

[Chairman: Mr. Musgrove]

[9 a.m.]

**MR. CHAIRMAN:** I guess it's 9 o'clock, so we'll call the meeting to order. First off, I'll ask Mr. Hurlburt to introduce the delegation that we have in support of Law Research and Reform. Mr. Hurlburt.

**MR. HURLBURT:** Thank you, Mr. Chairman. To my right is Mr. W. E. Wilson, Q.C., chairman of the board of directors of the Institute of Law Research and Reform. I am called director of the institute. We have both a board of directors and a director, which may strike you as a little strange, but there are all sorts of strange things going on. Mr. J. W. Beames, Q.C., on my left, is the vice-chairman. They are two practising lawyers from Edmonton. Professor Dick Dunlop, next to Mr. Beames, has been a member of the institute's legal staff for two years. He is a permanent member of the Faculty of Law at the University of Alberta. Next, Mr. G. C. Field, Q.C., who is an associate director of the institute and a member of its legal staff. Tom Mapp is another associate director of the institute and a member of legal staff. On the far left, we have Mr. Clark Dalton, who is really here in two capacities: number one, he is a member of the institute's board of directors as well; number two, he is the director of research and analysis in the Department of the Attorney General.

In the row to the rear, we have Mr. Del Keown, an assistant deputy minister in Consumer and Corporate Affairs and, nearer me, Mr. Don Bence, who is the administrator of collection practices. They're here because our report on debt collection practices is a Consumer and Corporate Affairs matter. That's our group, Mr. Chairman.

**MR. CHAIRMAN:** Thank you, Mr. Hurlburt. Next we have the minutes of the last meeting. Do we have any questions, errors, or omissions in the minutes of the last meeting? If not, I would ask . . .

**MR. CAMPBELL:** [Inaudible]

**MR. CHAIRMAN:** Thank you, Jack. All in favour? Okay.

We have a memorandum that Mr. Hurlburt mailed out recently. Maybe we should go through that and discuss it a bit. Mr. Hurlburt, would you like to take over from there?

**MR. HURLBURT:** Yes, Mr. Chairman. First, is anybody lacking a copy? I have spares.

Mr. Chairman, the situation is that there is a resolution of the Legislative Assembly, which is quoted at the bottom of the first page of that memorandum, referring or resolving that your committee

take under consideration, in general terms, the reports issued by the Institute of Law Research and Reform and report to the Legislative Assembly as to which of the reports of the Institute the Committee recommends be referred to it for detailed study.

That is why we are here.

You will remember, Mr. Chairman, that in May there was an informal meeting of some members of

this committee at which institute people appeared. At that time, that group thought it was worth while to approach the Assembly to secure this resolution. I don't know of course what the committee would like to do or how all this will strike the committee. However, this memorandum is an effort to put something down for discussion so that it might get things moving.

I refer you to page 6 of the memorandum. There I have suggested a form of procedure that it looked to us might be suitable. I don't know what you think of it. We've suggested that the committee would want to discuss how it's going to go at things and, secondly, that at some point there might be an overview of the reports of the institute which are outstanding and not dealt with. Finally, if there is time, we'd be glad to tell you what we're doing now. We think the institute's general functions are something you're probably interested in. Finally of course the committee would have to decide what it's going to do.

The rest of this memorandum is generally a brief description of the outstanding reports we have issued. The green pages, which are really green just to assure you that it isn't a 15- or 20-page memorandum, give brief descriptions. Mr. Chairman, perhaps I should just say a word or two about this institute. I don't know whether all members of the committee are thoroughly familiar with it, are hanging on its every word all the time and that sort of thing, or not.

**MR. CHAIRMAN:** I don't believe we have the same members here as we had at the May meeting, so it might be well to go over the institute's operations so everybody's familiar with them.

**MR. HURLBURT:** I do hope that everybody has some knowledge of the institute, if only because every so often one of these green things turns up in your mail. You will have seen things going through the House that started with reports of this institute. It's rather an unusual organization. It was founded in 1968. It is a joint venture of the Attorney General, the University of Alberta, and the Law Society, and in fact it was proposed by the Law Society. It's presently funded by the Alberta Law Foundation, the Attorney General, and the university. We are located at the university but are not really part of it.

Our function is basically what our name says. The name may be long and ponderous, but it does at least say what we do. We engage in law research and law reform. The research is mostly directed toward the reform. Over the years we've done quite a few things that have been accepted into law. Our first report resulted in the crimes compensation Act. Our report resulted in the Expropriation Act. We provided a report from which the Legislature sort of took off for the Matrimonial Property Act. Those are matters of fairly large importance. You will also be relieved to know that we had something to do with the Perpetuities Act, which I'm sure is something the Members of the Legislative Assembly read at night to put themselves to sleep, and a number of other things that sometimes only lawyers get excited about, but they are important changes in the law which we think are good things for the people of Alberta.

