



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

Chairperson
Mr. Doug Martindale
Constituency of Burrows



MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Seventh Legislature

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DACQUAY, Louise	Seine River	P.C.
DERKACH, Leonard	Russell	P.C.
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GERRARD, Jon, Hon.	River Heights	Lib.
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MITCHELSON, Bonnie	River East	P.C.
MURRAY, Stuart	Kirkfield Park	P.C.
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PENNER, Jack	Emerson	P.C.
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PITURA, Frank	Morris	P.C.
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REIMER, Jack	Southdale	P.C.
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SANTOS, Conrad	Wellington	N.D.P.
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WOWCHUK, Rosann, Hon.	Swan River	N.D.P.

LEGISLATIVE ASSEMBLY OF MANITOBA

THE STANDING COMMITTEE ON LAW AMENDMENTS

Tuesday, July 23, 2002

TIME – 6:30 p.m.

LOCATION – Winnipeg, Manitoba

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

**VICE-CHAIRPERSON – Mr. Conrad Santos
(Wellington)**

ATTENDANCE – 11 – QUORUM – 6

Members of the Committee present:

Hon. Messrs. Caldwell, Lathlin,
Mackintosh, Hon. Mses. McGifford,
Mihychuk

Messrs. Enns, Gilleshammer, Martindale,
Santos, Mmes. Smith (Fort Garry),
Stefanson

Substitutions:

Mr. Derkach for Mr. Gilleshammer at 9:46
p.m.

APPEARING:

Hon. Jon Gerrard, MLA for River Heights
Mr. Leonard Derkach, MLA for Russell
Mr. David Fauschou, MLA for Portage la
Prairie

WITNESSES:

Bill 22–The Public Schools Amendment Act
(Francophone School Division Governance
Structure; Loi modifiant la Loi sur les écoles
publiques (structure de gestion de la division
scolaire de langue française)

Mr. Claude Lemoine, Division scolaire
franco-manitobaine n° 49

Mr. Léo Robert, Directeur Général, Division
scolaire franco-manitobaine n° 49

Bill 44–The Provincial Police Amendment
(Aboriginal Policing) Act

Ms. Marjorie Prince, Private Citizen
Ms. Diana Traverse, Private Citizen
Mr. Edward Pashe, Private Citizen
Ms. Sheila James, Private Citizen
Ms. Lorraine Elk, Private Citizen
Mr. David G. Newman, Private Citizen

Bill 19–The Mines and Minerals Amend-
ment Act

Mr. Francis Flett, Grand Chief, Manitoba
Keewatinowi Okimakanak (MKO)
Mr. Michael Anderson, Manitoba
Keewatinowi Okimakanak (MKO)
Mr. Ed Huebert, Mining Association of
Manitoba

Bill 33–The Private Vocational Institutions
Act

Mr. Ken Penner, Midwestern School of
Business and Technology and Robertson
College

MATTERS UNDER DISCUSSION:

Bill 19–The Mines and Minerals Amend-
ment Act

Bill 22–The Public Schools Amendment Act
(Francophone School Division Governance
Structure); Loi modifiant la Loi sur les
écoles publiques (structure de gestion de la
division scolaire de langue française)

Bill 32–The Fatality Inquiries Amendment
Act

Bill 33–The Private Vocational Institutions
Act

Bill 43—The Polar Bear Protection Act

Bill 44—The Provincial Police Amendment
(Aboriginal Policing) Act

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Mr. Chairperson: Good evening. Will the Standing Committee on Law Amendments please come to order?

This evening, the committee will be considering the following bills: Bill 19, The Mines and Minerals Amendment Act; Bill 22, The Public Schools Amendment Act (Franco-phone School Division Governance Structure); Bill 32, The Fatality Inquiries Amendment Act; Bill 33, The Private Vocational Institutions Act; Bill 43, The Polar Bear Protection Act; and Bill 44, The Provincial Police Amendment (Aboriginal Policing) Act.

We have presenters registered to speak to four of these bills as follows: Bill 19, Michael Anderson, Grand Chief Francis Flett and Ed Huebert; Bill 22, Claude Lemoine and Maurice Auger; Bill 33, Ken Penner; Bill 44, Marjorie Prince, Edward Pashe, David G. Newman, Diana Traverse, Sheila James, Lorraine Elk.

Is it the will of the committee to hear public presentations prior to consideration of the bills?
[Agreed]

Before determining the order of the presentations, I would like to advise the committee that there are two registered presenters for Bill 22 who have asked to have their presentation made *en français* this evening.

If there are any other persons in attendance who wish to present in French, could you please make yourselves known to the attendant at the back of the room if you have not already done so?

We also have a number of out-of-town presenters in attendance this evening. As indicated by an asterisk on the speaking list, the out-of-town presenters are Claude Lemoine, Marjorie Prince, Edward Pashe, Diana Traverse, Sheila James, Lorraine Elk.

Considering this information, how does the committee wish to proceed in hearing presentations?

Mr. Conrad Santos (Wellington): Mr. Chairperson, consistent with past practices, may I move that we hear representatives for 15 minutes and an additional 5 minutes for questions?

Mr. Chairperson: Mr. Santos, we will consider time allocation in a second. I am trying to determine now if we wish to hear out-of-town presenters first and if we wish to hear the presenters in French at the—[interjection] Mr. Santos has moved that we hear the presenters in French first and then the other out-of-town presenters. All those in favour—[Agreed] [interjection] We will say it is the will of the committee. We did not really need a motion there.

So we have agreed that we will hear the presentations *en français* first, followed by the other out-of-town presenters, then the remaining presenters.

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

As a reminder to presenters, 20 copies of any written version of your presentations are required for the committee. If you need assistance with photocopying, please see the attendant at the back of the room. If there is anyone in the audience tonight who has not yet registered but would like to make a presentation to one of these bills, you may register with the attendant at the back of the room.

Is it the will of the committee to set time limits on presentations?

Mr. Santos: Monsieur le président, consistent with past practices in this committee, I move that we hear the presenter 15 minutes and an additional 5 minutes for questions from members of the committee.

Mr. Chairperson: Thank you. It does not have to be a motion, but if it is a motion it has to be in writing. Is it the will of the committee to follow these recommendations? [Agreed] Presenters

will have 15 minutes maximum to make their presentation and 5 minutes to answer questions, if they so desire, from members of this committee.

How late does the committee wish to sit this evening?

Mr. Santos: I suggest again, Mr. Chair, that we stay as long as there is business to be done. When it is done, the committee rise.

Mr. Chairperson: It has been suggested that we stay until all the presenters have presented and all the bills have been passed clause by clause. Is that agreed? *[Agreed]*

* (18:40)

**Bill 22—The Public Schools Amendment Act
(Francophone School Division
Governance Structure)**

Mr. Chairperson: We will now proceed with the presentations beginning with Bill 22, The Public Schools Amendment Act (Francophone School Division Governance Structure); Loi modifiant la Loi sur les écoles publiques (structure de gestion de la division scolaire de langue française). M. Claude Lemoine, representing DSFM n° 49, please take the podium.

Just before you begin, I would like to remind committee members that we have simultaneous translation. The devices are on the table in front of you.

Perhaps you could introduce both of the people at the podium and let us know who is speaking for the purposes of recording in Hansard.

Mr. Claude Lemoine (Division scolaire franco-manitobaine n° 49): Bonsoir, chers membres du comité législatif. Je m'appelle Claude Lemoine.

Translation

Members of the legislative committee, good evening. My name is Claude Lemoine.

Mr. Chairperson: Excuse me. I need to know if you are presenting together and if you are both representing the DSFM.

Mr. Lemoine: Just myself, moi-même. Seulement moi.

Translation

Myself. Just me.

Mr. Chairperson: Okay, please proceed.

Mr. Lemoine: Alors, bonsoir encore. Je m'appelle Claude Lemoine. Je suis le vice-président de la Commission scolaire franco-manitobaine. Je suis accompagné aujourd'hui de M. Léo Robert, directeur général de la Division scolaire franco-manitobaine, ainsi que plusieurs autres membres de la Commission scolaire franco-manitobaine.

Est-ce que vous voulez les copies de la présentation? Nous avons seulement 14 copies.

Translation

Once again, good evening. My name is Claude Lemoine. I am the vice-president of the Franco-Manitoban school board. I am accompanied by Mr. Léo Robert, the superintendent of the Division scolaire franco-manitobaine, as well as several other members of the Franco-Manitoban school board.

Do you want copies of the presentation? We have only 14.

Mr. Chairperson: We will make more.

Mr. Lemoine: Okay. Merci.

Alors c'est en octobre 1998 que la Division scolaire franco-manitobaine affirmait la nécessité de revoir sa structure de gouverne et recommandait au ministre de l'Éducation (M. Caldwell), de la Formation professionnelle et de la Jeunesse la mise sur pied d'un processus de révision de la structure politique et du processus électoral au sein de la division scolaire.

Mandaté par le ministre, M. Norbert Cenerini déposait en mai 2001 son Rapport de la revue indépendante de la structure politique et du processus électoral de la Division scolaire franco-manitobaine. Ce rapport présente une série de 11 recommandations visant à corriger

certaines lacunes de la structure et du processus politiques de la DSFM et propose notamment des changements importants dans la nature du palier régional.

Le ministre nous a ensuite demandé de lui indiquer la réponse des élus au rapport Cenerini. La CSFM a établi un processus par lequel les commissaires, les représentants régionaux et les présidents des comités scolaires ont étudié à fond ce rapport lors de deux rencontres consacrées à cette fin, tenues les 13 et 14 octobre 2001 et le 30 novembre, 1^{er} et 2 décembre 2001. De plus, un groupe de travail formé de huit personnes parmi ceux-ci s'est rencontré les 9, 10 et 11 novembre 2001 afin d'approfondir la réflexion.

Les participants aux rencontres, chefs de file de la DSFM, proposent des améliorations au système actuel, basées sur l'expérience acquise et sur les nombreux apprentissages qui ont émergé au sein de la communauté et au sein de la DSFM depuis sa fondation. Les recommandations suivantes sont issues d'un large consensus parmi les élus et les présidences des comités scolaires de la DSFM durant les rencontres. Elles sont le fruit d'une réflexion approfondie s'inscrivant dans un processus qui s'est penchée sur plusieurs modèles possibles de gouverne pour le système scolaire franco-manitobain.

C'est donc riche d'une expérience de huit années de gestion du système scolaire franco-manitobain et fort d'une tradition hautement démocratique que la Commission scolaire franco-manitobaine se présente devant vous aujourd'hui pour partager ses réactions et recommander certaines modifications au Projet de loi 22.

Premièrement, le paragraphe 21.9(1) du projet de loi prévoit l'abolition des comités régionaux tels qu'ils existent présentement. Le paragraphe 21.9(1) tel que proposé se lit comme suit: "La commission scolaire de langue française peut constituer un groupe consultatif pour chaque région de la division scolaire de langue française."

La Commission scolaire franco-manitobaine recommande le maintien du palier régional de nature politique comportant des représentants

élus à ce palier. Chaque comité régional serait composé d'un représentant élu par école de la région. La réalité franco-manitobaine, ainsi que la dispersion géographique de notre clientèle, requiert trois niveaux de gestion: local, régional et provincial. Il faut assurer un équilibre judicieux entre les préoccupations d'ordre régional et le bien commun du système francophone provincial, tel que préconisé dans le rapport Gallant.

L'existence des régions au sein de la DSFM est née d'un compromis entre la nécessité de répondre aux aspirations variables de chacune des régions et de chaque école à l'intérieur d'une région et la volonté politique d'agir en commun pour donner vie aux droits découlant de l'article 23. Il ne s'agissait pas d'une nécessité administrative. Certaines questions d'ordre régional sont de nature éminemment politique et demandent qu'un corps élu régional puisse s'y intéresser, chercher l'atteinte de consensus et formuler des recommandations avant que la CSFM en arrive à une décision finale.

Le maintien du palier régional élu permet une flexibilité importante au niveau de la délégation potentielle de pouvoirs. De plus, le palier régional permet de maintenir un lien beaucoup plus direct et efficace entre chaque communauté scolaire et la commission scolaire.

Le paragraphe 21.9(1) du Projet de loi 22 indique aussi que la commission scolaire de langue française peut constituer. Ainsi construit, le paragraphe permet l'établissement d'un groupe consultatif mais ne l'oblige pas. La commission scolaire recommande que le paragraphe soit modifié dans le but de créer une obligation de créer ces groupes consultatifs. La commission scolaire recommande donc d'enlever le verbe "peut" et le remplacer par le verbe "doit". Ce changement assurerait une permanence aux groupes consultatifs et assurerait aux parents un équilibre judicieux entre les préoccupations d'ordre régional et le bien commun de tout le système francophone provincial, tout en permettant un lien beaucoup plus direct et efficace entre les communautés scolaires et la commission scolaire.

Deuxièmement, le projet de loi prévoit l'élection des commissaires directement par l'électorat. La Commission scolaire franco-

manitobaine se réjouit de cette décision et en recommande l'adoption. L'élection des commissaires par suffrage direct des parents est un principe auquel souscrivent d'emblée l'ensemble des élus. Les commissaires étant imputables aux parents électeurs de la région, les problèmes de reddition des comptes prévus au moment de la création de la DSFM dans le rapport Gallant ne se posent plus, puisqu'on élimine la séparation d'un palier qui existe entre l'électorat et les commissaires.

Je tiens à souligner que plusieurs modèles de gouverne ont été analysés. Les élus soulignent que le choix d'un modèle résulte nécessairement de compromis entre les divers objectifs poursuivis. Tout comme l'a fait le Rapport Gallant en 1993, les élus ont eu à déterminer parmi les limites inhérentes à chacun des modèles étudiés, lesquelles constituent des compromis acceptables en fonction de principes fondamentaux établis depuis les débuts de notre système scolaire.

En troisième lieu, la Commission scolaire franco-manitobaine tient à souligner son désaccord avec le paragraphe 21.37(3): Autres électeurs, du Projet de loi 22. Le paragraphe précédent, le paragraphe 21.37(2), définit clairement dans la loi les critères à rencontrer pour être habilité à voter dans l'élection des commissaires de la division scolaire de langue française. Par contre, le paragraphe 21.37(3) indique que "autres catégories d'ayants droit" peuvent être habilitées à voter simplement en modifiant les règlements. La Commission scolaire franco-manitobaine est d'avis que toutes les catégories d'ayants droit doivent être clairement identifiées et décrites dans la loi scolaire, et non pas laissées à une modification d'un simple règlement.

Nous voulons rappeler au gouvernement que la gestion scolaire par les parents francophones est tout de même un droit constitutionnel et mérite d'être protégée par la loi scolaire du Manitoba. Nous vous recommandons fortement d'éliminer le paragraphe 21.37(3) du projet de loi, puisque le paragraphe 21.37(2) définit clairement les qualités requises des électeurs.

* (18:50)

Finalement, la commission scolaire veut souligner sa grande déception face au constat

que le Projet de loi 22 ne change rien dans la situation actuelle où rien n'empêche une division scolaire cédante d'établir ou d'offrir un programme français tel que défini dans la Loi sur les écoles publiques. Ainsi, les divisions scolaires cédantes qui sont responsables de l'éducation des élèves du groupe majoritaire viennent en somme s'interposer dans le droit de gestion de l'enseignement destiné à la communauté minoritaire. Même si cette approche a pu être une solution politique à court terme dans certaines régions, il n'en reste pas moins qu'elle ne saurait être une solution viable à long terme. Il appartient à la communauté francophone de gérer l'enseignement offert à ses enfants.

Dans le Renvoi manitobain portant sur la Loi sur les écoles publiques de 1993, la Cour suprême du Canada s'exprime de cette façon, et je cite: Il faut éviter toutes dispositions et structures qui portent atteinte, font obstacle ou ne répondent tout simplement pas aux besoins de la minorité; il faudrait examiner et mettre en œuvre des mesures qui favorisent la création et l'utilisation d'établissements d'enseignement pour la minorité linguistique. Par exemple, si la province décide d'offrir aux parents du groupe linguistique minoritaire un choix d'écoles où sera dispensée l'instruction dans la langue de la minorité, elle ne doit pas la faire aux dépens de services offerts par un conseil scolaire de langue française, ni empêcher ce conseil d'offrir des services reposant sur le principe d'égalité que je viens de décrire. De même, il ne serait pas loisible au gouvernement du Manitoba de délimiter les districts scolaires de façon à empêcher indûment un tel conseil d'attirer des élèves.

D'après nous, il est donc clair que la loi actuelle qui donne les outils nécessaires aux divisions scolaires anglophones pour s'ingérer dans l'enseignement destiné aux enfants de la minorité linguistique et culturelle ne respecte pas l'article 23 de la Charte canadienne des droits et libertés. Nous recommandons fortement au gouvernement du Manitoba de modifier sa loi scolaire afin de la rendre conforme à l'article 23 de la Charte canadienne des droits et libertés, ainsi qu'à toute la jurisprudence entourant cet article.

Je suis confiant que vous allez sérieusement considérer ces recommandations et je vous remercie de votre attention.

Translation

It was in October 1998 that the DSFM confirmed the necessity of reviewing its governance structure and recommended to the Minister of Education, Training and Youth (Mr. Caldwell) the establishment of a process to review the political structure and electoral process within the school division.

Mandated by the minister, Mr. Norbert Cenerini in May 2001 presented his Independent Study of the Division scolaire franco-manitobaine n° 49: Governance Structure and Election Process. This report presented a set of 11 recommendations intended to correct certain deficiencies in the structure and political process of the DSFM and, in particular, proposed significant changes in the nature of the regional level.

The minister then asked us to indicate to him the reaction of elected representatives to the Cenerini report. The CSFM set up a process whereby trustees, regional representatives and chairs of school committees examined this report in depth at two meetings held for this purpose on October 13 and 14, 2001, and on November 30, December 1 and 2, 2001. In addition a working group of eight persons met on November 9, 10 and 11, 2001, to pursue the examination.

The participants at the meetings, leading figures in the DSFM, proposed improvements to the current system based on the experience and considerable learning that has emerged in the community and at the DSFM since its creation. The following recommendations are the result of a broad consensus among the elected representatives and the chairs of DSFM school committees during the meetings. They are the product of deep thought during a process that examined several possible governance models for the Franco-Manitoban school system.

Thus it is on the basis of eight years of experience in the management of the Franco-Manitoban school system and on the strength of a highly democratic tradition that the Franco-Manitoban school board comes before you today to share its reactions and to recommend certain changes to Bill 22.

Firstly, subsection 21.9(1) of the bill provides for the abolition of the regional committees as

they currently exist. Subsection 21.9(1) as proposed reads as follows: "The francophone school board may establish an advisory group for each region of the francophone school division."

The Francophone school board recommends that the regional political level, including representatives who are elected at this level, be maintained. Each regional committee would be composed of one elected representative per school from the region. The Franco-Manitoban reality as well as the geographical dispersion of our clientele requires three levels of management: local, regional and provincial. A judicious balance must be ensured between regional concerns and the common good of the provincial Francophone system, as recommended in the Gallant report.

The existence of regions within the DSFM was born of a compromise between the necessity to respond to the variable aspirations of each region and each school within a region and the political will to act in common to give life to the rights flowing from section 23. This was not an administrative necessity. Certain matters of a regional order are eminently political in nature and require that a regional elected body be able to get involved in them, seek consensus and formulate recommendations before the CSFM comes to a final decision.

Maintaining the elected regional level makes possible significant flexibility in regard to possible delegation of powers. Furthermore the regional level makes it possible to maintain a much more direct and efficient link between each school community and the school board.

Subsection 21.9(1) of Bill 22 also indicates that the Francophone school board may establish. As formulated, this subsection allows for the establishment of an advisory group but does not make it obligatory. The school board recommends that this subsection be changed so as to create an obligation to establish these advisory groups. The school board therefore recommends that the verb "may" be removed and replaced by the verb "must". This change would ensure the permanence of the advisory groups and would assure parents that there is a judicious balance between regional concerns and the common good of the entire provincial

Francophone system, while at the same time making possible a far more direct and efficient link between the school communities and the school board.

Secondly, the bill provides for the election of trustees directly by the electorate. The Francophone school board is pleased with this decision and recommends its adoption. The direct election of trustees by parents is a principle to which all elected representatives subscribe. Since the trustees are answerable to the voting parents of the region, the problems of accountability foreseen in the Gallant report when the DSFM was created will no longer occur because the separation created by a level between the electorate and the board is being eliminated.

I wish to emphasize that several governance models were analyzed. The elected representatives emphasize that the choice of a model is necessarily the result of compromises among the various objectives being pursued. Just as was done in the Gallant report in 1993, elected representatives had to determine the inherent limits of each of the models examined and which constituted acceptable compromises in relation to the fundamental principles that have been established since our school system began.

Thirdly, the Francophone school board wishes to indicate its disagreement with subsection 21.37(3) of Bill 22: Additional electors. The preceding subsection 21.37(2) clearly defines in law the criteria to be met in order to be entitled to vote in an election of trustees of the Francophone school division. However, subsection 21.37(3) indicates that "any other class of entitled persons" may be entitled to vote simply by changing the regulations. The Francophone school board is of the opinion that all categories of entitled persons must be clearly identified and described in the schools act and not left merely to the amendment of a regulation.

We wish to remind the Government that schools governance by Francophone parents is a constitutional right and deserves to be protected by the schools act of Manitoba. We strongly recommend that subsection 21.37(3) of the bill be eliminated, as subsection 21.37(2) clearly defines the required characteristics of electors.

Lastly, the school board wishes to indicate its great disappointment at the fact that Bill 22 changes nothing in the current situation in which there is nothing stopping a provider school division from establishing or offering a French program as defined in The Public Schools Act. Thus, provider school boards that are responsible for the education of pupils from the majority group can intrude on governance rights concerning instruction for the minority community. Although this approach may have been a short-term political solution in certain regions, it cannot be a viable long-term solution. It is up to the Francophone community to manage the instruction provided to its children.

In the Reference re Public Schools Act of 1993, the Supreme Court states as follows, and I quote: Arrangements and structures which are prejudicial, hamper, or simply are not responsive to the needs of the minority, are to be avoided and measures which encourage the development and use of minority language facilities should be considered and implemented. For instance, if the province chooses to allow minority language parents a choice of school for instruction in the minority language, this should not be at the expense of the services provided by a French-language school board or hamper this board in its ability to provide services on a basis of equality as described above. Likewise, it would not be open to the Government of Manitoba to carve school districts which unduly hampered such a school board from attracting students."

So, in our opinion, it is clear that the current law that provides the tools necessary to Anglophone school divisions to interfere in the instruction of children of the linguistic and cultural minority does not respect section 23 of the Canadian Charter of Rights and Freedoms. We strongly recommend that the Government of Manitoba change its schools act so that it complies with section 23 of the Charter as well as with all the jurisprudence relating to this section.

I am confident that you will seriously consider these recommendations and I thank you for your attention.

Hon. Jon Gerrard (River Heights): Je voudrais vous remercier pour votre présentation. Une des

questions que les gens me posent, c'est la question des représentants pour les petites écoles comme Saint-Lazare et Saint-Laurent. Je voudrais vous demander si dans les modifications qu'on voit dans cette loi, est-ce qu'il y a une représentation de façon satisfaisante pour Saint-Lazare et Saint-Laurent, par exemple.

Translation

I would like to thank you for your presentation. One of the questions people ask me is that of representatives for the small schools, such as those of Saint-Lazare and Saint-Laurent. I would like to ask you whether, in the amendments that we see in this act, there is satisfactory representation for Saint-Lazare and Saint-Laurent, for example.

