[Chairman: Mr. Musgrove] [10:10 a.m.]

MR. CHAIRMAN: We have a quorum, and we'll call the meeting to order. First on the agenda is approval of the minutes of January 29. You all have a copy. John Batiuk moves. All in favour?

HON. MEMBERS: Agreed.

MR. CHAIRMAN: Also, the approval of the minutes of January 30.

MR. CAMPBELL: I so move.

MR. CHAIRMAN: Agreed?

HON. MEMBERS: Agreed.

MR. CHAIRMAN: You have before you a handout on Defences to Provincial Charges. We decided that we would make a decision on that today. Maybe we could ask Mr. Hurlburt to review some of the points in it.

MR. HURLBURT: Thanks, Mr. Chairman. First, I should apologize for being late. I was always brought up to believe that the one mortal sin was not to be there when the tribunal was ready. This morning, when I got to the office, the building was without power, so I had to go home and prepare this stuff at home. I should also say there's a further consequence of that. Not only does this material look a little scruffy — it's got the computer pages attached to it — but I prepared the handout you've now got from memory, because it was so dark I couldn't find a copy of the report. So you should be a little more suspicious than usual about this material. I had to do it at home without any help.

MR. ALGER: Mr. Chairman, let me write those excuses down. I could use them now and then.

MR. HURLBURT: The second thing is that if you are late, you dress it up. That's a practical, not a philosophical consideration.

Mr. Chairman, it's now six weeks or so since we talked about Defences to Provincial Charges. What this summary does is try to put in a nutshell what we were talking about. The committee may remember that there are these three strangely named categories of provincial offences. Under (1) is similar to a true criminal offence, in that the accused person is not guilty of it unless he intended to commit an offence or to do the things that are prohibited. There's the category, which I have numbered 3 on page 1, in which the accused is guilty if he commits the act. It doesn't matter whether he intended to commit it or anything else; he's guilty. Then there is an intermediate category, in which the accused is guilty even if he didn't intend to commit the offence. But if he can prove that he did his best or did what was reasonable, at least, to avoid committing it — he exercised due diligence — he should be acquitted. I've also included if "he reasonably believed in a state of facts in which he would not be guilty . . ." If he thought some fact was true, and was reasonable in so doing, then he should get off. Those classes exist, and the institute wouldn't be changing them. They've been established by the courts.

Moving on to the second page of the summary, under the present law the courts find that intention is necessary; that is, you're not guilty unless you intended something. If the statute uses words like "you shall not 'knowingly' do something," or "you shall not 'permit,'" or that the legislation shows that the person isn't guilty unless he knew about it, unless he knew he was guilty or knew he was doing wrong — the institute's proposals would leave that category the same.

Secondly, in the left-hand column, the courts have worked out their own ways of interpreting statutes so as to classify the particular offence either as strict liability, which means you can produce this defence of due diligence, or absolute liability, which means you can't produce the defence of due diligence. Since they're trying to divine something from the legislation that the legislation doesn't tell them, the rules they've worked out, while they're the best they can do, don't work very well. You find distinctions that don't seem to mean very much, confusion, and so on. The institute's suggestion is basically that if the Legislature uses words like "knowingly" and so on, the Crown has to prove that the accused intended it, as is true under the present law. We also say that if the Legislature wants to say that the accused is guilty no matter what, with no defence of due diligence, it's certainly at

liberty to say so, and that's its function in a proper case. But if it doesn't say anything, then we say it should be classified as what is called strict liability, which isn't that strict because the defence of due diligence is available. Unless the Legislature really went through its statutes and started putting words in everywhere, it would mean that more offences would be classified as ones in which a defence of due diligence is available. But that would be under the control of the Legislature, because it could always say something else if it thought that the full rigour was necessary.

Is that an adequate summary of that first main point, Mr. Chairman?

MR. CHAIRMAN: Did you have a question, Mr. Alger?

MR. ALGER: Mr. Chairman, I'm just confused as to what style of offences we're referring to here. Is it murder or breaking and entering or rape. What the heck are we talking about?