In general, our function is to try to find aspects or

areas of the law which are out of date and to find out how they came about, why they're there, whether there's any reason to keep them on and, if there isn't any reason to keep them on, how to change them so they fit in better with current conditions and circumstances.

As you will have noticed, we're not part of the ordinary government machinery. On the other hand, we're sort of associated with government. We claim to be independent. We are in the sense that nobody comes and tells us what to do or what answers to give. We are, however, basically funded by government, and by "government" I mean the whole government; executive, Legislature, and so on are our principal and almost only customers. So we are directed toward helping the machinery of government work.

How this particular process came about was that we indicated to the Attorney General that we would like, if there were any way for it to be found, to have closer communication with various aspects of the government, particularly the Legislature. His reaction was to suggest that we approach this committee, which we did through the chairman, with the results I have mentioned. I do hope the committee will regard what we have put before you as being of some importance. What we would really like to end up with is a process under which members of the Legislature would look at our work and, I hope, listen to why we think it's valuable, and then do whatever the committee thinks should be done with a view to putting before the House some form of recommendation with respect to it.

Mr. Chairman, is that a . . .

MR. CHAIRMAN: Thank you very much, Mr. Hurlburt. I notice in the memorandum you sent out that there were several suggestions of particular pieces we could have a look at. I'm not sure the committee has had a chance to go through this in depth and feels conversant with it, so maybe we'll start with your proposed agenda on page 6 and open up a discussion on what the committee would like to do. Could we start with that? Has anybody any suggestions or feelings?

MR. CLARK: I guess I would like to know what they're currently working on and what changes they expect to take place in some of the areas they have listed on page 5, just as an example of your current work and what changes you're looking at. I don't know whether that would be in order at this time.

MR. YOUNG: Mr. Chairman, if we're going to look at what I guess is item three on the agenda, having regard to the description of current work which begins on page 5, could we have an indication of the anticipated completion dates of some of those items which are listed there — just guesstimates of anticipated completion dates?

MR. HURLBURT: That is the current work you're talking about, Mr. Minister?

MR. YOUNG: Yes.

MR. CHAIRMAN: On page 5.

MR. HURLBURT: Yes. Item one, Creditors'

Remedies for Unsecured Debts, is a general look at how to recover money you get judgments for: things like the sheriff, garnishment, and so on. Professor Dunlop is working full-time on that — for a year from now, we hope. We may have a little slippage on that, but that's what we hope.

Representation of Children in Legal Proceedings is really a discussion of what's called the amicus curiae procedure under which a lawyer is retained who then retains social workers, psychologists, et cetera, to make reports and take part in trials about custody proceedings. That one is just about ready. It should come out shortly.

Living Together Outside of Marriage is looking at the law as between husband and wife, then moving over — sorry, I didn't mean to brush you; patting isn't in style these days — to the unmarrieds and having a look at the law with respect to them. Are there resemblances? Are there differences? We have just received the results of a survey of attitudes and circumstances of the unmarrieds and something about the attitudes of other people. If we did this one in a year, we would be lucky. If we did it in two years, I would think that's a little too long.

Judicial Review of Administrative Action. All we're looking at are some lesser points but important ones: the relation of appeal to judicial review. The trouble is that we're now into a legal subject. I could explain it, but it would take a little while. There may be two or three small items in the next year.

The Land Titles Act is revising and bringing into the late 20th century our existing mid 19th century Act. It won't make radical changes but would tidy things up.

Tom, when do you think — what do we say about that one?

MR. MAPP: I would say a year and a half.

MR. HURLBURT: Limitation of Actions. That's a very thankless subject. We hope to simplify and cut down the jungle, but we've been having great problems.

What about that one, Tom?

MR. MAPP: This year.

MR. HURLBURT: Not '84, surely.

MR. MAPP: No, no. By a year from now.

MR. HURLBURT: By June 30, '85.

MR. CHAIRMAN: [Inaudible].

MR. HURLBURT: Oh, I'm sorry. Limitations: if you're going to sue somebody, you should do it promptly. If a plaintiff, somebody who has a claim, sits back on it, lets the years drift by and then sues down the road, it's unfair to the defendant; by that time his evidence has gone, his witnesses have died, he's burned his files, and he's also been sleeping peacefully at night. You shouldn't let it go on forever. So the limitation means a limitation of time within which to bring action. But it has the other side too: every time a limitation comes down, somebody has lost his rights. So it's a very difficult area.