Mr. Lemoine: L'inquiétude que nous avons avec le projet de loi tel que présenté, nous aimerions voir la loi un peu plus forte en s'assurant qu'il y a un représentant régional par école, qui assurerait que chacune de ces petites écoles aurait une représentation. Dans le présent projet de loi, quant à nous, la terminologie n'est pas assez forte. On dit qu'on peut. Nous autres, on demande qu'on doit avoir des comités régionaux, ainsi que, avec ça, des représentants régionaux pour chacune des écoles, ce qui va assurer une représentation pour chacune de nos écoles, les petites écoles.

Est-ce que je peux permettre à M. Robert aussi de répondre?

Translation

The concern we have with the bill as presented is that we would like to see the law strengthened a little by ensuring that there is one regional representative per school, which would ensure that each of these small schools would be represented. In the current bill, in our opinion, the terminology is not strong enough. It says "may." We are asking for obligatory regional committees and, with that, regional representatives for each school, which will ensure representation for each of our schools, the small schools.

May I allow Mr. Robert to respond as well?

Mr. Chairperson: We need leave of the committee to have the second person speak. Is there leave? *[Agreed]* And we need your name before you speak.

Mr. Léo Robert (Directeur Général, Division scolaire franco-manitobaine n° 49): Léo Robert. Je pense aussi au point de vue des petites communautés, si les élections sont par les parents directement de certains commissaires dans les petites communautés, il est très peu possible ou probable que ces petites communautés-là puissent élire un commissaire à la commission scolaire à cause du nombre d'individus qui voteraient dans cette communauté-là.

Alors en maintenant les comités régionaux, on s'assure d'avoir une représentation élue pour ces petites communautés-là aussi bien que les grandes communautés qui ont plus de chances d'avoir des commissaires.

Translation

Léo Robert. I think also from the point of view of small communities, if parents directly elect certain trustees in the small communities, there is very little possibility or probability that these small communities can elect a trustee to the school board because of the number of people who would vote in that community.

So by maintaining the regional committees we ensure an elected representative for these small communities, as well as for the large communities, which are more likely to have trustees.

Mr. Chairperson: I am sorry. The translator is having difficulty. I wonder if you could repeat your answer a little more slowly please, a lot more slowly. Thank you.

Mr. Robert: C'est un de mes défauts. J'ai tendance à parler trop vite.

Dans la structure actuelle avec l'élection directe des commissaires, les grandes communautés ont plus de chances d'avoir un commissaire qui les représente à la commission scolaire. Les petites communautés comme Saint-Laurent, Saint-Lazare, Laurier, Saint-Léon, ont beaucoup moins de chances à cause du nombre d'électeurs qu'il y aurait dans ces communautés-là, d'élire un commissaire qui les représenterait à la commission scolaire. C'est un des raisons pourquoi la Commission scolaire recommande de maintenir les comités régionaux pour assurer une représentation élue de ces petites communautés-là aussi bien que les grandes.

Translation

It is one of my faults. I tend to talk too quickly.

Under the current structure with direct election of trustees, the large communities have more opportunities to have a trustee representing them on the school board. The small communities, such as Saint-Laurent, Saint-Lazare, Laurier, Saint-Léon, have much less opportunity, because of the number of electors in those communities, to elect a trustee who would represent them on the school board. This is one of the reasons why the school board recommends that the regional communities be maintained so as to ensure elected representation for these small communities as well as for the large ones.

Hon. Drew Caldwell (Minister of Education, Training and Youth): Merci. Un commentaire. Claude, Léo, merci pour votre présentation.

C'est un plaisir de travailler avec la Division scolaire franco-manitobaine dans le développement des écoles francophones du Manitoba. Vos avis ici nous sont très importants et la considération du comité—

Translation

Thank you. A comment. Claude, Léo, thank you for your presentation.

It is a pleasure to work with the Franco-Manitoban school division in the development of the Francophone schools of Manitoba. Your views here are very important and the consideration of the committee—

English

—will be managed carefully and reflectively. Merci beaucoup.

Mr. Chairperson: Thank you for your presentation.

Mr. Lemoine: Merci.

Mr. Robert: Merci.

Mr. Chairperson: The next presenter is Mr. Maurice Auger, representing the Comité régional urbain. Not here. Okay, we will go to the next out of town—well, sorry. His name has been

called once. We will call his name a second time later.

**Bill 44—The Provincial Police Amendment
(Aboriginal Policing) Act**

Mr. Chairperson: We are going to proceed to the other out-of-town presenters. The first name is Marjorie Prince, private citizen. Please come to the podium.

Ms. Marjorie Prince (Private Citizen): My name is Marjorie Prince.

Mr. Chairperson: Do you have written copies of your presentation?

Ms. Prince: My name is Marjorie Prince. I am the interim chief for Dakota Tipi First Nation. I was elected on December 3, 2002, to bring section 74 to Dakota Tipi. I am here today to talk about the policing services in our community.

Mr. Chairperson: Excuse me. We are having difficulty hearing you. I wonder if you could just point your mike down a little bit or move it closer. Thank you.

Ms. Prince: I am here to talk about the policing problems we are having in our community. The previous chief and council had signed an agreement with the Dakota Ojibway Police Service without consent of the band members. This agreement was signed without having a duly convened meeting with the band members and there was no meeting to discuss whether or not the band members wanted to have the Dakota Ojibway Police Service in our community. Because of the numerous problems we have been having, and I had stated in August before an agreement was signed—I have a letter to follow it up—asking that we attend the meeting, and there was never a meeting held. We did not agree with Mr. Pashe's decision, the previous chief, and we wanted to have a say in that meeting.

* (19:00)

I would like to read a letter from a band member. He is a traditional healer. He asked me to read a letter on his behalf. This letter is to LERA.

He states: I am writing your agency to complain about the conduct of the Dakota Ojibway

Police Service and several of its members and their actions that lead up to my arrest and detention on January 9, 2002, something that I believe was politically motivated and enacted upon by this policing agency with their full knowledge and understanding.

On January 9, 2002, at approximately 11:30 a.m., members of the Dakota Ojibway Police Service arrived at my place of residence on the Dakota Tipi First Nation. When I went outside to speak with them, I noticed one of them coming out of my garage. They approached me and said that they wanted to take me to their office for questioning. This is the same thing that they told my wife when she asked where they were taking me. They then took me to the Portage la Prairie RCMP detachment, where they placed me under arrest for the shootings that took place on Dakota Tipi First Nation on January 1, 2002.

I was charged with possession of a weapon, careless use of a firearm and mischief under \$5,000. I was then allowed to contact a Legal Aid lawyer who advised me not to say anything once she heard what I was charged with. She then asked to speak with the arresting officer. The officer then told her that they were only going to question me, then release me. When I spoke with her again, she told me that they were going to release me once they had questioned me. She also stated that, since they were going to release me, her presence was not needed. I was then lodged in the RCMP cells for approximately 4.5 hours. They then took me before a magistrate to have me remanded into custody. I was not afforded another chance to talk to the Legal Aid lawyer, which I could not do anyway, because it was after business hours.

Once they had me before a magistrate, they told me that they opposed my release. They also told him that they had reason to believe that I would burn down several houses and there would be more shootings if released. The magistrate said that he would remand me into custody and also opposed my release the following morning, based on their testimony.

I was then lodged overnight in the cells at the Portage RCMP detachment. During my stay there, I was given a rotten sandwich for dinner. When I told the officer that the meat in it was

actually green, he got mad and said that, if I did not eat it, I would not be fed anything else. I was also denied a blanket and forced to sleep in a cell that they kept turning the air conditioning on and off every hour until the morning.

After several hours of calling the local DOPS detachment, my wife was finally able to speak to one of the officers and find out what was happening to me. They told her that they had to speak with the Crown prosecutor, who said, based on the two statements from Gary Pashé and Kevin Pashé, that they had enough evidence to pick me up and charge me with the shootings. What they did not tell her was that the Crown had also instructed them to release me after questioning me.

In the morning, I was shackled hand and foot and taken to the courthouse. I was also led into the courtroom this way. Once my name was called, I was led into the courtroom and the charges against me were read. The Crown said he would not oppose my release providing I abide by a number of conditions. One of the conditions was that I not be able to return to Dakota Tipi First Nation.

A plea was never entered on these charges. The Crown later stated that he was very surprised to see me in custody. He also said that he had received a call from the chief of Dakota Tipi the morning of the court, demanding that I be held in custody and that he did not want me back on the reserve. The four people that were with me when the shots were fired went to the Crown and asked if they could give their statements to the RCMP because they did not trust DOPS to act on them. The RCMP agreed to take the statements at the request of the Crown.

On February 3, 2002, the Crown entered a Stay of Proceedings and all three of the charges against me. In an interview given later in the day, the Crown said that the charges are dropped because of some major credibility issues with DOPS witnesses. She further stated that her office had instructed DOPS to release me after arresting me. However, they chose not to comply.

A spokesperson for DOPS. said that he had asked the arresting officer why I was held so

long. The officer said that it took some time to complete the paperwork, which was a pretty lame excuse. If they had any intention of releasing me that day, a promise to appear, or a recognizance would have been sufficient. According to the arresting officer, they had already spoken with the Crown a previous day and had plenty of time to prepare the paperwork prior to arresting me the following day. In total, they had me in their custody for probably six and a half hours before taking me before a magistrate.

A good officer, even better, a detachment commander, would have never let such a weak case out of the office, much less send it to court without further investigation. Do these officers not take any pride in their work? The only reason that the Crown was forced to act on it was because of the seriousness of the charges. The Crown was already familiar with the character of the two witnesses and stated that he was not very happy with the DOPS officers. I believe these officers knew exactly what they were doing and were reacting to the pressure from the reserve to charge someone. I also believe I was targeted because of my stand against the current chief and council.

There had been a number of incidents where DOPS has failed to follow up on complaints. The most serious of them is the burning of the recreation building. Several key witnesses have never been interviewed. Our people believe it is because the two people responsible for setting the fire are supporters of the chief. The first one is a band constable and the other being one of the two councillors for the reserve. As a result of the inaction of DOPS, the witnesses have taken it upon themselves to contact the Office of the Fire Commissioner who agreed to travel to the city of Portage la Prairie to take their statements.

DOPS have only been policing the Dakota Tipi First Nation for a period of six months and have already accumulated a number of complaints against them. The majority of the band membership believe that the only reason why the chief and council brought them into the reserve is because of their history of giving into the pressure of the chief and council that control them. Although they do not have a puppet police commission in place, they do have a puppet

police commission in place. Ultimately, it is the chiefs that sit on the board of directors for the Dakota Ojibway Tribal Council that decide its fate and that of its officers.

The decision to replace the RCMP with DOPS was never brought before the membership of the reserve and was something that the chief decided on his own. This happened after the RCMP charged him with numerous counts of spousal abuse. They also accused him of playing politics like he did in an interview after he was informed that the charges against me were dropped. He also accused the Crown of playing politics.

As a result of being charged, not being able to return to my home for approximately four weeks, both my family and I have suffered physically, emotionally and mentally. I cannot begin to even imagine what effect this event has had on my son and daughter, to see their father being taken away in the back of a police car and charged with a crime he did not commit, then having to watch him being led into the courtroom in shackles like some kind of animal. My wife is the one who has suffered the most. She is the one who had to shoulder most of the burden while I am forced to live off the reserve. My reputation as a traditional healer and spiritual leader has suffered as a result of those trumped-up charges.

Within hours of my being charged, people as far away as the west coast knew of my arrest, and within days it spread into the United States. Word travels fast on the Internet. I make my living as a traditional healer because I could not return to my residence where I practice the various ceremonies for the people. I could not make a living and I have suffered financially. People from Saskatchewan, Manitoba and Ontario travel to my home for healing. I generally travel to Alberta, B.C. and the United States, if needed, because of the distance.

* (19:10)

I believe, because of the chief and council playing dirty politics, I was targeted to take the fall for the shootings. I also believe that DOPS was fully aware of the situation and acted on the false accusations knowingly. DOPS never had

any intention of releasing me despite instructions from the Crown. If they did, they could have released me on a promise to appear, or on a recognizance, instead of taking me before a magistrate during the dinner hour when I did not have access to a lawyer; and two, they lied to the Legal Aid lawyer that I initially contacted; and three, they lied to the magistrate in order to have me remanded in custody.

They did not have enough evidence to make a real case in the first place. A firearm was never produced; there was never any proof that I owned or had access to one. All they had were the statements of two very troubled individuals that would tell anything for the right price; that because of the political situation on the Dakota Tipi First Nation, they are catering to the current chief and council in order to protect their funding; that despite knowing that the current chief has several outstanding warrants for his arrest, they will not act on them.

I would also like to know why, and how, they have managed to get hold of my criminal record. I applied for, and received, a pardon for the past convictions in 1992.

I do not believe they had the right to enter my garage without permission. I had different people search the garage and my yard, fearing they might have planted the evidence needed to make the case. One of their witnesses did produce a shell casing that he said he took from me. What happened to that? Will the two witnesses be charged for the false statements made against me?

Despite knowing that the band constable is one of the main suspects in the case where someone set the fire to the recreation building, he is still allowed to access their office and vehicles.

Although all of the charges against me have been dropped, DOPS officers are still trying to pin the shootings on me. They have now resorted to harassing my friends.

The people of Dakota Tipi have suffered under the leadership of a chief that used intimidation and violence to enforce his will against the people for more than 20 years. Then,

they were subjected to the brutality of the Manitoba Warriors for four more years. Now, they are being further victimized by the same chief's personal police force, the Ojibway Police Service.

A band member said that he had seen several members of DOPS acting as the chief's personal security body guards at a recent Assembly of Manitoba Chiefs' meeting held in Winnipeg, Manitoba, in late January 2002. However, we have not had the time to confirm this as of yet. I have spoken out against the current chief and council—

Mr. Chairperson: Excuse me, Ms. Prince. I apologize for interrupting you, but you may not have been in the room when this committee agreed to time limits of 15 minutes for presentation and 5 minutes—

Ms. Prince: I am just about on the last paragraph.

Mr. Chairperson: Okay, so we will just ask you to wind it up. Thank you.

Ms. Prince: I have spoken out against the current chief and council of the Dakota Tipi First Nation. I have encouraged the people of Dakota Tipi to put their complaints and concerns about the Ojibway Police Service in writing and to send them to the Justice Minister of Manitoba. Now I find myself being unfairly targeted in order to silence my opposition of the chief and council of Dakota Tipi and its personal police force.

All of the events leading up to my arrest and release are true to the best of my knowledge.

Sincerely, Keith Pashe, traditional healer for Dakota Tipi First Nation. Thank you.

I will turn the mike over to Diana Traverse.

Mr. Chairperson: Yes, can we get your name before you speak?

Ms. Diana Traverse (Private Citizen): My name is Diana Traverse. Good evening.

Mr. Chairperson: We are going to give you 15 minutes with a little bit of latitude for the two of

you, so we have got less than 2 minutes left. Okay? We have also got two people that want to ask questions.

Floor Comment: She is on the list.

Floor Comment: It is separate.

Mr. Chairperson: If your name is on the list, you get 15 minutes entirely to yourself.

Ms. Traverse: Okay, thank you.

Mr. Chairperson: But there may be questions of Marjorie Prince. I know that Mr. Gerrard had his hand up. Does Ms. Prince want to answer questions?

Ms. Prince: Yes.

Mr. Chairperson: Okay. Mr. Gerrard has a question.

Hon. Jon Gerrard (River Heights): Your presentation was a very moving one and very disturbing one. The bill that we are looking at would provide for the establishment of Aboriginal policing services. Clearly, you have raised some major concerns with the Aboriginal policing service as it exists in the Dakota Ojibway policing service. Do you think that this bill should not be proceeded with, or should it be changed in a major way so that the policing service can be more fair and just and effective?

Ms. Prince: I believe that the bill should be passed through all Dakota Tipi band members' involvement. It should be done through meetings and by vote by the band members. It should have a whole involvement of the band members of Dakota Tipi First Nation. That is why I am speaking on their behalf, that they have to be addressed also of what is going on with the policing on our reserve.

Mr. Gerrard: What I am understanding you to say is that the bill should include provisions which would ensure that there is a democratic vote in, for instance, Dakota Tipi to provide for the mechanism for setting up the policing service in the community.

Ms. Prince: Yes.

Mrs. Joy Smith (Fort Garry): I, too, found your presentation very compelling to listen to. This bill that we are addressing this evening is a bill, as you know, that does put Aboriginal police officers on the reserve. Could you give us some input in terms of the proposed commission in the bill that is set up for the police service? What aspects do you think would be very beneficial to ensure that the police officers on the reserve are not tied in to the political side of the chief and council, and things like that?

Ms. Prince: I believe, once again, that we would have to work closely with the community. The aspects of the politics and the policing do not tie in, and it all goes back into the community and what they want. Right now, today, the Dakota Tipi band members do not want Dakota Ojibway Police Service on their reserve, presently. This is what I am hearing from them, that we do not want it passed on our community, the bill.

Mrs. Smith: So, basically, you are saying that the police service absolutely has to be independent of all these political constraints within the reserve.

Ms. Prince: Yes.

Mr. Leonard Derkach (Russell): Thank you very much for that very moving presentation. I need to ask a question for clarification. What you told us in your presentation, as I understood it, is that the police force that is on the Dakota Ojibway reserve is now controlled exclusively by the chief. Is that correct?

Ms. Prince: Yes.

Mr. Derkach: Is it also true that there is some question as to whether or not this police force is independent and is, in fact, acting in the best interests of residents of the reserve?

Ms. Prince: Yes. I do not believe that it is acting on the best interests of the band members. There is a lot of unreported crimes that are going on that they are not investigating, so they are not acting in the best interests of the reserve.

Mr. Derkach: You are proposing that the legislation here be changed to allow for a referendum, if you like, on the reserve to allow

the residents of the reserve to have a say as to what form the police force should take on the reserve.

Ms. Prince: Yes, that is what I would like to see happen. The band members should have a say in their policing.

Mr. Chair: We have time for one more. Mr. Faurshou?

Mr. David Faurshou (Portage la Prairie): Marjorie, have you registered the complaints which you have aired with us this evening with anyone?

Ms. Prince: Yes, we have made complaints to Al Brolly as Deputy Justice, Jim Cockburn [*phonetic*], to LERA and to the Aboriginal policing commission.

Mr. Chair: One last question. Mr. Faurshou.

Mr. Faurshou: Seeing the complaints have been registered, has there been any action to address the complaints to date?

Ms. Prince: No, there has not been.

Mr. Chair: Thank you. Your time has expired. We can ask more questions of the other presenters.

A point of order? Mr. Gerrard.

* (19:20)

Mr. Gerrard: Just one point of clarification which may be important in the context. The Member for Russell on my right asked about the chief having responsibility for the police force, but it is my understanding there is a dispute over who is actually the chief. Is that correct?

Ms. Prince: That is correct. He claims that he is the chief, but I say I am the chief because I was elected in by vote with the band membership.

Mr. Chair: Thank you for your presentation. As Chair, I have a dilemma. I think we have Diana Traverse at the podium. Is that right? And second on the list of presenters is Edward Pashe. What is the will of the committee?

We will hear from Diana Traverse. Please proceed.

Ms. Traverse: Thank you. We are just standing here in support for Marjorie Prince.

Good evening. As you know, I am Diana Traverse. I am from Dakota Tipi.

On July 17, we boycotted the Bingo Palace of Dakota Tipi, the VLTs. Since early this spring, we have tried to meet with Steve Ashton and Diane McGifford and Eric Robinson to discuss the accountability and transparency of the VLTs and the gaming, the Bingo Palace of Dakota Tipi. They refused to meet with the band members and our interim chief, Marjorie Prince.

We met with the Aboriginal gaming commission in Winnipeg several times. At one of these, we found out when we had met with these people that ten percent of the revenues went to them and ninety percent went back into the community. Based upon the agreement that was signed with the chief and council with the band, they did not have any questions asked as to what happened with the revenue that was generated from the gaming that occurred from the businesses. So, on July 17, we took it upon our hands, based upon the decision of our interim chief; we boycotted it, and we sat there.

During the day, on July 17, the manager of the Bingo Palace came into the palace, into the business, and he told Marjorie Prince that he would close the Bingo Palace down until elections occurred in November, and he was willing to give the keys over to Marjorie Prince. We were waiting for the media to discuss what had transpired between the two of them. During this time, the Bingo Palace manager, Arden Pashe, his children, vandalized several of the vehicles that were outside in the parking lot. One of those vehicles was mine. One of the things that the boys stated in the media—they have always firmly addressed to the media—that we have been very violent and that we have been drug addicts and alcoholics and that we did not want to work. I told the bingo manager that. I said to him you say that we are violent.

DOPS was very unco-operative with us. They were trying to have us charged by being

there, by making our presence known, that we were boycotting it and we were picketing it outside. Basically, we closed the Bingo Palace down based upon his decision. They were trying to have us charged, and the Crown had contacted one of our lawyers, and based upon that, there was no basis for them to charge us. They were very rude, making comments to us, like saying that they are working, that we are not. When there were comments made, they would not act on them, if there were threats that were being made.

On Saturday, I was viciously attacked by the Bingo Palace manager and his daughter, as you can see in my face. The daughter of the Bingo Palace manager—he coaxed her on to beat me up. I was just trying to approach him to see when he was going to pay for the damage that he had done to our vehicles, because my father-in-law's was one of the vehicles that was damaged, and he cannot get his vehicle out of the garage. I was just trying to approach him regarding that, and I am being charged for that. I do not know why I am being charged. I tried contacting them on Saturday and they told me that they did not want to talk to me.

They came by Saturday evening, July 20, to my house, and he would not come into the house; the constable—Jonsky [*phonetic*] is his name—basically said that he had a warrant statement that he wanted to take from me. I tried to ask him what a warrant statement was and he would not explain it to me. We had a youth pastor there with us. The youth pastor told me not to make any statements to him because of the warrant statement. He told my mom to shut up, basically because my mom told him, why can you not do your job? I looked at the constable and I said, you know, like I want you to apologize to my mom. You know, because my mom was not out of context to tell him why do you not do your job, basically to investigate properly.

When I confronted him about the vehicles regarding the Bingo Palace manager's daughter, when she had smashed up the vehicles, he said to us that it was not a criminal matter, that it was a civil matter. Now, if I were to go someplace and smash somebody's window anywhere in Canada, or if I tried to gouge out somebody's

eye, I would be immediately removed and immediately charged for that. It is very frustrating to live in the community when you are trying to be a law-abiding citizen, to try and to raise your children in a safe environment, to try and raise your children to be law-abiding citizens and to be dictated by these individuals when we have fallen under the dictatorship of this leader based upon the band members in the community of Dakota Tipi. For the past 23 years, they have been under his dictatorship. As of September 1 of last year, he has removed the RCMP and put in place Dakota Ojibway Police Service.

We have sent several letters to AI Brolly regarding this, that there were many concerns in the community regarding the policing service of Dakota Ojibway policing, because they are very biased. They are very politically involved with the chief and council and various communities in Manitoba, and we were very concerned of that.

There are a lot of safety issues for the band members. We have been beaten by the chief and council's supporters, as you can see from my face. One of the things that he had said, the Bingo Palace manager, Arden Pashe, to his daughter: Get her in the face, get her in the face. You know, for a 15-year-old girl to be doing that to me, and for me to be charged for something that I did not do to her, it infuriates me.

There are a lot of situations in the community like, as Marjorie Prince has given you one example, and I am giving you another example. I am the ex of Dennis Pashe. I have been beaten by Dennis Pashe. This is one of the reasons why Dennis Pashe has brought in the Dakota Ojibway policing service because he was charged for domestic abuse. I will not tolerate violence in any way, shape, or form, may that be to be told shut-up by anybody, or may it be poked by the member of the Dakota Ojibway policing service. You have no right to be touched by anybody if it is not allowed by you.

