire a lawyer of their own?

If this conflict of interest provision is included, someone could be represented by counsel that would otherwise have a conflict of interest and have no effective means of having that lawyer removed or having another lawyer appointed.

Those are my comments, and, again, MARL appreciates the opportunity to present to this committee. Thank you.

Mr. Chairperson: Thank you for your presentation.

Mr. Gerald Hawranik (Lac du Bonnet): Thank you very much for coming this evening and giving us your viewpoint with regard to the Legal Aid bill.

Can you tell me, Mr. Mandzuik, were you consulted personally or the Manitoba Association for Rights and Liberties was it consulted prior to the report being tabled in the Legislature in March 2004 with respect to Legal Aid review?

Mr. Mandzuik: No.

Mr. Hawranik: In one part of your report, you indicate that the courts have held that there is no constitutional right to the choice of counsel. I assume from that what you mean is possibly that the decision by Justice Holly Beard about a year ago indicating that there was no right to choice of counsel. Given that, and given what you have said in this report, do you feel that it really was absolutely necessary to legislate that within the bill?

Mr. Mandzuik: Well, we obviously think it is not necessary to legislate it. There is no constitutionally

guaranteed right and that is what the honourable Madam Justice Beard ruled on.

But the gist of our proposal or our comments is that just because it is not a constitutionally guaranteed right does not mean that it is not desirable, and it does not mean that in other cases it might not be constitutionally guaranteed. In cases where an abused woman, for example, wants to have someone represent her who has an understanding of the symptoms of abuse or might have a special knowledge of what it means to be abused, in that kind of situation the choice is going to be so very important, and legislating away that has nothing to do with this woman being constitutionally guaranteed a right to a lawyer of her choice, does not mean it is a good thing to do.

Mr. Chairperson: Are there any further questions?

Mr. Kevin Lamoureux (Inkster): Very quickly, the current screening process that someone would go to find whether or not they are eligible for legal aid assistance, in the legislation that we have that is before us now, does that legislation enhance different forms of screening or is there any real change in what they are currently practising?

Mr. Mandzuik: I cannot say whether it enhances it. It does obviously demand increased scrutiny or investigation for certain people charged with certain unpopular offences or certain offences that are going to be prescribed in legislation or regulations that we have not seen. Whether it enhances investigation, I do not know. The screening, rather.

Mr. Chairperson: Seeing no further questions, thank you for your presentation. The next presenter is Mr. Byron Williams on behalf of the Public Interest Law Centre. Mr. Williams, please be seated.

Mr. Byron Williams (Public Interest Law Centre): Thank you and good evening, Mr. Chairman and honourable members. I have taken the liberty of providing the deputy clerk with a rather lengthy submission called "Background Material for the Presentation to the Standing Committee." Lest you see it and pale at the length of the document, I want to assure you this is more for your leisurely reading tomorrow or some subsequent date. I want to give you some highlights from that submission, so I will ask the deputy clerk to hand it out at her convenience either now or at some later time.

As Mr. Martindale has indicated, my name is Byron Williams, and I am the director of the Public Interest Law Centre. For those of you who might not be familiar with the centre, we are a special branch of Legal Aid which was initiated in 1982, and our mandate is to help groups and individuals on matters of broad public interest. Based upon the direction of the board of Legal Aid, one of the objectives of our centre is to promote law reform activities in the courts and through research and presentations of briefs to commissions and legislative committees.

So it is under that mandate that the centre is here today, and I hasten to add that the opinions that I am expressing are opinions formed by the Public Interest Law Centre alone. They are based upon our review of the literature and our personal experience within the legal aid system and with the community as a legal aid service.

The focus of our presentation is going to be on one specific issue, which is the removal of the express right to choice of counsel which currently exists in section 14 of the legislation. In my oral comments, I want to talk mainly about three points. The first is the issue of choice and how it relates to low-income people. The second is the symbolic impact of this legislation in terms of the message it sends. The third and the final point I want to talk about, or people I want to talk about, are the silent majority of legal aid clients, those clients who are not members of motorcycle gangs. I would like to talk about removal of the express right to choice of counsel may have very real and very negative impacts for that silent majority.

*(18:50)

I want to start with the issue of why choice matters for low-income people. As you are far better aware in this room than I am in my office, the dilemma and conditions of poverty are not simply a matter of a lack of material resources. Poverty is a complex issue. It is made up of a number of factors, and they are linked to form a barrier to full participation in our society. I think the best expression of the barriers posed by poverty were set out by the United Nations in 1997 when it made its report on human development. In the words of the UN, poverty has many faces. It is much more than low income. It reflects poor health and education, deprivation in knowledge and communication, inability to exercise human and political rights and the absence of dignity, confidence and self-respect.

Behind those many faces of poverty, in the words of the UN, lies a grim reality of desperate lives without choices and, often, governments lack the capacity to cope. So, from a human development perspective, poverty means the denial of choices and the opportunities for a tolerable life. It means the denial of opportunities and choices most basic to human freedoms: human development, freedom, dignity, self-esteem and the respect of others.

So it is within this context expressed by the United Nations that our centre has approached the issue of the removal of choice of counsel. Many of Legal Aid's clients already experienced the damage caused by the lack of choice in their daily lives, whether on social assistance, or whether it is just the grim reality of poverty. Removing choice of counsel is one more blow to their dignity. It leaves them one further step away from inclusion in our society.

So I want to move away from the ivory halls of UN theory and get to the gritty reality of legal aid. We have to recognize that not all recipients of legal aid express a preference for choice of counsel. In fact, it may be that the majority do not. But for those who do express a choice, and I know this from personal experience, it is a very important choice. It is much more than a symbolic right. Applicants who exercise their right to choose do so because they want a lawyer they feel comfortable with. They want a lawyer they can trust to defend their rights. They want someone whom they trust to advocate on their behalf.

One American academic in the context of criminal defence described the choosing of a lawyer as the most important decision a defendant makes in shaping his or her defence. That is equally true on the civil side when we are talking about issues as important as our children, access, and child support. As my friend Mr. Mandzuik did, I would ask you to consider just for a minute the plight of women who are victims of domestic violence. They are coming into contact with the justice system at a time of physical, emotional and financial distress.

As a report prepared in British Columbia by the Women's Access to Legal Aid Coalition noted, single mothers are particularly vulnerable to threats by their partners. They frequently abandon claims for child maintenance rather than face the possibility of losing custody. That report went on to note that, as a result of intimidation and lack of representation, women often forfeit property and income,

surrendering themselves and their children to poverty. Single mothers are vulnerable; single mothers who are victims of abuse are even more so and, for them, a relation of trust with their legal counsel is critical, and much of that trust flows from choice.

This point was emphasized by a recent report by the National Association of Women and the Law. They argued that if an applicant is allowed to choose a particular lawyer or type of lawyer, it is likely their experience will be more positive, and that translates into increased client satisfaction. NAWL—and this was in the year 1998—recommended that in order to ensure quality of service, women must be able to continue to exercise in a meaningful way the right to counsel of their choice.

So, on behalf of our centre, we think it is important to emphasize that the vast majority of individuals, legal aid recipients who are exercising choice to counsel, are not members of motorcycle gangs. They are people on the social and economic margins of our society. On the family side, they are disproportionately single women. On the criminal side, sadly, they are disproportionately Aboriginal.

We note that in the revised legislation, Bill 47, section 2.1 sets out the purpose of legal aid, which is to provide "quality legal advice and representation" to low-income individuals. On behalf of our centre, we are asking your committee to recognize that choice is an important part of the quality equation. We think it is important to continue to entrench in the legislation the principle of respecting individuals' choice as a preferred vehicle for access to justice.

I just have a couple of final comments, and they both relate to the minister's comments on June 1, 2004, in Hansard. In one of his statements, he indicated that Legal Aid Manitoba, the new official name for the arm's-length corporation as proposed in the bill, would be clearly empowered to select a lawyer for a person who is granted legal aid.

When I read that comment, and reflected upon it, I think it is important to note that, even under the current legislation, under the current section 14 of The Legal Aid Services Society of Manitoba Act, while there was provision for choice of counsel, that section currently also states, "except where the board otherwise directs." So there already is a limitation on choice of counsel within the existing legislation.

Minister Mackintosh, in his comments of June 1, 2004, talked about the proposed legislation, Bill 47. He indicated that it would also allow Legal Aid Manitoba to continue to honour clients' preferences in the many cases where doing so will continue to make good sense. Certainly, as you can tell, on behalf of our centre, we agreed that that does make good sense.

Mr. Chairperson: Excuse me, Mr. Williams. I hesitate to interrupt you, but you have about 30 seconds left.

Mr. Byron Williams: If you will give me about a minute, I will finish up, Mr. Martindale, if that is all right.

It certainly does make good sense. But our concern is that the legislation, the proposed amendment does not make explicit provision for, or recognition of, the importance of that choice, and we think it should.

So, just in summary, as I hasten to the end of my presentation, clearly we think it is important for the committee to recognize that within the existing section 14 there are limitations that currently exist to choice of counsel. If the committee, and if the Legislature in its wisdom, decides to amend the legislation, we would recommend it consider looking at—at least express provision recognizing that choice of counsel is a general rule, or at least express a preference indicating that the applicant's preference will still be respected to the greatest extent possible.

With appreciation for that additional 45 seconds you allocated me, I am ready for questions.

Mr. Chairperson: Thank you, Mr. Williams.

Mr. Hawranik: Yes, thank you very much, Mr. Williams, for coming here this evening and making your presentation. It was very interesting, and, of course, you did not get through all of it. I will take the time later on to review the rest of your presentation.

Mr. Byron Williams: Thank you.

Mr. Kelvin Goertzen (Steinbach): Thank you, Mr. Williams, for your presentation.

Can I also ask a question that was posed to our previous presenter about the input that you had into the Perozzo report?

Mr. Byron Williams: Input into the Perozzo report? We were not, and I would not really expect the Public Interest Law Centre, because we are part of legal aid, to be directly consulted by Mr. Perozzo. Certainly, as regards Mr. Perozzo's research, I believe Mr. Brickwood was one of the people doing research for Mr. Perozzo. We certainly spoke with Mr. Brickwood on a number of occasions trying to explain what we do.

Mr. Goertzen: Thank you for that.

You talked quite a bit, and I think the majority of your report probably focusses on the issue of choice of representation. You made some allusions, and I look forward to reading your submission more thoroughly, to some dissatisfaction about those who did not have the right to choose their own counsel. In your analysis, or in your research, is that largely, in your opinion, based on the quality of the counsel that is appointed, or is it simply because the client feels disassociated from not being able to choose their own lawyer?

* (19:00)

Mr. Byron Williams: First of all, I agree with you that I did speak for quite a long time, and for that I apologize. I think that, in terms of dissatisfaction, that is a very individual circumstance, depending on the individuals. In some cases, it may reflect the quality. But I think, in many cases, people come in and we take legal aid applications. People will come to me and say, "I am just coming out of a domestic violence situation. I do not want a man, or I do not want a woman because the lawyer for my ex-wife is a woman."

I think it is a very individual situation. So dissatisfaction may relate to competency, but I think, in many cases, it is the lack of choice that drives it.

Mr. Chairperson: Thank you, Mr. Williams.

The next presenter is Veronica Jackson, representing the Manitoba Bar Association. Please proceed when you are ready.

Ms. Veronica Jackson (President, Manitoba Bar Association): Good evening, Mr. Chairman, Mr. Minister and members of the committee. Thank you for allowing me to address you this evening.

My name is Veronica Jackson. I am a practitioner, a lawyer in Winnipeg, and I am the president of the Manitoba Bar Association. I address you in that capacity.

There is a presentation which I have handed out, and I have a couple of extra copies if there is anybody in the room who would like them if there were not enough.

The Manitoba Bar Association represents more than 1200 members of Manitoba's legal community. Members of the MBA are, perhaps, can be described as the front-line workers of Manitoba's justice system. This perspective gives the MBA a unique lens through which to assess and evaluate our justice system, including the provision of legal aid, its objectives, its strategies, its management, its successes and its failures.

Our clients are the rich, the poor, the powerful, the disenfranchised, the popular, the despised, the vocal and the forgotten. Only a small percentage of Manitoba's practising lawyers actually do any legal aid work. As an aside, I have provided you with some information about the amount of pro bono work that many Manitoba lawyers do. I have taken the time to put that in the written presentation because there are some people who cynically believe that lawyers' concerns about the legal aid system are borne of self-interest. I beg to differ.

The MBA is here today, and we have been there every step along the way when legal aid is considered because we see, we know and because we care. Now the MBA has had the honour of meeting with our Justice Minister to discuss legal aid and other issues of mutual interest on a number of occasions, and I can say that we are grateful for our opportunity to engage with the minister and to be engaged. I believe that such an exchange in dialogue is a benefit to the public and, therefore, a benefit to the MBA and this government.

That said, the MBA does not always see things in the same light. That brings us to our presentation today. I put in our written presentation that, whenever you assess legal aid systems, you must, I suggest, assume two given principles. The first is that people who, owing to their circumstances of poverty, cannot afford a lawyer, in some circumstances need one, in order to ensure access to a fair and balanced legal system. A lawyer should, in

those circumstances, be provided for them. The second given, which you must take if you are approaching and assessing a legal aid system, is that all people are innocent until proven guilty.

Although these principles are so fundamental to a civilized society, free and democratic, that they have been enshrined in our Constitution, sometimes they are not truly accepted in real life. With great power comes great responsibility. Where the state has great power, and, of course, it does, it can put you in jail, it can take your children, it can decide whether or not you were wronged—it also has a great responsibility. The state must ensure, and provide for, a balance between the power it wields and the protection it offers. Legal aid attempts to do just that.