**MR. CHAIRMAN:** Could you elaborate on what you mean by that?

**MR. HURLBURT:** In the province we have what's called the Torrens system, a system under which you have title to land because somebody in the Land Titles Office has written on a piece of paper that you own it. It's a very good system, but the statute was basically drafted in South Australia in 1859. It leaves questions unanswered. Anybody who reads the Land Titles Act now and believes it would have problems, because from time to time it's been judicially interpreted to mean almost exactly the opposite of what it seems to say. It isn't a major problem. I don't want to downgrade you, Tom, but we're not suggesting radical changes but updating, writing it in English, clearing up points that have given rise to problems, getting some sort of better analytical basis so that the law will sit and be consistent and carry out its purposes. That's about it.

**MR. CHAIRMAN:** When do you expect to have that one completed?

**MR. HURLBURT:** I think Tom said a year and a half, didn't he?

**MR. MAPP:** I said a year and a half, because we're co-operating with five other jurisdictions.

**MR. HURLBURT:** Yes. We're trying to bring Saskatchewan, Manitoba, and the two territories along with us on that one so we'll keep some sort of uniform land titles law.

Not-for-profit Corporations. It's what it says. We recommended the Business Corporations Act a few years ago. That left outstanding the nonbusiness corporations, and they have to be tidied up. We also want to see them put into a reasonably coherent scheme, instead of under different statutes as they are now, without getting away from the simplicity of the present scheme and so on. It's a fairly tough thing since you could be talking about the Ford Foundation at one end and the old Scandinavian hall or the something-or-other water society at the other end. Real Property Securities is mortgages; at least most of it is mortgages. That's a bearcat at the present time. It will certainly be a year and a half before we're through with that one. I'm not sure just how long.

Sterilization of Minors and Mentally Incompetent Adults. We think these people aren't being fully protected or that the protection isn't uniform. Nobody really knows just what the legal standing is in this area. There was the old sterilization Act — I just can't lay mind to the name — that went out years ago. We suspect we will find that something should be done. I would think a year for that one as well.

Survivorship. This is a fairly narrow little point. Two people die; you don't know who died first. Property will go one way or the other; some arrangement has to be made about property. At the present time, we do have a Survivorship Act. In effect, it says that if two people die, a husband and wife, whose property is going to go to each other, you assume that the older died first, which is all or nothing; send all the property then into the estate of the younger one, which isn't a very fair way of doing things. There is a complication because under the

Insurance Act you assume the beneficiary dies first, which is probably reasonable. But that's just a fairly narrow legal point to worry about. The survivorship one should be done this calendar year, I hope — I'm not sure — but certainly by a year from now.

Trade Secrets has to do with confidential business information. What happened there was that the federal government got in touch with one of our legal staff who is well known for his interest in this general area, asked him to do a paper for them on both the criminal and civil aspects, which he did. The institute then decided to pick up the civil side. We're involved with a federal/provincial task force or working group, on which Mr. Hammond, who is our colleague, and I are representing the province of Alberta — I'm sorry, I shouldn't tell you this — with a view to trying to get uniform legislation about protection of trade secrets under the civil law, the ordinary law, so it will at least live together with whatever is done in the criminal law. There is a gap now. It's possible to steal information, and it's not at all clear that that gives rise to any legal rights in the person from whom it's stolen. That one would be at least a year, largely because we probably won't proceed until the national meeting of deputy attorneys general takes a step or two and so on.

**MR. CHAIRMAN:** Thank you very much, Mr. Hurlburt. Questions or comments?

**MR. MARTIN:** My understanding, though, of what we are to do, I believe by the second Monday of the fall sittings, is not to deal with these. There are a number of recommendations that I gather are gathering dust. My understanding is that the institute wants us to take a look at them, see if there is some merit to them, and make some recommendations to the Legislature. I gather that we're going to have to go through this over the next month or two, and I think what we need to do today, before getting into the new parts, is set an agenda or times. What did you have in mind, Mr. Chairman?

**MR. CHAIRMAN:** Yes. That's item five on the agenda: formulation of standing committee views and how to proceed. But first, let's see if there are any questions or comments on the current work. If not, we should probably go back and have a look. I believe you have some suggestions further back in this. I don't believe too many people have had a chance to read this.

**MR. HURLBURT:** That's no problem, Mr. Chairman. The memo is quite short, and I think it's even intelligible, which I hope comes as a happy surprise to you. I'll do whatever you like, Mr. Chairman, but I could go over at least a few of these things. Then you might get a feeling for whatever it is you want to do next.

**MR. CHAIRMAN:** Yes. That's on page 2.

**MR. HURLBURT:** Right. Mr. Chairman, I think I might like to start with the item that's marked Schedule 2, Defences to Provincial Charges. What I would do, if you wish, is just tell you what the problem is, what we think we're doing. The reason I think we might start with that one is that it really is something that's peculiarly a Legislative Assembly

thing. What it's dealing with is offences under provincial statutes, and it's the Legislature that creates all those offences. So it seems to me that this is something that is of peculiar interest to the Legislature itself.