MR. HURLBURT: All the things you have mentioned are true criminal offences and are under the Criminal Code. We're talking about everything that's mentioned in a provincial statute, everything from overparking to flogging securities without a licence or making mis-statements in prospectuses. If a provincial statute says "thou shalt" or "thou shalt not", that's what we're talking about.

MR. CLEGG: Mr. Chairman, I wonder if I could add an example. I was trying to think of an example last night that might clarify things. As I understand it, what the institute is proposing is that they would be expanding the most common kind of defence, which is the defence of due diligence. I think we should add, in clarification, that this does not mean that ignorance of the law would be a defence. A mistake of background facts that was reasonably assumed might be a defence. For example, if you had set off on a trip with your licence plate on the back of the car and you therefore thought it was on the back of the car, and you suddenly stopped and it wasn't, you could say both that there was due diligence and that you thought you had the licence plate properly screwed on. You thought it was there, and therefore you didn't think you were committing an offence.

To take that example further, if it was an absolute offence, which is one end of the scale, it wouldn't matter whether you thought it was there or not. If it's not there, it's an offence — end of story. That would be an example of an absolute offence. An example of a mens rea offence or the [inaudible] Criminal Code obligation would be that you would have to show that you had set off deliberately with an attempt to flaunt the bare back of your car all the way down Highway 2 and commit the offence at the same time. That seems to be an example.

When you were talking about a misunderstanding about facts, it would not extend to a misunderstanding about the law. Ignorance of the law is no excuse in any circumstance. It is just too good a defence.

MR. HURLBURT: We qualify that one a little later. But you're entirely right at this point, and you're basically right anyway. The example Mr. Clegg has given is exactly on point.

MR. CHAIRMAN: Is everyone clear on what we're voting on, or are there some other questions? Do we have a motion to approve the recommendations by the institute?

MR. CAMPBELL: I so move.

MR. CHAIRMAN: Thank you. Agreed?

HON. MEMBERS: Agreed.

MR. HURLBURT: Should I go on, Mr. Chairman?

MR. CHAIRMAN: Yes.

MR. HURLBURT: The second point is a small one. There are a number of common-law defences, which I could read out if you want. I've given an example or two there. I probably shouldn't have shown drunkenness, because it really isn't a defence, but there are rare circumstances under which it might be for provincial offences. We propose that the defence of insanity be abolished for provincial offences, which sounds very strange when you first say it. Abolition of insanity as a defence for overparking hardly seems like a great stride forward in the law. The point is that, if I may put it this way, nobody in his right mind would

plead insanity as a defence to a provincial charge, anyway. Secondly, this isn't the type of forum in which you should be deciding whether somebody is insane or not. Prosecution in a provincial judge's court for a provincial offence isn't the time when you should be doing that.

I gather that there have been cases in which the Crown has said that insanity is proved, so the fellow is whisked off to an institution or something like that. Our position is that there are ways and means of whisking people off to institutions, and this shouldn't be one of them. There are other and better ways.

MR. CLEGG: Mr. Chairman, I'd like to raise the question of how one deals with the situation where a person is, in fact, of reduced responsibility but hasn't been committed. You did say that nobody in his right mind would plead insanity, but the point is that if it's the correct plea, the person is not in his right mind. There are some very serious provincial offences which can result in very significant imprisonments and very serious penalties. Before we remove that defence -- it may be that it's pleaded very rarely, but there may be some cases where a person has diminished responsibility to the level which would permit that defence to work but hasn't been committed and has in fact committed an offence which would otherwise have absolute liability. It would seem a little hard to remove the real defence the person has, that he has diminished responsibility and didn't know that what he was doing was wrong, or whatever the present tests of insanity are.

MR. HURLBURT: Mr. Chairman, unfortunately I'm here without my expert this morning.

MR. CLEGG: While you're looking that up, I might give an example of a person with diminished responsibility who might well start issuing and trying to sell shares in a company which didn't exist, or something, just because he was a little bit crazy and was harmless but hadn't been committed. He might otherwise have no defence to the charge. Then it would be open to the court to convict him or to give a discharge or a very minor fine. But there are some offences which could well be committed by a person who had diminished responsibility to the point that he would do such a thing and have no defence, apart from insanity, under the legislation, but wouldn't at that time be committed or necessarily have to be committed. It would just be that the person looking after him has to watch him a bit more closely.