So I turn now to the MBA's concerns about Bill 47, and we have a number of serious concerns, some of which have already been touched on by other presenters. For instance, we support the position taken by the Manitoba Association for Rights and Liberties regarding the discriminatory treatment of applicants charged with certain types of offences, and that is those who are targeted for mandatory investigation because of the type of charge they face. But, because our time here is limited, we are going to be addressing three key issues.

The first is the legislating out of the conflict of interest provisions. I have put the provision of the proposed change, section 20(2), in the written material. What it basically says is this: A staff lawyer employed by Legal Aid can represent a client while another staff lawyer of Legal Aid represents another client in the same matter, whether interests conflict, and it is not in breach of the code of professional conduct.

This notwithstanding clause, as the Bar Association refers to it, flies in the face of the legal profession's code of professional conduct in every single province and territory in this country. What this provision says is that, notwithstanding the fact that it is a breach of your ethical obligations not to do that, if you are a staff lawyer at Legal Aid, you can.

The conflict of interest provisions in our code of professional conduct are there for the client's protection, not the lawyer's. It is in place as a mechanism to avoid not only the intentional disclosure of confidential information which could have damage to that client's case from the other side, but it is also

there to guard against the unintentional, the accidental, the inadvertent disclosure of information.

The conflict of interest provisions of the code of professional conduct reflect and embody rights guaranteed by the Canadian Charter of Rights and Freedoms. What this provision says, this notwithstanding clause, is that the poor are entitled to less protection. It is, I submit, repugnant to suggest that people who cannot afford their own lawyer deserve less protection than is afforded to others. It is equally repugnant to suggest that a Legal Aid staff lawyer would, or should, provide their clients with a lesser degree of protection than their professional code of conduct requires.

I say also, in some cases, for instance, family cases—and again domestic violence has been repeated as a concern that often comes up in Legal Aid—but in family cases where domestic violence is an issue, if there are two staff lawyers representing opposing parties, or in a criminal case where there are two individuals facing charges whose interests conflict, the potential for damage by the inadvertent exchange of information could have tragic consequences. The solution, because I have tried to propose a solution to each of the concerns we outline, is to remove the proposed section 20(2) from the current bill.

The second concern that we have identified is the removal of choice of counsel. I am not going to say much on it, except to echo the concerns expressed by MARL, by the Public Interest Law Centre, and that I know will be expressed by others who can do it more justice than I can. I will simply say that the relationship of lawyer and client is one of utmost trust and confidence. It cannot work if the client does not have the confidence in the lawyer to disclose some of the most private, personal information imaginable. The solution is that choice of counsel, as protected in the current legislation, in section 14, must be retained.

The third issue we have identified and would like to speak on is the management council, and this is sections 5 and 6 of the proposed legislation. What it does is it replaces the current board structure of Legal Aid with a management council, and it requires, or sets out, that there will be three nominees put forward by the Law Society of Manitoba.

First of all, let me applaud the government for its continued recognition of the need for lawyers to

form part of the governing body of Legal Aid. However, we believe that both the Law Society of Manitoba and the Manitoba Bar Association should each be responsible for the nomination of two council representatives.

* (19:10)

The Law Society of Manitoba has a very important and specific role in this province: it regulates lawyers. The Manitoba Bar Association is the voice of the legal profession in this province. The MBA is dedicated to improving the administration of justice and helping Manitobans obtain access to legal systems. The MBA advocates in the public interest. Our focus and experience place us in a unique position to be of benefit and to serve the public and that organization, Legal Aid.

Just as the current provision of Bill 47 demonstrates confidence in the Law Society of Manitoba, in that it will present a list of nominees who are able to fulfil the duties of that office, so should the final version of Bill 47 demonstrate a confidence in the MBA to nominate management council members who are dedicated to the purpose of legal aid and capable of fulfilling the duties of the office of council member.

Mr. Chairperson: Excuse me, Ms. Jackson. You have one minute remaining.

Ms. Jackson: Thank you.

Indeed, the MBA's experience with, and commitment to, the administration of justice and to access to justice issues is such that it cannot be debated that allowing us to nominate two members of the management council is in the best interest of Manitobans.

The MBA currently has representation on the judicial nominating committees under The Provincial Court Act, the Superior Court judicial appointment selection committee, the board of directors of the Manitoba Law Foundation and the Manitoba Law School Foundation. At each of those entities, the MBA's representatives carry out his/her duties and responsibilities with integrity, with reason and in the best interests of the organization.

A solution we propose is that the MBA would ask that this committee amend Bill 47 to change

subsection 5(4) to prescribe that four solicitors be put forward, two nominated by the Law Society of Manitoba, two by the Manitoba Bar Association. We have provided some warning.

The last issue which I wanted to address was the ongoing, chronic underfunding of legal aid. I say—

Mr. Chairperson: Excuse me, we have reached the time limit. *[interjection]* Mr. Hawranik is asking for a leave of the committee to allow the presenter to continue. Is there leave? *[Agreed]*

You have leave to continue.

Ms. Jackson: Thank you very much.

This, of course, is not particularly, or specifically, raised in Bill 47, but it is, nonetheless, an issue which I am compelled to raise as the president of the Manitoba Bar Association. There are too many Manitobans in this province who cannot access justice because of the long-term, chronic underfunding of our legal aid system.

Civil legal aid has all but been eliminated. Human rights violations, cases of civil sexual assault, claims involving significant personal injury, disability—these are the claims of people who are often poor, people who are powerless. People turn to legal aid only too often to be turned away. Without an adequate level of legal aid funding, their rights will go unprotected and the wrongs they have suffered will go without remedy. When that happens, and it is beginning to happen now, the public's confidence in the administration of justice in this province is eroded. Justice is only served if you can access it.

I thank you very much for your time. I would be more than pleased to answer questions of the committee members if time permits.

Mr. Chairperson: Thank you for your presentation.

Mr. Hawranik: Thank you, Ms. Jackson, for coming this evening and taking time out of your schedule to represent the 1200-plus lawyers in Manitoba very adequately. I appreciate the presentation.

Was the Bar Association consulted for input before the Perozzo report and before the legislation was drafted?

Ms. Jackson: I can tell you that the Manitoba Bar Association has discussed issues of legal aid with the minister on an ongoing basis prior to the Perozzo report, and as well we were consulted extensively during the Perozzo report process. That said, we were not aware of the terms of reference of the Perozzo report until it was released, and, specifically, one of the terms of reference, in the vernacular, being this: start with the same pool of money and see what you can come up with. A lot of our submissions to Mr. Perozzo during the process had to do with levels of funding and inadequacy in that regard.

Mr. Hawranik: Was any part of your recommendations or representations to the minister, or with regard to the Perozzo report and the legislation, embodied in the legislation that you can see?

Ms. Jackson: Well—

Mr. Chairperson: Ms. Jackson.

Ms. Jackson: I keep forgetting I have to be acknowledged. Sorry.

I can say that one of the issues and positions that the MBA put forward was the maintenance of a bifurcated system, i.e., the maintenance of having staff, lawyers and private bar lawyers both providing service. I see that being maintained, and I am grateful for that.

Mr. Hawranik: Having seen the legislation and read the legislation, particularly with regard to legislating against conflicts, has the Bar Association entered into any discussions or debate with respect to an alternative to legislating against conflicts? What I am getting at is with regard to more than one staff lawyer representing multi-accused in criminal trials.

Ms. Jackson: I can tell you that there have not been those specific discussions, although, I can tell you that if there had been, our response would have been the only system that ensures that there is not an inadvertent disclosure is a system where it is not possible, for example, where the conflict of interest guidelines are adhered to.

Mr. Lamoureux: Very quickly, would the Manitoba Law Society be aware of your position in regards to management committee, that you would like to see their representation reduced from three to two, and

then your association given two spots? If so, do you have any feedback on that?

Ms. Jackson: I can tell you that I advised the Law Society that will be our position. I certainly would not come to this committee and not have broached that with them. That said, I think it is a win-win situation because it actually elevates the nominees to four. Right now, it says there will be three nominees, and we are talking about four; two from the Bar Association and two from the Law Society.

Mr. Chairperson: One short, quick question, Mr. Goertzen.

Mr. Goertzen: Mr. Chairman, as you know, I always keep myself to short questions. Thank you very much for your presentation.

A question regarding whether or not the Bar Association of Manitoba has had discussions with your counterparts in Saskatchewan. I understand that in Saskatchewan, the vast majority of legal aid cases are handled by in-house counsel, and whether or not that experience has been positive, how might it differ from the model we have had put forward by the minister today?

Mr. Chairperson: Ms. Jackson, for a brief reply.

Ms. Jackson: I can tell you that all of the people, without exception, that we have spoken to have indicated that the best system is a bifurcated system, where there are staff lawyers and private bars doing a mixed delivery service.

Mr. Chairperson: Thank you very much for your presentation. The next presentation is on behalf of Legal Aid Lawyers' Association, either David Joycey or Allan Libman. Please identify yourself, sir.

Mr. David Joycey (Legal Aid Lawyers' Association): Yes, Mr. Minister, Mr. Chairman, honourable members. I am David Joycey, so you can guess who lost the coin toss.

Mr. Bates is actually the gentleman who would have liked to be here tonight. He is the president of the Legal Aid Lawyers' Association. Unfortunately, he is in Thompson. He was not able to be here. He sends his regrets, and I will do my best to represent our membership this evening.

I will say right off the bat that much of what I might otherwise have said has already been said, particularly by Mr. Williams, and by my friend and colleague Veronica Jackson. With regard to the choice of counsel or the removal of choice of counsel, and also everything that has been said by those two individuals regarding the removal of conflict of interest, we would echo that. I will try not to repeat what they have said.

Section 20(2) is the particular section that I want to address. As Ms. Jackson, my association also would like to see this section removed for the following reasons. Just to run over that section, and I will go through it and try and address it point by point very quickly. As I do so, it begins that a solicitor employed by Legal Aid Manitoba, and of course, that is me and all of my colleagues. We are solicitors; we are employed by Legal Aid Manitoba; we are the staff lawyers.

I want to say again, right off the bat, I am happy to be employed by Legal Aid Manitoba. I am proud to be a legal aid staff lawyer. I came late to the practice of law. I have had a number of careers before this one. I think this is my last one, and all of those careers were involved, really, with dealing with this same group of people, the people who are marginalized for a whole lot of reasons that we have heard about tonight, and that you know very well. The people who, bottom line, end up being at the bottom of the economic ladder. These are the people that I, as a lawyer employed by Legal Aid Manitoba, have the privilege to represent.

* (19:20)

Now, this section on conflict of interest says that, as a lawyer employed by Legal Aid Manitoba, I do not commit a breach of a rule of the code of professional conduct of the Law Society. Well, that presents a bit of a problem for me, because I also happen to be a proud member of the Law Society of Manitoba, a law society who has a code of ethics and some very, very clear rules about conduct, what we can do and what we cannot do.

If I can just, perhaps, bring this debate sort of into the arena that we can all feel it a little bit, rather than just talking about people who are out there, I am going to try and do that. None of us in this room tonight are immune from finding ourselves charged with some criminal offence. I mean even members of

the Legislature can have the misfortune to find themselves charged with a criminal offence. None of us who are involved in marriages or intimate relationships where we live with other people are immune from suddenly finding ourselves in a situation where the people we love most suddenly become, for at least a brief period of time, our bitterest enemies, and we find ourselves fighting over the other people we love most, our children.

Now, if you or I are in that situation, obviously what we are going to do is we are going to look around and we are going to find the best possible lawyer to represent us in our particular situation. That lawyer is going to be a member of a law firm, and, like me, is going to be proud to be a member of that law firm. We are going to be able to go and consult with our lawyer, knowing that we are not just talking to that one individual, we are talking to everybody in his law firm, all of the resources, all of the other lawyers, the paralegals, the people who do the research, the infrastructure that supports him, the people to whom he is accountable and the people who are accountable to him. All of them are working on our behalf.

Imagine how upsetting it would be if we discovered that someone who was co-accused, maybe one of our fellow MLAs who was co-accused of a criminal offence, or our recently estranged spouse, had retained another lawyer in that firm. What happens then to all of these resources that we thought that were at our disposal? What happens then to all this confidentiality that we thought protected us in that crisis in our lives? Now, fortunately, because of the Law Society of Manitoba, a proud member of whom I am, that could not happen to you or me. That could not happen because the Law Society says it cannot happen, because if that happened that would be a conflict of interest. That is what we are talking about when we talk about conflict of interest.

What this section attempts to do is to remove that protection from one group in society, one group and one group only. You and I will still be fine. We will still be protected. But a lot of the constituents of MLAs will not be protected, and none of my clients will be protected, because if you are poor enough to qualify for Legal Aid, this section suggests that you are not going to benefit from the rule which says, "No conflict of interest." What it says to me as a Legal Aid lawyer is, "You know, as a Legal Aid

lawyer, proud though you may be of what you do and important though you may think it is, we are telling you forget what the Law Society says. We are telling you that we expect you to operate with a lower professional standard than all of the other lawyers in Manitoba."

Ms. Jackson used the word repugnant and, frankly, all I can do is echo it. So I do ask you to re-think this section and get rid of it. If you do not, what you have done, very effectively, is to establish a two-tier system in this province, one system for those of us who can afford to buy the services of a lawyer and another system with a lower standard of care for my clients, the people who cannot afford it. I think that is unacceptable and I am hoping that, after you have given it some due thought, you too are going to decide that that is unacceptable.

Thank you very much for listening.

Mr. Hawranik: Thank you, Mr. Joyce, for coming this evening and giving us your presentation. I know it is always difficult after three people in front of you take away some of your thunder, but you did a very good presentation. I enjoyed hearing it.