Under the criminal law, generally speaking, I'm not guilty of something unless I intended something; that is, not only must I have taken the axe to grandmother but generally speaking I must have meant to take the axe to grandmother, which is a crude way of putting it. About 100 years ago, the courts started to go wrong in the field of what are called regulatory offences, minor charges that are really not criminal but are intended to regulate conduct and keep up merchandising standards — don't make false statements when you're selling securities and that sort of thing. They're not criminal in the real, true, criminal, terrible thing context. But what the courts started to say on these regulatory things was that if you did whatever it was that was prohibited, you were guilty, and it really didn't matter that you didn't mean to do it or thought you were doing right or tried to do right or anything else. What they said was: you've done it; you're guilty; that's the end of it.

A few years ago, the courts started to go right, and they dug themselves out of that quite a long way. A few years ago, the Supreme Court of Canada said that in many cases the court will look at the facts and see that the Legislature said "thou shalt not do X", and the court will see that you've done X. But the court will also see that you really did what you could; if you made a false statement in a prospectus, you'd really researched it; you got the wrong answer, but you tried; you did what you could.

I've forgotten whether the holes in fishnets are supposed to be very big or very small, but if your fishnet had holes the wrong size, if you'd gone to the right store and asked for the right thing and thought all the holes were the right size, that is a defence of what they call "due diligence" or you tried and you tried reasonably. If you could show that, you should get off, because usually all the law should really be trying to do is make people try to be good, to conform to the standards. If they try and don't succeed, that isn't reason for getting out the whole panoply of the criminal law.

So the Supreme Court has said that in many cases that's going to be a defence, but they haven't yet worked out a really good way of saying when it's going to be that kind of offence and when it's going to be the other kind. There may be sometimes, sometimes, that the Legislature, if it addresses its mind to it, may say, well, because this is the sort of thing that only the defendant knows, and you don't want to take his word for the fact that he was trying to do his best or something, or we've got to go so far in order to raise general conduct that we're not going to allow this due diligence as a defence. There may be some cases like that. The courts haven't yet worked out how to choose when that defence is going to apply and when it isn't.

The main purpose of this report is to say this: if the Legislature does think that a particular offence is of a kind where you should be liable merely because you've done the act, then let it say so in that Act. Then at the other end, there are cases when you should only be convicted if you really intended it, and the Legislature can say that too. If the Legislature doesn't say anything — and that's the usual case —

then our recommendation is, let this defence of due diligence apply. That's really the fair thing. If I tried to obey the law and thought I was obeying the law — did what I could and can show this; I have to establish it — then let me off. That's fair. So that's the main thing in that report. We suggest there be legislation saying that.

There are a couple of other things. We've suggested a defence which has been given the charming name of "officially induced error". What that means is this. There's an Act regulating something or other, and as a citizen I go in and say to the regulator, some official whose business it is to be there and tell me these things, "Here's what I propose to do; is that all right?" Or I say to him, "I'm not sure just what I'm supposed to do; would you advise me?" If I go away and do it, honestly relying on what he told me, if it turns out it was wrong, that the official was wrong, and I am technically guilty, then we think I should be able to get off there too. Again, I think we should be encouraging citizens to speak to government and see what it is that government wants. If they do and they get bad advice — and some of them are going to get bad advice sometimes — then they should be able to rely on it.

A sort of similar one is if there is an unappealed judgment of an Alberta court which looks like the law and I do what it looks as though — I am one of the few people that reads judicial decisions; this isn't a very important one. Or if I go and see my lawyer and he says, "The law is this because this case says so" and I rely on it, then a while later a higher court either here or in Ottawa says that that wasn't the law, again I shouldn't be charged for having done what is . . .

MR. CHAIRMAN: What is the province's appeal procedure? Suppose somebody were charged with a provincial charge and won their court case. Does the province generally appeal those? How does that . . .

MR. HURLBURT: The province can and does appeal things. I think they have to feel fairly strongly before they don't accept the local courts, but they can go from the provincial judge, if that's where it is, sometimes to the Queen's Bench or the Court of Appeal. They can eventually get to the Court of Appeal. I don't know whether they can get on to the Supreme Court of Canada on a summary conviction offence without special circumstances, but there is an appeal procedure.

MR. CHAIRMAN: Questions?

MR. YOUNG: Mr. Chairman, I note that most of us don't have our green books in front of us. This is a tremendously challenging area, and I'm just not sure of the extent of the challenge. Obviously it addresses summary convictions and other violations of regulations which might be more severe than that. What about regulations which are normally dealt with by tribunals or where the appeal is normally to a tribunal? Would the same principles be intended to apply?