MR. HURLBURT: I think our only answer is — and this is on Jim Robb's knowledge of the circumstances of what happens. The likelihood of someone raising the defence in the context of regulatory offences is a remote one, though it causes us some concern that the Crown could raise the issue. The thing is that you may conceivably find, I suppose, a provincial offence in which it would be better for the accused to be committed than to be convicted.

MR. CLEGG: Is it an inevitable consequence that if a person succeeds in a defence of insanity, he is committed?

MR. HURLBURT: Do you have knowledge, Clark? We're straying into areas that I'm not familiar with every day.

MR. DALTON: The essence of a defence of insanity is that you're insane, and you're not relieved of your liability. It's just that you're said to have diminished responsibility, and because you have that diminished responsibility, you're taken away at the pleasure of the Queen, more or less. Now, I think what Mr. Hurlburt is saying is this: there are better ways of dealing with this in relation to regulatory offences. It's okay in the case of murder or rape or an assault case, where we have violence and that kind of thing. They would likely prosecute in that particular case. But in the case of something of a regulatory nature, that requires a mens rea element, for example your securities offence, one would think that rather than prosecuting under the Securities Act, they would make an application under the Mental Health Act to have the man committed because of his insanity.

MR. CLEGG: But there are some offences which don't require mens rea. There are absolute offences under provincial statutes. I wasn't aware that it was an inevitable consequence that the person who succeeds with that defence is thereupon committed; I thought it was the discretion of the court to make a committal order if that defence succeeds.

MR. DALTON: My experience is that one of the reasons you don't want to use that defence is because your man may not go to jail, but he will go to an institution.

MR. HURLBURT: It's also true that he may then be examined and found to have ceased being insane, I suppose.

MR. DALTON: Yes, that's true. But in that particular case, you may well find that he has to face the charge again.

MR. HURLBURT: Well, yes, but in theory, at least, he could be insane at the time he committed the offence but not insane by the time he came to trial. That may not be very likely.

MR. R. MOORE: I think Mr. Clegg has a point on the insanity deal, but when I look at my personal experience, I think the crazy guy is the one that buys the shares. He's the guy that's a little off.

Mr. Hurlburt, I am wondering why, when you propose taking insanity away as a reason for defence, you didn't include drunkenness. It bears out the same way as insanity as a reason for defence in provincial charges.

MR. HURLBURT: Basically, although I included drunkenness here, it's such a rare thing that it can be a defence to a provincial charge that we didn't think it mattered. When you get into a serious criminal charge, it may be raised. Just a minute.

This passage again is prepared by Jim Robb. Dealing with this defence of due diligence, he says that self-induced intoxication — because you got yourself drunk — would not allow you to put up that defence. It would not be a defence to either a strict or an absolute liability offence. He is really saying that he thinks the legal protection against it being raised is sufficient at the moment. There can be certain rare cases — and these would be the mens rea type cases — in which the Crown would have to prove that the accused formed the specific intention of doing the act, and then it could be a defence. In provincial offences I don't think it's a serious enough problem.

The reason that we've drawn the difference is that we're advised that in the case of insanity, there is a danger that the accused will suddenly find himself carted away as being insane. That won't happen to him once he's sobered up for the drunkenness. That's the distinction, and that's why we suggested abolishing one which we think would not be raised, anyway, by the accused and could be used to his detriment. We don't think drunkenness has caused enough of a problem on provincial charges to worry about, whatever the case may be on murder. We think that can be left to the courts.

MR. STILES: Mr. Hurlburt, as I understand this recommendation, the ground for making it is that the penalty arising from the successful use of insanity as a defence is usually worse than the offence would draw if insanity were not involved. Is that correct?

MR. HURLBURT: It's half of it, Mr. Chairman. The other half is that it may be used against him without his intention, even without his raising it. Again, this is our advice: there is at least some risk that the Crown may say that it's demonstrated that he's insane, so he will be found guilty but insane and carted off without his even raising the point. That's the second half.