How many members of the profession do you represent, and do you represent Legal Aid lawyers who are not only staff lawyers but also lawyers in the private bar?

Mr. Joyce: I am sorry. I represent all of the Legal Aid staff lawyers and there are 49 of those. I just had it from the very best authority there are 49.

Mr. Hawranik: Yes, can you tell me whether you made a presentation or any representations prior to the Perozzo report being released and prior to the legislation being drafted?

Mr. Joyce: I can tell you that Mr. Perozzo met with Mr. Bates and Mr. Libman, who narrowly escaped being the speaker this evening. He also met with me, although not in this capacity. He met with me because I am in the Child Protection office of Legal Aid and he had some particular interest there.

Mr. Hawranik: Have you mentioned any of the concerns to him as you have done tonight? Have you mentioned those same concerns?

Mr. Joyce: The discussions that Mr. Bates had, I gather, were not on this specific section, and, in fact,

the discussion that I had with Mr. Perozzo, although it was fairly far-ranging, we did not actually zero in on this section. So, my short answer is no. But I certainly had the opportunity, and it was, as I say, a free-ranging conversation, it just did not happen to zero in on this.

Mr. Hawranik: You are concerned about legislating against conflicts and we have heard that from the other three presenters, as well. Have you had any discussions with the Legal Aid lawyers who represent, or do you have any suggestions as to how that could be overcome, rather than legislating it?

Mr. Joyce: I am not sure I understand your question.

Mr. Hawranik: I guess my concern is that, well, first of all, we are introducing legislation that will legislate against conflicts of interest if multi-accused are, in fact, represented by the same law firm, in this case Legal Aid. Would you have any suggestions as to how that conflict could be resolved without passing legislation?

Mr. Joyce: As it stands now, there can be no conflict because we, all the Legal Aid staff lawyers, are subject to the code of ethics of the Law Society, which precludes conflict. So if, for instance, I discover that another staff lawyer, someone else in my office or someone in the criminal law office, represents, we do a conflict check so that if someone comes to me and wants me to represent them as a Legal Aid lawyer, then we do a conflict check in the system. If a conflict exists, then I cannot represent that person. So the conflict now is not there. This section would seem to me to be trying to allow something which is presently disallowed, both by the rules of the Law Society and by the practice and procedure of Legal Aid.

Mr. Hawranik: The code of professional conduct, of course, deals with conflict in the same law firm, as it does in Legal Aid. But what I am getting at is this. Is there any other way, other than introducing legislation, that the minister could proceed to allow Legal Aid lawyers to represent multi-accused other than introducing legislation of this type? For instance, could he, in fact, if he had, let us say, six Legal Aid lawyers hired for this purpose, establish three separate offices of two lawyers each, and have them separate offices and not have any communication between the offices, could he actually do that

and still comply with the code of professional conduct?

* (19:30)

Mr. Joyce: I understand the model you are suggesting. I think there are many inherent problems in that.

First of all, and I guess you still cannot escape the fact that you have, if these are Legal Aid lawyers, they are all Legal Aid lawyers, all with the same lines of accountability, I mean, that cannot be escaped. So there is, at least, going to be, the perception, if not the reality, of conflict. Have those as satellite offices, if you wish, but the lines of accountability still run in the same direction and still end in the same place.

The other difficulty, of course, will be what you would essentially be doing, under this model, will be setting up numerous Legal Aid offices, presumably each with their own infrastructure, each with their own electronic support systems, with their own human resources and so on. It would seem to me that that would be a very expensive way of going about it, particularly when, with the current mix of private and Legal Aid lawyers, there are already a number of firms existing in Manitoba. So you would be, essentially, creating new law firms and calling them little Legal Aids.

I practised for a number of years as a sole practitioner in Manitoba. One of the things that I find most valuable to me as a Legal Aid lawyer is that I practise in the context of a large group of other lawyers, some with more experience, some with different experience, than myself. So, when I am presented with a difficult case, I have all these colleagues upon whose knowledge and experience and expertise I can draw in the same way as if I were a lawyer in one of the big firms in the city which are not Legal Aid.

Setting up satellite offices with a couple of lawyers each, who had, sort of, taken some vow of silence, and it almost sounds rather monastic, which is perhaps putting me off a little bit, but who have taken sort of a vow of silence not to speak to their colleagues, I guess this is how we could recognize Legal Aid lawyers: These guys are not talking to each other; gee, they must both work for Legal Aid. I

just do not think that, practically speaking, it would work very well.

Mr. Chairperson: Time for questions has expired. Thank you for your presentation.

Mr. Joyce: Thank you for your last comment. Thank you.

Mr. Chairperson: The next presenter is Mr. Fineblit, representing the Law Society of Manitoba. Please proceed when you are ready.

Mr. Allan Fineblit (Law Society of Manitoba): Good evening. My name is Allan Fineblit. I am the chief executive officer of the Law Society of Manitoba, and I am making this presentation in that capacity.

The Law Society is the licensing and governing body for Manitoba lawyers. Our mandate is to protect the public. We are a corporation created by a statute, The Legal Profession Act. It says in section 3(1) that "the purpose of the Law Society is to uphold and protect the public interest in the delivery of legal services with competence, integrity and independence." Because of that mandate, my comments will be quite limited to a couple of issues which, I think, fall within that mandate.

Before doing that, I wanted to let you know that I spent 20 years of my life working for Legal Aid Manitoba. It may surprise some of you to learn that Legal Aid Manitoba was considered a world leader in the delivery of legal services to the poor. People literally came from all over the world to study our system. I think one of the previous speakers said that the delivery model was considered one of the best in the world. Certainly, it is unique. Certainly, it is something that was much admired.

The other thing I wanted to let you know, and it is easy to lose sight of it sometimes, is that tens of thousands of people every year are helped by Legal Aid Manitoba. I think that the changes that are being proposed to the legal aid act are being proposed with the intention of strengthening legal aid and with the intention of giving it the tools that it needs to meet some of the new challenges that it is clearly facing. The intent of my submission is to support those goals by addressing what the Law Society believes are a

couple of weaknesses in the legislation that I think can be fixed without impairing the objectives.

I am going to try and get you out of here before midnight by not repeating what everybody else said about the issue of choice of counsel. I do have a couple of points that had not been made that I wanted to make.

I want to, first of all, be clear that this is not about quality of service, in the sense that I am absolutely confident that Legal Aid Manitoba staff lawyers are among the best and the brightest and most experienced lawyers. I am absolutely confident that if work is shifted to Legal Aid staff lawyers or away from Legal Aid staff lawyers, the public will be served well by the lawyers who do the work. The point is the one that has been made by just about every one of the previous speakers, and that is that it is absolutely critical that there be a solicitor-client relationship based on trust and confidence, not on suspicion and resentment.

Okay, so here is where I come to the helpful suggestion part. It seems to me that the Perozzo report identified a number of areas where staff lawyers are cheaper and a number of areas where the private bar delivery model is cheaper. I am assuming the intent of this provision is to give the Legal Aid board the tools to shift work from one delivery model to another in the interest of efficiency. If that is the intent, in my view it can be accomplished without eliminating a poor person's right to choose their lawyer.

In my experience, Legal Aid staff lawyers have a tremendous competitive advantage in the marketplace. They are usually the first point of contact, whether it is in their role as duty counsel, through the drop-in advice programs, through some of the outreach activities that are handled by the Legal Aid staff lawyers. If management were to decide that it wanted to shift work, towards more staff lawyers for example, then what they need to do is hire more staff lawyers, and they need to manage those staff lawyers to ensure that they have a caseload of clients who have chosen them.

It is perfectly legitimate for the government to want to ensure that legal aid is managed efficiently. Services delivered in a cost-effective manner can be accomplished through good management and without removing choice of counsel. So that is what I wanted to say about that point.

The second point I wanted to talk about is conflict of interest. I guess my point here is that this amendment speaks to the provisions of the Law Society's code of professional conduct, and it is quite similar to language that is in other statutes, in particular in Newfoundland and Saskatchewan.

My point here is that this is not about really the rules of the Law Society. It is pretty clear that the bigger problem in dealing with conflict of interest will be the courts. The courts have sent a pretty clear and, I think, unequivocal message that you cannot have two lawyers acting in a conflict of interest, and here is why.

The first reason is that a fundamental tenet of our justice system is that the relationship between a lawyer and his client is one of loyalty, and that loyalty must be undivided. There was a very important case decided by the Supreme Court of Canada called *R. vs. Neil*. It was decided in 2002, and a great deal of that case is about that principle, the principle of loyalty. It goes back hundreds of years, and it is fundamental to the justice system.

The second underlying principle of the conflict of interest rule is that a client must be able to speak to their lawyer with the absolute confidence that whatever they tell their lawyer will be confidential, that there can be no either intentional or inadvertent breach of that confidentiality. I guess the problem that I foresee is that this legislation, as it is worded, is too broad. It fails to protect the legitimate public interest clients have in feeling that their Legal Aid staff lawyer's loyalty is undivided and that their confidences are secure.

* (19:40)

So I think that you do have another option, which is to write into the statute what I think you are going to have to do anyway. I cannot believe that the minister does not already know what the case in *Neil* says. If he does not know that, I know that his dream team over here has told him more than once that the courts will not let you set up, no matter what the Law Society does, two lawyers in conflict unless you put in provisions that ensure that loyalty is undivided, and that it is transparent, and that the confidences will be secure. You are going to have to build that. Legal Aid, if it decides to make use of this tool that is being provided them, is going to have to build those mechanisms.

What I am suggesting to you is that you put that in the legislation, because, ultimately, Legal Aid is independent. These decisions will be made by what I still refer to as the Legal Aid board, but what this legislation is going to call the management council, and that management council is independent. The government does not have the ability to control how they implement it. I do not think they do, unless they legislate it. I am saying, legislate it. Amend the legislation to say that if the Legal Aid board does decide to do this, if you decide to have two lawyers acting in a manner that would normally be a conflict of interest, you have to ensure that there are adequate measures in place to make the client feel confident that their lawyer's loyalty is undivided, and anything they tell their lawyer cannot inadvertently or intentionally be shared with somebody who has a conflicting interest.

That is all I have to say. I am happy to answer any questions.

Mr. Hawranik: Thank you very much, Mr. Fineblit, for coming this evening and making your presentation. You mentioned in Newfoundland and Saskatchewan that they do have anti-conflict-of-interest-legislation already there, and you mentioned that one of the provisions that you would suggest is to ensure that that legislation has undivided-loyalty provisions and ensure that there is confidence to secure confidence and confidentiality in the legal aid system. Are you aware of any provisions in Newfoundland and Saskatchewan which, in fact, provide for that?

Mr. Fineblit: No, and in fact they do not provide for it, as far as I know. However, when they actually do appoint staff lawyers in conflicting situations, they do exactly that. For example, Saskatchewan Legal Aid has had this provision for the longest period of time. Somebody earlier asked about two separate offices. They have a Saskatoon city office and a Saskatoon regional office and they appoint lawyers from the different offices. As I understand it, they have in place a complex infrastructure to ensure that there is not any sharing of information, that each of these offices operates independently. I think they even have their own boards of directors for each of these offices. So they, in effect, do it. They do not legislate it. I am telling you I think you would be way better off legislating it.

Mr. Hawranik: They operate as two separate law offices, I take it, to keep the conflict to a minimum. Is that what you are saying?

Mr. Fineblit: That is my understanding.

Mr. Hawranik: Yes, thank you.

Mr. Chairperson: Mr. Goertzen.

Mr. Goertzen: I am sorry, I thought I saw a hand go up on the government side. Were there any questions from the government side for Mr. Fineblit? Go ahead.

Mr. Chairperson: Mr. Minister.

Hon. Gord Mackintosh (Minister of Justice and Attorney General): Thank you very much, Allan, for your insights.

I just wanted to confirm that, indeed, it is our understanding that the legislation will not be determinative as to whether there is a conflict or not. It will be the actual organizational efforts made in respect of this challenge. Of course, nothing will take away the jurisdiction of the court to remove a lawyer who has a conflict.

But I just wanted to point out that the regulation-making ability of the government is amended by the legislation so that the regulations will direct to Legal Aid via the management council some direction in terms of the organization of the operations of Legal Aid Manitoba to avoid conflicts. It is there where we can get into more detail in terms of the objectives and, I think, the concerns that you raise. I do not know if you have any comment on that, but I did want to point out that that piece of the legislation, I appreciate your wording, here, about client confidentiality, the appearance of duty, of loyalty. I think that that lends itself to the kind of word-smithing that is best in a regulation, but if you have any thoughts, fine, but we certainly are alive to that concern.

Mr. Fineblit: I do not suggest that you do a lot of word-smithing. I think that you need to put a general provision in the legislation because I think it is important enough to be preserved in legislation. I appreciate that you can do it in regulations, and I just think it is better in the legislation.

Mr. Lamoureux: The Manitoba Bar Association made the suggestion that the management council be

changed so there would be two representatives from each respective organization. Can you just comment on that?

Mr. Fineblit: Well, I did hear from the Bar Association yesterday that they were going to put this suggestion forward. What I told them was this, that, in my view, the Manitoba Bar Association does a wonderful job in its mandate of advancing the interests of its members. It is an organization intended to promote the interests of its members of the legal profession in Manitoba. They do a terrific job.

In that regard, I told them that I thought it was a bad idea. I thought that the council would then be in the position of having a conflicted mandate. It seems to me the role of the council is to manage the operations of the legal aid system in the public interest. When you have people whose mandate is to look after the interests of the profession, and you have the council making decisions with enormous financial consequences for the legal profession, I personally expressed the view that it was a bad idea to have that kind of representation on the council.