We are taking a stand as members of parliament. We are voicing out our concerns to each and every one of you to put a stop to this policing service in our community because we do not want them in our community anymore, and we are taking a stand against that, and we

are crying out to you, as you can see by my face. I have no criminal record. I have tried to abide by the law. I am almost 40 years old and I tried to keep my record clean. For this, it is very devastating to find that I am going to be charged for something that I did not do, and for the other members in the community where they are being charged for stuff that they have not done, and they are being incriminated by it, and their voices are not being heard. It is the same dictatorship.

* (19:30)

Frank McKay. You have called Frank McKay on numerous occasions regarding our situation, and it has gone on deaf ears. With Diane McGifford, with Steve Ashton, with Eric Robinson, with various other members of parliament, we have voiced our concerns regarding the safety issues in our community. Is it going to take somebody to die in our community before somebody takes a stand, before something is done in our community? Our community is very small. This is Canada, and we have a right to voice our concerns. This is Canada 2002 where we have a right to say something.

I am a woman, and I am native, but I have no job and I am poor, but I am voicing out to you to have pity upon us to take action against this police force, because they are very politically involved in our community and something needs to be rectified. They need to be disciplined.

One of the agreements when they become a police officer is that they are to abide for peace in our community, to be able to provide law, to provide safety, and that is not being done.

That is all I have to say. Thank you.

Mr. Derkach: Thank you, Ms. Traverse, for this incredible presentation and confession. To do this in front of this group has to take a lot of courage, and, certainly, I think all members around this table would want to thank you for stepping forward.

I guess I want to ask you about the steps you took regarding the gaming commission. You took those steps because you felt that the monies

were not going to the places where they were meant to go, in terms of the profits. Is that correct?

Ms. Traverse: That is very correct. There is no transparency; there is no accountability. When we approached the Gaming Commission in Winnipeg, when we met with Al Brolly and Bill Dexter and a lawyer that they had, they told us they did not care. That was their words. They did not care what happened with that 90 percent of the revenue that was generated from the Bingo Palace or the VLTs. That was very alarming to us because that money was to go back into the community to go into a poverty relief fund, and/or create programs for the community, or into a religious organization, and that was not being done.

We were questioning the chief and council and also for the gaming commission people that were involved in Dakota Tipi, and they would not respond to us.

Mr. Derkach: Ms. Traverse, today I asked the Minister who is responsible for the Gaming Commission whether, in fact, the Dakota Tipi gaming commission was in compliance with the agreement between the Province and the Dakota Tipi First Nation.

The minister repeated his answer from July 16, in which he said that the gaming commission at Dakota Tipi was, indeed, in compliance. That means that, according to him, the monies are accounted for in a proper fashion, but you are telling us something entirely different today. Can I ask you, then, do you have any knowledge as to what is happening to the money from the gaming commission?

Ms. Traverse: Where are the programs? We live in the community. Where is that money going? One of the things is that it is supposed to go back into restoring the roads, restoring whatever, or youth programs. There are no youth programs in the community.

Mr. Chairperson: Mr. Derkach, I have three more people on the speakers' list, so I will come back to you later.

Next is Mr. Gerrard.

Point of Order

Mr. Derkach: On a point of order, Mr. Chair, and I hope this is not eating into the time of other questioners. But I have one more question to ask. I am not asking for unlimited time here, but we have a human rights issue in front of us. We have a woman who has been beaten by people on her reserve for a stand that she has taken in the name of justice. This committee, if it cannot do anything more than to listen to the concerns of these people, and, indeed, act on them as legislators should, then I wonder what we are all about.

Mr. Chair, I am only asking for one more question of this individual before I let the mike to someone else, if you would at least accommodate that.

Mr. Chairperson: Is it the will of the committee to give Mr. Derkach another question? *[Agreed]*

* * *

Mr. Derkach: Thank you very much, Mr. Chair.

Ms. Traverse, I asked the question of the Minister responsible for the Status of Women today about the impact that the aggressive gaming advertising has had on women in our province. The minister told me that there was no impact from the gaming advertisements and the increase in gaming and the addiction to gaming on the women of Manitoba because she has not had any calls.

The secretariat of the Status of Women has never had any phone calls or any complaints about gaming and the Province of Manitoba. Have you, or any of your members, ever contacted the Status of Women secretariat or the minister? You had indicated you had contacted the minister to meet with her about this issue.

Ms. Traverse: On several occasions we have made attempts to contact Diane McGifford. We went as far as Ottawa to voice our concerns. So far, it has gone on deaf ears. That is why we did what we did on July 17. We will continue to voice our concerns. If it is regarding our community and many other communities in Manitoba,

we will do that. We will take a stand because we do have our rights.

Regarding the gaming, it has severely affected a lot of native children in Manitoba, women and children. There are a lot of reasons as to why there is a lot of violence, a lot of alcohol, drug problems in our community. It relates to poverty.

Mr. Gerrard: Thank you for your presentation. Certainly, you are courageous to stand up and to come here and talk about the experiences you have been through.

I want to refer to one of the documents that Marjorie Prince brought in, which is a letter to Mr. Al Brolly, of July 19, 2001, which is a year ago. In this letter, Marjorie Prince says: I would like to express that our reserve needs full-time assistance from the RCMP at all times.

This bill that we are dealing with deals with establishing the framework for an Aboriginal police force. One either has an Aboriginal police force, or the RCMP, or a clear relationship between the two, so that, in fact, you would have protection from the RCMP, if necessary. So I would ask you what you feel would be the best solution for Dakota Tipi.

Ms. Traverse: The best solution that I feel that we have for Dakota Tipi as a band member and also as a supporter for Marjorie Prince, I feel that the policing service should be removed and that it should be disassembled altogether. If it is going to be intact as Dakota Ojibway Police Service, it should be severely, severely re-established as a policing service because they are very bias and very political. That needs to be rectified and they need to re-educated regarding this. Also their ethical conducts, that needs to be rectified. They cannot go on the way they are going on. They have no respect for the elders. They have no respect for the band members. They are only there for the chief and council. I am not speaking on behalf of Dakota Tipi and I am not speaking on behalf of any other community in Manitoba because I am the one that lives there and I am the one who sees them.

When you call them for assistance, they say, what do you want, what now, or they hang up on

you, or simply they just do not pick up the phone and you end up calling the RCMP. The RCMP says we have no jurisdiction over Dakota Tipi. It is frustrating when you have a prowler running around in your yard or in March where I had a prowler who literally smashed my sunroom and walked in, 5:30 in the morning, walked right into my bedroom with my children and myself when we were asleep—5:30 in the morning. It took me a good half hour before I got a hold of anybody, a half hour. By that time I could have been stabbed, beaten, raped. When the cop did finally arrive at the house, he was half awake. He was half awake. Where is the service? Where is the protection? They are being paid with your own tax money, with the people's tax money of Manitoba. That money needs to be accounted for, just like our revenues that are being generated in our community, it needs to be accounted for and to be placed in the appropriate places where they need to be placed in, not in somebody's pocket.

* (19:40)

Mrs. Smith: As you know, this bill, The Provincial Police Amendment (Aboriginal Policing) Act, puts police officers on the reserve under the watchful, supposedly watchful eye of the chief and council. Are you aware of that?

Ms. Traverse: I am very aware of that.

Mrs. Smith: The Attorney General of this province I would assume has been kept apprised of what has happened at the Dakota Tipi location, Gord Mackintosh.

Ms. Traverse: I am sorry.

Mrs. Smith: The Minister of Justice, Gord Mackintosh, is well aware—I notice from some of my documentation here, some of my letters are addressed to the Attorney General or the Minister of Justice, Gord Mackintosh, so he was fully aware of what was going on at Dakota Tipi.

Ms. Traverse: We have sent him the letters. We have not received any. What we have been doing, a lot of time it has gone on deaf ears, and it is just very frustrating for us. You see last year, as of August 6 of last year, we were cut off from all services, right down to welfare. We

were fired from our jobs. We were denied schooling, education, health care we were denied, because we took a stand against the chief and council. It goes back to the accountability and transparency. He told us that he was going to starve us out of the community.

Right from day one, we have been voicing out to various members of parliament. We had a protest march on August 1 of last year. We had called it a civil rights movement. When we came here—we left on August 1 from the Perimeter and we marched down all the way down Portage Avenue—we had passed various packages around members of parliament and also various women's organizations. We only had one member of parliament that came out to speak to us, and nobody came out to talk to us.

It is very frustrating when that happens, when you are trying to voice out, when you are trying to send letters to various members of parliament.

Mr. Chairperson: Last question goes to Mr. Faurshou.

Mr. Faurshou: Thank you very much, Mr. Chairman. Diana, you live—actually it is three short snappers, Mr. Chairman—you reside on the reserve yourself?

Ms. Traverse: That is right.

Mr. Faurshou: Do the Dakota Ojibway Police Service personnel, do they reside on the reserve?

Ms. Traverse: No, they do not. Constable Derek Smoke lives in, I believe, Southport. Another constable, I forget his name, he lives right in town. And the other members, I do not know exactly where they live. But the main detachment is out in Sandy Bay, which is about an hour and half away from the community. The RCMP is only five minutes away from the community.

Mr. Faurshou: Diana, have you seen or observed any change in the conduct of DOPS personnel since the change in management or administration of the Dakota Tipi to third-party management from Dennis Pashe and council?

Ms. Traverse: Dennis Pashe is still pushing his weight around in the community. He still states

that he is the chief of the community. There is no change of the police force. There is no change in their attitude towards us. It is very scary. Like for me, for example, I do not know if I am going to be charged. I have three little kids. I have a five-year-old, a three-year-old and a one-year-old. It just petrifies me because I do not want a criminal record, because I want to eventually provide for my children in a job where I can choose. With a criminal record, I will not be able to do that.

It is like as if they are dictating again. It is like as if they are suppressing us. They are pushing us down because of this leader. It is like as if we are being suffocated and there is nothing that we can do about it. That is why we are here today to voice out our concerns, for you to hear this. That is all I can say.

Mr. Chairperson: Thank you for your presentation. The next presenter is Mr. Edward Pashe.

Mr. Derkach: Is there a written presentation, or do these individuals have written presentations for us?

Mr. Chairperson: Normally, they provide a written presentation when they come to the podium. Ms. Traverse did not have a written presentation.

Please proceed. Do you have a written presentation?

Mr. Edward Pashe (Private Citizen): No, I do not. Because of circumstances, events that happened late last night on the reserve, the majority of us did not have time to start working on our presentations until this afternoon. Too busy dealing with some of the issues.

My name is Edward Pashe. I am a member of the Dakota Tipi First Nation. I am a member of the community. I am also a former member of the Dakota Ojibway Police Service.

Since I have moved back to the community, as of December of 2001, I got involved with what was going on in the community as a result of the arrest of the medicine man. I have seen how unfairly he was picked up and treated and

that he was actually being targeted because of his political beliefs.

Mr. Vice-Chairperson in the Chair

I tried numerous times to talk to Frank McKay, the Chief of Police for DOPS. The deputy chief, at that time, was Dave Scott. They would not acknowledge, they would not talk to me, return phone calls. Any form of communications with the officers, there was not any because they believed that if you were a member of the opposition or dissidents, as they called us, then they would not talk to us.

After the person who sat on the police committee for DOPS left our community, the interim chief and council appointed me as the member to replace and sit on that committee. It is only after that that I have been able to get some kind of communication going with DOPS as to say I am a member of their police committee.

One thing I would like to say about DOPS is that—any native policing agency, people are talking about them—as long as the chiefs of Manitoba or any province and their political bodies have a say in how that police force is run, it is never going to work because of all our politics and their abuse of power, which, in Dakota Tipi, is pretty easy to see. When one man can replace an entire federal police force just because he got charged, and to replace it with what we believe to be an inferior police force to do his bidding, they will listen to him.

I worked on many communities while I was a member of DOPS, and, if you rock the boat too much, you charge the wrong person, your career is very short with them. You charge the wrong person, a member of the chief and council's family, you got removed from that community and were placed somewhere else. I worked when it was called just DOTC police. Then I came back years later in '96 and worked till '99 when it was then referred to as DOPS. That was about 10 years in between working for them, and they did not change.

I would like to talk about some of the incidents that have been going on in Dakota Tipi that I have been trying to get answers to. There

have been a lot of major, I guess I call them major criminal acts committed against the people of Dakota Tipi. Yet, to this day, no charges have ever been laid against the people that have committed them.

* (19:50)

The first one Marjorie Prince made reference to is the recreation hall fire that was committed by the band constable and the former band councillor, Arden Pashe. The traditional healer of the community, Keith Pashe, tried to make a statement to DOPS about his knowledge of it, and they told him they did not have time, that they would come back and take it, and he is still waiting for them. So he took it upon himself to write the Chief of Police, Frank McKay, a letter stating the knowledge that he had of this incident. No action ever came of it. At a band meeting where Frank McKay was present, when he was asked about it, he denied ever receiving it. But later, after the meeting was over, he made reference to certain things that were included only in that letter.

Another incident that happened concerned the former chief, where he used his vehicle as a weapon to run into a 16-year-old boy. After he knocked the boy down with his vehicle, he got out and tried to fight with him. The boy managed to get away and was taken to the Portage General Hospital. Dennis then went over to the DOPS office and spoke with the members who were present at the time. They came out of their office, got into their vehicles and left the community and did not return till the next day. No charges have ever been laid in this incident either.

Probably, the most publicized one is the stabbing of the two men. It happened on June 15. Dennis Pashe, his two boys, and several wannabe gang members stabbed two men and then proceeded to beat them with various sorts of clubs. Even though Dennis and his boys, his wannabe gang members, they are all on various types of peace bonds, recognizances to keep the peace and be of good behaviour. When DOPS showed up, nothing was ever done about it. Those people are still walking around in our community today, which is one of the reasons why some of us do not have the time to do a

proper presentation, because of the events that were going on last night.

During that same incident, a young woman and her baby were also assaulted at that time, during that same incident, on June 15. Nothing has ever come of that yet.

On Saturday, July 19 or 20, one man was assaulted at what used to be called the Dakota Tipi gas bar. Dennis Pashe claims to have sold the reserve gas bar to one of his sons and one nephew. It now goes by the name of S & L gas bar. A man went over to purchase a pack of cigarettes early in the morning. He was assaulted by two men, one of the owners and his brother. When he tried to talk to DOPS about pressing charges, they told him that he could not press charges because it was a privately owned business. It was like their yard. We are telling him assault is assault. It does not matter where it happens.

To try and determine whether the sale of the gas bar was actually legal, we did ask him to open a file, an investigation. I took it upon myself to call the provincial sales tax to find out if there were any businesses registered under S & L. It turns out there is not, and they have no permits to sell gas or cigarettes. But they have been doing so for several months already.

I spoke to the deputy chief of DOPS this morning about the gunshots and the people running around last night, driving around, and asked him about what had been done about it. All he would tell me was that an officer did show up and speak with Dennis Pashe who told them that it was just a firecracker that went off. But all of us who live in the community have heard gunshots before, and that was no firecracker.

I think that is about all I have to say right now. I know I worked for DOPS before. I know what should and should not be done during an investigation. What these people are doing, you cannot even call it policing. They make so many comments like, we cannot charge the individual who assaulted you because this is a political matter. This is the type of comments we have to put up with from these people every day.

There is something happening on Dakota Tipi every day. We have been trying to settle everything down. We have been trying to work with the other side. But, every time they come up with a person who says they will work with us, something like last night happens where there is a carload of individuals riding around yelling and screaming at the houses saying you are all going to die tonight, and then gunshots go off. DOPS is never around. They are always either in Sandy Bay or Tim Horton's in town, in the city of Portage.

That is about all I have to say.

Mr. Chairperson: Thank you, Mr. Edward Pashe, for your presentation. Are there any members of the committee who have questions? In my list are Mr. Derkach, Mr. Gerrard, Mrs. Smith and Mr. Fauschou.

Mr. Derkach is the first one.

Mr. Derkach: Thank you for the presentation. I want to ask a question about the monies that, I guess, are transferred from the federal government to the reserve for social programs and health programs. My question has to do with people who require those dollars for welfare. We have read in papers where people from Dakota Tipi have to come into Winnipeg to the soup kitchens, if you like, because they are not getting their money from the band for social assistance. Can you comment on that, please?

Mr. Pashe: Since I have come back to the community, back in December of 2001, the people on the reserve, mostly the women and children, were being punished by Dennis Pashe. They were not receiving any type of services from the community at all. They were not receiving any social assistance, hydro bills that normally would be paid were not.

Mr. Chairperson in the Chair

He then came up with a reserve housing policy, forcing the people to pay rent and giving them, I would say, about a week to sign the order or face eviction.

Yes, and it is true that a lot of the people of Dakota Tipi had to come into Winnipeg to

access the food banks. They even tried to stop this after a while.

Mr. Derkach: Mr. Pashe, it is our understanding that there is a third party now put in place to manage the affairs, both on the INAC side and on the health and social services side. There are actually two firms that are now in place to manage those affairs. Has there been a change since Soaring Eagle, who, I believe, is owned by David Doer—has there been any change in the way that monies are now being administered for social and health services on the reserve?

Mr. Pashe: The only changes that have come about are that the people that were previously being denied social assistance are now receiving it. As for Soaring Eagle, no one has met this group yet. They refuse to meet with the interim chief and council. According to the terms of the agreement that they signed at medical services, they are supposed to be accountable to us and provide a monthly financial statement to us. The only thing we hear and that we know for sure is that they have hired Bill Traverse to work alongside them. He is also signing on our medical services account.

* (20:00)

Mr. Gerrard: My question to you deals with the bill that is before us, which is the Aboriginal Policing bill. It provides for a police commission for each First Nations police force, and one of the clauses deals for the provision of regulations which would specify the manner in which the police commission of the First Nations police force is to be composed, who would choose it, how it would be elected or what have you. I would ask your thoughts in terms of how one would set up the police commission, if that were the approach that were taken in Dakota Tipi, to make sure that the police force has a level of independence, integrity and authority that it needs to operate properly as a police force.

Mr. Pashe: I believe that, if the committee was going to work, the members would have to be either elected or picked from the grass-roots people themselves. Having band employees appointed to sit on such a committee has never worked, and never will, because they always will have their jobs hanging over their heads.

Mr. Gerrard: My next question deals with the commission and how one ensures that, if it were to be set up under the force here, what would be the relationship with the Aboriginal police force and the RCMP? If you have band members, for example, who are not able to get a call answered by the Dakota Ojibway policing service, should there be some recourse to the RCMP, or what should be the relationship between DOPS and the RCMP?

Mr. Pashe: Well, if there are going to be two police forces in the province, there should be some type of a level of communication and understanding; or, if one was not able to answer a call, if the other one was five minutes away, they should be able to take the call. Like in the incident that happened last night where one member of Dakota Tipi got assaulted and had a hockey stick broken over his back, even though DOPS was right there. It happened 10 feet off the reserve. They would not respond to it. They said it is out of their jurisdiction.

Mrs. Smith: Thank you for your courage to come here tonight and present to this committee. It is both shocking and compelling to listen to what you have to say. I am wondering if Bill Traverse is a member of the band.

Mr. Pashe: No, he is not.

Mrs. Smith: I am wondering. We have just gone over the fact that members of this Government knew full well about what was happening at Dakota Tipi, prior to this presentation tonight. Could you tell me why in the world would a bill, The Provincial Police Amendment (Aboriginal Policing) Act, come forward like this? What would be the reason that this Government would bring this forward, knowing that this situation, this dictatorship, is happening at Dakota Tipi and knowing that this bill would reinforce that dictatorship?

Mr. Pashe: I believe the only reason they would try and present such a bill would be to rid themselves of their responsibility.

Mrs. Smith: Quite obviously. I know, and I know the Justice Minister and this provincial government know that the mandate of a police force is to serve and protect. That is what the

mandate is, and, tonight, listening to this, this definitely is not happening.

In your opinion, what would you like to see happen to this bill?

Mr. Pashe: Well, from what I have seen of it so far, I would like to see it die right on the table, the way it is now.

Mr. Faurshou: I was wondering, when did you see the change in ownership at the gas bar to S & L?

Mr. Pashe: I believe their signs came out in either March; I believe, they put up a sign saying S & L gas bar.

Mr. Chairperson: Mr. Faurshou, you have time for one more question.

Mr. Faurshou: So that I am clear on that, the fact is it came out prior to the third party taking over administration of the Dakota Tipi affairs, and I just want to ask about the amenities of the gas bar. The cigarettes, the gasoline, are they, to your knowledge, being delivered by reputable suppliers?

Mr. Pashe: Whatever they have by way of cigarettes and that, we do not know who their suppliers are. It has been rumoured when I have been asking around, trying to find out where it is, they say it is coming from the Mohawks in Ontario. But we have no proof of this. As for their gas, it has been closed down. The gas was being delivered from a company from Amaranth, but even that shut down after a while because the manager of the gas bar is addicted to cocaine and he spent the last bit of money on his habit.

Now, with this third-party manager, we believe that he applied for some kind of grant, a \$5,000 grant, to go out and get himself started back up again. The third-party manager will not do anything about the gas bar because he says he is only accountable to INAC. The manager of this gas bar has a vehicle registered to the Dakota Tipi First Nation, and this is the one that was driving around last night threatening people and responsible for firing off the shots. We are trying to get that vehicle taken away, but DOPS will not do anything. The third-party manager

will not do anything. The only thing left to do is take it back ourselves, and, as a result, we will be the only ones that get charged because of this.

Mr. Chairperson: Thank you for your presentation. The next presenter is David G. Newman.

Oh, sorry, we have two more out-of-town presenters. Sheila James is next. Do you have a written presentation?

Ms. Sheila James (Private Citizen): No, I do not.

Mr. Chairperson: Okay, please proceed.

Ms. James: My name is Sheila James. I am a band member at Dakota Tipi. I also was elected in as interim councillor. I just kind of wanted to talk to you about some issues that we are still facing out there. I want to go a little bit more into detail of the June 15 assault. At that time, we saw a lot of influence that Dennis Pashe had with the policing on the reserve. We saw that he was still calling the shots and that he was giving orders to people to beat up other people.

At that time, there was a young band member who was stabbed in the throat with an elk antler. His esophagus was ripped. He was taken to Portage District Hospital and then rushed to Health Sciences Centre. At that time, his wife was with him, took him to the Portage hospital, and she went outside to have a cigarette. At that time, let me just kind of go back a little bit, Dennis Pashe's son, Preston Pashe, also claimed that he was assaulted and went to the hospital too. But he was the assaulter on Terrence Richard who was stabbed in the throat.

* (20:10)

We even have witnesses. You know, there is a witness. No charges have been laid on Preston, but, okay, he was at the hospital and Dennis, when Terrence's wife came out for a cigarette, he was standing there with a DOPS officer and a couple of other of his wannabe goons, gang people, supporters, whatever you want to call them, some of whom are not even from the reserve. But he was standing there and he was

ordering those people to get out of their car and beat that young woman up. There was an officer standing present, and when she questioned, why are you letting this man talk to me and make threats against me like that, that is when the officer, kind of, you know, pushed Dennis aside and told him, like, get out of here for now, you know. And she was still looked upon as being the bad person.

When Preston Pashe, who apparently was beaten up, went back to the reserve and then assaulted another band member's spouse. I mean, you know, this guy was stabbed in the head by Dennis Pashe. He was beaten with a metal rod and, you know, just kicked and fought, and yet those people who did that, there have been no charges laid to this date. We believe that he has really lost his mind in ways, that he is even ordering his own children to do these acts. Would anybody in their right state of mind ask their own children to go out and try and fight or put themselves in harm fighting for his cause?