MR. STILES: Mr. Chairman, if I might make one or two observations from my own experience as a criminal trial lawyer. With respect to the situations arising in provincial court, which is where all criminal actions start as a court of first instance, anyone who is brought before the court, where there's any suspicion the person may not be sane, there is a psychiatrist who attends the remand centres on a daily basis. These people are examined by the psychiatrist. If there is any suspicion that the person is insane, the psychiatrist will make a recommendation to the court that the individual be taken to a forensic unit — in Calgary it's the General hospital — where they usually undergo a 30-day period of observation to determine whether they are sane or insane, whether they are fit to stand trial. That procedure is followed in every case where there's any concern on the part of the Remand Centre staff or the defence counsel or anyone else, including Crown counsel, as to the person's sanity.

My experiences with the forensic unit — and I spent two weeks at the forensic unit in completing my law degree. Everyone involved

in the criminal justice system recognizes the consequences of an insanity plea, and the forensic unit tends to make the person sane so he is fit to stand trial. They do that with medication and treatment. It's very, very infrequent that a person who is sent over for observation doesn't come back fit to stand his trial by the time he's completed the 30 days. What they'll do if he isn't fit to stand his trial by the end of the 30 days — and I appreciate this has nothing to do with an insanity plea, because as you said, a person can plead temporary insanity, that he was insane at the time of the commission of the offence but not insane later when it comes time to stand his trial. I'd just like to go through this so that everyone understands. What they often will do if the person isn't fit to stand his trial at the end of the 30 days is ask for an extension of the period so he can undergo further treatment until he is fit to stand his trial. It's very unusual for anyone to come before the courts who does not stand trial as charged on the basis that he is fit to stand trial and give instructions to counsel.

In terms of the insanity plea, as I said, everyone involved in the criminal justice system — and, I would say, most lawyers; if not all lawyers, I think the vast proportion of lawyers who are involved in trial work are aware of the consequences of a plea of insanity and of a finding of insanity by the court. So they simply don't ever plead insanity. They just don't use that defence. I think it would be an extremely rare case where the defence would actually be used. As Mr. Clegg pointed out, if the person is truly insane and if there is a clear case of insanity being a defence, why should we take that defence away from an insane person? Perhaps that's where they should be, in an institution where they can be treated.

MR. HURLBURT: I'd like to make one observation. I've really said all that I have to say. The procedure you're talking about may be very good when you're talking about serious criminal charges. The great bulk of provincial charges — again, my submission is that it isn't really worth it for this kind of offence. If somebody seriously sees that the accused is in that condition, proceed under the Mental Health Act. However, I think you've probably heard everything you need to hear, certainly from me, on the subject.

MR. CHAIRMAN: As I understand it, your concern is that the courts might take it upon themselves to declare this person insane, and that takes away that possibility from the courts too.

MR. HURLBURT: This isn't the major point in the report, I should say, Mr. Chairman. It's a fairly small one.

MR. STILES: Mr. Chairman, to clarify my position. The concern I have is that I don't believe — and Mr. Moore alluded to the defence of the drunkenness. Drunkenness has been canvassed very thoroughly by the courts in cases in which drunkenness has been used or has been attempted to be used as a defence. I think the law is quite clear as to when drunkenness can and cannot be a defence to a criminal act. We are talking about provincial offences. I appreciate that they aren't normally as serious as some of the Criminal Code offences. However, they often can carry a fairly severe penalty.

The point I'm trying to make is that people who are faced with provincial charges or offences ordinarily have the availability of counsel. I don't think anyone comes before a court who is not represented by counsel. If the court feels that the person should be represented by counsel — and I have seen this happen many, many times — the courts will remand the matter and have that person come back with counsel, either by way of Legal Aid or on their own resources. The court will not proceed. In many instances where someone is faced with a serious penalty, they simply won't proceed until that person has legal counsel. Once the person has legal counsel, that lawyer is there to give his advice and certainly to conduct the case in a manner that is appropriate to the individual.

I'm quite positive there are no lawyers doing that kind of work who aren't aware of the consequences of the insanity defence. They simply don't use it. But I don't believe we should be taking away a defence. If it's a reasonable defence to a charge, I don't believe we should, by statute, be taking away a defence that has previously been available. In the very, very few times that it may be used, I think it should still be available to people to use it.