I think the advisory committee is the right place for it. I think it is where it can provide valuable and meaningful input. But I just think, from an appropriateness perspective, the perspective that is brought to the committee should be one of the public interest and not the interest of the profession. Ultimately, legal aid is about the clients and not about the interests of lawyers. While the Manitoba Bar Association rarely finds itself in a situation where there is a conflict between the interests of the public and the interests of the profession, it seems to me ultimately that is their mandate, and it is different from ours. So that is my position.

Mr. Chairperson: Thank you for answering questions.

The next presenters are Sheldon Pinx and Saul Simmonds, representing the Manitoba Criminal Defence Lawyers' Association. Please identify yourself, and when you are ready, please proceed.

Mr. Sheldon Pinx (President, Manitoba Criminal Defence Lawyers' Association): Sheldon Pinx, I am the president of the Manitoba Criminal Defence Lawyers' Association, and Mr. Simmonds. I call him my colleague-in-arms. So he will be assisting us in

one portion of the submissions that we will be making this evening.

Madam Vice-Chairperson in the Chair

I should also, at the outset, say to you that if you looked up our association in the phone book you will not find an address and you will not find a phone number. That has been done deliberately to ensure that we are never found in a conflict of interest. I make that comment in jest, although there is in my view some concern we have, which I will deal with in a moment in my submission with respect to that portion of the legislation as well as the portion of the legislation that deals with the elimination of choice of counsel.

I can begin by saying to you that I do not look at the issue of right to counsel separate and apart from the conflict legislation. I believe that both are essentially tied together. One flows from the other. There is a need for the conflict legislation if, indeed, government is going to eliminate the choice of counsel to allow for individuals in this province to have counsel appointed for them in order to, as we see it, reconfigure the relationship between the private bar's portion of legal aid services to that of staff lawyers.

Currently, the staff lawyers perform 40 percent of the services to those in Manitoba who are unable to afford counsel. The private bar, as we understand it, performs approximately 60 percent. We do not see the wheel broken. We do not see a need for this legislation. We do not see a need for these changes. We believe that what we are dealing with at this time is an underfunded system that has been underfunded historically for many, many years.

* (19:50)

In our meetings with the Minister of Justice (Mr. Mackintosh), who has been good enough to meet with us on a number of occasions, we have expressed those concerns directly to him. It is our understanding that a recent audit, prior to the Perozzo report, being conducted by a member of Treasury concluded that legal aid is currently underfunded by approximately \$1.25 million to \$1.5 million annually. This was Treasury's own audit of legal aid services in the province of Manitoba.

I give you that backdrop because that is what leads, as we understand it, to these legislative

amendments, in particular, the elimination of the choice of counsel and then, of course, the enactment of conflict legislation to allow for staff lawyers within Legal Aid to handle more than one accused in a given case, which obviously then may cause them to potentially, from an appearance standpoint, be conflicted in their representation of both of those accused persons.

We see the elimination of the choice of counsel as an attack on a very vital and important principle of our justice system and that is equal access to justice. Everyone should have the choice as to which lawyer they choose to have represent them, particularly in serious criminal cases. It is our understanding that the elimination of the choice of counsel, together with the conflict of legislation that we see before us this evening, is designed to allow Legal Aid effectively to take on the more serious cases. That is, two persons charged with murder in the same event can, through this legislation, theoretically be represented by two staff lawyers with Legal Aid. That, we understand, is perhaps, one of the avenues this government is looking at through this legislation to address how we can reconfigure the relationship between what staff lawyers do in terms of their work, versus what the private bar has been doing for many number of years.

Let us not lose sight of what we are trying to achieve through this legislation. This is a re-configuration of the relationship between the services Legal Aid offers to the people of Manitoba through what has been historically viewed as the finest delivery system in the world. I do not make that statement without some confidence that there is, in fact, support for it. If you called upon Mr. Fineblit to come back to this podium, whom I have known for many years as a practising lawyer when he was then the executive director of Legal Aid, he will tell you that people from around the world have come to look at our model for legal aid, before this bill was brought to our attention this evening in this meeting.

They have adopted our model, adopted it because they cannot find anything better. Now we are trying to change it, to change an effective system, for what? Is it about saving money? What price are we prepared to pay to take away the choice of counsel from people who most desperately need it? Those are the poor, those are the indigent, the Aboriginal people in our province, women, young people, those are the ones who most need the right to

choose who they are comfortable with and which lawyer is best able in their minds to afford them representation.

I find the bill interesting because in its preamble, 2.1, "Legal Aid Manitoba is to serve the public interest by (a) providing quality legal advice and representation to eligible low-income individuals." Is not quality legal advice, in many respects, in the eyes of the beholder? Should I tell you, sir, who is a quality lawyer for you? Or are you to tell me who is a quality lawyer that I should retain? I say that because I think that is fundamental, in my view, to our justice system. We should not be telling each other who is best for us, as counsel. I think it is for the client to make that choice. We have had an effective system in that regard.

I also want to talk about, very briefly, wrongful convictions. We say the most experienced counsel should be the ones doing the more serious cases. We have the most experienced lawyers in this province available to do the most serious cases for the indigent, ensuring, hopefully, that they are getting the best representation possible. No guarantee that a wrongful conviction cannot occur while the client is represented by a senior, experienced lawyer, but we hope that the chances of that happening will be much less.

I want to move on, very briefly now if I may, to the conflict point. I do not want to repeat what you have already heard, but I want to say this in respect to the conflict legislation. I may be asked, at some point, whether I consulted with Mr. Perozzo. We did. Mr. Simmonds and I expressed our views with respect to the entire gamut of what he was reviewing in respect to his report.

One of the areas we expressed our concerns about was the discussion about potential conflict legislation. We had told him, in our view, it would be flat-out unconstitutional. I find it interesting, and you may for your reference wish to take a look at page 47 of Mr. Perozzo's report, where he says the following with respect to the legislation: "Following the lead in other provinces, Manitoba could establish each legal aid office as a separate office and pass the appropriate legislation. The effect of structuring the offices with sufficient protection for confidential information is to prevent the type of conflict of interest that would, for example, lead to a *Charter* violation. The provincial legislation will not be

sufficient to defeat a challenge under the *Charter*. However, its purpose is to provide comfort to the staff of Legal Aid that they will not be found in breach of their duties under *The Legal Profession Act*."

I think you heard from Mr. Joyce as to how comfortable he will be if he, indeed, is put in a conflict of interest situation. Now, I say to you all that, when you are considering the totality of this particular bill and in particular these two elements, it is important to be reminded that ultimately the call as to whether one is or is not in a conflict of interest is not going to be found, with all due respect, Mr. Minister, in your regulations, or in the statute, or into your organizational system that you are going to be putting forward. It is going to be decided on a case-by-case basis. One ought not to forget the two fundamental principles always involved, whether or not there is a conflict.

The question is not always whether, in fact, there is a conflict, but what about the perception? Is there a perception of a conflict of interest to a degree that the court will not be comfortable in permitting two lawyers from whether it is the same office, offices down the street from each other, but two lawyers who report to the same executive director, who work for the same organization, paid by the same organization, effectively the same employer? Somehow, we are going to artificially create, or legislate away, or through organization or regulation, that these people, in fact, are not conflicted when they represent two accused in the same case, who, in fact, say to their respective counsel, "He did it."

Two legal aid lawyers defending two accused who point the finger at each other and say, "He did it, he did it." And we are going to say, "Legal aid lawyers go ahead, statute says we can immunize you. You are not going to be in breach of any Law Society Act or regulation. This will be fine, in our view, for you to proceed in this fashion."

I think it is important to remember what this is about. This is about representing the interests of the people of Manitoba, not the interests of lawyers.

Mr. Hawranik: Thank you, Mr. Pinx, for your presentation.

I note that you had mentioned that there was an audit report given to the Justice Ministry that \$1.25

million to \$1.5 million of extra funding for legal aid would be necessary because it is underfunded, and I have to agree with you. It is underfunded. There are less and less private lawyers every year, I think, willing and able to take Legal Aid certificates. Would you agree with that \$1.25 million to \$1.5 million, that that is where it is?

Mr. Pinx: We have not, ourselves, conducted an independent audit, but it sounds to me that that seems to be a number that is consistent with our, at least, analysis that we were able to conduct in this matter. Yes.

Mr. Hawranik: I believe Saskatchewan has legislation similar to this Manitoba legislation against conflict. So are you aware of any appeal or any constitutional challenges that were made or contemplated being made in Saskatchewan?

Mr. Pinx: I am not aware of any. I turn, perhaps, to the advisers to my right. I do not know whether or not there have been, to their knowledge, any challenges. I am not aware of any that have yet been made in respect to this legislation. But I can tell you that depending upon what we see in this province, it may be a different story here.

Mr. Goertzen: Mr. Pinx, thank you for your presentation. It was very informative and certainly very passionate.

As legislators sometimes, we are concerned about making changes that radically change a system and you certainly alluded to the fact that, in your mind, this would do that.

* (20:00)

One of the things that I did in preparation for the committee was to talk to some of the people within my own constituency and their experiences with the legal system. One individual, who without knowing his direct income, did not qualify for legal aid and the situation that he had in a community that I live, and there are about 20, 25 lawyers. He indicated that he looked at the 20 lawyers, realized that only half of those did the kind of work he was looking at, realized only half of those he could afford, and then, when talking to those five, he found that only one had the time. So he kind of rounded out this right to counsel or right to choose as not a factual statement within his own scenario, recognizing that.

The other person I talked to did qualify for legal aid. She indicated that in her situation she simply could not find anybody in our community to do the case. There just were not a lot of people doing legal aid. So the first person that she finally found who, kind of reluctantly, almost, took the case, she snapped up. I realize it is a micro-snapshot, but in the discussion that I have had this kind of concept of right to choose just was not there for these individuals. Now maybe that is not representative, but I just wanted you to comment on that.

Mr. Pinx: I am very reluctant to comment about two examples of what could be, potentially, many thousands of cases that go through our justice system each and every year, most of which we never hear about. We only hear about the ones that make the newspapers and radio and television.

So to respond to you I would say this, I can only speak from my own personal experience, having been a lawyer some 32 years now defending criminal cases. I can tell you, there are many cases, even today where most of my practice is private, where I will accommodate my fees for individual clients whom I feel need quality representation. In other words, we all, and it is not just me, and I do not want to use myself as the only example of our profession, I know there are many other senior lawyers that will—

Madam Vice-Chairperson: There is one minute left for questions.

Mr. Pinx: Sorry?

Madam Vice-Chairperson: One minute left for questions.

Mr. Pinx: That is fine.

—accommodate many people by either reducing their fees or I know, in some cases, even doing cases on a pro bono basis simply because legal aid may not cover it. The client does not have the money, but they still need help in respect to their problem.

Mr. Jack Penner (Emerson): Mr. Pinx, good presentation.

You seem very passionate about the ability of the individual being able to choose the right to representation, and I do not know whether anybody here argues with that. Could you possibly give us an overview as to how you would, instead of this

legislation, ensure that a person had the right to legal representation and also ensure the public that they would not be putting out large amounts of money to protect those that might, in fact, have money in organizations and/or otherwise to hire legal choice? It appears to me that the government is trying to deal with that in legislation, and I am not sure whether that is appropriate or not.

You have raised the issue as to cost. Can you describe for us how you would go about defining the rights and maintaining the cost?

Madam Vice-Chairperson: Mr. Pinx.

Mr. Pinx: I would eliminate, entirely, paragraph 14 in this bill. I would eliminate the freedom of choice issue completely.

On the other side of the equation, yes, I believe that perhaps more attention needs to be spent in respect to the qualification part of the legal aid system. Perhaps that part of the mandate in the legislation, I am not suggesting it should go as far as creating a crime, which it does, and that is perhaps to be left for another day, but I certainly would respect vigorous investigations be conducted, perhaps more so than have been, to ensure that people legitimately qualify for legal aid services in Manitoba.

If that, perhaps, answers your question, it certainly would answer, I think, your concern with respect to balancing freedom of choice, but, at the same time, accountability that only those who need lawyers and cannot afford it should be entitled to legal aid services.

Madam Vice-Chairperson: Thank you, Mr. Pinx.

Mr. Pinx: Thank you very much.

Madam Vice-Chairperson: Mr. Williams, would you like to identify yourself, and then please continue.

Mr. Michael Williams (Private Citizen): Yes, good evening. My name is Michael Williams. I am a private bar lawyer practising in the area of Family Law. I appear as a private citizen today, although I do have association with the Manitoba Bar Association. I am the vice-chair of the Family Law Section of the Bar Association, the chair of the Legal Aid Committee of that particular group, and I am also an observer on the Legal Aid Board of Directors.

Today I appear as a private citizen. I want to talk briefly about section 14, which we have heard quite a bit of discussion about already, some very impassioned pleas to the committee to reconsider the proposed bill as it impacts on section 14.

I am a private bar lawyer who is in the trenches. I have been practising for 16 years, doing this type of work. I find myself in the position now of not being able to represent the people who come to me seeking assistance on legal aid. I am actually a lawyer who is prepared to do legal aid. I want to do legal aid, but I cannot do legal aid in certain areas.

Even prior to the proposed Bill 47, Legal Aid administration had, utilizing the existing section, already made fundamental changes to legal aid. They brought in the Legal Aid Child Protection Office. Instead of private bar lawyers being able, at first instance, to represent people whose children had been apprehended by an agency, those people now were funnelled through or streamed through the office at the Legal Aid Child Protection Office. In a stroke, and this occurred roughly five years ago, that took away a number of very experienced private bar lawyers.