MR. HURLBURT: This is related to proceedings in court and convictions — the provincial version of criminal law.

MR. YOUNG: Yes, I know about it.

MR. HURLBURT: Yes. Well, you can't say it's criminal law, because if you said it's criminal law, it means it's under federal jurisdiction. Therefore it isn't criminal law.

MR. FIELD: It's sitting on the edge of constitutionality.

MR. YOUNG: This is a very interesting area for the committee. Certainly it is for persons involved in administration, especially if we're going to get into considering a defence of a government official making a statement and someone relying upon that statement. I think it ties very much to the concern about regulations, the quantity of regulations and the administration of those regulations. I simply choose the opportunity to put my two cents worth in on a matter which I think is of some interest.

MR. FIELD: I think what we're trying to do is to make the law clearer so the citizen knows where he stands. It's one thing to say that you can't dump garbage in the North Saskatchewan River. The Legislature may feel: I don't care how this arose or anything about it; if you do that, you're guilty and you're going to be fined. It's another thing to say that you can't knowingly dump garbage in the North Saskatchewan River. If you say that, if you do this knowingly, then you must have some kind of knowledge or you must know what you're doing.

The real problem is that so many statutes don't say one or the other, and the courts have got to work out some sort of goofy rationale as to whether this is so important for the general public that it's going to be what we call an absolute offence — in other words: if you do it, you're dead — or whether it's going to require some sort of knowledge. I think all we really want to say in this report is: if the Legislature is going to do this, please make it clear so the citizen knows where he stands.

I can see that the officially induced error may cause you some concern. It applies to bylaws in the city as well. If I'm going to start up a plant somewhere and I go to the city and say, "What are your requirements?" and some senior official tells me, "You have to have a smokestack that's miles in the sky like Sudbury's" and all the rest of it, and I do this and I'm still wrong, have I really been guilty of anything? I went and I tried. But I can see that this is the delicate point, sir, that . . .

MR. YOUNG: George, I don't want you to misinterpret my concern. I really don't have a concern of that type, but officials will surely have concerns of that type. From the point of view of administering, it does open an area which needs to be understood. That's really the point I'm making.

MR. HURLBURT: At the moment, you're quite right; you don't have the green books. The only thing is, is this a subject you would like to deal with sometime?

MR. CHAIRMAN: I think this is going to be a very interesting topic in future meetings. Any other comments or questions?

Are there some other ones still outstanding that . . .

MR. HURLBURT: I suppose we might as well go back to the beginning of the list to debt collection practices. This is Schedule 1 which is referred to at the bottom of page 2 of the memorandum. This is one that Professor Dunlop is particularly knowledgeable about. I'll try to be very brief on it, and maybe he can amplify if you wish.

This has to do, firstly, with debt collectors and debt collection agencies. By the way, this is the one Mr. Keown and Mr. Bence are particularly interested in on behalf of Consumer and Corporate Affairs. Mr. Bence is actually the one who is directly responsible for the administration of the debt Collection Practices Act, which would be amended by our recommendations. By the way, you haven't actually got this report yet, but it should be in today's or tomorrow's mail, or sometime this week. The report basically recognizes that debt collection is necessary and it's a good thing. In fact it saves money. It saves consumer costs if debts are collected and saves court costs if you do it out of court. It also recognizes that debt collectors and even creditors are under some rather tremendous pressures and that sometimes they may get carried away in putting pressures on debtors in ways that really go beyond civilized conduct.

At the present time, the main method of controlling debt collectors is through the annual licence. I think the situation is that the administrator has the power to license or not to license, and the law really doesn't tell him very much about how to do it or on what grounds to do it. We have proposed that there be some rules of conduct which I think are not particularly onerous or complex: things like you don't threaten violence, you don't say you're going to send out your kneecapper; you don't threaten legal action that you can't take; you don't keep on with your telephone calls and your personal calls to the point that — what's your phrase, Dick?

MR. DUNLOP: That the result is abuse or intimidation.

MR. HURLBURT: I should say, by the way, that in preparing these green things, the language I use on the very first page suggests that just harassment would be something that the law would look at. Actually we decided that "harassment" as such would be too vague. My summary was oversummary, so there's really an error in the second paragraph on that first page. The word "harassment" shouldn't be there. It should be a series of telephone or personal calls that come to the point where it's really abusive. We would also say you shouldn't be applying pressure through the employer. That's a difficult point, but the problem with that kind of pressure is that it's very likely to lose the debtor his job and his ability to pay not only this creditor but all the other creditors he probably has. So generally speaking, we think that the debt collector shouldn't work through the employer. There are a few things of that nature. That's really pretty well about it.