That is what I wanted to say about that. I get really emotional, too, when I think about all these issues. That same night, that little baby Eddie was talking about, the mother is a terminally ill woman. She just came back from having chemo, and he grabbed that woman, and she is not a very strong woman, he grabbed her and he flung her down. Anyone of us as women can be just beaten up by this man at any given time, any place. That really scares me. It scares me a lot. I have small children, too, and I am going to have another baby. Is he going to come out somewhere because I oppose him and fling me around, assault me in front of my children or even hurt them?

I mean, there has to be something done. There has to be some form of policing that is going to be out there to protect us. We do not want DOPS in our community anymore. We want them out as soon as possible, but we feel that we have no one to turn to, and that is why we bring this to you. Maybe you can give us direction as to who to speak to next on this issue.

With the gaming, we have asked and asked and asked for someone to try and help us, to shut the palace down and the VLTs because we felt

that the money was used as an incentive. You know, maybe they will buy them something or they will give them a little bit of spending money if they were to commit crimes against the people who are opposed to him.

It has just got to stop. Nobody would help us. We shut the palace down ourselves in a picketing way. We took direction from the elders, from the other band members when we did shut it down. Then he is coming out there intimidating us, and the police are right there. They are just sitting there and he is driving by and calling people down, but we are sitting there very peaceful.

Another thing that happened during our protest was that we had our children there. A lot of us are mothers or women with children. We had our little children there, and the DOPS officer came in with sirens blaring and lights flashing. You could hear their wheels squealing right across the parking lot. I went to go and approach one of the officers and ask him, could you please, when you are pulling in here and we are having a peaceful demonstration, could you please lower your speed, and he would not even talk to me. He would not even acknowledge that I was talking to him. What kind of a police service is that when they cannot even give the people that they are supposed to be policing the time of day? We just feel that we need some sort of help.

We want the Bingo Palace, the VLTs, closed until there can be an election. We do not want him using that money. Even the gas bar, we would like to find out who actually owns the gas bar. We assume that it is still band property. They are using the band trucks that are registered under the Dakota Tipi band.

We want everybody to be living fairly. We want to shut down all of the businesses and just let everything cool off and wait until after the election. Again, we ask for your help.

Mrs. Smith: Thank you once again for coming, Sheila James. It takes a lot of courage to come and present at a committee like this. It is extremely helpful to know the truth and to know what is really going on.

You mentioned gang members. You mentioned that there has been issues on the reserve that have to do with people on an and off the reserve. In your knowledge, are there any gang members that are known gangs that operate on the reserve other than the local people?

Ms. James: Yes, but the next speaker will take care of that issue regarding gangs. But, yes, I do know that there are gang members. I can tell one story without stepping on the next speaker's toes.

My own brother was living on the reserve. He had his house there, and they just all of a sudden moved in, gang members, into his house. He did not like this. He did not feel comfortable with the Manitoba Warriors president at that time and family living in his home. My brother is a very honest type. He is also kind of passive in a way too. He had really no say under the dictatorship of Dennis Pashe, who was to live at his house with him. It made him feel so uncomfortable that he moved away from the reserve. He gave his home away. Since then, for educational reasons, he has even had to transfer off the reserve, because he was denied education because of his decision not to help the Manitoba Warriors.

Mrs. Smith: Who is in the home right now?

Ms. James: Since then the house has flooded out really bad. The water table is very high at Dakota Tipi in some areas. But they are not there right now. The gang leaders are not in that house now.

Mr. Faurchou: How long have you resided on the Dakota Tipi reserve?

Ms. James: Let me clarify that. I do not exactly live on the reserve, but I do spend a lot of my time there. The reason I do not live on the reserve is because of the dictatorship of Dennis Pashe. I live in your area actually. I live off the reserve because of the fear of Dennis Pashe and his activities. I did not feel that I could live personally under that sort of dictatorship, so I am taking it as an off-reserve person, but I still am elected into council by the people.

Mr. Faurchou: For clarification for the committee's own knowledge, you are an official band member of Dakota Tipi First Nation.

Ms. James: Yes.

Mr. Faurschou: So in that capacity and now as elected to council on the interim board, how many persons do you consider band members for Dakota Tipi?

Ms. James: We have a lot of band members who are on and off the reserve. I do not have the exact numbers because I have to sit there and think about how many are adults. Approximately 300 band members all together maybe. That is adults and children.

* (20:20)

Mr. Faurschou: And estimated on and off the reserve?

Ms. James: Yeah. I would say both, on the reserve about 100, maybe 120 at the most, including children. I have not done a head count in a while.

Mr. Gerrard: Thank you for your presentation. It certainly describes a very troubling situation in Dakota Tipi. We have before us today the bill which would provide for establishing and running Aboriginal police services. We have heard from other presenters that probably the best circumstance might be to kill this bill entirely. I would ask you whether this could be amended so that there would be some Dakota Ojibway policing service which was responsive to the community and whether there is a possibility of having a service which really does what you need and what you want, which is an Aboriginal service. What do you think?

Ms. James: I think that there are a lot of politics on the reserve and off the reserve as well, I mean at the higher organizations. Now, I hate to step on anybody's toes, but over the years I have seen chiefs who do influence higher powers. I hate to say this, but the former chief used to do a lot of influencing at AMC and AFN and whoever else. It is very hard to say if it would work because the way I have seen things. I know it does not happen everywhere, but the way I have seen things, with Dennis Pashe, he had a lot of control at the Assembly of Manitoba Chiefs. He also had a lot of pull, at times, with AFN.

We have seen that first-hand, when AMC would deny to help us in our stand. They chose to help Dennis Pashe financially and they would not even give us a second look, yet we are the grassroots people who are crying out for help. These people are getting money that comes from Ottawa, and it is brought down to them and then stemmed out to us. They should be there helping us and I think that it is too political, I am sorry to say.

I think that the policing would, in our area—I cannot say for everybody because just the way I feel right now with what we have gone through, I would probably be almost in a biased situation to discuss that.

Mr. Chairperson: This is your last question, Mr. Gerrard.

Mr. Gerrard: What I hear you saying is if it was to be an Aboriginal police force, there has to be very solid guarantees that it would be independent, that it would not be subject to political influence, as is happening at the moment, and that there would have to be processes for, I do not know, review or appeal or the ability to establish links with the RCMP that would make sure that there was functional service to people in the community.

Ms. James: That is right, but at the same time I feel that it would be very, very hard to have this kind of service without political involvement, political insight from leaders.

Mr. Chairperson: Mr. Derkach, you have time for one question.

Mr. Derkach: Ms. James, your group of concerned citizens did take a position against the Bingo Palace because you felt that the funds were not being channeled in the right direction, as I understand it.

Were you aware that under the agreement between Manitoba Lotteries and the band, that indeed the minister has the power to terminate the agreement and actually close the casino, even without cause, but more importantly for a cause where monies, in fact, are not being channeled into the areas that they are supposed to be channeled into. Are you aware of that?

Ms. James: Yes. When we first started to ask for gaming at our reserve, that was so that we could put the money in towards where we had a shortage of funding, say towards medical or education. Before these other initiatives came out, like Healthy Communities, we were already asking for gaming to flourish these activities in our community, like, you know, little extras because where we live right now there is a plant located across the road that does not smell too well. We call it quality of life where we maybe have to give the people central air because they cannot go outside and enjoy the fresh air, sit around outside because it smells like something died, you know, with rot.

You know, this money was supposed to be put into the little extras to build our community, make our community a better place. At first it was, but in recent years we just have not seen where the money is going. We do not know where it is going. We do not know if, you know, this money is going—there could even be a hit out on me. Who knows. Maybe the money was funded through gaming. To my knowledge, we do not know where the money is going. We do not see it being put into programs. The children are being denied schooling, people who are opposed to the former chief and council. So, obviously, the money is not going towards helping their education. There is a low percentage at our big beautiful school.

So, you know, we do not have a medical there. There are different little things we could have that we just cannot see where the money is going. We maybe see it in the councillor's Harley Davidson bike or the chief's yacht, you know, like kind of things like that, driving a brand new Avalanche. Meanwhile, we are just hoping to get by on whatever little bits of money we can scrape up to get to meetings like this or to make presentations where we have to fax a lot of paper or make copies. They always call us drug addicts, drunks, lazy people. Well, all of us have been willing to give blood samples to prove that this is not the case. If we were so lazy, why would we be out here pushing and pushing and asking for help and doing this and that trying to get our points through. That is all I have to say.

Mr. Chairperson: Thank you for your presentation. We have one more presenter on

this bill from out of town. Lorraine Elk. Ms. Elk. Do you have a written presentation?

Ms. Lorraine Elk (Private Citizen): No.

Mr. Chairperson: Okay, please proceed.

Ms. Elk: Hi. I am Lorraine Elk. I am a band member of Dakota Tipi First Nation, and I am here to speak about the gangs.

Back in 1996 is when Dennis Pashe had first brought in the gangs. They were hired as security guards for the reserve. These gangs had more privilege for jobs and education and housing than the real band members did. They just intimidated the people, harassed kids and elders and the regular band members, right to the point where they started beating up on band members like my husband and his brother.

Back in July 22, 1999, they attacked my husband and his brother, and they beat them up really good. To this day, that case is still in the courts. It got transferred to Winnipeg and was remanded until November 4, I believe, of this year. I was the only witness to this assault, and that is how I lost my job. I was secretary for Dakota Tipi School for seven years, and, because I showed up and testified against Dennis's goons, I lost my job. From there, my kids could not go to school on the reserve. I had to put my two older daughters in care just so they could go to school off the reserve. They now live in Winnipeg and they are going to school. They do not want to come back to the reserve because of all the political stuff that has been happening. They do not feel safe there. We had to drive our kids to school every day. I have two boys going to school in Portage and I drive them every day.

* (20:30)

Things have been just happening when these goons were there terrorizing people. Since DOPS came on September 1 last year, I have seen these gang members back on the reserve sometimes, but not all the time. When I do see them, I will call the DOPS. By the time the DOPS come to the reserve from Sandy Bay, they are gone already. They said there was really nothing they could do, but there is a court order

for these gang members to stay off the reserve right now.

There was an incident that happened December 24, 2001. We were just coming back from Winnipeg, and I saw one of the gangs at Dennis's house and I immediately phoned DOPS right away. He came out within 10 minutes, he was in Portage, but by then that gang member, he left. I do not know where he went to. I did not see him after that. But the DOPS took my statement of how I saw them and where I saw them. Then he ran a check on the guy, Clayton Flett, and he said the court order was lifted December 21. I said, well, how could that be because the case is still in the court system right now? He said, well, it was lifted and there is nothing we can do, and the gangs can come on the reserve if they want to. But I phoned Joyce Dalmyrn, the Crown Attorney, and she told me there is a court order, to phone Chris Vanderhooft in Winnipeg to get the copy of that court order and give it to the DOPS. So I related that to one of the officers and he said he was going to do that, but he never told me if he did or not.

That is all I wanted to say about the gangs.

Mrs. Smith: Thank you. I know it is hard to speak to a committee and sometimes memories are not the easiest thing to relay, but thank you for coming. I certainly admire your courage for doing that.

Can you remember any specific names or any gang members that you have seen there recently, and have you seen any increased activity in that area?

Ms. Elk: Once I saw Michael Joe Flett, and I immediately phoned DOPS. By the time DOPS would come, they are gone. That incident there, December 21 2001, really I have not seen them around. If they do come around, they are really sneaky because they know there is a court order.

Mrs. Smith: What was the reason for you given? I understand you were secretary to the school for seven years and you lost your job, so I would assume that somebody terminated your

employment and gave you a reason. What was that reason?

Ms. Elk: I never received a paper stating that your services are no longer needed. I never received anything. It was just verbal between Dennis Pashe and myself, and for two years he has been harassing me at work, wanting me to phone the Crown attorneys stating that I never witnessed no assault. I kept telling him I would, just to keep my job, and he kept telling me if you do not, you are going to lose your job, you are going to starve and all of this.

So right up until September 4 and 5, I was just about going to follow his orders, but then I thought, like, this is wrong. I should not let these gang members get away with this, and I showed up and I lost my job.

Mrs. Smith: Can you tell us what particular assault you witnessed and when you witnessed that?

Ms. Elk: Excuse me, I did not hear her.

Mrs. Smith: Can you tell me what particular assault you are referring to that Dennis Pashe wanted you to call the Crown Attorneys about and when did that assault occur?

Ms. Elk: July 22, 1999, the assault that happened at Dakota Tipi.

Mrs. Smith: That is the one with your husband and brother. That is the one that is still in the courts at this time.

Ms. Elk: Yes.

Mrs. Smith: Thank you.

Mr. Gerrard: Can you just help us understand a little bit the situation with DOPS? Sometimes they are at Sandy Bay and they cannot come to Dakota Tipi.

How far is Sandy Bay? How long does it take, and why are they at Sandy Bay and stationed so far away?

Ms. Elk: Sandy Bay is about an hour-and-a-half drive north of Dakota Tipi. I do not know why

they are stationed over there. They should be stationed at Dakota Tipi where we need police service.

Mr. Gerrard: It seems to me that there needs to be something done on a very urgent basis to restore credibility to the police service in Dakota Tipi, given the circumstances you describe.

What would you recommend in terms of being able to provide an immediate answer, as well as looking at the question of what is a long-term solution.

Ms. Elk: Well, all the problems we have been having with Dakota Ojibway Police Service, a lot of people are not happy with their services. It seems they only listen to the former chief and council and his supporters, whereas our complaints, nothing ever happens.

I wish we had different policing for Dakota Tipi.

Mr. Derkach: Lorraine, I have a question with respect to the third party that manages the health and social services area, once again.

Now, this party was brought in to administer the affairs of the band, as a result of the chaos that existed under the former chief, as I understand it. Now that was put into place by the federal government, I would think. Has this third party acknowledged the interim council, or are they working with you as interim council members to administer the areas of responsibility that they have?

Ms. Elk: No, they do not recognize us as interim chief and council, just regular band members.

* (20:40)

Mr. Derkach: So let me get this straight. The federal government, under section 74, has given notice that the chief, Dennis Pashe, would be removed from his responsibilities as the chief on the Dakota Tipi reserve and that a third party, namely Soaring Eagle, would be put in place to administer the health and social affairs area of the band.

The people have chosen an interim council to act on their behalf. Even though the federal

minister has sort of removed the present chief, Soaring Eagle still continues to deal with Dennis Pashe. Is that correct?

Ms. Elk: Yes.

Mr. Chairperson: Thank you for your presentation.

Mr. Faurschou: You have been a lifelong resident or member of Dakota Tipi First Nation?

Ms. Elk: I have been a band member of Dakota Tipi for 17 years.

Mr. Faurschou: In those 17 years, are you aware of the police services changing from DOPS to RCMP and now back to DOPS again?

Ms. Elk: Yes.

Mr. Chairperson: One more question.

Mr. Faurschou: Could you elaborate as to the years when DOPS was policing versus RCMP versus DOPS?

Ms. Elk: We never had DOPS before. It was always RCMP. It just changed September 1, 2001.

Mr. Chairperson: Thank you for your presentation.

Bill 19—The Mines and Minerals Amendment Act

Mr. Chairperson: We have an out-of-town presenter on another bill. We have Grand Chief Francis Flett on Bill 19. Is Mr. Flett in the room? Please take the podium. Do you have a written presentation?

Mr. Francis Flett (Grand Chief, Manitoba Keewatinowi Okimakanak): Yes, we do. We do have all the presentations that we are going to be handing out.

Mr. Chairperson: Please proceed.

Mr. Flett: Maybe I can start off, and thank you very much for the opportunity to address the Committee on Law Amendments. We are here to do a presentation on Bill 19, but I also want to

make a statement before we actually get into the presentation.

Back in November 18, 1999, there was an MOU that was signed between Minister Mihychuk and MKO, that MOU is going to be a part of the package that is going to be presented to you. Some of the concerns that will be addressed through the bill have never really been addressed through the MOU.

MKO is a political organization. It is there to promote, enhance and protect the rights of First Nations people. The rights that I speak about are the treaty rights and the rights to resources. I just want to make it very clear that this is one of our intentions.

On May 8, 2002, Bill 19, The Mines and Minerals Amendment Act was introduced by Minister Mihychuk. Minister Mihychuk explained that Bill 19 will help to promote exploration and development, mining activities in Manitoba and to help enhance the quality and land tenure in Manitoba.

Of concern to the Manitoba Keewatinowik Okimakanak First Nation is that Bill 19 broadens and reinforces the free-entry system by proposing at section 52(3) of Bill 19 to grant mineral access rights, which would include the ability to enter, use and occupy Crown lands in order to carry out exploration activities.

In addition, MKO is not provided an opportunity by the minister to participate in the development of Bill 19. If you refer back to the MOU and the process that was chosen, to use that process to jointly work together in partnership did not happen. The free-entry system permits the mineral operator to enter lands where minerals are in the hand of the Crown and obliges the Government to grant exploration and development rights if the miner applies for them. In most cases a prospector licence or equivalent must be obtained first. But it has always been freely available.

If the applicant has met all the prerequisites for the claim or mining lease, the minister has no discretion, but instead has a duty to issue the disposition. The free-entry system, while always strongly supported by mining industry, in that it provides licensed prospectors with absolute title to minerals and typically an absolute right to mine is a reflection of the land-use plan and First

Nations-Crown relationship that were in effect at the time of European colonization. The present Mines and Minerals Act reflects many of the basic principles of the free-entry system.

The free-entry system features expressed under Manitoba law are: upon the payment of \$10 Manitoba will issue a lifetime, non-transferable, prospecting licence to any person over 18 years of age without other requirements. Licensed prospectors many enter, remain, travel upon Crown mineral lands that are operated for prospecting and staking out of any prospect, stake out and work on such land, including bringing into the land any vehicle, machinery, equipment, supplies, personnel or temporary accommodations as required.

* (20:50)

I am just going to skip part of my presentation. I will just start off on page 7, where it says the free-entry system as it affects the rights, interest and lands of the MKO First Nation is no longer appropriate within the MKO region. Whether as represented in the existing Mines and Minerals Act and as proposed to be reinforced in Bill 19 for at least the following reasons: the negotiations, promises and terms of treaties 4, 5, 6 and 10. The Constitution Act 1982 recognizes and affirms the Aboriginal and treaty rights of MKO First Nation.

The courts of Canada including the Supreme Court have clearly ruled that the provincial and federal government must first justify any infringements of the exercise of Aboriginal and treaty rights prior to the granting of any natural resources, related licences, permits or allocations. The courts have further ruled that the failure to justify an infringement will leave the permit, licence or allocation subject to challenge and Manitoba has entered into a binding commitment to the co-operation; plan, and manage the land and natural resources within the resource management area of the MKO First Nation, which signed December 1977 Northern Flood Agreement. In a December 15, 2000, ministerial statement, the Manitoba Minister of Aboriginal and Northern Affairs (Mr. Robinson) declared the Northern Flood Agreement to be a treaty.

These matters have not been addressed by the minister or the Government during the first

reading and debate on Bill 19. This commitment must ensure that the fiduciary obligations and binding commitments of Manitoba are adequately reflected in provincial mines and minerals legislation, including any amendments being proposed in Bill 19. Much of Bill 19 comes from the recommendations made by the Mines Legislation Review Committee. Following review and comment by trade and mines working group of officials from the Department of Industry, the Mines Legislation Review Committee was formed in late 1998 by the former minister and is made up of representatives of the mining industry, prospectors and heavy construction sector.

MKO initially participated in the Manitoba minerals guidelines process initiative by a former minister. The Manitoba minerals guidelines process was intended to bring together representatives from First Nations, Métis, northern communities and Manitoba miners industry to begin a relationship building process and to create mutually beneficial opportunities. During the process it has become clear that many of these issues affecting the relationship between the MKO First Nations and mining sector concerns matters which can only be effectively addressed through the government policy legislation and regulations such as the recognition of Aboriginal and treaty rights, access to information, environmental monitoring and assessment, and employment and resource equity. Therefore, MKO advised the minister that we would participate further in the Manitoba Aboriginal mining initiative. Only after Manitoba made a commitment to MKO First Nations to enter into a formal memorandum of understanding between First Nations and Manitoba with respect for the activities of the mining sector within the traditional territory of Manitoba First Nations, MKO and the present Minister of Industry, Trade, and Mines (Ms. Mihychuk) entered into a memorandum of understanding. On November 18, a working group was to provide a forum for Manitoba and MKO to address the full range of issues related to mines and minerals industry of importance to the MKO First Nations, including the development of policies and legislation.

Mr. Chairperson: Excuse me, Mr. Flett. I apologize for interrupting you, but I would just

like to let you know that you have approximately two minutes left, so I hope you can move to your conclusions. Thank you.

Mr. Flett: Okay, maybe what I will do is I will just make a statement in conclusion that we certainly do not agree with the Bill 19 the way it is being addressed and how it is addressed. We certainly do not support the move that is being made to change that legislation to make it easier for the mining industry to occupy and use and enter those lands without first consulting with First Nations and making sure that the rights and treaty rights of our people are also honoured. Thank you.

Hon. Jon Gerrard (River Heights): Thank you very much for your presentation. I would ask you, in terms of this November 18, 1999, MKO-Manitoba agreement, which was signed, I understand, jointly, it appears, by yourself and by the current Minister of Industry, Trade, and Mines, this agreement or MOU provides for a whole lot of commitments by the Province of Manitoba. You tell us that the commitment in relationship to consultation has not been met. Have any of the other commitments been met? Was the working group ever set up? What has happened with this?

Mr. Flett: Well, the working group—

Mr. Chairperson: Excuse me, I need to acknowledge you every time.

Mr. Flett: Thank you very much. Sorry about that. I think the commitments that were made have not occurred. If that is going to occur, then I do not think we would have a problem in trying to resolve the issue of the Bill to be addressed in that way. We are just here to protect the rights and interests of our people based on what we had agreed to in the MOU and also the changing of that Bill.

Mr. Gerrard: I am just very surprised that the minister would sign an MOU and then not follow through at all in any way. Was there nothing at all that happened as a result of the MOU? Was there just a breakdown of communications? What happened?

* (21:00)

Mr. Flett: Some of the things that I think we had proposed to do from the bill are to ensure that we have a working relationship and partnership together. I know there have probably been attempts made by the Province to contact us, but, unfortunately, I think a lot of times we have miscommunicated with each other. I know there is really no communication, like real communication, to deal with the issue of the MOU and how it would possibly and best work with the mining industry.

Mr. Leonard Derkach (Russell): Grand Chief Flett, I guess it does not need to be said that a solution to a problem is best arrived at if all parties that have a vested interest are consulted and brought into the process. Would you favour this bill being put on hold for a period of time, until such time that your organization, the First Nations people, have an opportunity to, at least, have some time to discuss the issues of the MOU with the minister and the Government, and then to have this bill brought back in a form that is going to reflect the needs, the desires and the rights of First Nations people?

Mr. Flett: Yes, I agree that this bill should be held back because I really feel, and our First Nations people really feel, that something needs to be done in the protection of those rights and those lands that we occupy. I guess I can give you an example of some of the things that happened. When a bill like this comes out and somebody has a trapper licence within that system, it becomes a secondary issue. With our treaty rights, do they become a secondary issue to that bill that is being passed? Those are the types of things that we need to protect. We certainly would like to see the bill being held back so we can possibly correct some of the problems that are there.