I myself had been legal counsel for five different Aboriginal agencies mandated in this province. I have personally, as prosecuting on behalf of my clients, placed into care hundreds of children. However, if an Aboriginal person or any other member comes to me now and says, "I qualify for legal aid. I want a lawyer. You are very experienced. Can you help me?" I generally have to say, "No, I cannot. You are going to have to go through Legal Aid, and they will determine whether or not I can represent you because you have to go through the Legal Aid Child Protection Office."

Generally speaking, unless there is a conflict, or if I have a prior history with a client, I am not going to be able to represent that person. That bothers me. It has bothered me for a long period of time because these people want assistance.

Now, Mr. Joyce, who spoke before you, is a very competent lawyer. He is a member of that office. I do not begrudge Mr. Joyce the opportunity to represent these people, but they should have a choice. There are only three lawyers in that particular office. There are many experienced lawyers that are still available to do child protection work. There are

at least 20 or 30 of us, and yet, on a practical basis, aside from the odd case where there is a conflict, I cannot represent these people.

Now we are faced with another situation where Legal Aid has implemented a Collaborative Law program. So the typical domestic client comes in with a recent separation, and they are looking for assistance. They are now funnelled through the Collaborative Law program. If they meet the criteria of the program, they are obligated to go into the program and go through the collaborative law process, which, basically, is a type of mediation with the assistance of lawyers.

Why could I possibly object to mediation and people seeking an alternate dispute resolution? I do not, of course. I think it is a wonderful idea, but people have no choice. You are told you must go into this particular program if you qualify. If you choose not to participate and do not want to use one of the lawyers in the office or go through that particular process, then you are at risk of not having a Legal Aid certificate. This makes no sense to me. It makes no sense to me because I was consulted concerning the Perozzo report. I spoke to Mr. Perozzo at length, and I told him what I had been telling a number of people over the years: the private bar has a unique ability in family law to deliver services, and those services are delivered at lower cost than the staff lawyer at Legal Aid Manitoba.

*(20:10)

Now, in case there is any misunderstanding, or people were concerned that perhaps the private bar was out in left field on that issue, that has been confirmed in the Perozzo report. So I ask the question: Why cannot I represent these people? I am experienced, and I deliver a service that is at least as efficient, if not more efficient, than what Legal Aid can provide through a staff lawyer. Why cannot I represent these people? Well, apparently, I do not really have an answer to that other than there is an ability now of the director and the board to make certain exceptions, and they have done that. I suspect they have done it initially to try to look at cost issues. But, on further analysis in the Perozzo report and probably as a result of this ongoing organizational review that Legal Aid is undergoing, I anticipate that this review will also confirm what I believe to be the obvious, that the family private bar is available and can deliver quality legal representation at the same or

lower cost. The question I am always asked is how is that possible. Because we subsidize the cost of legal representation of people who cannot afford us through our fee-paying clients we are able to subsidize that cost, and we are also very efficient at what we do.

So my concern is that if you take away this right in section 14 in terms of the ability to choose or have a strong preference, then you are left with someone who does not have access to a whole pool of available lawyers who can provide service. As the Perozzo report certainly once again confirmed, the mixed model, where you have a complement of both staff and private bar lawyers, works well, has historically been the model throughout Canada. It should be preserved.

So I urge certainly the members to consider whether, at least as it reflects on family law, which is nearest and dearest to what I do for a living, why it is necessary to change section 14. What possible benefit is there to the public in changing that section? How does it benefit the public in any way, shape or form? I do not see the benefit. I can only see problems in terms of continued erosion of the ability of the public to make a choice. Choice is important when it comes to family law. You have to feel comfortable with the lawyer you are choosing. You cannot be forced into a scenario where you must go through a process and must make a choice out of a very small pool of lawyers. So the need to choose is fundamental to our system and it must be preserved.

My last comment would be with respect to the issue of the ability of the Manitoba Bar Association to appoint someone with respect to the management committee of Legal Aid Manitoba. I have had the opportunity to see it and observe. I think it is very important that, if the members are considering this reclosed legislation in terms of an advisory committee to the actual management committee, if that is the choice that is made, I have concerns about exactly what, as the representative from the Manitoba Bar Association, Family Law Section, my role is on the advisory committee. I do not understand the function. I am not clear as to exactly how I am going to be able, on a practical basis, to provide that information, my expertise, my assistance directly to the management committee. I am unclear as to the process and have concerns that, if I am not there and be able to provide my input, directly at the management level, I do not see how

the management committee is going to have the best available information to make those very difficult decisions.

Those are my comments. I am open to any questions.

Madam Vice-Chairperson: Thank you, Mr. Williams. Mr. Minister?

Mr. Mackintosh: Thank you, Michael, for your advice. It is always appreciated, and I did want to follow up then on the concern that you raised about the practice of collaborative law in the family area. You actually raised that issue with me going back several weeks.

I have been advised that there was a training event for those interested in practising collaborative law in family. I understand there were responses from the private bar. As a result of that training and interest, there are private and staff lawyers both doing collaborative law, and other lawyers that get the training will be added to the list of those eligible. Now, if that is not correct, let me know and I will pursue that further. But that was information that was provided to me through the department and, I guess, requests of Legal Aid.

Mr. Michael Williams: Well, there certainly is a pool of available private bar lawyers who have collaborative law training. I have had some. Most of the lawyers practising now in the area of family law had some degree of collaborative law training. So we are certainly available and willing to do the work.

The current concern we have is the process by which, basically, all new applications are funnelled through Legal Aid and vetted through the very small group of lawyers there. There are approximately four of them, I believe, at the present time. Only, generally, as regards the overflow, or those requests that the parties make directly to Legal Aid to appoint a private bar lawyer to have a collaborative process with one of the existing staff lawyers, I understand that has not been as common as we would have liked. Really, you are, in essence, centralizing all the collaborative law process through a very small group of about four lawyers, where there is a larger group of private bar lawyers who have a lot of training and a lot of ability who simply are not being utilized and certainly can deliver the services in a very efficient manner as confirmed in the Perozzo report.

Mr. Hawranik: Thank you, Mr. Williams, for coming out this evening and taking time out of your practice to prepare that presentation. I think it was very interesting in terms of hearing about the practical implications that this legislation would have on your particular practice, and it is very good to hear from. It is very good to hear from somebody who is practising in the family law area who takes Legal Aid certificates, because there are fewer and fewer as we know every year that goes by.

Mr. Chairperson in the Chair

I would like to ask you, though, you had mentioned that you met with Mr. Perozzo prior to the report and prior to the legislation being drafted. Can you tell me whether any of your suggestions, or any of your concerns that you raised at any meeting that you had with Mr. Perozzo prior to the legislation being drafted, whether those were taken into account in the final draft of the legislation?

Mr. Michael Williams: Clearly, I can only comment that, certainly, my concerns and that of the group I was representing at the time, the Family Section of the Manitoba Bar Association, were certainly set out in some detail in the Perozzo report. Clearly, we addressed the concerns about the erosion, in terms of the ability of the public to make some choices, and we held out the Child Protection Office and the Collaborative Law program as of concern to us in terms of the requirement people must participate, generally, through that particular program.

The other concern we had, of course, is simply the message that sends to the private bar that, although you have all these skills that you are able to utilize for your fee-paying clients, you are not necessarily wanted or needed in all cases when it comes to legal aid matters. I think that our concerns and the benefit of the private bar are simply set out and, I think, in great detail. In fact, I believe Mr. Perozzo even contemplated, or suggested that perhaps in another circumstance one might even consider going exclusively to a private bar for family law because of the apparent cost savings.

So we, certainly, were happy to see that most of our concerns re: family law were clearly centred in the Perozzo report, and that accurately reflects our position.

Mr. Hawranik: I understand that the discussion in the Perozzo report does take care of some of those concerns, or at least address those concerns that you had.

Having reviewed the legislation, were any of those concerns embodied in the legislation?

Mr. Michael Williams: The concern that we stressed with Mr. Perozzo, at least certainly in my particular discussion with him, was the need for choice of counsel. Clearly, the proposed legislation does not address that issue. In fact, it seems that it does not address the issue at all, and causes me real concern.

I had concern enough with the existing legislation. Now, basically, this proposed legislation, in essence, takes away that choice and vests it with the executive director. Not that I am suggesting the executive director would necessarily misuse that ability or that power, but on a practical basis the executive director has to make some, I assume, very difficult decisions, certainly, on fiscal matters.

But on a practical basis, when it comes to family law, I just do not see the rationale on a personal level for taking away the right of counsel. There just does not seem to be any logical reason. Financially, certainly, is not an issue; the Perozzo report put that to bed completely. So the issue is, "Why should there not be free choice of counsel if the service can be delivered at or below the existing cost of a staff lawyer?" I am not aware of any fundamental issue taken with that position.

Mr. Chairperson: The time for questions has expired. Thank you, Mr. Williams. The next presenter is Sarah Inness, private citizen.

Ms. Sarah Inness (Private Citizen): Good evening, Mr. Chairman, and members of the committee.

Mr. Chairperson: Excuse me. Could you put your microphone down a little closer, or get closer to it.

Ms. Inness: I will try to speak up.

I am a lawyer in private practice. I work in a private law firm in Winnipeg. When I was in law school, I worked at Legal Aid. I had the privilege of articling at Legal Aid, and have practised in private practice for the last five years. I am also a member of

the Manitoba Bar Association, a member of the criminal trial lawyers' association, and I echo many of the comments that have been made by my colleagues that have spoken to you tonight.

* (20:20)

In the work that I do, while I do have the privilege of representing people that can afford to retain me privately and pay me for the services of representing them, the majority of the people that I represent cannot. I choose to accept their cases and do the work for them on Legal Aid certificates. Many of my colleagues in private practice do the same thing.

The work that I do is restricted entirely to criminal defence work. I feel quite privileged to represent those people that, but for the legal aid system in this province, would not be able to afford their own lawyer.

I feel privileged to work within a mixed delivery system, combined of both private and public lawyers, at defending those who are charged with all kinds of criminal offences, specifically, of course, those where the possibility of incarceration is real and is oftentimes quite certain.

I feel an obligation, because of the privileged status that I have in this society, to represent those who are impoverished, to represent those who are disadvantaged, so many of whom, unfortunately, are Aboriginal people. I do this, and my colleagues do this work, not to get rich, we are not getting rich off of that work, but because it is important work, and we acknowledge its importance.

Many of the people that we represent have had contact with the justice system more than one time. Oftentimes, they are in trouble with the law on more than one occasion. They come from families of origin where alcohol, physical, sexual and emotional abuse is commonplace. Many times, they remain in custody until their cases are completed.

For some of these people, sadly enough, choosing their lawyer may be one of the few remaining choices that they feel they have, particularly for those who are young, who, in the middle of the night when they get into trouble, know that the only person they can reach by way of a telephone is their lawyer, because they cannot get a

hold of their social worker, they cannot get a hold of their parents. The one person that has some continuity in their life is their lawyer. As sad as that may sound, quite oftentimes that is the reality.

For many of those whom we represent, a trust relationship comes to develop. It develops so that those people feel they can open up to you and talk to you about the most private and personal details in their life. It might be that they open up to you and you might be the first person they ever speak to about childhood sexual abuse that they have suffered. Unfortunately, again, in the work that we do, there is so much of a connection between personal and private background to the representation of that person's defence and what has brought them before the court, that it is crucial and necessary to understand that background in order to put forward a full and fair defence for that client, even if it is representing them at a sentencing hearing, to bring out that information. You cannot do that if your client does not provide it to you. In order to provide it to you, that person has to feel safe and comfortable and have a trusting relationship and have confidence in their counsel.

It is here in my submission to you tonight that I say where choice of counsel is most crucial. It is most crucial and it transcends, oftentimes, the specific certificate that you might be representing a client on. I speak of the solicitor-client relationship, because I might represent somebody on what might seem to be a minor criminal charge, but because of that trust relationship, when they get into trouble with trying to access social assistance or a tenancy dispute, they will call us. We will offer the advice, if we can, or assist them in whatever way we can, because they view us as somebody that can help them and because that trust relationship has developed.

The current legislation, the legislation as it is, provides that an applicant that is applying for legal aid has a choice of counsel and that that choice of counsel is to be accommodated wherever possible. Where there is no choice, then an appointment is made. A solicitor, of course, myself or any other private counsel, can decline to act even if that person chooses to have us act on his or her behalf. In this sense, I submit, preference, of course, is given to choice where there is one available, but it is not granted at any cost, because some counsel, as has been mentioned earlier on tonight, are simply not

prepared to take cases on a Legal Aid basis. Sadly enough, of course, you have heard that those numbers are decreasing.

But, for those who are, and still are, and there are many who are prepared to take on Legal Aid cases at the set rates, the ability of somebody to choose their counsel is an important one and one that should remain. So I submit to you the choice that is given in the legislation as it is is not given precedence over any other consideration. It is respected and satisfied where it should be, and the situation should remain the same.

The legislation, as it is being proposed, removes any element of choice at all. In fact, the heading of the legislation specifically says, "No right to choose lawyer." Removing the choice of the right to counsel, I submit, significantly has an impact upon the solicitor-client privilege, and it is important to remember that the solicitor-client relationship is one in which it is so valued in our law that a privilege has been created and clothes it.

As a private citizen, and as a member of the associations referred to this evening, I really feel that I am coming before you tonight in representing those people that I do represent on a daily basis on legal aid and putting forward, I know, what they would say to you if they were here tonight. The majority of the work that is done is not big criminal organization cases; it is not the big murder cases. The majority of the work that we do is more what we might think of as minor matters, the people who, because of addictions issues, because of alcoholism, because of poverty, are committing crimes, the basic run-of-the-mill cases, as was described in the trenches. Those are the people that choose their lawyer, and to them, I can tell you, their choice is an extremely valued and important one. I ask that you respect it and that it continue. Thank you.