MR. LYSONS: I'm more confused than ever

now. What about someone who has taken a drug that has affected their ability to think, maybe only temporarily, and sometimes they've not knowingly taken this drug. For instance, if I take a tranquilizer or something like that, it really affects me, to the point where I drive down the wrong side of the road. Where does that fit in?

MR. HURLBURT: It's in the same general area as intoxication, Mr. Chairman.

MR. CHAIRMAN: We've had discussion on this topic. What is your pleasure? Does anyone have a motion?

MR. STILES: Mr. Chairman, I move that the recommendation not be proceeded with. I'm not sure whether you want to have a negative motion.

MR. CHAIRMAN: That's fine. Any more discussion on this topic? The motion is that we not proceed with this particular part, removing the defence of insanity. Agreed?

SOME HON. MEMBERS: Agreed.

MR. ALGER: What about opposed? You haven't asked that.

MR. CHAIRMAN: Opposed? One opposed. Is that all the discussion on Defences to Provincial Charges?

MR. HURLBURT: There are still a couple of items, Mr. Chairman. The next one is Unpublished Regulations and Bylaws. At the present time the law requires that a regulation made under a provincial statute be published in the Alberta Gazette and that a municipal bylaw be filed with the municipal clerk. But once the regulation or bylaw is made, even if it hasn't been made public in that way, a charge can be laid under it. Our suggestion is that, as a general rule, that should not be true, that until the regulation has been made public through the Gazette or the bylaw has been made available to the public by filing with the municipal clerk -- and that really isn't much of a problem -- the general rule should be that there would be no conviction of a breach of that regulation, simply on the grounds that until the law is brought out into the public eye in some way, it shouldn't be the law or at least shouldn't bind the citizen.

That leaves open the problem of -- you see something dreadful happen or is about to happen, so you promulgate a regulation, but it's going to take you a month to get it published in the Alberta Gazette. That is, there can be emergency cases in which a regulation is needed. What we've said about that is: all right, in the special case of an emergency of that kind, let the regulation say specifically that it's to be effective and the offence will be an offence immediately the regulation is made. That's one thing. Secondly, whatever steps can reasonably be taken to notify people that are affected should be taken. You wouldn't know what those reasonable steps are until the time came. If it's a regulation that's really directed at a specific individual or group of individuals, you just tell them that the regulation has been published, and then they're bound by it. I suppose a newspaper advertisement of a regulation having general effect might be a way of giving notice. I don't think those cases should be that frequent. When I look at regulations, I see that most of them are of such an emergency nature that you would want to enforce them before they've been put out, where a well-meaning member of the public can find them. The municipal bylaw really isn't any problem, because you can file the bylaw with the municipal clerk by walking across the corridor. I wouldn't expect this to cause any problems for municipalities. Where it really might have some effect is with provincial regulations under provincial statutes.

I think that's all I have to say on that.

MR. CHAIRMAN: Any questions or comments?

MR. CLEGG: Mr. Chairman, could I ask a question? How would you propose to deal with a situation where it hadn't been published but had in fact been issued and the accused knew that it had been issued?

MR. HURLBURT: You may have a point. We should go a little farther. We've said, "reasonable steps are taken to notify." I suppose it's possible for somebody to learn of the regulation even though nobody has taken reasonable steps to tell him about it. Mr. Chairman, if the committee is disposed to approve of the principle, I think we should be

directed to consider whether we have covered the case Mr. Clegg has raised, where somebody in fact knows about the regulation but it cannot be demonstrated that somebody took appropriate or reasonable steps to inform him of it.

MR. CLEGG: Mr. Chairman, the reason I raise this is that because of the way in which the Gazette is published, it can be three or four weeks after the time the order in council or ministerial order creating the regulation is passed, and in fact the order in council list is a public document. Nobody knows who has it, but it can be obtained by any person who might well know that that regulation has been issued. It would seem to be against the principle that if a person actually knows, it doesn't matter if it hasn't been gazetted. There may have been no steps taken at all to advise the public, but the person knew about it.