Mr. Derkach: Grand Chief, have you had an opportunity to speak with the minister who is responsible for this bill and ask her to hold this bill for a period of six months or a year, or until the next session, or to bring in an amendment? Of course, this all has to do with the fulfilment of the memorandum of understanding, and your involvement in the development of the process. So I guess an amendment would not work. But have you had an opportunity to discuss with government, or the minister specifically, the

prospect of holding this bill for a period of time until your concerns and your issues can be addressed?

Mr. Flett: I did meet with the minister on one occasion, just recently, and we did have a discussion on the bill, because the bill that we had found out was through the Internet system, to take a look at the bill and how it was tabled for first reading. Also, I did discuss with the minister that we should have a meeting with the mining industry. The idea behind all of this is to try and correct some of the problems and get away from all this sort of thing from happening in the future. This is what I would like. We would like to negotiate, or even sit down with the mining companies and say, well, let us share the resource.

Mrs. Joy Smith (Fort Garry): Just to clarify, and thank you for your presentation. I find it very surprising. It is my understanding that there was no consultation with MKO, or MKO First Nations, prior to the bill being put together.

Mr. Flett: Not to my knowledge, no.

Mrs. Smith: You found out about this very important bill via the Internet?

Mr. Flett: Yes.

Mr. Chairperson: Last question, Mrs. Smith, Fort Garry.

Mrs. Smith: Did anybody consult you in any way, shape or form via fax, via telephone, or did they point you to the Internet, or did you find it yourself?

Mr. Flett: Our technical people found it.

Mr. Chairperson: Thank you for your presentation.

Mr. Flett: Thank you.

Mr. Chairperson: I would like to suggest that we go through the balance of the in-town presenters in the order that the bills are listed, if it is agreed by the committee. The next presenter then would be Mr. Ed Huebert representing the Mining Association of Manitoba on Bill 19.

Mr. Michael Anderson (Manitoba Keewatinowi Okimakanak): Mr. Chair, excuse me. I was listed as a co-presenter with Grand Chief Flett.

Mr. Chairperson: Are you from out of town?

Mr. Anderson: No.

Mr. Chairperson: We have finished the out-of-town presenters, and now we are going to do—unless the committee wants to vary the list.

Mr. Anderson: It is Bill 19 that I was speaking to, and Ed and I both live in Winnipeg.

Mr. Chairperson: Is it the agreement of the committee that we continue with presenters on Bill 19? [*Agreed*] Okay, Mr. Anderson. Do you have a written presentation?

Mr. Anderson: It was circulated with Grand Chief Flett's material. We just circulated everything at once for convenience.

Mr. Chairperson: Okay, thank you. Please proceed.

Mr. Anderson: The Minister of Conservation (Mr. Lathlin) had earlier requested that I leave my slides at home, so I have done that. I just have some technical additions just to add in terms of Grand Chief Flett's presentation and the materials that he had passed by. He had requested that I do this.

Essentially, in looking at Bill 19, the concerns of the MKO First Nations are: There is a long-held expectation that anyone entering First Nations traditional territory for the 27 northern First Nations, which are the 27 MKO First Nations, his traditional lands collectively cover something like three-quarters of the province of Manitoba. From Wuskwi Sipihk, or Indian Birch, on the west side to the Nunavut territorial boundary, down the east side of Manitoba to Island Lake is all MKO.

Each of our First Nations has made it very clear that any persons entering the territory to conduct activity, be it commercial fishing, mining exploration, forestry, have an expectation that they will be consulted or advised prior to

these activities taking place. In some cases, of course, as we know from the reference to the Northern Flood Agreement, the Crown has made a further commitment to First Nations to engage in the co-operative management of those regions.

Under the successor agreements to the Northern Flood Agreement, this one being for Nisichawayasihk, and at this time I would like to acknowledge the presence of Charlie Joe Hart, who is the chairman appointed by the Nisichawayasihk Cree Nation of the resource management board provided under article 6 of this agreement. Of course, there are four successor agreements, one for Nisichawayasihk, one is for Norway House, one for York Factory and the first, of course, in 1992, for Tataskweyak, Split Lake.

Each of these agreements call for the creation of a land-use plan and a resource management plan that would be jointly developed between the First Nation and the Minister of Conservation. These plans establish zones, regulations, all of the principles that would guide development activity within these areas. They were in consideration of the considerable economic and environmental devastation that took place with the construction of the hydro projects in the North, which created irreversible environmental effects. The power produced by that has created benefits and opportunities for the province, and I am not heading in any debate as to whether the projects were right or wrong, but these agreements result from that development.

The strengthening in the current bill of the rights of access to minerals for exploration permits, in particular, the ability to enter, use and occupy, in effect, create the opportunity for exceedingly large areas of land to be designated as mining exploration lands. Even in the absence of the plans that would otherwise provide for them, the maps that were circulated, and I apologize that they are not all in colour, show a sample from the Web site of Industry, Trade and Mines, which I congratulate the Government, the minister, for having on-line, showing the coverage of exploration permits in the God's Lake area. The greenish-blue areas, which on the black-and-whites are shaded, are exploration

permit lands of one company—DeBeers Canada Exploration. So you can see that a single mining operator can record and have set aside a considerable portion of lands for their purposes without the requirement to first receive the consent of the First Nation affected.

I would like to point out once more that there are five First Nations, including Pimicikamak at Cross Lake, who have a commitment with this Government to plan their areas prior to development occurring. So, in effect, the strengthening, as was quoted in the statements by the minister on first reading, to create a greater certainty in land tenure is at the expense and contrary, in many respects, to commitments already made by the Crown. In other words, prior to creating certainty in land tenure for mining exploration operators in these five communities, their land-use plans need to be developed and the resource management plans need to be created. I must say that none of the plans for these four communities have yet been developed.

* (21:10)

Nisichawayasihk was signed March 5, 1996. The plan is not developed. The resource management plan is not in place. Split Lake was in 1992, similarly. Norway House was in 1998, similarly, as was York Factory. If we look at the map of exploration permits being issued, it falls greatly within these territories.

Part of the issues that led to some of the discussions at the Mines Legislation Review Committee on the need to create additional certainty dealt with a special exploration permit that was proposed, overlapping Split Lake and Nelson House territory. There was some objection to this permit being issued, and it created a considerable concern.

What I understand is a first in Manitoba, is that the entire chief and council of the Nisichawayasihk Cree Nation, which is noted for its working in partnership with this Government on the hydro development in Wuskwatim, the entire chief and council signed the letter to the chief mining recorder requesting that Dasher Energy exploration permit 223 not be issued because of the location of the permit, in a critical

area used for domestic fishing and hunting by the community as a replacement area for the lands devastated by flooding. It is a critical area for the migration of woodland caribou, and there is currently a joint study between NCN and Manitoba Hydro underway. The area is also involved in Treaty land entitlement selections and fulfilment of a 90-year promise of the federal government now borne by Manitoba and Canada jointly.

So the application was made to the chief mining recorder, but there is no mechanism within the legislation that requires any review of what happens on the ground when these extremely large territories are designated. The current legislation provides for a maximum of 123 000 acres for an exploration permit.

Minister Lathlin's legislation, under your jurisdiction under The Crown Lands Act and The Wildlife Act and others, do require permits for certain types of exploration activities, but it is the presumption that the operator may enter, use and occupy First Nations territory that flies in face of the existing commitments and certainly the expectations of all MKO First Nations. I would point out that our trappers and commercial fisherman, although they have conducted activities which, in traditional senses, predate the establishment of the province of Manitoba by perhaps thousands of years and, certainly, in terms of commercial activity, predate the creation of the province by at least 150 years, tend to have their interest in the lands viewed as secondary to those of large forest licenses, mining operations and others. So disputes and the resolution of conflicts and interest in land are really at the centre of creating certainty in the mining industry.

The MOU that the Grand Chief signed with the minister was intended to help create certainty in the mining industry, and it is the view of MKO that the current legislation, by strengthening the ability of explorationists to enter land without working it out with First Nations as a mechanism first, will only create uncertainty.

One of the key issues that has taken place, as Grand Chief has summarized, is that the courts have made it very clear that a duty falls on provincial governments to justify any potential

infringement on the exercise of rights that may be caused by the authorization of land-use activity. This flows from the doctrine established by the Supreme Court in 1990 in *Sparrow*, and it has been reinforced in the federal court recently in a case called *Mikisoo*, in which the federal court overturned a winter-road authorization issued by the Minister of Canadian Heritage because they failed to determine whether or not an infringement would take place, and, secondarily, when they did determine an infringement would take place, they failed to justify.

It is very clear that establishing an exploration camp, the bringing in of tents, fuel drums and equipment according to the powers under the existing legislation forms the very type of infringement which must be examined and justified prior to authorization and creates the opportunity for challenge each and every time. That does not establish certainty in the mining industry.

So, in essence, we have a situation in Manitoba where the free-entry system, although modified and subject to forms of regulation—I have the act and its regs with me which is the substantial body of this, and there is a fair bit there. But the key is this. Any person—and I do not say this lightly—any human being resident on the planet Earth over 18 years of age for \$10 can obtain a lifetime prospecting licence that will allow them to enter all traditional lands within the MKO region. Their powers under that licence, that \$10-lifetime licence, is to enter, remain and travel upon Crown mineral land that is open for prospecting and staking out and may stake out and work on such land in accordance with this act and may bring onto such land and use such land, any vehicle, machinery, equipment, supplies, personnel or temporary accommodations as required to prospect, stake out and work on such land in accordance with this act.

Now, those are tremendous powers. Without being unintentionally glib, Mr. Chair and members of the committee, I cannot get a \$10 authorization in Manitoba to do anything else that extensive. As part of this, the individuals can cut trees to build camps, use those trees for fire to heat their camps and cabins. I require a permit to cut a Christmas tree.

So what we have in the minerals legislation and the system of free entry is an anachronism of colonization, where persons can travel freely through First Nations territory relying on authorizations granted by the Crown. The strengthening of the exploration permit rights in the legislation, we submit, is a continuation of that thinking. Although it may be logical in that it basically caps—because you can get a prospecting licence that will last for life for 10 bucks that will let you go anywhere as long as you are exploring and acting consistent with Minister Lathlin's jurisdiction under The Crown Lands Act and under The Environment Act.

When you have a staked claim, the current legislation presently allows you to do substantial activity on the sight, and it gives you rights to conduct these activities that the minister cannot take away. The holder of a claim may enter, use and occupy the surface of the land that is governed by the claim for the purpose of prospecting or exploring for developing, mining or producing minerals on, in or under the land to the extent necessary for the purpose, now governed by environmental legislation.

While the intent of the legislation as Bill 19 is to fill in the gap, right now the exploration permit aspects of the legislation appear to give the director considerable discretion, and it is unclear what the rights of an explorationist are. A prospector has tremendous rights under law to access land, and a licensed prospector who has a claim may work that claim, but if they are exploring over 123 000 acres of land similar to the maps, it is not quite clear what they can do.

There have been conflicts with MKO First Nations over access through exploration permits. The companies reasonably, if you read the act as a whole, say: We have received an authorization from the Crown that lets us enter your territory. We are speaking to you as a matter of courtesy.

The companies desire this certainty so there is not this conflict. First Nations insist on being consulted. They insist on knowing exactly where people are going. As one of the outcomes of the minerals guideline and the MOU, the minister's office has been informing MKO First Nations of exploration permit applications prior to them being issued, which is important and which is

partly what has led to the discussion that led to Bill 19.

So there is a positive aspect of having information in advance that has led to this kind of information. Being able to access the mineral disposition map on-line is also very positive. It has also in effect inadvertently led to the discussion leading partly to Bill 19. The issue is even with our demonstrated interest in the reform of minerals policy and legislation, our participation in the minerals guideline and the MOU, we are not part of the development of this legislation.

With that, those are my comments. I appreciate the committee's indulgence in letting me make them. Thank you.

Mr. Chairperson: Before we move to questions, I neglected, before Mr. Anderson started, to ask for leave of the committee to have him as a separate presenter. Is there leave of the committee? [*Agreed*] Questions.

* (21:20)

Mr. Gerrard: You indicate that some of the things from the MOU may have led to the presentation of Bill 19. It seems odd that MKO was not consulted and that MKO heard about this from the Internet. It almost seems as if the Government was trying to put this legislation through without MKO knowing and realizing what was happening. Is that right?

Mr. Anderson: Mr. Chair, the intent of government I cannot comment on because I do not know. All I know is that we were not advised that there was a Mines Legislation Review Committee, although it was struck in 1998. We were not part of the committee's activity. The Grand Chief was trying to indicate that technical staff—this Government has also put bills on-line, the Hansard. I mean, it is partly the evolution of the Internet, and it may be a matter of timing, but it is another occurrence that has taken place. As part of my duties as research director of MKO's natural resources secretariat, I check the status of bills on the Order Paper to determine whether there is legislation that may be of interest to MKO, and so our appearance before you today.

Mrs. Smith: Thank you for your presentation. It was really thorough and very astute and well

researched. I am absolutely amazed at some of the things that I have heard tonight. This bill is certainly amongst that. For 10 bucks virtually you have carte blanche to do anything, you know, use, be on the land, participate in bringing any kind of machinery on it. There are a lot of aspects that I can see First Nations people objecting to for a number of reasons.

Is there anything in this bill, in your professional opinion, that is useful to retain? What would your advice be in terms of dealing with this bill at this point in time? I have to admit I am very surprised at the lack of consultation and collaboration, but I can also see some permanent harm being done here for many, many years to come if some aspects of this bill were to proceed. As a professional in the area of mining and minerals, what would your advice be?

Mr. Anderson: One observation I would like to make about permanent damage, I suppose, is that there is not a similar regime of long-term certain tenure that our trappers and fishermen can obtain in their own traditional lands. For example, under Manitoba policy the only valid reason for one of our member's to have a cabin up at a lake that their family may have used for generations is through a trapping permit, which is issued annually, while they see legislation being strengthened to allow others to come into the same traditional lands with substantial powers to enter, use and occupy.

Our own community members are not able to obtain authorizations under provincial law in most cases to receive an authorization to enter, use and occupy their own traditional lands under provincial law. So that is part of our reason for focusing on this, in addition to other aspects. There are some housekeeping matters, though, within the bill, that I think deserve examination, for example, that do assist the industry, the logical elimination of diamonds from quarry material, for example. I think that is an important aspect to preserve the diamond exploration activity, because they may occur together.

One of the interesting features that the bill is touching on is classification of tailings as a mineral. We actually have had circumstances or persons who have attempted to stake a claim on

a tailings pond because what one company is utilizing may not be of any interest to them, and others may do it. Whether they are actually staked, the issue is that there are mineral values within tailings, so that, by classifying tailings as a mineral, it is captured by authorizations issued by the Crown to that company.

There are other aspects of the bill that have housekeeping issues, and I could review them and go through them in a list, if you like, but those aspects of it have been reviewed by the industry, by industry members and by staff within the department that are taking care of anomalies in the way the law is being applied in the modern minerals environment. But the key area that we are interested in is the interface between the Crown and First Nations, because the courts have indicated that it is the Crown that must justify an infringement, not the company. This is a very important distinction. The operator does not carry the obligation to conduct the consultations to explain their activities. Although those meetings are extremely important and the information provided is invaluable, it is the Crown that must justify, prior to issuing the authorization, and there is no mechanism to do that.

Having had the opportunity to discuss changes to the bill, we would be looking at how the free-entry system, as it has been coming on, is consistent within an environment like Manitoba's, where, without intending to overuse this as a very large prop, commitments had been made for wide-area plans that go back as late as 1992, where there are conflicts being created within these regions. It is a lot of work to do these things. So, in terms of some of the housekeeping matters in the bill, they deserve being examined and proceeded with. In terms of those aspects that create new rights to access First Nations lands, Mr. Derkach had recommended that those aspects of the bill be deferred, and we would recommend that be done. So those things that are neutral to the accessing of First Nations lands and the relationships between the Crown and First Nations and First Nations and the industry have been thought out, but it is this tug-of-war.

The industry requires certainty of access to land. It is how the whole industry was developed, but it was developed in a different time. It

was developed in a different era. It was developed prior to the recognition of rights in the Constitution Act 1982. It was developed prior to the entering into of these agreements between Canada, Manitoba, Manitoba Hydro and five First Nations. It was developed in a different era, and Manitoba would benefit from developing mechanisms that accommodate the rights, interests and lands of our First Nations and, at the same time, recognize the potential for economic advancement of our First Nations by partnerships in appropriate mineral development.

Economic development within our communities is an absolute priority. The minerals industry, particularly within our region, presents a great deal of opportunity. Fifteen of the 27 MKO First Nations are isolated and accessible only by air or winter road. It is in many of these areas. I deliberately chose Gods Lake, where there is activity being examined. At one time, of course, historically, there were gold mines within Island Lake and Gods Lake regions.

So there is an opportunity. The idea is to be able to capture it in a manner that is consistent with the aspirations and goals of our First Nations and in a manner that is consistent with the rights and interests of the First Nations.

Mr. Chairperson: Excuse me, Mr. Anderson, we have gone over time. I am going to allow one more question.

Thank you for your presentation. The next presenter is Mr. Ed Huebert, representing the Mining Association of Manitoba. Do you have a written presentation?

Mr. Ed Huebert (Mining Association of Manitoba): Yes, I do.

Mr. Chairperson: Please proceed.

Mr. Huebert: Committee members, thank you very much for giving me the opportunity to present. I would like to speak in support of Bill 19.

First of all, a little bit about the mining sector and a little bit about a response to some of the issues that were raised. One of the reasons for having a prospector's licence is that, under the terms of The Mines and Minerals Act, and I

was around the first time it was examined, in the event someone was not dutifully following the procedures prescribed for under The Mines and Minerals Act, there was a way to lift an individual's licence if there was any negligence, fraud, or inappropriate conduct.

So the \$10 licence is not intended to give a person universal rights. It is to be registered, and I believe there are less than 300 prospector licences in the province, but it is in terms of having some restriction for a code of conduct in terms of what is appropriate behaviour.

* (21:30)

Second of all, with respect to exploration permits, we are a unique industry in that for an exploration permit it is not a \$10 charge. It can be half a million dollars that will be put up front that is required in the way of a financial bond before you are allowed to set foot, and all obligations in terms of work permits, walking out in the land, in securing and ensuring that there are responsible operations, the onus is on the operator and the holder of the permit that they must secure all conditions and satisfy all requirements with the natural resource office, Department of Conservation.

So it is not by absolute fiat that a person has a right. You can hold an exploration right and permit and still not be given access to the ground for very good conservation reasons.

Anyway, thank you very much. I would like to talk a little bit about who we are. Our association is a trade association who has represented the collective interest of the mine industry for the past 62 years. We represent the hard rock metallic side, not the pits and quarries the industrial minerals people in the gravel industry.

Last year, the industry represented roughly \$1.1 billion worth of mineral products, about 3.4 percent of Manitoba's gross domestic product, employing about 4200 people directly.

The story I would like to talk about is this act speaks specifically to the exploration industry. The actual genesis of it goes back probably a lot further than '97, probably maybe '95, '96. We

were starting to get hints that diamond exploration was going on in the province of Manitoba, yet we had no way of defining what a diamond mineral was.

I agree with my colleague who just spoke earlier, there was a lot of housekeeping that took place. This was something that was going back and forth between prospectors, junior mining companies, the departmental staff who provide an awful lot of advice and are part of the community, as well as the communities themselves and the northern flood and others saying we need some clarification on some of these issues.

In 2001, the Canadian exploration industry levels for our nation had dropped to \$420 million. That is an important number because in 1996 it was \$920 million. It was a 55% drop-off. So we saw a huge slide in the exploration industry.

Bill 19 looks at many of the elements that gives Manitoba a fighting chance to compete with industry. Certainly on a geological basis there is a lot of excitement and optimism that Manitoba does hold some extremely good promise. That still means any of our member firms recognize that section 35(1) of the Constitution act for treaty and Aboriginal rights is mandatory. That has to be dealt with and the firm has to ensure that treaty and Aboriginal rights are respected, and we stand by that principle.

I want to talk about where we were in '96. While the rest of the country dropped 55 percent, Manitoba only dropped 25 percent. So we actually did quite well, as a province, relative to the Canadian average. Where we would like to see it in the industry, there is no reason why it could not be \$50 million to \$75 million. I see the minister nodding and hopefully maybe I am being conservative on that number.

Anyway, the background on it is we have been asked in the past, and we greatly appreciate the opportunity to work with stakeholder groups, to work with First Nation Aboriginal people and government to deal with legislation in a responsible way. In this case, we have been working on this probably over the last 15 years in this

current iteration of what we now call The Mines and Minerals Act.

One thing about working with legislation, the devil is in the details. You think you have really nicely balanced legislation, and then all of a sudden someone comes out and says you have diamonds. Geologically, we were not supposed to have diamonds in Manitoba. That was conventional science, probably as recently as 1989. In fact, I can still recall a *Winnipeg Free Press* article that said I will give all the scientific reasons why diamonds do not exist in Manitoba. Mr. Anderson was quite correct; there is significant diamond exploration in the province.

The connection to exploration and to mineral development is probably something that we do not do a very good job explaining. I have taken a look at our historic trends and roughly the ratio is for exploration, 1.2 million hectares of exploration may result in one acre of development. So it sounds like there is a lot of land, but those exploration permits are very time sensitive. An exploration is three years. A special permit can be negotiated as much as five years. But they are not forever, and they are very expensive, not like forestry, not like hydro. They have a different, unique allocation formula.

But the actual amount of land that may go into production, and I use the word may, is very, very small, relative to the amount of ground that is actually explored for. The reason for that is the aircraft that is required, the technology—you may be doing a lot of airborne work, not necessarily having your foot even on the ground, but you are doing large passes and you are trying to understand and unlock the key. Industry certainly respects the geological survey in Manitoba, and, I think, it probably would be fair to say they are probably the best team in Canada, one of the best surveys. But they can provide so much information on a regional basis; it comes up to industry to follow through on a much more intensive basis, and they work together.

I want to go back to what the objective of the Mines and Minerals Amendment Act is: to provide for, encourage, promote and facilitate exploration development and the production of minerals and mineral product in Manitoba, consistent with the principles of sustainable

development. My understanding of sustainable development means working with community, working with Aboriginal people, working with northerners. It is not something you do in isolation.

So, if we can find ways of improvement, and there have been mechanisms with government through MELC process that they can be more open, certainly, we would welcome that and look at different ways and means and work with government on that.

We had a committee called MELC, Mineral Exploration Liaison Committee. That is where this started, actually. Through that process, it led to the start of the Manitoba minerals guideline two years after that. So there is some sequence and linearity to it. It does not happen all at once and, maybe, we have more work to do to get there.

A couple of issues that came out of our review. It has been touched on by a previous presenter. The diamond exploration industry is very unique. Some diamonds, you can actually find in alluvial or gravel-type deposits, not necessarily hard rock, and there was no way to define it. Obviously, it was an area of definition that you had to take an engineering principle and geological approach to it that made sense, that was legally defensible and conferred tenure.

There were other issues, as well, definitions of advanced exploration, definitions of tailings, the mineral tailings. It is more than just a question of opportunity. It is also a question of social responsibility and environmental responsibility. There are various standards for ensuring that tailings, the tailing dam management, environmental protection, must be met. We did not want to have a loophole out there where somebody could go into someone else's tailing and start mining it and releasing toxics or environmental issues into the environment. So it was something that we thought was appropriate, that that loophole had to be closed.

Another area is review of airborne licence requirements, concern over legislative process to deal with staking irregularities, the grouping of claims, the condition of lease renewals. In large part, they were housekeeping issues. Obviously,

hearing from my colleagues with MKO earlier, there are other issues. We should be sitting down and talking about those. I would urge the committee to give some priority to this bill in the sense that we do have some diamond exploration, but we are also going into some really lean times in terms of attracting investment to the province.