Mr. Chairperson: Thank you for your presentation. Mr. Hawranik?

Mr. Hawranik: Yes, thank you very much for coming this evening and making that very passionate presentation from a client's perspective. I think that we have to be concerned about those we deliver legal services to, and I thank you for that very much.

Ms. Inness: Thank you.

Mr. Chairperson: The next presenter is Laura Friend.

Ms. Laura Friend (Private Citizen): Good evening. I would like to say that I found out about this meeting late. I arrived late. But, through a very brisk reading about what this meeting was about, I have come to the conclusion that I am not late on understanding the importance of this meeting and what this can mean for people in this province.

First of all, I would like to say that it is very heartening to see a group of lawyers—I am a bit nervous; I am not used to speaking in front of a whole room of legal minds. But it is heartening to see so many lawyers working on behalf of marginalized people, I being one at one time, still to some degree, but I am fighting to get out of that.

I am a criminologist. I had a Grade 9 education in the beginning, and I have lived on welfare on and off for a long, long time. I do not want to bore you with my personal details.

So I would like to say that I agree with the points that Veronica Jackson made, the two principal points. They could be, if I had more time to do research, anyway, that people cannot oftentimes afford a lawyer and that they must be provided with the mechanism by which they can have a lawyer, and whether or not having access to a lawyer at all hours is a problem in this province. I know it is in other provinces. Sometimes there is just nobody they can call to get the advice they need. People are innocent until proven guilty.

I would also like to say that the conflict of interest concerns to me seem very valid. I myself have been privy to a situation that happened to be two people who were getting divorced. One of the lawyers basically said to the woman, you know, that he represented the husband. His partner called her to say, "Well, we could represent you, too." So I know that is a problem with ethics, and I know that should not happen. I am not saying it does on a large degree, but in this case I, personally, was able to see in a private setting that it did indeed happen.

Removal of choice for counsel further disenfranchises those who greatly have little choices available to them already. In other words, I am once again backing up everything that everybody said, as a private citizen.

Also, there is one thing that I find interesting. Where are the people that are representatives of the organizations that represent the marginalized? I do not see the people here, just wondering, which, to me, seems odd because usually—I am from British Columbia—when you have a meeting of this magnitude that affects so many people, you have got all kinds of people coming and expressing their concerns. I do not know how this was advertised. I found out about it in the paper. Perhaps it is something to think about in the future.

Another thing that was not mentioned was section 12(3), criminal organization ineligibility. This is an interesting one because, well, there are still problems going through the federal court related to what a criminal organization is: *mens rea*, *actus reus* person, and how you create that with an organization. There are lots of things going on with that.

* (20:30)

So, in other words, there are still problems that currently exist as it relates to what a criminal organization is. From what I can see, from what people have told me in Manitoba, and I am not from here, mind you, a lot of the people that have ended up in a position where they needed help are Aboriginal youth who are young, who may or may not have an idea of whom they are working for, being at the bottom of a criminal organization. What is happening is, from what I hear, basically, they are becoming ineligible, or this legislation proposes to make them ineligible for representation.

This is one of the main reasons I am here. I did not hear it spoken about this evening, but that is what motivated me to come here to say that it does not matter who you are associated with or what you have been charged with, you are innocent until proven guilty, and you must, must have legal representation.

I realize that a criminal organization is defined in the code under section 2, but I still think there is a lot of work to do. Also, finally, I think that maybe it might be a good idea to examine, analyze what other provinces have done in relation to their legal aid and find out what worked for them, what did not, and then make some of your changes based on that. To me that seems very common sense. Everybody is going to be a stakeholder and come forward with their interests, but, really, the best thing, at least in

my view, would be to analyze the different things that have gone on.

I am sorry I am so out of breath. I am six months pregnant so I am in this no-breath thing. It does not matter what I do. Anyway, pardon me. Though I am not that nervous, I am, but I cannot breathe.

I am just going to cut it short and say that I, myself, am willing to give all the research and background that I have into some of the issues. I am not an expert on legal aid, do not claim to be. Also, how about people that access LERA? This is a very interesting thing.

As a criminologist, I moved to B.C. around a month ago. I started looking into some of the processes that exist here. I am not going to go off into another world, but people that are charged, or people that are victimized, how do they get access to representation? Should that be something that should be thought about as well?

Some of these other things seem like they are ethical conflicts of interest, these kinds of things, but what about access to representation through LERA, I mean, in general? Having to fill out a LERA form and hand it in to the chief of police, which is what is recommended in the pamphlet, is beyond understanding for this woman. Thank you very much.

Mr. Chairperson: Thank you for your presentation.

Mr. Hawranik: Thanks very much for coming down, Laura. It is really appreciated. You have a very strong presentation.

There was a review of legal aid schemes across Canada by Mr. Perozzo, and he concluded that Manitoba did compare very favourably in terms of who is eligible and what coverage there is.

But our concern, what is driving us with this legislation, I want to assure you, is that we want to make sure that legal aid becomes stronger in Manitoba because we have seen it really attacked in other provinces. Funding is an issue for legal aid, largely because we have federal partners that have withdrawn, but I do not want to get into the blame thing.

We have added 55 percent in funding to legal aid in the last five years. We will continue to look to strengthen legal aid, but we do recognize, and this is

largely behind the bill, that the staff lawyers have to provide some healthy competition with the private lawyers in terms of dealing with the more complex cases. As well, there are other concerns that Mr. Perozzo has expressed that we are trying to move on, so I can assure you that our only intention here is to make sure there is a stable and reliable legal aid service to provide help for Manitobans that are in need of legal services and cannot afford it. Thanks very much for coming.

Mr. Chairman: We have another question.

Mr. Hawranik: Yes, Ms. Friend, thank you very much for waiting for the last two hours and making your presentation—it was very interesting—and making your presentation as a private citizen. We value your comments, and certainly we would consider them. Thank you.

Mr. Penner: Thank you very much. Again, I want to thank you for your taking the time to come out and present to this committee. I think it is extremely important that people that do not have a law degree come forward and voice their opinion on how they or others, such as some of us that do not have a law degree, need to envision, and how this is applied. I think it is unfortunate that the minister chose to blame some other government, again, for not being able to afford to fund the process. As he said, the federal government had withdrawn funding, and it is unfortunate that had to be brought to the table.

However, I want to ask you what would you recommend to this government in drafting legislation that would ensure you or people you know the right to adequate counsel and the right of choice under this. How would you draft the legislation to ensure that only those who really require assistance through legal aid would get it and those who do not qualify, or should not qualify, would not get it? How would you draft that legislation?

Ms. Friend: Respectfully, if I could answer that at this moment then, well, we would not have need for a meeting, but I can honestly say that all the brains in this room could probably consult with people more. There should be more representation here from the people who are going to potentially feel the effects of the legislation.

Basically, it gets down to the term "accessibility," which is a fun one that likes to get

thrown around a lot, but what does that really mean in this province? There are different provinces with different things that are happening in them.

I just think that it is very important to maintain at all costs, and I mean at all costs, the choice for individuals to make when they are in that position. I do not think that penalizing human beings who end up in a position of breaking the law—these are decisions people make, but they still have a constitutional right to be, and they need to be, represented. I think if we start qualifying who deserves to be defended based on their criminal offence, we are getting into, really, basically, a slippery slope, as far as I am concerned. I hate using that term, excuse me, but, at least as far as I am concerned, I do not think that is something that is going to work in the long term to do that. I think it is really unfortunate, and I would hate to see the province of Manitoba be the province to do that, to decide that people, based on their criminal offence, will not be represented.

Sorry, if I did not answer your question.

Mr. Chairperson: Thank you for your presentation.

The next presenter is Val McCaffrey, private citizen.

Ms. Val McCaffrey (Private Citizen): I, too, found out about this meeting about a half an hour beforehand, so I did not have much time to prepare anything.

I am a retired teacher. I have been in a caregiving profession all my life and, after hearing all the lawyers preceding me, I can tell that they are also in a caregiving profession. I do feel, though, that they have a vested interest in making their presentations. I think it was very interesting, and they had a lot of really good points, but I am here to support the minister because I feel that what he is doing is right.

In limiting a legal aid client's choice of lawyer, I just wanted to say that, as a private citizen, I do not have a choice of having the best. If I should get into trouble, I could not afford the best lawyers. So, therefore, I do not have a choice. My choices are limited. When somebody is in trouble with the law, and I am not talking about family law, I am talking about criminal law, I feel that those people, if they

are going to access legal aid, they should stand in line; whoever is next on the list, that is who they get.

I have had occasion to sit in on some very serious legal cases, criminal law, in the last two years, and I have seen the jockeying of lawyers by defendants. I think it is really unfair, too, to society. I am trying to represent the majority of citizens out there who do not break the law, do not have to access all of these legal proceedings, but we have to pay for it. So I think, making some limitations, I think that is a very important thing to do.

* (20:40)

Of course they need to have good legal representation, but I think, maybe, what we ought to do is hire the best, pay them a lot, have a good committee, maybe have satellite groups where you can have no conflict of interest. I think it is a possibility. I do not think it is all that difficult.

Denying legal aid to people connected with organized crime. Nobody has spoken to that. Maybe I might have missed it. I am totally in favour of that. Obviously, there are a number of people in our city, and it is growing more and more who are living off of the avails but, of course, they are not paying taxes. Nobody knows they have money, but they have it. They have wads of it in their pockets. They should be paying for their lawyers. We should not have to be paying for it.

I think if you want to investigate people who are applying for legal aid, you should be able to do that. After all, if I want to apply for a mortgage, or if I want to apply for a loan I have to get permission for them to look at my financial status. Now, when it comes to criminals involved in gangs, they are not going to have any paperwork to follow because everything is in cash. So, then, maybe you are going to have to investigate with their friends, and maybe you are going to have to use detectives. I do not know, but I do not want to pay for their lawyers.

That is all I have to say.

Mr. Chairperson: Thank you.

Mr. Mackintosh: Thanks for coming down, Val, and for taking an interest in what we do down here. I think that that is an important engagement that you have made here with us tonight.

I just wanted to lay out that the legislation requires that someone who is charged with a criminal organization offence, there is a mandatory investigation. It is criminal organizations as groups that will not qualify, so there was, perhaps, some misunderstanding on the part of the paper that reported that. We certainly agree that we have to make some significant changes if we are going to maintain legal aid in Manitoba and have it do what it has to do, but we have had some difficult experiences in the last couple of years with Legal Aid, and we just think that we have to move to more staff lawyers in the service. That is really based on Mr. Perozzo's report.

I would invite you, as well, if you have the time because you certainly have the interest, but looking at Mr. Perozzo's report, it is on the Justice Web site, and it sets out there a lot of the rationale behind what we are doing. I just appreciate your coming down and providing some support.

Ms. McCaffrey: Not to see a whole bunch of other private citizens here, I really feel it is not because they are not interested. I talk to people every day about this and they are interested but, you know what? They are working; they are providing for their families, and they are putting their feet up at the end of the day, which is what I was going to do tonight. They just do not get around to it, but they are there, and they are thinking about it.

Mr. Penner: Thank you very much, Val. I truly congratulate you for taking the time because I think many more people should become involved in this kind of committee work. We are the only jurisdiction in Canada that still has a public committee on legislation, and I think we should be very proud of that.

Secondly, I would like to ask you what sort of process of evaluation do you think could be put in place to determine the affordability of an individual that is applying for legal aid, whether they are a criminal organization or not. I am not here to make that judgment, but is there, in your view, a process of evaluation that could be put in place in legislation that would allow us the freedom to do that kind of analysis as to whether the person could afford or not afford to pay for legal advice by themselves?

Ms. McCaffrey: Kind of a loaded question. Are you talking about a level of an amount of money that people are making?

Mr. Chairperson: Mr. Penner. We will allow you to clarify your question.

Mr. Penner: Sorry about that, Mr. Chairman. I should know better. I am talking about anybody applying for legal aid. How should government and/or an agency be able to do a determination of that person's ability to afford to either hire a lawyer of their own volition, or whether Legal Aid should, in fact, pay for that lawyer? How would you do the evaluation if you had the choice to?

Ms. McCaffrey: I would look at their financial income, their property ownership, and I guess you would have to look at the poverty level, whatever financial level that is at. I cannot really answer that. I cannot answer that, I am sorry.

Mr. Hawranik: Thank you, Ms. McCaffrey, for coming out this evening and taking time to make a presentation.

I notice that you are the only presenter who referred to section 12(3) in which a criminal organization is ineligible. I guess my concern about that particular piece of this legislation is that is really is fluff and it is smoke and mirrors. The reason I say that is because how often have you seen the Hells Angels actually apply for legal aid. It is not the Hells Angels who apply for legal aid. It is individuals. This provision would not prohibit those five individuals from applying for legal aid.

So, in reality, it has absolutely no effect. I cannot think of a single incident where criminal organizations themselves have applied for a Legal Aid certificate. So, in reality, it does absolutely nothing. It looks good. But my concern, I guess, is what are your thoughts in terms of making ineligible individuals who are members of criminal organizations from applying for legal aid.

Ms. McCaffrey: First of all, there were three Hells Angels who were up for trial, I believe it was last year, and all three of them had legal aid lawyers.

Mr. Hawranik: Would you be surprised to learn that this provision would not prohibit them from applying for a Legal Aid certificate?

Ms. McCaffrey: Yes, I would.

Mr. Chairperson: The time for questions has expired. Thank you for your presentation.