In a sense, we think that will actually help everybody. It would provide a few fairly simple rules that anybody could understand. Basically I think the administrator would then to a great extent be able to test his action by relation to that, so he wouldn't be in the position of trying to decide whether to give licences or not give licences without any guidance,

which I think must make him uncomfortable; I don't know.

One of our suggestions would actually stop a great flood of paperwork. As it now stands, every year debt collection agencies have to send in to the administrator the form letters they're going to use. He has to read them all — I must say I don't really think I envy him this particular job — and decide whether they're sufficiently civilized, I guess, and whether they go too far. Since he's here, by the way, he can correct anything I say. He must decide whether they're proper letters to be used by debt collectors, and I think this is a great chore for him and for the debt collectors. We have said that once you've got this fairly simple set of rules, that's really enough and we think you can stop that administrative process — at least we would hope so.

MR. CHAIRMAN: We have a question. Tom Lysons.

MR. LYSONS: This is a very interesting subject — debt collection practices. Would we not be opening up a whole new process where the supposed victim, if you like, could say that the debt collector was harassing him, whether or not it was real or implied? I'm an old debt collector. If I met you on the street and said, "Look, you haven't paid your account, and if you don't pay it pretty soon I'm going to talk to your boss, your wife, or your girlfriend", or whoever you figure can lean on him the most, then the person owing the money would simply say to a court, "He harassed me". Whose word are you going to take, and how are you going to prove it?

MR. HURLBURT: My answer, Mr. Chairman — and I think maybe I should pass this one to Mr. Dunlop — would be that that isn't harassment. It has to get pretty bad. There has to be a lot more of it and there will be a lot more objective evidence around about it. We've tried to leave room for every appropriate kind of pressure and to avoid that sort of thing. Dick, what would you say about that?

MR. DUNLOP: I suppose, first of all, we have to be clear on how these rules are to be policed. The effect of breach of these prohibitions would not be to extinguish the debt; it would have no effect on suing for and collecting the debt. Secondly, the sanctions which would enforce these prohibitions would be prosecution, which is now the sanction in the Collection Practices Act, together with cease and desist orders, which is now a sanction in the Collection Practices Act. Indeed the general answer to your question may well be that as far as collection agencies and collectors who are employees of collection agencies are concerned, what we're really talking about is a different kind of regulation. Because there is regulation now. There is a de facto control and supervision of the activities of collection agencies and collectors by the responsible public servant, the administrator of collection practices.

What we're saying is: if there is to be regulation, let it be ordered, and let the rules of the game be clear and specific and narrow. I talked to a number of collection agencies and collection managers in credit departments, and one of the points they made was that they could live with specific rules, as long as they were clear. What they could not live with was the kind of thing that you're anticipating, which

is a kind of general rule that you're not supposed to harass. They don't know what that means either. They don't want that, and we've tried to avoid it, sir.

MR. LYSONS: That's basically answered my question, Mr. Chairman. The problem I see when we're changing the law is that so often when you change it, you haven't really cured the whole thing. You're only going at a part of it, and when you use the word "harassment" that can be any sort of thing. It would be interesting to see the Act in its final draft to know what it would look like — and I appreciate your answer — particularly if it had a provision in it that it wouldn't extinguish the debt.

MR. DUNLOP: It doesn't say that. I think it is abundantly clear that it would not have that effect, and I think our report will make that clear.

MR. HURLBURT: That has been suggested elsewhere, but that just doesn't seem right.

MR. CHAIRMAN: But as I see it, this regulation would be that if somebody is being harassed over a particular debt, it doesn't change the debt but he could report the harassment to somebody and have it stopped. Is that the idea?

MR. HURLBURT: I did use the word "harassment". It's really the wrong word, Mr. Chairman, because we don't propose any such general thing. But yes, the only sanction — the administrator has his licensing powers. There would be an offence created by the statute which could be the subject of a charge. Those would be the only sanctions we propose. We thought about a civil sanction and a right to sue, but that wasn't the way we ultimately came down.

MR. CHAIRMAN: Okay, any other questions?

MR. MARTIN: The other reason I think it's important to perhaps lay out guidelines is that it may well be that a lot of people just aren't paying their bills. But a lot of times when you have collection agencies involved, I think there is a dispute whether or not the bill is in fact owed. If there aren't some guidelines, like going to an employer . . . Until it's proven in court that that person owes the debt, I would think there is a presumption of guilt by the collection agency, which hasn't been determined yet in court. I think that would be another reason for guidelines, because often those debts the collection agencies are going over are in dispute. Some people think they don't owe the debt, and obviously the other people do. So I think this would just lay out guidelines. It's a different thing after it has gone to court and it's been proven that they owe the money.