Certainly, a strong signal to the diamond industry, knowing that if they are exploring for diamonds and putting money into the province, and recognizing that they have social responsibilities and environmental responsibilities, that they actually hold tenure to diamonds, if that is what they are looking for.

Within the industry, certainty of mineral tenure is a very important issue. It is probably even more important than free entry. But free entry is something that all Canada and North America currently practices. It is difficult to think of any alternative options on it. I heard a comment on that. The National Round Table on Environment and Economy had recent report north of 60 looking at resource development in Aboriginal communities. It was an issue raised, and it was said that some further study has to be done on that, but nobody, at this point in time, had some options. Maybe we can look for some wisdom from the national round table on this subject. Given that they have federal responsibility north of 60, section 35 (1) of the Constitution certainly has some significance.

Anyway, in summary and conclusion, I would like to say that the association does support Bill 19. We believe it helps clarify some provisions of the act that required immediate attention. It has the potential to increase opportunities for mineral exploration and development in Manitoba and certainly will clarify and strengthen mineral tenure. Bill 19 will help reduce some uncertainty and will contribute to a more transparent business climate.

I think one final point I would like to add to this is we are in a very competitive environment. I look north to Nunavut and NWT right now, and they are doing \$75 million of exploration. We are doing 30. I know, as a Manitoban, I would like to be able to say there is \$75 million done here, and maybe we have some more mines

and some more benefits for northern Manitobans.

* (21:40)

Hon. MaryAnn Mihychuk (Minister of Industry, Trade and Mines): Thank you, Mr. Huebert. Thank you for coming. I have a few questions. I understand that you were a member of the Legislative Review Committee struck to go through a process of consultation. Can you inform the committee if Aboriginal peoples were invited to sit on the committee?

Mr. Huebert: That is a good question. At the time, when we started on the process, I was working with the Assembly of Manitoba Chiefs in terms of opportunities for business relationship building between AMC and the business community. We had done some consultation and asked that the AMC serve on the committee, and the reason for that was, in terms of the sand and gravel industry, that includes the Southern Grand Chief and the communities. The AMC covers a lot of representation area in terms of the east side of Manitoba, in terms of the Rice Lake, Gold Belt, Tanco and other operations. We have asked if the Grand Chief of the day would mind, in terms of putting the information out, because we were looking to have a liaison with the Aboriginal community, and AMC agreed to serve on the committee.

Ms. Mihychuk: Can you explain what the relationship has been like between the mining industry and First Nations communities with regard to treaty and Aboriginal rights, which we all take very seriously? There has been some suggestion that this, in fact, could threaten those rights. Can you please elaborate on those issues?

Mr. Huebert: When we were part of the Manitoba Minerals Guideline Process, the idea and the principle actually rose from a northern community that was trying to develop a mineral property. There was obviously a need for communication between the mining industry and Aboriginal communities. We felt that the commitment must be made, and it has to be real. At that time, it was Northern Association Community Councils, AMC, MKO, C32s, as well as the prospectors.

No, we know the responsibility and obligation, Minister, and thank you very much, to work with Aboriginal people in terms of ensuring that whatever we do respects treaty and Aboriginal rights.

Ms. Mihychuk: One final question. If Manitoba was the only jurisdiction in North America to eliminate the free-entry system, can you project what that would do to our exploration industry?

Mr. Huebert: It would likely have the same type of impact as to what happened when Nunavut entered into territorial position from N.W.T. There was immediate drop-off in exploration. Simply put, nobody knew how to register a claim. The administration process to actually set up a recording system at Nunavut was quite problematic.

I managed to have an opportunity to speak with the Minister of Natural Resources at Nunavut and said that was quite a challenge. It essentially takes you out of the play for several years. The hard part is it is a very competitive business to get people back.

Mrs. Smith: My question has already been answered, thank you.

Mr. Gerrard: Thank you for your presentation. You described Manitoba as going through some pretty lean years at the moment in terms of exploration. Can you comment a little bit further about why that is?

Mr. Huebert: I would preface it by saying that Manitoba is probably doing better than the Canadian average. The problem right now is the trend in Canada, in general, in exploration. We are going through some difficult times. Partly, it was depressed commodity prices. In part, the aftermath of Bre-X, which most of you saw as a slap at investors' confidence. Other problems related to it were just the general infrastructure and opportunities that are now becoming available elsewhere, offshore of Canada.

Mr. Gerrard: Just a question about the mining environment in Manitoba compared with, say, Ontario or Labrador at the moment.

Mr. Huebert: There are about three parts to your question. On a geological scale, it is hard

right now where you have got a lot of attention focussed on Labrador, and that will have an impact on it. The diamond play in Manitoba is certainly attracting a lot of attention. In terms of policy, I think Manitoba has got a good reputation out there. The Fraser Institute and others have said Manitoba is a good place. The other issue is infrastructure. The question of where there are roads, where there are opportunities, what other existing physical plants are there to process minerals such as Thompson, Flin Flon, concentrators, smelters, refineries.

So I would say Manitoba has got a very strong position relative to the rest of Canada.

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

The next bill is Bill 22, and the—

Committee Substitutions

Mrs. Smith: With leave of the committee, I would like to make the following membership substitutions effective immediately for the Standing Committee on Law Amendments. Mr. Derkach, Russell constituency, for Mr. Gilleshammer, Minnedosa.

Mr. Chairperson: Is there leave of the committee for the substitutions as noted? *[Agreed]*

* * *

Mr. Chairperson: Mr. Maurice Auger, representing Comité Régional Urbain on Bill 22. I do not think he is here, and we called him before, so his name is dropped from the list.

Are there any other persons who wish to make a presentation in French? If not, is there agreement from the committee to allow the translators to leave for the evening? *[Agreed]*

Bill 33—The Private Vocational Institutions Act

Mr. Chairperson: The next presenter is Mr. Ken Penner, Bill 33, representing the Mid-western School of Business and Technology and Robertson College. Do you have a written presentation, sir?

Mr. Ken Penner (Midwestern School of Business and Technology and Robertson College): I do.

Mr. Chairperson: Please proceed, sir.

Mr. Penner: I will read from the presentation that I have given to you, and may add a few more comments and entertain any questions on this.

The preamble: Whereas Bill 33 gives more protection to the student, it appears to be at the expense of the operator of the private vocational school. The bill appears to be confrontational and biased against the operator of a private vocational school. We had hoped, and still hope, for a bill that will encourage the operators of the private vocational schools and one that recognizes the great value that the PVSs contribute to the Manitoba economy and to our society.

So our concerns, I have listed them there, the following pages, front page and reverse.

1. Our major concern is with the power granted to the director. The power granted to the director could severely hamper the operation of a private vocational school if the director were to poorly or badly exercise the near absolute power provided by the bill.

(a) For example, sections 4(1) and 4(2): The director may, if the director is satisfied. What if the director is arbitrarily not satisfied?

What if the director is just not aware of the issues and opportunities, or makes ill-informed decisions? The director may take months to make a decision. In the meanwhile, the opportunity disappears, and this is especially true in the technology area where opportunities exist for a short while and disappear if we do not act on them. This is currently a significant problem, as the responses are slow and untimely.

(b) Another example of the arbitrary power and absolute power given to the director of Section 5(1): "The director may refuse to register an applicant who, in the director's opinion, is disentitled to registration." It is very vague, very arbitrary.

(c) Section 5(3): "If the director is satisfied that a proposed or previously approved program of instruction does not meet the standards contained in Section 4(2), the director may (a) refuse to approve it; or (b) direct a registrant to suspend or cancel its being offered or provided."

This is of great concern to us. We are greatly concerned about this since we could, in good faith, be operating a successful program, and one day we could receive notice to suspend the program. This could kill a private vocational school overnight. It is too much arbitrary power. Even if, in the appeal, we were to win the case, the students are gone, and the income lost would likely close the school. Students would be without alternatives in looking for new career training options.

* (21:50)

In a sense, just to ad lib a bit, it defeats the purpose of the bill, which is to protect the students. In essence, by doing this, it could actually harm the students as well as the operator of the school. A more acceptable process would see the private vocational schools work jointly with the director to address any concerns and make adjustments to the delivery as required.

(d) Section 10(2)(a): The director or a person authorized by the director may enter any premises where, and I did not complete the entire sentence there, but where the records are stored and the like.

In other words, no notice need to be given to enter, whether it be at a school, a private home or a lawyer's office. This seems to violate some very basic rights of Canadian society and The Privacy Act.

(e) Section 11: The director is given direction as to who should be consulted to evaluate a program of instruction, but nowhere does it mention that he or she should also consult with or ask the operator of the school. We would like to suggest that this section dictate that the evaluation of a program also include an opportunity for the operator of a school to meet with the review board and present justification for the format and content of the program. Decisions on this program should not be made without input from the operator.

The bill contains many more examples of the arbitrary power granted to the director. I respectfully request the committee to consider the following questions: (i) Does protecting the students' rights have to be at the expense of the operator of a private vocational school? (ii) Please read the bill as though you were the owner or operator of a school. Could you operate within the terms of the bill? Would you invest in a private vocational school? Is the bill business friendly? (iii) How are the operators' rights protected?

2. Another concern is the training completion fund.

(a) The 1% fee is excessive. A private vocational school operator is pleased if he or she can realize a profit of 10 percent. Very often it is less than that. One percent represents the decrease in profit of at least 10 percent.

(b) The ongoing assessment of a 1% fee will become excessive. Unless the fund is capped at a percentage of total tuition and a maximum student capacity, it is more of a fee than the establishment of a fund.

3. The bill does not address what many of us had hoped for when we heard that the bill was going to be rewritten, that is, a more rapid approval of new programs. The current process is unnecessarily cumbersome and the time frame unreasonably long. The bill appears to make the process even more subjective, and it is unclear how a private vocational school operator could expect timely approvals.

4. In conclusion, I ask of the committee to protect and assist the operators of private vocational schools. We contribute tremendously to our society, both financially and through offering a service of great value. Please allow us to continue operating; show us and others that Manitoba is open for business.

Hon. Diane McGifford (Minister of Advanced Education): I thank the member for coming here tonight. I wonder if the member can tell me if he is familiar with the Manitoba Association of Career Colleges and if he is a member.

Floor Comment: I am sorry, I cannot hear you.

Ms. McGifford: I know. I am sorry. I cannot stop coughing. I wonder if the member could tell the committee if he is familiar with the Manitoba Association of Career Colleges.

Floor Comment: Yes, we are a member of—

Mr. Chairperson: Sorry, I need to acknowledge you every time. Mr. Penner.

Mr. Penner: Yes, we are a member of it.

Ms. McGifford: I thank the presenter for that information. I wonder then if the member is aware that we have consulted with the Manitoba Association of Career Colleges, and we have been assured that they like the legislation.

Mr. Penner: We contributed to the bill, and some of the concerns I mentioned here were raised to that committee. We have not seen that reflected in this bill today. In particular is concern about the great power given to the director, which is mentioned by the committee; examples given, the problem that we see as it developed in Ontario, and we have not seen that acknowledged to date.

Hon. Jon Gerrard (River Heights): Have there been a number of vocational schools go out of business, which led to the current legislation to protect students?

Mr. Penner: Sorry, what was the question?

Mr. Gerrard: Have there been vocational training institutions, private vocational training institutions, which have gone out of business and leading to this particular problem, which this bill is trying to address?

Mr. Penner: Yes, there have been some going out of business. I am not sure how many. We did recently acquire Robertson College, which nearly went out of business, and maybe, in essence, they might yet go bankrupt. But we did step in and, so to say, rescued some situations where the students were allowed to complete their course of studies.

Mr. Gerrard: Your concern here is not with the intent of the legislation, which you see is a reasonable one for protecting students but rather

that there needs to be an approach, which either provides for appeal or a reasonable, more democratic approach in terms of the role of the director. Is that right?

Mr. Penner: Precisely correct. We have no problem at all with more protection given to the student. We will endorse that, and the committee, which was referred to before by the minister, endorsed that as well. Our concern is that the bill looks to us to be one-sided and that it seems to do that at the expense of the operator of the school.

Mr. Gerrard: In addition to changing the powers of the director and having some sort of appeal mechanism, are there some other specific changes that you feel are critical for this bill?

Mr. Penner: I think that the ones that I have listed here are the major concerns. I would be quite prepared to discuss it in more detail, but I do not have enough background to do it right at this point.

Mrs. Heather Stefanson (Tuxedo): Thank you very much, Ken, for your presentation this evening. You made some compelling arguments here in this presentation, so thank you for those.

Have you ever, at any point in time, been in discussions with the minister's office regarding your concerns over this bill?

Mr. Penner: I have mentioned them to, I do not know if it was directed to the minister's office. I have mentioned it to some of the people in the ministry who work in the Department of Education, some of the concerns that we have. I have definitely mentioned them to the, I am not sure what her position is, it is the Director of Private Vocational Schools, Monika Oepkes. I mentioned that to her with respect more to the existing bill, that one of the great concerns of private vocational schools, and I have talked to a number of them, and it is true, especially for the private vocational schools that do technical training, is that the length and even the arbitrariness of getting approval process is huge. What I see here is that the subjectivity of trying to get something approved, it is a bit like a border guard. You do not know if you are ever

going to get through or not, because there are no rules to mandate it.

If you look carefully at the bill, there are no time lines given. We could be waiting for approval for weeks and months, and that has happened to date. This bill does not address that.

Mrs. Stefanson: You had mentioned, Ken, that you had had discussions with other private vocational school operators. I am wondering if you could let me know how many agree with some of the issues and concerns that you have brought forward here tonight.

Mr. Penner: It would be an estimation only, but I have talked to, more those in our field of study, which is business and technical training. I am thinking of about four or five of them that expressed the same concern.

Mr. David Faurichou (Portage la Prairie): Thank you very much for your presentation. I would like to ask a couple of questions with regard to the training completion fund. You have made a couple of observations here that I believe have merit. In regard to the 1 percent, the legislation says up to 1 percent. However, has it been indicated to you that it will be 1 percent?

Mr. Penner: No, it says up to 1 percent.

Mr. Faurichou: In regard to the actual fund, is there a history of the private vocational registrants as far as default and how much money has been lost by students for failure to deliver programming and all of that? Is there a track record that warrants this type of fund being established?

Mr. Penner: I do not think I could comment on that. I am not aware of any great defaults on that. I do know of some that have recently defaulted, and the ones I am thinking of, for example—I am not sure if I should mention names or not, but Hallcrest College, for example. I believe they were taken over by Success. Generally what happens is—we took over Robertson—the students have been generally allowed to complete the program of studies.

* (22:00)

But I would like to add to that. On the other hand, as I stand here, there is probably at least,

my best estimation, about \$200,000 of tuition fees that I will never see for students who have not paid me. I do not know where I appeal to. I think the problem is much greater in reverse. That also is problematic to most schools where we just do not realize, unfortunately, some of the tuition that should be paid.

Mr. Faurschou: Thank you for your answer there. So you have a suggestion here that it have a cap placed on it, and then if that cap is reached and there are new entrants, new registrants in this particular vocational programming field, that potentially that new entrant would then pay their percentage to the fund, and you as an existing registered individual then get a rebate because there is another player in the midst.

Can you maybe elaborate a little bit on that, when you mentioned that it should be capped?

Mr. Penner: Yes. On 2.(b) on the last page there, I suggest possibly some percentage of the product of the total tuition fee times the maximum student capacity. So if, indeed, the tuition fee, let us say, was \$5,000, and the school had a capacity of 100 students, which would be half of a million dollars, that the fee, if you think about what could probably go wrong and what could the fee be and what is the likelihood of it, what percentage of schools have gone out of business, I think it is a very low percentage. Is it 10 percent of schools? I do not think so. Is it 5 percent? I am not sure.

So maybe it should be 5 percent of that total amount, which would be adequate to cover it, probably more than adequate because as indicated in the proposed legislation, the interest on that fund would also be put into the fund which could over the course of time grow substantially.

I do not know, I am not privileged to know what the gross revenue of all the private vocational schools would be in the province, but my understanding is there are well over 100 private vocational schools in the province. I do not know if the average is a million dollars, half a million dollars, but if it were a million dollars, multiply a million dollars by 100 schools which is \$100 million and 1 percent of that is a lot of money, and that accumulates over years with interest.

I think it is more of a fee than a fund. I use those numbers more as examples because I do not know what the gross revenue of the private vocational schools would be, but it definitely would be many millions of dollars per year.

Mr. Chairperson: Thank you for your presentation.

Mr. Penner: Thank you, Mr. Chair.

**Bill 44—The Provincial Police Amendment
(Aboriginal Policing) Act
(Continued)**

Mr. Chairperson: The next presenter is on Bill 44, David G. Newman. Welcome back. Do you have a written presentation?

Mr. David G. Newman (Private Citizen): No, I do not, Mr. Chair.

Mr. Chairperson: Please proceed.

Mr. Newman: You have had circulated to you material which I will be referring to from time to time that was circulated at the outset before Chief Marjorie Prince and others spoke to you.

I wanted to, at the very outset, simply correct something that might have been misinterpreted and make very clear that the Exchange Group, and Colin Moncrieff in particular, are the third-party manager for Indian and Northern Affairs Canada. They are responsible for the administration of the funds from INAC.

Soaring Eagle Accounting Inc. is the appointed manager chosen by Dennis Pashe and approved by Health Canada in relation to Health Canada funding. The gas bar business, whoever owns it, Bingo Palace, VLT and other gaming revenues and expenditures fall within the area of provincial responsibility, so far as legislation is concerned. Policing, of course, and the administration of justice, fall within the provincial area of jurisdiction and includes, of course, policing in relation to criminal offences.

I want to try to put all of you who are not, like Mr. Lathlin, exposed to life in a reserve situation over any long period of time, and I am not one of those either. The particular reserve

here, the particular band here, the particular history of this band, is one of a dictatorship for a long period of time. You have heard it described.

Now, what does a dictatorship mean? It means control with impunity over the executive and legislative branches of government and the band treasury and expenditures, of course, including the capacity to fund criminal court defences of individual band members and friends of the chief, the capacity to use the civil courts, to sue and seek injunctions, to restrain political opponents, in a situation, I might say, where the federal Human Rights Act does not have a ground of political beliefs as a ground of discrimination, like the provincial act does.

The courts can then be used without there being any recourse for that being used as a means of oppression by a dictatorial chief. The very courts that are administered by this Province can be used to repress band members who are nonsupportive of the chief, and they control the funding. Some specific examples of areas of control in a dictatorship situation are things like social assistance payments, who gets them, things like education funding and the right to attend school, things like housing, who lives where, in what conditions, whether they pay rent or not, and whether they can stay there or they can be evicted.

Band by-laws is a law-making function which, in a dictatorship, the chief can do it alone. Band-owned businesses are run, owned. Profits go then to those businesses controlled by the chief. All jobs on reserve, hiring and firing, are in the control of the dictatorial chief. Health funding and programs, the management of them, are in the control of the chief. Privacy and disclosure are in the control of the chief. There is a situation here, there may be some people at this table who have individually or had subordinates or friends receive brown envelopes from Dennis Pashe, brown envelopes containing information such as human rights investigatory reporting information, criminal record information, private health information, private social assistance information and private financial information.

People who are prominent citizens in this province, as part of the campaign to cause these

people not to be represented, to disassociate themselves from these people, were strategically sent out. It is the kind of thing in a dictatorship in this world. If you imagine the Premier of the Province giving direction to every minister to dig up information on individuals from every department of government from cradle to grave and then use it against political opponents, think about it. That is the monstrous kind of thing which has happened here.

So policing becomes pretty important. Safety, security and freedom from police abuse and false arrest may be controlled and certainly influenced by a dictatorial chief. With separation of politics, power and wealth from policing—that is, a lack of independence to investigate, charge, arrest, testify against the dictatorship and friends of the dictatorship—fear and favour rules. The rule of man prevails, not law.

* (22:10)

Oppressed people who are band members need fearless protectors who treat no one as being above the law and treat all people equally and respectfully. Oppressed people who are band members need protection against abuses of power contrary to the human rights law, contrary to the Criminal Code, contrary to tax law and gaming and lotteries law.

At issue are life, safety from injury and security of own source revenue from VLTs, bingo, break-opens and other gaming and from things like gas bar revenue and taxes to the federal and provincial governments from gas and tobacco sales on reserve. Why is that a security issue? Because if they are not paid, then they become a debt on the band and the members and come out of revenues that are there to support other things that are more significant.

If a province recognizes a dictatorial chief, the police are the only protectors of matters in provincial jurisdiction; for example, provincial tobacco taxes, provincial gasoline taxes, provincial VLT revenue and expenditures and provincial gaming revenue and expenditures. If the police are in the control or influence of the chief, the band members must take law enforcement into their own hands for the sake of the rule of law, democracy, human rights and

justice, because by recognizing the dictator, not only are those own source revenues jeopardized and used to fund further oppression and dictatorship, but personal security, safety, health and life itself and the whole reputation of the justice system are in jeopardy.

This time, this situation, the Province cannot blame the federal government in relation to Dakota Tipi. The federal government has (1) imposed third party management to replace dictatorial control of the treasury and expenditures of education, social assistance, housing and the like. Band jobs paid for by INAC funding are now in that third party manager's hands. The third-party manager, in fact, becomes the employer.

The federal government, secondly, has committed to impose a secret ballot election supervised by the federal government, allowing on- and off-reserve band members to vote, and everyone over 18 who is a band member on or off reserve can vote. That is, the federal government has supported democracy and human rights and the rule of law and will supervise the election process.

Thirdly, in new governance legislation proposed, the federal government commits to extend the Canadian Human Rights Act to protect Indians from the Indian Act and the administration of the Indian Act and Indians from human rights abuses by Indians on the same reserve from discrimination, with the exception of political beliefs, which is something this Province should be lobbying the federal government to change. I certainly have.

This provincial government has chosen to protect the dictatorship. Not to go the way of the federal government, but to protect, respect, recognize the dictatorship. It is not in the public interest to do this. The public want the rule of law and respect for the justice system and especially policing. Most importantly, oppressed band members anywhere want the safety and security and equal treatment under the law, like the rest of us. Yet this Government proposes to expand Indian policing services in these kinds of circumstances without proper safeguards and assurances of democracy and the rule of law.

The Government was warned by Marjorie Prince before the contract with the dictatorship

was signed by the Province. That was referred to. That was the July 19, 2001, letter. I am going to read from it. It is to Al Brolly, who is here, has been here. He is here right now, as is the Deputy Minister of Justice, and as is Greg Graceffo, I believe the ADM.

Mr. Vice-Chairperson in the Chair

In this letter, Marjorie Prince, speaking for the people at Dakota Tipi, said: It is my understanding from speaking to Inspector Nason on July 18, 2001, at the RCMP station in Portage la Prairie that Chief Dennis Pashe wanted to have Dakota Ojibway Police Service in our reserve, and it would only be one peace officer from nine to five. Also, there would be no services available on weekends and after hours. This concerns us and haven't you seen why it should? I would like to express that our reserve needs full-time assistance from the RCMP at all times. The decision Chief Pashe made was not made with the people. It is only Chief Dennis Pashe's decision. We do not agree with it at all. The people of Dakota Tipi First Nation would like to express to have the RCMP detachment patrolling our reserve. The RCMP are only two and one half miles away from our reserve and respond immediately to all calls from the band members. We see no reason to change this system with the RCMP. We were notified of those decisions made by Chief Dennis Pashe and do not agree with it. We do not accept Dakota Ojibway Police Service.