That concludes the list of presenters that I have before me this evening. Are there any other persons in attendance who wish to make a presentation?

Seeing none, is it the will of the committee to proceed with a detailed clause-by-clause consideration of Bill 47? Agreed? *[Agreed]*

Does the minister responsible for Bill 47 have an opening statement?

Mr. Mackintosh: I want to thank the presenters collectively. I think, whether as private citizens or as experienced counsel, the presentations provided some good insights and different positions, depending, of course, as they say, where you stand depends on where you sit. I think what we heard tonight was a good overview of some of the concerns particularly that have been expressed to me both before and after the Perozzo report and before and after the introduction of the legislation.

The government has considered the presentations made. I might add that, as a result of the Perozzo report's release, and we posted on the Internet and asked for feedback, we did not get any feedback on that, I am sorry to report. I think it is unfortunate in terms of the general public. We did have feedback, in addition to tonight, from the Manitoba Bar Association. I have regular meetings with them, as well representations from the family subsection, the Legal Aid Lawyers' Association and the Criminal Defence Lawyers'. I appreciate the time that they put into the collection of those views, because I know they had to go to their membership.

* (20:50)

I know there have been some strong feelings in certain quarters in the legal profession. I have some amendments tonight that respond, in part, to some of those concerns, but I can say that there is no change in any of the principles as set out in the legislation. We remain of the view that this legislative scheme is important to make the legal aid system more reliable, more dependable, and the key to that is, of course, to move to more in-house lawyers. That is a decision that rests with the budget process, which has now begun in terms of how far we go with the change of ratio. Mr. Perozzo, of course, has recommended a

certain ratio change, but that is under consideration by the government collectively, of course, now and will be announced in the budget process.

The amendments are really threefold. First, in response to the concern of MARL tonight about the investigation of assets, there, I think, can be a strengthening of that particular section, and we will add some wording there to ensure that that is only for the purposes of determining eligibility for legal aid because the intention was nothing other than that. So I thank Mr. Mandzuik and MARL, and Josh, I am sure was involved in it, for those insights.

On the issue of conflicts, I know there are some strong feelings on that one, but I think there might be some misunderstanding in some quarters, and others, I know, fully understand that the legislation is not determinative of whether a conflict exists or not. That will depend on the operational work that is necessary to guard against conflict, and that will be borne out with the work that has to be done through both the regulations and then the administrative and operational arrangements by Legal Aid Manitoba.

As well, we are looking at changes to reflect just the practicality and what was always the intention, of course, and that is to clarify that when it comes to choice of counsel that Legal Aid Manitoba will consider request of a counsel. There was never any thinking otherwise. It is the only way it can work, but the request for a particular counsel is not necessarily a right. There is a big difference between that and then the right, so we will not move on putting into law an expression and a mandate to Legal Aid Manitoba that there is no right to choice of counsel. We cannot move from that principle; but, reflecting that on a practical basis, Legal Aid Manitoba will consider requests for particular counsel. That is how the system will have to operate, and I said that when I introduced the bill. Legislation, I think, can be just clarified in that regard.

As well, I have heard concerns expressed about the advisory council, advisory committee, and efforts are going to be pursued through amendments to strengthen the advisory committee process because it is important that there be a strong communication between the management council and the advisory committee.

Finally, I think what is driving a lot of the concerns from the bar is what has been driving

concerns for quite some time. We know there was a freezing of tariffs for 13 years. We now have increased the tariffs by about 18 percent, just under 18 percent, I understand. We will continue to enhance tariffs as we can, but I think what is important on a go-ahead basis is that there be a regular review of the tariff by Legal Aid Manitoba. Now the decision ultimately has to remain with the province, with the government, but I do not think we can ever afford for anyone to have another period of 13 years or anything even significantly shorter than that without a tariff review because the experience has shown that it has impacted on the accessibility of legal aid, particularly for those in need of family law assistance across the province. So those are changes that we are prepared to make today, but again—some may call it a tweaking; some may call it substantive—we think that that is a reasonable way to proceed, having heard from and carefully considered the concerns expressed over the last number of months.

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

Mr. Hawranik: Yes. Just a short, opening statement. I would just like to express my appreciation to all the presenters. I notice there were presenters from the family law subsection as well as the criminal law subsection and both from the Bar Association and the Law Society. I thank them for their presentations and their very detailed analysis of the bill that is presented to us.

I have some concerns in terms of the number of private citizens who came here today. Only two private citizens, only two people who are not lawyers, appeared today. I have some concerns about that because they are the recipients of the legal aid system. They are the people who will be most affected. The lawyers themselves will be ultimately affected, but the people who are affected the most are those who receive Legal Aid certificates for criminal or family matters. I have some concerns about that the minister perhaps did not notify the public any more in advance. We heard from two of the private citizens who said they just heard about it tonight and therefore they registered for a presentation, and I thank them for those presentations, because they were very valuable. They had much input. They had a very valuable input, I believe, to the process, and I would have liked to have, certainly, seen more private citizens give a

presentation here this evening. They are ultimately the ones who benefit from the system, and they are the ones who should have been consulted and should be targeted toward making presentations to this committee.

Having said that, I appreciate, of course, even though there were only two private citizens, I appreciate all their input. We will certainly be considering their comments as we go into third reading.

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

Clauses 1 to 3—pass. Clauses 4 to 6.

Mr. Mackintosh: I just put on the record that we will consider further presentations made tonight. The report stage lies ahead and there may be some that we reserve the right to bring in further amendment, but we will consider matters further.

I have amendments to clause 6, Mr. Chair.

Mr. Chairperson: We will pass clauses 4 and 5 before we do the amendment.

Clause 4—pass. Clause 5.

Mr. Lamoureux: A quick question for the minister. The Manitoba Bar Association has suggested that they have two members appointed to the management council. Can the minister indicate what his position is in terms of potential conflict of interest for the Manitoba Bar Association being able to appoint two members?

Mr. Mackintosh: We share the same view as the Law Society, that the management council should be comprised of individuals with the single objective and responsibility, and that is the public interest according to the objects of the Legal Aid legislation. We have for the first time, and, I think, the only place in Canada that has created an advisory

committee, though, where the different interests of those who are providing Legal Aid services, both on the private side and the public side, be housed. You will see from amendments, as well as the bill, that we think it is important to have the exchange of views and the insights, the advice of the practitioners, but we think that the management decisions must be made and not fettered by concerns about the incomes of lawyers, for example, but are concerned about the public interest alone, so we would share Mr. Fineblit's view on that.

Mr. Lamoureux: The last question would be this: Is the minister aware of any other jurisdictions that might actually allow for the equivalents to be on a board, whether it is a board or a management commission, in other provincial jurisdictions?

* (21:00)

Mr. Mackintosh: I know that there has been a lot of debate over the last couple of decades about having representation from the labour component of an organization on a governing board, for example of a Crown corporation. Is the representative of the union on the board representing the interests of the union or representing the interests of the corporation? That is an ongoing debate. There is starting to come from that experience discernment, that there are different mandates here at play.

I cannot recall off the top of my head if Mr. Perozzo had commented or done a cross-Canada comparison, but we feel comfortable that this new model here in Manitoba was very good. I think it strengthens the management of Legal Aid; the same time it does provide for strong advice coming from those who do practise legal aid, the Legal Aid Lawyers' Association, as well as the Bar Association.

Mr. Chairperson: Clause 5—pass.

The minister has an amendment to clause 6.

Mr. Mackintosh: I move

THAT Clause 6 of the Bill be amended by adding the following after the proposed section 6:

Tariff review

6.1(1) At least once every two years the council must review the tariff of fees paid to solicitors for providing legal aid.

Consultation with the advisory committee

6.1(2) The council must consult with the advisory committee when conducting the review.

Report to minister

6.1(3) The council must provide the minister with a report on the findings of the review. The report must set out any recommended adjustments to the tariff of fees and provide an explanation for any recommendation.

Mr. Chairperson: The amendment is in order.

It has been moved by the minister

THAT clause 6 of the Bill be amended.

An Honourable Member: Dispense.

Mr. Chairperson: Dispense.

Mr. Penner: Yes, Mr. Chairman, maybe what I should be doing is asking for a clarification as to what the intent of the addition of 6.1(1) is. When I look at clause 6 the way it is drafted, it would appear to me that the charge to the council is to oversee the financial management of Legal Aid Manitoba, and to manage the resources of Legal Aid Manitoba efficiently. That, to me, would charge the organization with the responsibility of looking at tariffs on an ongoing basis, not just every two years, and would give the right to the council to, in fact, change the tariffs at will.

Now we are saying, "Well, we are just going to dilute that." We are only going to say to the council you must do this every two years, or you have the right to change the tariffs every two years and the fees paid. I would suspect that if you leave the draft as is, I think you would make a clearer case for good management than you do by adding 6.1.

Mr. Mackintosh: The member would have a point, except that the words in 6.1(1), "at least," say that it has to happen. They can do it more often if they wish, but I can tell you that for 13 years that was not done. We cannot afford that as a province; the clients of Legal Aid cannot afford it and, of course, those providing services cannot either.

Mr. Penner: That is not the point I made. The point is that the way you have drafted the amendment now, and I do not argue that it was not done in the last number of years, however, the way clause 6 is

drafted clearly indicates that there be proper management, which would imply that tariffs could be changed at any time, or should have the ability to change them at any time, and that is charged to the council. So I would suggest to you that 6.1 might, in fact, be something that you want to take a hard look at if you really want to write that into law.

Mr. Mackintosh: It is for greater certainty and there is a direction inhering that is important. I do not accept that just because the council is mandated to provide good governance. In their view, it might be that they are not going to review legal aid tariffs. The government is saying that there has to be a legal aid tariff review every two years.

Mr. Chairperson: The question before the committee is shall *Clause 6 of the bill be amended by adding the following:*

THAT Clause 6 of the Bill be amended by adding the following after the proposed section 6—

An Honourable Member: Dispense.

Mr. Chairperson: Dispense.

Clause 6 as amended—pass.

Mr. Mackintosh: I move

THAT Clause 6 of the Bill be amended by adding the following after the proposed subsection 8(5):

Meetings

8(5.1) The committee must meet at least four times each year. One of the meetings must be a joint meeting with the council.

Executive director and chair to attend

8(5.2) The executive director and the chair of the council must attend each meeting of the committee, or send a delegate on his or her behalf.

Mr. Chairperson: It has been moved

THAT Clause 6 of the Bill be amended by adding the following after the proposed subsection 8(5)—

An Honourable Member: Dispense.

Mr. Chairperson: Dispense.

The amendment is in order.

Mr. Mackintosh: This amendment is to strengthen the role of the advisory committee by saying, of course, that it has to meet. The intention is that it meet. I want it to perform a real and vital function. I want it to be communicating with the management council, so there has to be a joint meeting at least once a year; there can be more. Legal Aid should be tuned into what the advisory committee is doing. The advisory committee can meet off the record as well and so on and strategize, but I think it is important that we link the voices and the ears here.

Mr. Chairperson: The question before the committee is shall *Clause 6 of the Bill be amended by adding the following after the proposed subsection 8(5):*

Meetings—

An Honourable Member: Dispense.

Mr. Chairperson: Dispense.

Amendment—pass.

Mr. Mackintosh: I move

THAT Clause 6 of the Bill be amended by adding the following after the proposed section 8.1:

Information to advisory committee

8.2 The chair of the council must provide the advisory committee with the following information on an annual basis:

- (a) the number of applications for legal aid;
- (b) the number of applications approved;
- (c) the number of eligible applicants who requested the appointment of a specific solicitor to provide legal aid; and
- (d) the number of eligible applicants who had legal aid provided by their requested solicitor.

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

THAT Clause 6 of the Bill be amended by adding the following after the proposed section 8.1:

An Honourable Member: Dispense.

Mr. Chairperson: Dispense.

Mr. Mackintosh: This again just goes to an attempt to strengthen the role of the advisory committee by ensuring that they have information.

Mr. Chairperson: The amendment is in order. The question before the committee is shall *Clause 6 of the Bill be amended by adding the following after the proposed section 8.1:*

**Information to the advisory committee
8.2—**

An Honourable Member: Dispense.

Mr. Chairperson: Dispense.

Amendment—pass; clause 6 as amended—pass.
Clause 7.

Mr. Mackintosh: I move

THAT Clause 7 of the Bill be amended in the proposed subsection 11(2) by striking out "An applicant" and substituting "In order to determine whether an applicant is, or continues to be, eligible for legal aid, the applicant".

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

THAT Clause 7 of the Bill be amended in the proposed subsection 11(2) by striking out—

An Honourable Member: Dispense.

Mr. Chairperson: Dispense.

The amendment is in order.

Mr. Mackintosh: This amendment has wet ink thanks to MARL. Okay.

* (21:10)

Mr. Chairperson: The question before the committee is: Shall *Clause 7 of the Bill be amended in the proposed subsection 11(2) by striking out "An applicant" and—*

An Honourable Member: Dispense.

Mr. Chairperson: Dispense.

Amendment—pass; clause 7 as amended—pass.
Clauses 8 to 10

Mr. Hawranik: Yes, I have a question of the minister with respect to clause 8 in specific reference to subsection 12(3) in that I cannot think of a single instance where a criminal organization, and I can tell you that there are very few prosecutions under the Criminal Code with respect to criminal organization offences to start with, and I am only aware of one organization that has been held to be a criminal organization in Canada, and that is sort of by reference in a case in Québec, and that being the Hells Angels. So in reality that clause that you are adding to this legislation is almost ineffective. I cannot believe that a criminal organization would actually apply for a Legal Aid certificate. An individual who is a member of a criminal organization might apply for a Legal Aid certificate, but not the criminal organization itself. Perhaps the minister can provide me with an example of a situation that may have occurred in Manitoba that would prohibit, in a practical sense, how a criminal organization could be prohibited from a Legal Aid certificate.