MR. DUNLOP: Mr. Chairman, could I just make one point in response to that? When I talked to collection agencies, my understanding was that they were very conscious of the problem of trying to collect a debt which has been paid. The practice of the collection agents I talked to — and I believe them — is that if the debtor says "I don't owe the money", their next step is to go back and check with the creditor. The reason is that there is no point in pursuing a debt which has been paid, because they're not going to collect it and they're not going to get their

commission, which is a percentage. So they have a very good business reason for not pursuing the debtor.

There are pressures toward harassment, however. We talked to a number of people, and we sort of got some information about the way the industry operates. Many collectors are paid on a percentage. They have a quota to collect during the month. If it's the 28th of the month and they haven't collected their quota, there may be a certain pressure on them to transfer the pressure to the debtors they happen to be phoning at that particular moment.

MR. MARTIN: I wasn't suggesting that the collection agency — I don't think it's a problem there with them. There may be a dispute between the creditor and the person supposedly owing the money. I think that's where it runs in. If they're dealing with a creditor and the creditor says, "Yes, this amount of money is owed", obviously they will pursue it. But for many different reasons, that person may still not accept that that money is owed. I don't think it is necessarily a debt, if there's a difference, until it goes to court.

MR. HURLBURT: Mr. Chairman, there is one other thing I should say on that. I was going to say it anyway, but it leads from the last remark. We have also suggested that the basic rules should apply to the creditor collecting his own debt. That is an extension under the present law. The debtor may have a tort action, I suppose. If he's defamed, he may have an intimidation action under some extreme circumstances. But this would extend the provisions to the creditor collecting his own debt. That would be a difference from the current law, but we think it's a justified difference.

MR. CHAIRMAN: Thank you. Any other questions or comments? Okay.

Do you want to move to some of the others?

MR. HURLBURT: This is the way you'd like us to proceed, is it, Mr. Chairman? I don't want to plow through these things just for the sake of plowing through them unless that's the way the committee wants to go.

Looking at my list, I won't bother with the Statute of Frauds and Related Legislation for the reason that I thought it was going to come out this month. We've run into a problem we have to resolve, and it will be a couple of months down the road.

Now with regard to — sorry.

MR. HIEBERT: Sorry for the interruption, Mr. Chairman. I look at the proposal that's before us with regard to the various schedules and topics, and I know that a decision is supposed to be made with regard to what we want to deal with. I think this committee, having the background information of the outstanding topics, needs to assess some of these more carefully and come back with some future scheduled meetings so that we utilize our time effectively. I think we're just wandering through some of these schedules and getting background information, and that might not be utilizing our time effectively nor the members of the society. I think we need to assess some of the schedules and background information and schedule some future meetings in a more effective manner. That would be

my thought, Mr. Chairman.

MR. CHAIRMAN: Thank you. Actually it is now 10 o'clock. If the committee would like to read these reports and recommend which ones they would like to have reviewed at the next meeting, that's probably a way of handling it. Are there any that any of the committee would like to have a bit of a brief discussion on?

MR. HIEBERT: Mr. Chairman, I don't think that's the decision we would want to make. I think we would want to look at all of them and then prioritize them so that our decision is a valid one. I think that's something we can't do in this present format.

MR. CHAIRMAN: Okay.

MR. MARTIN: Mr. Chairman, I think I would agree. As I look through them, I think we get a good feeling for what they are doing, but we will probably be going over the same ground again. Before we make a decision or a recommendation, I'm sure that we'd go into a lot of this ground in much more detail. But for our time, I would agree that perhaps we go through it, and then at the next meeting, the committee prioritize what ones they would like to deal with. Then we could have the appropriate people here to deal with them in much more detail at that time. It may be that we would spend a whole session on one piece of legislation because of the nature of it.

MR. CHAIRMAN: Would you like to have Mr. Hurlburt give us just a brief background on all these schedules, without questions and comments on them at this time, so you feel a little freer in prioritizing them? Would that be worth it?

MR. HIEBERT: Quite frankly, Mr. Chairman, I think what has been summarized on the green sheets gives us a feel as to what the topic is and what we're dealing with. I think that's where this committee ought to sit down and assess and prioritize to maximize a greater expansion on the ones we consider priorities.

MR. CHAIRMAN: Okay. Then perhaps for the next meeting, the committee could individually give me a list of their priorities on these schedules, and we will deal with them in that priority. I will work through them and set up what the priorities are as compared to what members feel are priorities.

MR. CLARK: Not being a lawyer and not being up on all the Acts, some of us at least, when we go over these one at a time — if we're going to do that — before the meeting, I wonder if we could have some background on what the law is now, the changes, and the effect those changes will have. Would that be possible?

MR. HURLBURT: As long as we understand what you want, we will certainly provide it — no question, no problem.

MR. CLARK: I guess what I would like to have before I've made a decision on the changes you're recommending is what effect those changes will have and what the Act states in that area now and what

the effect would be with the new changes.