Mr. Chairperson in the Chair

Is it not ironic? Grand Chief Margaret Swan, I was told tonight was at a meeting on the Dakota Tipi Reserve in August 2001 at the AMC meeting of chiefs there, and a special injunction was obtained from the Court of Queen's Bench of Manitoba to ban the people of Dakota Tipi who did not support Dennis Pashe from attending anywhere near the meeting which was in the Bingo Palace, and they had to stay a hundred metres away. That decision was made with Margaret Swan apparently being the only dissent.

Mr. Chairperson: Sir, you have about one minute left.

Mr. Newman: So what is the solution to a situation where ministers of the Crown, the

Premier (Mr. Doer), the Minister of Justice (Mr. Mackintosh), the Minister of Aboriginal and Northern Affairs (Mr. Robinson), the Minister of Finance (Mr. Selinger), the Minister for the Status of Women and Lotteries (Ms. McGifford), the Minister responsible for Gaming (Mr. Ashton), all who have a part to play in the security of the people in this band and their financial security as well, all of them have rejected representation, recognition of Marjorie Prince, chief and council. All of them have chosen to recognize the dictator. All of them have chosen to do nothing about the issues which have been brought before you.

What is the solution? I suggest the following ideas.

(a) Consider requiring a referendum, a secret ballot vote after an information and consultation period with band members to approve a band entering into such a policing agreement.

(b) Build it right into the statute. With respect to the commission, the commission must be designed in such a way as to be independent, above politics, professional, accountable, and have integrity.

(c) The final idea is to suggest that the province work with the Solicitor General department in Ottawa to ensure that the quality of policing and capacity building in this evolving Aboriginal police service has a readily available community relations kind of recourse for complainants with the contracted police service to facilitate and educate complainants about recourse available and then report back about the results of these complaints, be there to serve.

I am going to table or point out to you that financial statement, that fat document that was left with you, I want to point out in particular, it is a qualified financial statement. This is the March 31, 2001 financial statement Minister Ashton in the House today should read, because he said Dakota Tipi was in compliance with gaming. Qualified financial statement by this firm, you read the auditor's report, exhibit A, Holukoff Chiarella. It is page numbered 5, right hand corner. Read page 34, Bingo Palace auditor's report—

Mr. Chairperson: Mr. Newman, I think you said you were going to table that. You are quickly running out of time.

* (22:20)

Mr. Newman: Okay. Page 38, it shows accounts receivable, advances receivable totaling over \$60,000, which has somehow been given out to individuals. Is that charity? Is that religious objects? The examination revealed serious deficiencies in internal control over the accounting records. As a consequence we were unable to satisfy ourselves that all revenue and expenditures of the Bingo Palace had been recorded or existed, nor were we able to satisfy—

Mr. Chairperson: Mr. Newman, you are quoting from a document that we have had since about six-thirty, and your time is up. We have two people for questions, so far.

Hon. Jon Gerrard (River Heights): David, thank you for your presentation. It seems to me that something needs to be done immediately as well as there need to be some clear changes to the legislation that we are talking about. The letter to Brolly suggests that on a short, immediate form that it might be better to have the RCMP as an independent police force operating and looking after things in the community. The suggestions that you have made in terms of the organization of the police commission and so on would be changes that you would recommend be made to the bill before it proceeds any further. Is that what you are suggesting?

Mr. Newman: Absolutely. Those kinds of changes should be considered. I do not pretend to have the legislative drafting expertise to deal with that. That is why there are legislative drafts people. I do not pretend to have done the research that has been done, but I have enough comfort from even discussions I have held this evening with Al Brolly that this idea of having community approval is a good one. This Government has community approval in the form of a referendum for the conversion of public Hydro into a private enterprise. That is protecting public ownership. They should have the same kind of concern about democracy for protecting people's lives and people's property and people's revenue.

Mr. David Faurshou (Portage la Prairie): I would like to ask the presenter as to whether he had in fact concluded his remarks, because I would seek leave of the committee for the

presenter to conclude his remarks, should he wish to do so.

Mr. Chairperson: I had cut him off because he had run out of time, but you are asking for leave. Is there leave of the committee? No? Leave has been denied.

Mr. Leonard Derkach (Russell): Well, this I think should be recorded. The government of the day has denied a presenter for making a very critical presentation with respect to the lives and the safety of people living on the Dakota Tipi reserve, Mr. Chair.

I think it is obvious from the presentation, Mr. Newman, if I could turn to you now, to ask my question that what we have on the Dakota Tipi reserve is a corrupt government and a corrupt chief or a past chief or whatever he is called today who are running the affairs of the reserve. It appears from the comments you have made and other presenters that the government of the day is supporting, in fact, this corrupt form of government, rather than supporting the third party who have been put in place to manage the affairs of the reserve.

Mr. Newman: I will not use adjectives. I will simply refer to the stories that have been told tonight by five representatives in the band who courageously appeared here tonight and can go home now with probably the message already received by this chief as to what happened here tonight, and their lives and their health and their families' health are in jeopardy because retaliation has been the name of the game beyond any kind of reason beyond the law. So that is the concern.

The federal government chose for the sake of good governance under section 74 of the Indian Act to commit to declare an election. All the regulatory work has been done, as I understand it, and they will be ready as early as August 7 to declare that an election will take place about 79 days after that. The case challenging it, the other injunction attempt to kill this courageous decision by the federal government, this appropriate decision by the federal government for the sake of good governance, they attempted to preclude that from happening and also attempted to preclude third-

party management from continuing by virtue of an injunction proceeding, a *certiorari* proceeding, in the federal Court of Canada. They withdrew that on the very day, which was their last day for filing their material.

Mr. Chairperson: Mrs. Smith, Fort Garry.

Point of Order

Mr. Derkach: Mr. Chair, on a point of order.

Mr. Chairperson: Point of order, Mr. Derkach.

Mr. Derkach: When a member at this table secures the floor to ask some questions, is it not normal practice from this committee that that individual member be allowed to complete his questions before you move on to another member?

Mr. Chairperson: Mr. Derkach, I was just trying to be fair to your colleagues, including your Justice critic, Mrs. Smith from Fort Garry. There are three people from your caucus who want to ask questions. If you wanted to use up the entire five minutes yourself, you should indicate that to your colleagues. Otherwise, I am going to rotate and recognize Mrs. Smith and then Mr. Faurshou.

So I believe you do not have a point of order.

* * *

Mrs. Joy Smith (Fort Garry): I will defer to my colleague Mr. Derkach for his next question because I believe it goes into the line of questioning he wants, and with your indulgence I would ask one question following that.

Mr. Faurshou: I would like to defer.

Mr. Derkach: Just one final question, Mr. Newman. In questions asked of the Government, the minister responsible for northern and native affairs said in the House that he had very little choice but to recognize the existing chief of Dakota Tipi, and the band council that were there previously. In your professional opinion, since the federal minister has indicated that there must be an election, do you feel that the

provincial government has no choice but to continue to recognize the government of Chief Dennis Pashe?

Mr. Newman: If this is a product of legal advice within the provincial government, the Department of the Attorney General, I think the advice should be reconsidered. In light of all of the materials that were filed in the federal Court of Canada, court file T-56302, where an affidavit was filed by Nathalie Nepton and I believe you have in the material a page of that, which indicates, at page 5, her position. That is: where there is a leadership dispute between two or more alleged councils, a third-party manager may be appointed to deliver those programs and services funded by DIAND and suspend all other transactions requiring the statutory consent or involvement of the council or the band as required by the Indian Act until such time as a council is chosen in accordance with the Indian Act.

Martin Egan also swore an affidavit April 25, 2002, and at page 19 and throughout, it says in paragraph 45: Pending the results of an election under the provisions of the Indian Act, DIAND has continued to suspend any transactions of Dakota Tipi which in accordance with the provisions of the Indian Act require the involvement or consent of the council of the band.

Another affidavit is filed in the materials. There are also particulars that are filed, both a Queen's Bench version and a federal court version, prepared by the attorney for Dennis Pashe, which sets out the particulars for choosing leadership in the band. I quote, page 2, tab D of the materials filed called *Particulars of the Defendant/The Dakota Tipi Indian Band*, and the Case of William Hall and Her Majesty the Queen as Represented by the Minister of Indian Affairs and Northern Development, the Attorney General of Canada and the Dakota Tipi Indian Band, file No. T-1750-99, paragraph 6, page 2: Under the custom, a new chief would be selected by the First Nation a) upon the death of the existing chief; b) when the consensus of the First Nation is that the existing chief is unable or unwilling to carry on his duties; c) when the consensus of the First Nation is that the existing chief has failed to fulfil the high trust of his

office or no longer has the confidence of the people. These decisions are reached by consensus.

* (22:30)

There were five meetings held by the band where everyone was invited and they repeatedly, starting December 3, 2001, chose Marjorie Prince and councillors with elders there making the choice and approving it, and it was changed from time-to-time. Sheila James replaced Garry Pashe. Ralph Pashe, who used to be the third councillor in the Dennis Pashe group, joined and was chosen by consensus to be part of Marjorie Prince's chief and council group by all of these meetings.

Open discussion, transparency at all of these meetings trying to get at the truth. They selected, continue to support Marjorie Prince and her council, and they continue to support the process to get a declaration under 74 to bring this band under the Indian Act.

The last, last effort by Dennis Pashe, relying on section 35 of the Constitution Act 1982, was to go to the Federal Court and to say the federal government did not have jurisdiction to make a declaration under section 74, because there was an Aboriginal right which pre-empted it; also went further and said, third party administration was not done in accordance with appropriate exercise and discretion.

And I say that was filed. These were the materials that were in response to that filing and the result was they never produced any evidence of any Aboriginal right under section 35.

If there was any doubt before then; if there was any deference to allow the court to make a decision, the court is not now asked to make a decision, and this Province should now make the courageous, easy decision. Follow the federal government and do for the sake of good governance and here safety, health, and security, financially, of the people. Start recognizing interim chief and council as the chief and council, and failing that, take the federal position and do not recognize either, but make sure that the interests of these people are looked after through proper policing and through proper

accountability, and through a police investigation, a proper police investigation—

Mr. Chairperson: Mr. Newman, your time—

Mr. Newman: —or a provincial auditor investigation of what is going on in that community with respect to gaming revenue, gas bar revenue, taxes. Send in the police.

Mr. Chairperson: Mr. Newman, the time has more than expired. Thank you very much for your presentation.

Mr. Newman: Thank you for your attention so late.

Mr. Gerrard: I would ask for leave to ask one more question, which I think is important.

Mr. Chairperson: Is there leave of the committee for one more question?

Some Honourable Members: Leave.

Mr. Chairperson: Leave has been granted, Mr. Gerrard.

Mr. Gerrard: Thank you. You spoke about the imminent danger or threat to the lives of the individuals who presented here. What would be your recommendation in terms of making sure that they are not at risk?

Mr. Newman: Well, I think they should be alerted to the concerns by whether it is Al Brolly or someone, the Deputy Attorney General, the Attorney General. We have enough notice. I can tell you that I wrote a letter to Minister Mackintosh, which is amongst the materials, out of grave concern. I thought someone was going to die Canada Day weekend, because that was a year after the events leading to the first injunction, and I thought someone was going to die. So I came out and decided that with the instruction and support of my client something had to be done to bring this to the highest level to get some action here.

This opportunity, frankly, has allowed things to be told that can be dismissed when they are presented in letter, but when they are presented by people telling their stories it is very

compelling, and if you were not moved by this, if you were not moved to do something about it, then God rest your souls because you are responsible.

Mr. Chairperson: Thank you for your presentation.

That concludes the list of presenters I have before me. Are there any other persons in attendance who wish to make a presentation? Hearing none, is it the will of the committee to proceed with clause-by-clause consideration of the bills? [*Agreed*]

Bill 19—The Mines and Minerals Amendment Act

Mr. Chairperson: I would like to suggest that we begin with Bill 19, The Mines and Minerals Amendment Act. Is that agreed? [*Agreed*]

Does the minister responsible for Bill 19 have an opening statement?

Hon. MaryAnn Mihychuk (Minister of Industry, Trade and Mines): No.

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

An Honourable Member: He is not here.

Mr. Chairperson: We thank the Official Opposition.

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

Clauses 1 and 2(1)—pass; clauses 2(2) to 2(4)—pass; clauses 3(1) to 5(2)—pass; clauses 6(1) to 8—pass; clauses 9 to 11(2)—pass; clauses 12 to 16—pass; clauses 17 to 19(2)—pass; clauses 19(3) to 20(3)—pass; clauses 21(1) to 21(5)—pass;

clauses 22(1) to 23(1)–pass; clauses 23(2) to 25(2)–pass; clauses 25(3) to 27–pass; clauses 28 and 29–pass; clause 30–pass; clauses 31 to 32(3)–pass; clauses 33 to 38–pass; clauses 39 to 42–pass; clauses 43 and 44–pass; clauses 45 to 48(2)–pass; clauses 48(3) to 51–pass; clauses 52(1) to 53(2)–pass; clauses 54(1) to 55(1)–pass; clauses 55(2) to 58–pass; clauses 59 to 60(3)–pass; clauses 60(4) and 61–pass; enacting clause–pass; title–pass. Bill be reported.

**Bill 22–The Public Schools Amendment Act
(Francophone School Division
Governance Structure)**

Mr. Chairperson: The next bill is Bill 22, The Public Schools Amendment Act (Francophone School Division Governance Structure). Does the minister have an opening statement?

Hon. Drew Caldwell (Minister of Education, Training and Youth): Very briefly, I want to thank the Division scolaire franco-manitobaine for their participation and partnership in the process that led to this piece of legislation that we are reviewing today.

The relationship that has developed between the Division scolaire franco-manitobaine and the provincial government over the last two and a half years has been a very positive one. I do owe a sincere debt of gratitude to the trustees of the Division scolaire franco-manitobaine for their advice and good work.

Mr. Chairperson: We thank the minister. Does the critic from the Official Opposition have an opening statement? No.

During the consideration of a bill, the enacting clause and the title are postponed until all other clauses have been considered in their proper order.

* (22:40)

An Honourable Member: Page by page.

Mr. Chairperson: Page by page? Is that agreed? [Agreed]

Clauses 1 and 2–pass; clauses 3 to 7–pass; clauses 8 to 12(1)–pass; clauses 12(2) to 15–pass; clauses 16 to 20–pass. Clause 21.

Mr. Caldwell: Thank you, Mr. Chair. I have an amendment to clause 21 somewhere here. It has been tabled right now. I move, Mr. Chair

THAT the proposed clause 21.38(2)(b), as set out in section 21 of the Bill, be replaced with the following:

(b) elected or appointed as a member of the Legislative Assembly, the Senate or House of Commons of Canada, or the council of a municipality;

(b.1) elected or appointed to the board of another school division or school district; or

Mr. Chairperson: The amendment is in order. It has been moved by Mr. Caldwell

THAT the proposed clause 21.38(2)(b), as set out in section 21 of the Bill, be replaced with the following:

An Honourable Member: Dispense.

Mr. Chairperson: Dispense.

Mr. Caldwell: Thank you, Mr. Chair. I have no remarks further then to the amendment.

Mr. Chairperson: Amendment–pass; clause 21 as amended–pass; clauses 22 to 23(3)–pass.

Mr. Caldwell: Mr. Chair, I have a second amendment.

Mr. Chairperson: Which clause?

Mr. Caldwell: Clause 25.

Mr. Chairperson: Clause 23(4)–pass; clause 24–pass.

Mr. Caldwell: Mr. Chair, I appreciate that. I move

THAT section 25 of the Bill be replaced with the following:

Coming into force:

25(1) subject to subsection (2), this Act comes into force on the day it receives royal assent.

25(2) Clause 21.38(2)(b) comes into force on July 1, 2003.

Mr. Chairperson: The amendment is in order. It has been moved by Mr. Caldwell

THAT section 25 of the Bill be replaced with the following:

Coming into force—

An Honourable Member: Dispense.

Mr. Caldwell: I have no comments on the amendment, Mr. Chair.

Mr. Chairperson: Is the committee ready for the question?

Some Honourable Members: Yes.

Voice Vote

Mr. Chairperson: All those in favour of the amendment, please say yea.

Some Honourable Members: Yea.

Mr. Chairperson: All those opposed, please say nay.

Some Honourable Members: Nay.

Mr. Chairperson: In my opinion, the Yeas have it. The amendment is carried.

* * *

Mr. Chairperson: Clause 25, as amended—pass; enacting clause—pass; title—pass. The bill, as amended, be reported.

Bill 32—The Fatality Inquiries Amendment Act

Mr. Chairperson: The next bill is No. 32, The Fatality Inquiries Amendment Act. Does the minister have an opening statement?

Hon. Gord Mackintosh (Minister of Justice and Attorney General): No.

Mr. Chairperson: Does the critic for the Official Opposition have an opening statement? Mrs. Smith, Fort Garry, do you have an opening statement on Bill 32, The Fatality Inquiries Amendment Act?

Mrs. Joy Smith (Fort Garry): No, I do not.

Mr. Chairperson: Thank you. During the consideration of the bill, the enacting clause and the title are postponed until all the clauses have been considered in their proper order.

Is there agreement from the committee that the remaining bills be done page by page? *[Agreed]*

Clauses 1 to 2(2)—pass; clauses 3 to 5(2)—pass; clause 6—pass; clauses 7 to 9(1)—pass.

Mr. Mackintosh: We have an amendment to distribute to clause 9(2).

Mr. Chairperson: Let us pass 9(1). No, we did that. Mr. Minister.

Mr. Mackintosh: There are two related amendments here. I move:

THAT subsection 9(2) of the Bill be amended by striking out "this Act comes into force" and substituting "section 4 of this Act comes into force".

Mr. Chairperson: The amendment is in order. It has been moved by Mr. Mackintosh—

An Honourable Member: Dispense.

Mr. Mackintosh: This is just to split the coming into force and there is a subsequent amendment to clause 10 and 11 that will tie this in.

Mr. Chairperson: Is the committee ready for the question?

An Honourable Member: Question.

Mr. Chairperson: Is it the will of the committee to adopt the motion? *[Agreed]*

The motion is accordingly passed. Clause 9(2)—pass. Shall Clause 10 pass?

Mr. Mackintosh: I move

THAT section 10 of the Bill be amended by striking out "this Act comes into force" and substituting "section 6 comes into force".

Mr. Chairperson: The amendment is in order. It has been moved by Mr. Mackintosh—

An Honourable Member: Dispense.

Mr. Chairperson: Dispense. Mr. Minister.

Mr. Mackintosh: Again, this just relates to the splitting of the coming into the force of provisions and the amendment to clause 11 will tie this together.

Mr. Chairperson: Is the committee ready for the question?

Amendment—pass; Clause 10, as amended—pass; Shall Clause 11 pass?

Mr. Mackintosh: I move

THAT section 11 of the Bill be replaced with the following:

Coming into force

11(1) This Act, except section 6, comes into force on the day it receives royal assent.

Coming into force: section 6

11(2) Section 6 comes into force on a day fixed by proclamation.

Mr. Chairperson: The amendment is in order.

Moved by Mr. Mackintosh

THAT section 11 of the Bill—

An Honourable Member: Dispense.

Mr. Chairperson: Dispense.

Mr. Mackintosh: This is just a straightforward amendment, but the Provincial Court has asked for an opportunity to consider, and I am sure, with the new Chief Judge, that there will be reasonable time and supports available to write reports. There had been arrangements that the former Chief Judge was able to bring in to allow time for the writing of inquest reports, but the Chief Judge is away for several weeks and the court has therefore asked that it come into force and proclamation. They, of course, only expect a brief period to review this. They do not ask for a

lengthy period of time, but in fairness to the court, I think it is only fair, given that there are very serious sanctions for not beating the deadlines in the bill.

Mr. Chairperson: Is the committee ready for the question?

An Honourable Member: Question.

* (22:50)

Voice Vote

Mr. Chairperson: All those in favour of the amendment, please say yea.

Some Honourable Members: Yea.

Mr. Chairperson: All those opposed, say nay.

An Honourable Member: Nay.

Mr. Chairperson: The Yeas have it. The amendment is accordingly passed.

* * *

Mr. Chairperson: Clause 11 as amended—pass; enacting clause—pass; title—pass. Bill be reported.

Bill 33—The Private Vocational Institutions Act

Mr. Chairperson: The next bill is Bill 33, The Private Vocational Institutions Act. Does the minister have an opening statement?

Hon. Diane McGifford (Minister of Advanced Education): No, Mr. Chair, I do not.

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

An Honourable Member: No, Mr. Chair.

Mr. Chairperson: We thank the members. During the consideration of a bill—I think we agreed to do page by page. I guess I have to read this. During the consideration of a bill, the table of contents, the enacting clause and the title are postponed until all other clauses have been considered in their proper order.

Clause 1—pass; clauses 2(1) to 3(1)—pass; clauses 3(2) to 4(2)—pass; clauses 4(3) to 5(3)—pass; clauses 6(1) to 7(4)—pass; clauses 7(5) to 8(3)—pass; clauses 8(4) to 8(9)—pass; clauses 8(10) to 10(2)—pass; clauses 10(3) to 11—pass.

Mrs. Heather Stefanson (Tuxedo): I move

THAT the following be added after subsection 13(3):

Any bill introduced in the Legislative Assembly to amend, repeal, override or—

Mr. Chairperson: Excuse me. I am going to interrupt the member. We are going to pass the clauses before your amendment and then we will deal with your amendment.

Clause 12—pass; clause 13(1).

Mrs. Stefanson: I move

THAT the following be added after subsection 13(3):

Any bill introduced in the Legislative Assembly—

Mr. Chairperson: Excuse me. I am sorry. We need to do 12(2) and then we will do your amendment to 13(3). Okay?

Clause 13(1)—pass; clause 13(2)—pass; clause 13(3).

Mrs. Stefanson: We will get this right. All right. Okay. I move

THAT the following be added after subsection 13(3):

Amendment or repeal

13(3.1) Any bill introduced in the Legislative Assembly to amend, repeal, override or suspend the operation of subsection (3) shall be referred at the committee stage to a standing committee of the Legislative Assembly which provides the opportunity for representations by members of the public.

Requirements re hearings

13(3.2) The standing committee referred to in subsection (3.1) shall not meet to review the bill until seven days after the later of

(a) the day the bill is distributed in the Legislative Assembly; and

(b) the day the public is given notice of the date, time and place of the meeting.

Mr. Chairperson: Amendment is in order.

Mrs. Stefanson: Just a couple of things, the purposes of this bill, we have noticed and made note that this Government has a record of dipping into funds to support their spending habits, Mr. Chair, and we want to—basically, we understand that this says that these funds can only be used for the purposes of students' tuition fees, but it does not prevent further raiding of this fund and anyone on the opposite side from introducing a bill to subsequently raid the fund to support their spending habits. So this bill will provide and give ample notice for the public to come in and express their concern if that should take place.

Ms. McGifford: Mr. Chair, I want to assure the member that this fund will be held in trust and that the fund is designed for the purposes stated in the bill. I do not think the member need fear that there will be any raiding, and so, for those reasons, I reject the amendment.

Mr. Harry Enns (Lakeside): Well, Mr. Chairman, I can appreciate, when a minister is confronted with an amendment, that she has to look at it seriously, but this amendment does not in any way detract from the purpose of the bill. I will accept that honourable member's skepticism for not believing what we believe on this side of the House, this Government has a penchant for, namely, dipping into funds for other uses.

I will not go into the whole Hydro debate at this stage of the evening, but the point that I want to make, this recent amendment does not change one iota the purpose of the act. It just puts in place a bit of notice to the general public that, some time in the future, if they or some other government wants to change it, there has to be some public notice given, and the public has an opportunity to discuss the advisability of the change. It does not change the purpose of the bill.