Mr. Mackintosh: As criminal organizations become the greater focus of criminal law reform, it may well be that criminal organizations come to the courts to make applications as a public interest group or under the public interest mandate of Legal Aid. Surely, the member is not suggesting we take this out. I think it is important to cover that off.

Mr. Hawranik: I am not suggesting you take it out, in fact, the minister had lots to say when I introduced it in a private member's bill, and that was one of the provisions with respect to it. He had lots to say, saying that it is not a practical provision, but my particular point is to strengthen the provision. Why would he not look at prohibiting members of criminal organizations from receiving a Legal Aid certificate, not the criminal organization, the members of the criminal organization? Would he agree that the five Hells Angels associates, in fact, would still be eligible for a Legal Aid certificate in spite of section 12(3)?

Mr. Mackintosh: I recently heard the member criticize a provincial legislation dealing with organized crime as unconstitutional. I suggest he might want to apply that same test to his own proposal.

We have to protect the taxpayers and, quite frankly, if the member is going to propose that legal aid not be available for members of criminal organizations, it will, I guarantee him, cost the taxpayers more, because the court will then appoint the lawyer and they will set the fee. That is not appropriate because that fee surely will be more than the Legal Aid tariff. I think the member should think very carefully about making such a proposal. Everyone in this country, under the Charter, whether you like it or not, is entitled to competent counsel, and I will tell you if it is not going to be Legal Aid paying it under the tariffs, it is going to be, all-out, court ordered lawyer and I will tell you if he was going to introduce legislation like that, I would do everything I could to expose that as a threat to taxpayers.

Mr. Lamoureux: A sceptic might say, with reference to this particular clause, that the minister is maybe attempting to appear to the public that he is getting tough on gangs. If you read that clause, it would not have applied to anything that has been before us. It was interesting one of the presenters that came before us felt that yes this is a super clause to have in there. I think that, in part, the minister is on a bit of a public charade here in certain areas where he has brought in legislation at times in which one could question just to what degree it is effective versus political propaganda.

The member from the opposition made reference to if you want to give it some real teeth, if you wanted to try to get it to do the things that you are giving the perception to the public you are doing, you would add in the members as opposed to just leaving it at that, but the minister likely knows full well that the chances of an organization actually applying for legal aid really is not there. It has not been there in the past. He has not been able to say that it has been there in the past but he is able to go in front of the camera. He has been able to go in front of the public and say, "We brought in the legislation." Well, it is kind of like this motherhood and apple pie type of thing. It challenges the member from the opposition, "Well, are you going to move to take it out?"

I would not move to take it out, but I think that there is an onus of responsibility for the minister of justice to be honest with the public. This is not going to prevent members of a gang from acquiring funding for legal aid support. I think that is the truth

of the matter, yet the perception that is trying to be portrayed by this government is quite different. I just leave that for remarks on this particular clause. Thank you, Mr. Chair.

Mr. Mackintosh: It is unfortunate the member wants to connote that the presenter here tonight stated what you did and I corrected her. It should be noted that when this bill was, people can read this bill, when the bill was introduced the press release said that the bill would prohibit the eligibility for assistance to criminal organizations and require mandatory investigations into the assets of individual applicants charged with criminal organization offences. It made it very clear that we are dealing with members of gangs on the one hand and criminal organizations as groups on the other.

If the member wants to take out that provision, as I say, he is entitled to do that. He does not like it, he can make an amendment.

But I will tell you what we have in this legislation is something that has never been seen in this country. I think we are pushing the limits here, but we are strengthening measures to make sure that legal aid does not go to gang members who can afford to pay for their own defence. We are doing it by a number of measures.

The member will see that 11(2) requires an applicant to give consent to third parties disclosing financial information. It was a subject of some discussion here tonight from the presenters. 11(3) requires applicants to provide any further information or evidence regarding their eligibility if requested. 11(4) creates provincial offences with a maximum fine of \$10,000 where an applicant fails to report a change in his or her financial circumstances that could affect eligibility or intentionally makes a false or misleading statement to obtain legal aid.

Section 11.1 requires Legal Aid Manitoba to conduct an investigation of "the financial resources and obligations of" all applicants who are charged with criminal organization offences. We heard some dispute with the government's intention in that regard tonight.

Finally, the criminal organization as a group is not eligible for legal aid. It is set out there and that is what has been said publicly. How it has been reported or interpreted or received, I cannot say. I

cannot speak for that, but I did correct it tonight and that is the case. If somebody wants to go further and say that legal aid is not available to a member of a criminal organization then let the courts decide, there is another risk in doing that, aside from the fact that it is going to cost taxpayers a lot more, I can guarantee you, the court might just stay the charges.

I move that—

Mr. Chairperson: Excuse me, we are going to pass clause 8 and then you can introduce your amendment to clause 9.

Clause 8—pass.

Mr. Mackintosh: I move

THAT Clause 9 of the Bill be replaced with the following:

9 Section 14 is replaced with the following:

No right to choose lawyer

14(1) The executive director or an area director must appoint a solicitor who is a registered member of the panel to provide legal aid to an eligible person or group.

Consideration of request

14(2) In making the appointment the executive director or area director must consider any requests by the person or group for the appointment of a specific solicitor.

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

THAT Clause 9 of the Bill be replaced with the following:

9 Section 14—

An Honourable Member: Dispense.

Mr. Chairperson: Dispense.

The amendment is in order.

Mr. Mackintosh: As I said when introducing the bill, this is how it will unfold. This is just the practicality of it, in any event, but we just set it out for clarity. That may alleviate some concerns.

But, as I say, we will not deviate from giving administrative expression to the fact that the courts have recognized no right to choose a lawyer. Other provinces have gone this way as well. It may be that in most of the cases that come for Legal Aid certificates, the lawyer of choice can be accommodated, but that is not necessarily so. It is important that Legal Aid Manitoba has the ability to manage the cases, to stream the cases, to ensure that there is productivity, and that there is a cost-effective legal aid system in this province.

Mr. Goertzen: Mr. Chairperson, certainly, I want to thank the presenters who brought this to light today and the difficulty in terms of very specific situations where there might be a client who is requesting a lawyer of a particular gender. I thought that those were very appropriate comments.

Certainly, the things that might not have immediately occurred to members of this committee without those comments here tonight. So I am assuming that this a direct reflection of those concerns that the minister heard tonight and, probably, has heard in the last number of weeks. For that, this is a positive amendment, one of the litanies of amendments we have had tonight, but this is certainly a positive one.

I do think that the incumbency or the onus will fall then to the minister to ensure that adequate resources are put forward into Legal Aid so that this is not just simply an amendment or something that is in the bill that has no substance. Obviously, if people are going to have the right to choose or the right to request a particular counsel who would then be appointed to them by the executive director or the area director, then, in fact, there will have to be diversity within the department. The request will only become meaningful at that point.

I think the amendment is a good one, but I would caution the minister or maybe implore the minister to ensure there are proper resources put in place so that it is meaningful.

Mr. Chairperson: The question before the committee is shall *Clause 9 of the Bill be replaced with the following:*

9 Section 14—

An Honourable Member: Dispense.

Mr. Chairperson: Dispense.

Clause 9 as amended—pass.

Mr. Mackintosh: I move

THAT Clause 10 of the Bill be replaced with the following:

10 Subsection 15(1) is amended

(a) by striking out "selected by or appointed for an applicant" and substituting "appointed to provide legal aid"; and

(b) by striking out "for that applicant" in the English version.

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

THAT Clause 10 of the Bill be replaced with the following:—

An Honourable Member: Dispense.

Mr. Chairperson: Dispense.

The amendment is in order.

Mr. Mackintosh: It is just a matter of form and for consistent wording. The words "appointed to" is what is used.

Mr. Chairperson: The question before the committee is shall clause 10 of the bill be amended by adding—

An Honourable Member: Dispense.

Mr. Chairperson: Dispense.

Amendment—pass; clause 10 as amended—pass; clause 11—pass. Clauses 12 to 15.

Mr. Hawranik: Yes, I have a question with regard to clause 12, particularly with respect to section 20(2), Conflict of interest.

I would like to ask the minister why it is necessary to legislate against conflicts when, in fact, in Saskatchewan they do have an alternative model. They do have separate law firms within the legal aid

system. Has he considered that model? I would like to hear some of his comments with regard to some of the discussion that took place prior to making this amendment?

Mr. Mackintosh: Well, first of all, this provision exists actually in three other provinces. Nova Scotia just recently passed a similar amendment, and Saskatchewan and Newfoundland, I understand that they have a provision, and I am just going from the Perozzo report.

But again I say that the basis for dealing with conflicts of interest will rest with the administrative arrangements. This only deals with the code of conduct issue, and the regulations will set out further direction in terms of the objectives to be followed. But this will all depend on how Legal Aid puts together the operations. There is experience in this country now. There are at least three other provinces that are down this road, and some with considerable experience in providing for more than one counsel from a legal aid scheme to provide services.

So it will be done carefully. I can say that we have obtained the advice of a person experienced in the area, looking over the case law, indeed, the case of *Neil*. We recognize the Supreme Court's directives, or views, on this one, and all of this advice is instrumental in helping the department and Legal Aid in moving ahead in terms of the arrangements that would be necessary to deal with conflicts.

Mr. Hawranik: The Perozzo report, in fact, recommends the hiring of 10 additional Legal Aid staff lawyers, and I would like to hear from the minister to hear whether or not he is going to be following that recommendation, and when.

Mr. Mackintosh: Well, once the legislation is passed, and I hope that we can get that done, then there is an operational review and a full- to almost full-time chair appointed, we will then have the budget considerations hopefully completed, and I can advise that that is a decision that has to be made collectively by the government. Having looked at the Perozzo report in light of all of the priorities of the province, a decision will be made in terms of moving to a greater ratio in favour of the staff lawyers at Legal Aid.

Mr. Hawranik: Can the minister advise whether there is anything in the legislation that is before us

that would have prohibited him from hiring additional staff lawyers?

Mr. Mackintosh: The whole concept of moving more complex casework into Legal Aid Manitoba, as the member will see from the Perozzo report depends in no small part on the legislation, which has, I think, three main components: (1) clarifying that on the administrative level there is no right to choice of counsel; (2) dealing with the legislation on conflict of interest; and (3) putting in place a new management structure for Legal Aid Manitoba.

Mr. Hawranik: Would the minister agree, though, that all of that would not have prohibited the province from hiring 10 additional staff Legal Aid lawyers?

Mr. Mackintosh: Well, it is our view that the additional capacity at Legal Aid Manitoba will be focussed more disproportionately on the more complex trials, and it is on those cases where the right of counsel issue and conflict issue is more likely to become important. As well, though, overseeing the growth of more in-house counsel does depend, in our view, on a different management structure. So that is why we see everything unfolding in this way. But nothing at Legal Aid will change in terms of changing the ratio, according to the Perozzo report, until the provincial budget.

* (21:30)

Mr. Goertzen: Just for the minister, and I recognize that he is suggesting that the additional staff lawyers will be essentially to deal with the more complex cases as they arise within the province, however, just for his own information, I did have the opportunity to meet with the Chief Public Defender from Minnesota last year. Recognizing it is a different jurisdiction with a different system, one of the things that they do on the issue of conflict of interest, and perhaps it deals with the administrative arrangements, is to have half-time public defenders there, but I guess in this model half-time legal aid lawyers, in certain areas, who work half-time and have certain cases assigned to them for their public defender system, and the other half-time they continue on their private practice. He indicated that this was fairly successful in working, and that private individuals appreciated that system because it smoothed out, to some extent, their private practice. I know it dealt with some money, I think, provided for overhead

because, of course, these lawyers were working out of facilities that they paid for themselves. So a portion of their overhead costs were covered. Again, it was received favourably in that jurisdiction, because it helped private lawyers, I think, again smooth out their income and help to alleviate some of the conflict of interest concerns that are raised in that state. Undoubtedly, it also allowed some of the lawyers to participate, probably in that state, health programs and that, that they might not otherwise, simply operating as a private practitioner.

So I just leave that with the minister, as a comment.

Mr. Chairperson: Clauses 12 to 15—pass. Clause 16

Mr. Hawranik: Thank you. I have a question with regard to clause 16. In accordance with that clause, you are strengthening the provisions with regard to the investigation of assets of individuals who apply for Legal Aid certificates. Is the minister planning on hiring an investigator, a full-time investigator, in order to properly investigate the financial resources of applicants?

Mr. Mackintosh: That is a matter that has been under consideration that does depend on volume. We will do an assessment of that. Last time when we did this on a one-off, because of some unusual circumstances, they were private individuals that were

contracted to do the work. But that is a discussion that will take place mostly within Legal Aid Manitoba, but we will perhaps explore some options with them, but that decision will ultimately be made by the management council.

Mr. Chairperson: Clause 16—pass; clauses 17 to 19—pass; Schedule A—pass; Schedule B—pass.

Shall the enacting clause pass?

Mr. Mackintosh: I should just note, because it has not really been part of the discussions, but the act actually changes the name of what is known as "Legal Aid Manitoba" to Legal Aid Manitoba, as it, actually, has always been in law, recognizes the Legal Aid Services Society of Manitoba.

Mr. Chairperson: Enacting clause—pass; title—pass.

The bill as amended shall be reported.

What is the will of the committee?

Some Honourable Members: Committee rise.

Mr. Chairperson: The hour being 9:33 what is the will of the committee? Committee rise.

COMMITTEE ROSE AT: 9:33 p.m.