MR. HURLBURT: I hope there's some of that in these green things.

MR. BEAMES: Mr. Chairman, it occurred to me that generally speaking a sort of executive summary appears in each report.

MR. HURLBURT: Not in the early days. In the recent days, yes.

MR. BEAMES: In cases where there is not an executive summary, I think the institute could provide one so that for each of the reports listed, you would have a reasonably concise statement of just what the law is and what the problems are perceived to be and what the suggested solutions are. I think that we could provide something along that line, Mr. Director.

MR. HURLBURT: Yes indeed.

MR. BEAMES: Mr. Chairman, I certainly think the approach recently suggested is an admirable one. As far as the resolution is concerned, it appears to ask the committee to take under consideration all the reports and indicate which they would like to have referred for detailed study. As our director often says, our outstanding reports are outstanding in every way. Ideally we would hope that this committee would say, well, we want a look at them all. Practically speaking that likely isn't a realistic expectation, and I think the getting together of a list of priorities would be excellent. I can see where you would be assisted in having executive-type summaries of each. That would assist you in deciding the order in which you might like to look at these things. Then perhaps the next meeting could go into some more detailed descriptions, answering questions in connection with those reports which particularly appeal to you.

MR. CHAIRMAN: Thank you, Mr. Beames. There are some of these that I find there would be enough interest in that we could spend perhaps a whole meeting on one of these schedules. That's why I think prioritizing them might be important.

Okay, that's fine. Now I guess we have to set a date for our next meeting. We have to give a report to the Assembly during the fall session, so we probably should have a look at possible dates for the next meeting.

MR. CAMPBELL: Mr. Chairman, what are the constraints? I notice in this report that there has to be a recommendation made to the Legislature. What are we looking at? The second week, I believe. Is that correct?

MR. CHAIRMAN: Yes. I think it's the Monday of the second week.

MR. CLEGG: The second Monday, Mr. Chairman.

MR. HURLBURT: The second Monday of the fall sittings, Mr. Chairman.

MR. CHAIRMAN: It starts on October 16, so that

would be October 29.

MR. CAMPBELL: Mr. Chairman, we have this as a time constraint. We have to get into this previous to that date. Is that correct?

MR. CHAIRMAN: Yes.

MR. HURLBURT: That's not for me to say, Mr. Chairman, but that's what I understand the resolution to say.

MR. CHAIRMAN: Has anyone got a recommendation for the next meeting? I notice that we have the full caucus on September 13 and 14. Is an evening meeting possible?

MR. CAMPBELL: To simplify this, maybe it should be at the call of the chairman. If we start going over dates to make it convenient for all . . .

MR. CHAIRMAN: Okay. With the co-operation of Mr. Clegg and Mr. Blain — we'll survey the members on a suggested date and call the next meeting.

MR. MARTIN: Mr. Chairman, are you still going by your proposal that each individual member go through this and prioritize it in their own mind and give that to you?

MR. CHAIRMAN: Yes.

MR. MARTIN: There should probably be a date that you have time to do that then. You should let us know when you want that done too. Otherwise it could be pretty hit and miss.

MR. HIEBERT: Mr. Chairman, I would even go further. Individual members should study this and do their own prioritization, but I think there's value in this committee coming together to discuss those inputs so that in effect we're dealing with it in an effective way rather than just relying on people to make an artificial input. Such a meeting could be called by the Chair.

MR. CHAIRMAN: Thank you. Okay. I guess that's about . . .

MR. HURLBURT: Mr. Chairman, may I ask something, and might I also say something? What I would ask is this: my understanding is that what you want from us is what you could call an executive summary of each report, some of which are already prepared and others which we would prepare. That's the ball that's in our court, I take it, and we'll get those to you as quickly as we can.

Secondly, there is one thing I should say. There are one or two in there that I suspect the committee may look at and just say, we'll have none of that. I hope we would have a chance to speak to those. I think you'll recognize them when you come to them. One thing we would like before that kind of decision is made is just a chance to talk to you about it; that's all. I think there are things we may start out looking at in rather different lights. I hope we could come together one way or the other.

MR. MARTIN: Mr. Chairman, it would be my



understanding that the institute would be involved in all the meetings we have.

MR. HURLBURT: I just hope you don't prioritize things so that some of them are out the door, Mr. Martin; that's all.

MR. MARTIN: Again, it would be my understanding that you would be at that meeting.

MR. HURLBURT: That's all we can ask for.

MR. CHAIRMAN: Okay. Any other observations before we adjourn? Thank you very much, gentlemen. I'll do a survey and find out what time would be best for members to attend the next meeting, and I'll get back to you.

MR. CLARK: I move the meeting adjourn until the call of the Chair.

[The meeting adjourned at 10:15 a.m.]

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