I would ask the minister to reconsider her automatic rejection of this amendment.

Mr. Chairperson: Is the committee ready for the question?

An Honourable Member: Question.

Mr. Chairperson: Is it the will of the committee to adopt the amendment?

Some Honourable Members: Agreed.

Some Honourable Members: No.

Voice Vote

Mr. Chairperson: All those in favour of the amendment, say yea.

Some Honourable Members: Yea.

Mr. Chairperson: All those opposed, say nay.

Some Honourable Members: Nay.

Mr. Chairperson: In my opinion, the Nays have it. The amendment is accordingly defeated.

* * *

Mr. Chairperson: Clause 13(3)–pass; clauses 13(4) to 14–pass; clauses 15(1) to 16(2)–pass; clauses 17(1) to 18–pass; clauses 19 to 20 (2)–pass; clauses 20(3) to 22(1)–pass; clauses 22(2) and 23–pass; clauses 24 and 25–pass; clauses 26 to 28–pass; table of contents–pass. Shall the enacting clause pass?

Mr. David Faurichou (Portage la Prairie): Before we pass this particular portion of the bill, I want to ask the minister: In light of her very short time span or duration of consideration of the amendment, is she considerate of introducing in third reading an amendment to address a very valid concern which has been presented before us here this evening, Mr. Penner's?

As well, a lot of discussion has taken place as to the monies that could accumulate over the period of time in fund for a very valid reason. We understand, certainly, the rationale behind the fund.

I want to ask the minister: Is she considerate of introducing an amendment to address the concerns raised here this evening in committee?

Ms. McGifford: I want to assure the member that we have consulted very extensively with the industry and the industry is supportive of this legislation. I also want to assure the member that it is very unlikely that much revenue will accumulate in this fund. We think the value of the fund will be about \$200,000 a year. It is a small amount of money, so, no, I am not considering an amendment at third reading.

Mr. Faurichou: The amount quoted by the minister, is that on an annual basis or at what juncture in time that comes into it?

Ms. McGifford: Mr. Chair, it is per year, but I am told by officials it would take one school bankruptcy to wipe it out and we have had three this year.

Mr. Faurichou: So, in light of what has taken place and the track record of this particular industry, is it not a consideration of the minister that at some point in time a cap should be considered? If there are going to be three bankruptcies, then let us put it in legislation that perhaps a fund be established to accommodate the highest number of bankruptcies or exit from this type of industry in any given year as history will provide. I believe it is a very valid point that a cap should, in fact, be introduced. Will the minister consider that amendment?

* (23:00)

Ms. McGifford: Mr. Chair, I have every confidence that this fund will be handled judiciously, and I can assure the member that we do not expect there will be a large amount of accumulation. I also want to point out to the member under 13 (2) (b) (i) "The prescribed percentage, which shall not exceed 1 % of the student tuition received," and it could, of course be lower, too. "Shall not exceed" the operative phrase. So I think the member need not trouble himself.

Mr. Chairperson: Enacting clause–pass; title–pass. Bill be reported.

Bill 43–The Polar Bear Protection Act

Mr. Chairperson: The next bill is Bill 43, The Polar Bear Protection Act. Does the minister of polar bears have an opening statement?

Hon. Oscar Lathlin (Minister of Conservation): Yes, thank you, Mr. Chair. I do have a very brief opening statement to make.

This bill is being introduced to address a particular set of circumstances that have revealed a gap in our ability to prevent ill treatment of captive polar bears originating in Manitoba, but being kept outside the province. I refer, of course, to the unfortunate incident in Puerto Rico several months ago, where polar bears, some of which originated in Manitoba, were being kept in inhumane conditions. Although the Province had guidelines in place governing the treatment of these animals, it was clear that there was no provision requiring that the guidelines be part of a contract with the receiving party, or how the guidelines might apply when the bears were transferred to a third party. In short, our conditions could not be imposed outside the province. All we were able to do was appeal to the authorities in the United States to take action, which they, fortunately, did.

Let me be clear about what circumstances this bill will address. It will address the quite rare situation where polar bear cubs are orphaned, but it appears that they can viably be raised in captivity. That this is a rare circumstance is evidenced by the fact that we have not turned over bear cubs to any organization in or out of the province for raising in captivity since 1996. This bill will not affect the many actions that occur routinely in the Churchill area to deal with problem bears, many of which are relocated away from human settlement, and a few of which have to be shot. The act will not deal with adult bears in the wild.

This bill clearly sets out the obligations of the Province to do all in its power to ensure the humane treatment of polar bears that it authorizes for export to be raised in captivity, or to be raised in captivity locally. It requires the Province to attach stringent conditions for the treatment of the animal to any export permit issued. It obligates the Province to also enter into a contract with the permittee that will, in turn, obligate the permittee to fulfil a number of conditions. These include meeting humane treatment standards that will be set out in the regulation. It would require the return of the animal or its assignment to an approved institution if these terms are breached. The act also

provides for penalties when the act is breached in Manitoba.

I have mentioned that the actual standards of care will be contained in regulation. The starting point for the public consultations that will occur on the regulations is the existing guidelines, the guidelines that exist now. We will be announcing the timing and other specifics of the consultation process shortly.

I believe this bill will ensure that polar bears that we have allowed to be taken out of Manitoba to be raised in captivity will be well treated and, if they are not, that we will have the means to put a stop to any mistreatment. Thank you, Mr. Chair. Those are my opening remarks.

Mr. Chairperson: Does the critic for the Official Opposition have a statement?

Mr. Harry Enns (Lakeside): Mr. Chairman, we have, in the Opposition, reviewed the contents of this bill. We support the measures being proposed and will seek its speedy passage.

Mr. Chairperson: We thank the minister and the member. During the consideration of a bill, the preamble, the enacting clause and the title are postponed until all the clauses have been considered in their proper order.

Shall clause 1 pass?

Hon. Jon Gerrard (River Heights): I just have a question for the minister on this bill. It is unusual in that it provides, in essence, for the extraterritorial application of Manitoba law, through the provision of contract. Does the minister foresee the potential for needing inspectors to go from Manitoba to wherever it may be in the world where polar bears are being housed?

Mr. Lathlin: Well, I think there are enough organizations out there that will, very immediately, let us know if, No. 1, bears are treated inhumanely. I also think organizations will be interested in the types of agreements we enter into with receiving parties in the jurisdictions that they operate.

Mr. Gerrard: In the event that there is an organization which is housing the bear, what will be the approach that the Province takes to

apply this in Puerto Rico or wherever this may be, in the Bahamas or Bermuda or Antarctica or wherever they may be?

Mr. Lathlin: One of the things that we have looked at is included in here. When regulations are made that will flow out of this legislation, we would not enter into any agreement with anybody where we felt that we could not take action, civil action, in the event that the agreement is breached. We would only enter into agreements in those jurisdictions where we feel that the agreement is breached so that we can take action and have some sense that there could be consequences imposed on the party that would be breaching the agreement.

Mr. Chairperson: Clause 1—pass; clauses 2 to 3(3)—pass; clauses 3(4) to 5—pass; clauses 6 to 8(1)—pass; 8(2) to 9—pass; clauses 10 to 13—pass; preamble—pass; enacting clause—pass; title—pass. Bill be reported.

Bill 44—The Provincial Police Amendment (Aboriginal Policing) Act

Mr. Chairperson: The next bill is Bill 44, The Provincial Police Amendment (Aboriginal Policing Act). Does the minister have an opening statement?

Hon. Gord Mackintosh (Minister of Justice and Attorney General): I think all of us in the room heard first-hand of concerns by certain of the residents of Dakota Tipi First Nation. We certainly are aware over the last while of ongoing reports, regular media reports. I know the MLA is aware of the issues that have arisen in this First Nation.

* (23:10)

I want to, of course, remind members of the committee that what is before the committee is legislation which, following recommendations from AJI, AJIC and just a general recognition that there should be represented in the law the reality of First Nations policing in Manitoba and puts in place a reflection of that reality and framework so that there is clear legal authority for the establishment of First Nations police forces.

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

Mrs. Joy Smith (Fort Garry): Clearly I think members around this table would agree that recognition of Aboriginal police forces is something that is necessary in many respects. However, tonight the shocking stories and the compelling stories that came forward, I have to reflect and think, what if these people did not come here tonight? There would have been missing information that we did not have.

I guess what I am very surprised at is that this Government would bring forth a bill that would endorse a chief and a situation on a reserve that, right now, this bill would certainly help. The problem is that plans have to be put in place where there is accountability in all sectors, whatever government. Good government, part of that is putting that accountability into place.

When I look and reflect at the literature that has gone to the Justice Minister's office, where do these people turn? If the highest justice authority in this Province has not, at this point in time, after listening this past year to the complaints, to the danger, can you imagine the terror children must feel when they hear tires squeal and gun shots in the night? Can you imagine what it does to any police force hearing about a fellow police force that are not there to serve and protect, that they are to do otherwise. It is a shocking revelation that this bill could be brought forward without first straightening out these kinds of aspects.

The women and the children are at risk under a dictatorship such as we have seen at Dakota Tipi. It is not a matter of whether or not there should be a police force there. It is a matter of safety of the women and children. It is a matter of everyone has a right in the province of Manitoba to be safe and to be protected. As a police officer, police officers across this country take an oath to serve and protect, and that should be in force no matter where that police force happens to be, whether it be in Winnipeg, in rural Manitoba, on a reserve, wherever that needs to be. That oath has to be there because that is what police officers across this country live by.

So, in my opening statement, I have to say quite categorically that I will be presenting two amendments, and, if those amendments are not accepted, members on this side of the House

certainly cannot support this bill. This could be something that we would really dig our heels in because we are concerned about the women and the children on this Dakota Tipi reserve that are at risk. No young child should have to see a man beat up their father or a hockey stick being broken, mother or father. It should not happen. They should not have to live like that in the province of Manitoba. This is what we are here for as government, and safety is a huge component.

In my opening statement, I want to make it quite clear where I stand and where we stand as members on this side of the House. This is shocking. It is deplorable. This should not be happening. The highest justice office in the Province, which is under the umbrella of this current Government, needs to wake up and do something about it. So, as far as this bill is concerned, no bill can go through that would endorse something like this. Thank you.

Mr. Chairperson: During the consideration of a bill, the enacting clause and the title are postponed until all other clauses have been considered.

Mr. Harry Enns (Lakeside): Well, Mr. Chairman, just to support my colleague from Fort Garry, allow me to put a few words on the record. I do so as I fondly remember having had the privilege of representing the Dakota Tipi people during the seventies as their MLA in this building. They may not remember me, but, then, that was a long time ago.

Mr. Chairperson: Excuse me, Mr. Enns, normally, we only allow the critic and the minister to make an opening statement. Is there leave of the committee to allow Mr. Enns to speak?
[Agreed]

Mr. Enns: Mr. Chairman, I do not need leave. Any member of this committee can speak. Call your first clause, and I will speak to it.

Mr. Chairperson: You have leave to speak.

Mr. Enns: I certainly do not need leave to speak to this committee.

Mr. Chairperson: You have leave to speak now, Mr. Enns.

Mr. Enns: I do not need leave. Any member of this committee can speak. Call your first clause and I will speak to it.

Mr. Chairperson: You have leave to speak.

Mr. Enns: I certainly do not need leave to speak to this committee.

Mr. Chairperson: You have leave to speak now, Mr. Enns.

Mr. Enns: Well, that happens to be part of the issue. You know, I was appalled at the action of this committee a little while ago. None of us can say that we were not moved by the heartfelt presentations of very ordinary people that were courageous enough to come up and talk to us in the manner in which they did.

We were privileged to have, along with them, a gentleman like Mr. Newman, who is both learned in law, also experienced in politics, and in the very field as a former Northern Affairs minister, not to extend a bit of time, bit of leave to further examine the issue with him.

This committee can do anything. I know we have set somewhat ridiculous rules with respect to time limits. I would like to remind you of the 37 years that I have served in this Chamber. In 33 of them we never had time limits. We had presenters up there speaking, using up two, three, four hours of time. This condensed time limit that we have accepted as committee, I appreciate we have done that, and for the average bill perhaps that is reasonable, but when we have an opportunity we could certainly extend—the will is the master of its own house. All it would take is the will of the committee to say we will spend an extra half hour and listen to what Mr. Newman has to tell us, but we did not do that. I do not think any of you can be proud of that.

Mr. Minister, I want to tell you, I feel uneasy about passing the bill. We are lawmakers around this table. We are the highest court in the land. People have a right to come to us for some redress. I do not know how any of us can go back very comfortably knowing that these women have to go back and face what they have just explained to us. I do not know how we can do that.

Mr. Minister, pass this bill if you must, but this bill ought not to be proclaimed because if you do, you are just perpetuating the system. You are supporting the dictatorship. Unless we have made some fundamental move to remove the problem, we are talking Dakota Tipi right now, I suspect that the problem regrettably exists elsewhere, but it is Dakota Tipi that we are talking about, but if we just move along and use your majority, pass this bill, then you are part of the problem, Mr. Minister. That is a terrible thing to say to a Justice Minister.

It is a terrible thing to have citizens come up here and say they do not know where to go to when they are being threatened with criminal activity. That is what we heard tonight. When we had an expert witness that could have provided us with a bit more information, perhaps a bit more advice as to how best to deal with this matter, we stuck by the rule book and cut him off.

Well, governments will have the power to do exactly what you are doing tonight, but I appeal to you, Mr. Minister, and I appeal to senior members of your staff, to think long and hard before you willingly, enthusiastically become complicit in a kind of state of affairs that was described to us today, in this committee, on this matter.

I do not think we should be doing anything, empowering any more police service, until we address some of the fundamental problems that are there. Thank you, Mr. Chairman.

* (23:20)

Mr. Chairperson: Is there leave to allow Mr. Derkach to speak?

Some Honourable Members: Leave.

Mr. Chairperson: Leave has been granted.

Mr. Leonard Derkach (Russell): Just very shortly and very quickly, Mr. Chair, and to the minister. You know, I have watched this minister in the House, and I would have to say that, in most measures, the minister is quite sincere about his work and about ensuring that he carefully conducts his affairs in a manner in

which the will of the people is reflected in the legislation he brings forward, and in the matters he has jurisdiction over. But what we heard tonight is, quite frankly, something we should all be astonished about and very concerned about, because—in the 16 years that I have been here, I have never experienced a situation like we heard tonight, where people who are literally beaten are coming to the committee to express a concern because they are afraid for their lives and the lives of their children.

This just is not a matter of somebody being emotionally hurt. This is a matter where lives could be lost. I do not want to be a member of a Legislature which passed a bill which in fact could result in the death of a single individual. Mr. Minister, I do not think you want to be putting yourself in that position either. It is for this reason that I think we need to stop this bill where it is until such time as the matter at Dakota Tipi is resolved. Then, Mr. Minister, I would probably support your bringing this bill back to the House and back to this committee for its consideration.

I know you are sitting there with a concerned look on your face, and so you should have. I know this is not sitting well with you, and in all probability, if we had not heard the concerns of the individuals that came forth to this committee this evening, we would probably have taken a different approach and a different attitude to this bill, but when the evidence comes forward which clearly demonstrates that there is a problem, and that problem needs further investigation, Mr. Minister, this perhaps is a time when you need to extend your authority as a minister and perhaps order a proper investigation into the matters on the reserve.

Now, whether you have that power or not is not for me to say, but something needs to be done. I do not think we should take another step in passing this bill through this committee and into report stage or into third reading. I think that you would be supported by the Legislature if you were to rise in your place tomorrow and ask that this bill be put on the shelf until such time as you have had an opportunity to satisfy yourself that indeed matters on Dakota Tipi are under control, and the families, the women are assured

of safety, and also the men are assured that there is safety for their families on that reserve.

So, in conclusion, Mr. Chair, I would be very supportive if the minister would simply ask for a postponement of consideration of this bill until further notice.

Mr. Chairperson: During the consideration of a bill, the enacting—

Mr. Mackintosh: Well, I just want to address these points because this is a very serious situation. We are, as a government, deeply disturbed by what is happening within this First Nation and within the families of this First Nation. This is not just community division; this is about family divisions as well.

We have taken actions, recognizing the processes that are in place. I can speak about that. We have asked, on an emergency basis, for the federal government under its fiduciary obligation, to appoint a mediator that is acceptable to the parties, the sides of this. We have not yet received a response, but there are indeed deep divisions.

I want to just talk about this bill. This bill is not about supporting any chief or supporting any side, this is simply acknowledging a reality that has occurred in Manitoba and grown since the seventies. I think that this bill addresses a long-standing shortcoming, as rightly brought forward by AJIC and AJI, but, having said that, is the bill a lightning rod? Is there likely or even a risk that there is a perception that this bill may deepen divisions and provide antagonism. That is difficult to measure, but there may be a risk with that, just given the timing of this and the situation in the First Nation.

I think all of us as legislators have to act very responsibly around this issue because, as the Minister of Aboriginal and Northern Affairs (Mr. Robinson) said in the House, this is a very complex matter and it is a very sensitive matter. The department has provided a facilitating role in the last few months to bring the community together with DOPS to address all of the issues. The department and myself, my office is exploring any further options in the absence of some federal action on an immediate basis.

Where to go? There are processes in place. There is a police commission to which DOPS reports. There is LERA, which is wholly independent from the police force. We have to, I think as well, be very careful that we do not have dual standards for Aboriginal policing versus other local, whether it is municipal or other policing in terms of conversion.

If we are bringing in changes to The Provincial Police Act, which are long overdue—the whole act is in need of revision. This is addressing a historical omission. There has to be a proper consultation process, and indeed AJIC said it should take three years probably in terms of how a police commission should look. Should there be police commissions? Who should be on it? What are the standards of policing?

But we have to have those consultations with municipalities, not just AMM, with AMC, with other Aboriginal governments. It is a big job. The challenges and the divisions in Dakota Tipi, I think, attest to the need to move on with that big job, but it has to be done being respectful of the different governments and partnerships that are out there.

* (23:30)

I know there are representatives of the First Nation here. We are concerned about every man, woman and child in the First Nation. As a province, it is important that we not escalate the situation at all but look for solutions with those that are involved. I will say right now that, given what may be perceptions around the bill, I am prepared to not proceed with this bill further tonight.

I think we should gather our thoughts and reflect on the advice that is given and make sure that this bill not become part of a problem. I do not think it should be. It is in its wording not, I do not think, part of the problem, but we should guard against the risk that it may be perceived as an irritant, because I do not think that, in this situation, government or legislators of any party should be, even on a perception basis, causing further division, even if it is only on a perception level.

I think that it would be good to collect our thoughts and reflect and perhaps we can have

discussions. My approach is to work with the Opposition when they are prepared to present positive alternatives and constructive criticism, because I think that is when the Legislature works best. I have enjoyed that from the former government once or twice maybe, not often enough, but I do appreciate that. I think that is when we are serving our function best, but I am prepared not to proceed with the bill tonight and then I think we should re-assess where we go on this one.

In the meantime, I can tell you, in terms of the issues and the serious challenges and situation with this particular First Nation, that the Government is certainly engaged in serious consideration about further options. I just expressed one that I think is incumbent on the federal government to respond to, but there are other responses at the provincial level that are under very active consideration, because I can tell you that our concern is growing.

I think the evidence tonight is worthwhile for all of us to hear first-hand. Although we have heard about these, and I say it has been a very live issue in the media, but when you hear first-hand, and I am not saying that it is only the voices tonight. There are voices that are not here tonight, from all sides.

I might also add that, in terms of the policing arrangements, the RCMP is available for emergency call-ins to the First Nation. Members should know that as well, DOPS has an officer available for 40 hours in the week. There was evidence about that tonight. As well, I can advise the committee that there were a series of ongoing, and the member knows of this, concerns about the RCMP tenure servicing Dakota Tipi.

So there is a lot more information I would certainly be willing to share with the members and we can explore that even tonight, although that is not the bill. But again, we recognize that, I think, we can all serve Manitoba better if we reflect on this.

Mr. Chairperson: Is there leave of the committee for Mr. Gerrard to speak? *[Agreed]*

Hon. Jon Gerrard (River Heights): I will speak briefly, Mr. Chairman, just to a couple of

points. The minister, in making the statement that this bill is necessary to clarify the legal status of the Aboriginal police force leaves in limbo, and the uncertainty: Is the current DOPS in unclear legal status or no legal status? Certainly, from what we have heard tonight, there is some question about the legitimacy of a police force, in any circumstance, which seems to be under such political influence, as the stories we have heard tonight would seem to indicate.

Certainly, the minister, in light of his remarks in introducing, or comments on this bill, needs to clarify this. It would seem to me, and I suspect to others, that a mediator is not what is needed necessarily in the short run, although it certainly may help; but that something clearly needs to be done to ensure the safety of individuals here and to ensure the issue of who has the legal and appropriate authority within the Dakota Tipi area. Perhaps the minister has clarified it a little bit by saying that the RCMP could be called in if necessary.

Mr. Mackintosh: I will just conclude my remarks, just a few points. First of all, the DOPS was given the role of police force of jurisdiction as a result of a band council resolution of Dakota Tipi, and there can be lots of arguments about the governance. This is, I think, essentially an issue about democracy, about governance in a First Nations. It is also an issue, though, as a result of that, about safety. So we recognize that.

I also can say that there have been allegations that have been forwarded to the department which have been referred to the proper authorities, recognizing that as a minister, as a political person, I cannot be, or be seen to be, interfering or in any way directing ongoing investigations or reviews by the Crown, of which I can advise members there are such follow-ups. There are such issues ongoing, but there have been allegations as well from the other faction in the First Nations community that, you know, DOPS is not charging enough people on the other side. This is part of the unhealthiness of the situation. I will finally just say that this legislation is brought in to not only correct an historical shortcoming but is to provide legal authority, beyond doubt, about the availability, the existence, the option of Aboriginal First Nations policing in Manitoba.

Right now, the argument would have to be made that this would be municipal policing or based on an inherent right of self-government, and those arguments may well succeed if there was a challenge to Aboriginal policing in Manitoba. It may well succeed, but this is to make it beyond question. Okay? So it is a clarity bill.

Mr. Chairperson: Is there leave of the committee for Mr. Faurischou to speak? *[Agreed]*

Mr. David Faurischou (Portage la Prairie): Thank you very much, Mr. Chairman, and thank you, committee members. I do appreciate the minister's remarks and have satisfied a number of questions that I have regarding the bill; however, I do want to emphasize that all of us have been witness to concerns raised here that have stirred a great deal of interest as to the level of policing. As you have stated here this evening, one should not be subject to different levels, different standards of policing here in the province, regardless as to which jurisdiction one resides, and should the concerns that have been raised this evening be validated, that your office make certain that whatever legislation is thereby required, to make absolutely certain that, regardless of where one resides in this province, the policing is held to a high standard and is fair to everyone. But, to the point raised here this

evening, stating that as we have witnessed here, an obvious assault when it can be determined that it should be pursued in civil court, that disturbs me, sir. Assault is clearly a criminal matter and, regardless of where the assault took place, should be considered such.

* (23:40)

So, once again, Mr. Minister, I do appreciate your comments and your actions. I believe it is prudent for all of us to look at what we have heard here this evening and to act in the most knowledgeable and prudent fashion in which to address the concerns, and most assuredly, verify the concerns that have been raised here this evening.

Mr. Chairperson: Is it the will of the committee not to proceed at this time with Bill 44, The Provincial Police Amendment (Aboriginal Policing) Act? *[Agreed]*

What is the will of the committee?

Some Honourable Members: Committee rise.

Mr. Chairperson: Committee rise.

COMMITTEE ROSE AT: 11:41 p.m.