MR. CHAIRMAN: Thank you. This changes it a bit. The recommendation now is that, in principle, no one be charged until the regulation has been gazetted, unless there's reason to believe that he has been informed.

MR. HURLBURT: Or reasonable steps have been taken, whether or not they were effective.

MR. CHAIRMAN: Agreed?

HON. MEMBERS: Agreed.

MR. CHAIRMAN: Opposed? Okay.

MR. HURLBURT: I think that's a useful addition, Mr. Chairman.

Then we come to the two kinds of what we've called Officially Induced Error. In one case, the facts would have to be that an Alberta judge made a decision, and in the course of that decision he said that the law is X and that the time for appeal of that decision has gone by. Then somebody probably goes to see his lawyer and is told that there is a judgment that says that the law is X. He then goes out and acts on the proposition that the law is X. Later the case is reversed or over-ruled by a higher court, and the law turns out not to be X. That means that the accused has infringed the law as it's declared by the higher court, though he didn't infringe the law as it was declared by the earlier court. We've simply said that if he can show that he relied on a decision which was later over-ruled, he shouldn't be convicted.

I should point out that I now realize that there's one error in the summary. At the bottom of page 3, the lower left-hand column, I've said "This can happen if the judgment he relied on is reversed on appeal or over-ruled later." I should not have said "is reversed on appeal," because one of our stipulations is that the time for appeal must have gone by. So reversal on appeal shouldn't be something that happens.

MR. R. MOORE: Mr. Hurlburt, in this case we have provincial laws on the books or in the statutes of Alberta. They're put there; they haven't been taken off. Some lower court has said, well, they are out of order. By the time it's over-ruled somewhere down the road, the time for this change could be a year, two years. This means that we don't have any statute covering that particular area in the province, because what we have on the books does not apply if we go with your proposal.

MR. HURLBURT: We're talking about interpretation. We're not talking about whether . . . Well, I suppose we could be talking about whether the statute is ultra vires. But the basic point is that the citizen who reads the statute and then reads the decision — on the basis of the present law you are requiring him to know more than the judge who gave the decision. In order to avoid contravening the law, he has to read the judgment and know it is wrong. That is a pretty heavy burden to put on the man in the street — to be brighter than the judge, or you might put it a little more cynically, to guess better than that judge what the court upstairs was going to say later. That's our point. If a judge says that something is the law, the citizen should be protected from quasi-criminal or half-criminal responsibility if he relies on it.

MR. R. MOORE: Mr. Chairman, once a court rules a piece of legislation is incorrect, or whatever terminology you want to use, isn't the onus on the province to change that law?

MR. HURLBURT: Yes, if the province doesn't like what the judge says. If the Legislature says that what we said in that statute meant X and we have a decision in which the judge says that

isn't what is meant at all, the Legislature can change it and ought to do so. But I think we all know that the Legislature is rather busy with other things most of the time and may or may not get around to it. So there can be a period of time. But the Legislature can certainly change it -- prospectively, usually.

MR. R. MOORE: What I'm getting back to is that the general public should know what the law of the land is. I can agree that the general public should not be aware of every judgment that comes through the courts. Until that change, it's still on the books; it's still the law of the land. Even though one in the lower court said he disagreed with it, it's still on the books as being the law of the land.

MR. HURLBURT: But the point we actually have in mind is not the ultra vires or that it isn't law at all, but it's what it means. The courts look at the wording of every statute you send out in relation to the particular facts, and they say the wording either covers those facts or it doesn't. In the course of it they will say, "The Legislature said something which is ambiguous in relation to these facts, and this is what it means." Again, until the Legislature comes back to the charge or until another court has reversed this, we think the citizens should be able to rely on it. We're talking now about the honest, decent citizen who wants to know what the law is so he can conform to it. He asks what the law is and is told, correctly, that this is the judicial statement of the law.

MR. CLEGG: I was only going to say what Mr. Hurlburt has explained, that the issue is not so much of a case where a law is struck down but where the court explains the law a little bit further. There is a gap in understanding what the statute means. This doesn't usually result in an amendment.

MR. STILES: At the beginning, Mr. Hurlburt, I think I should tell you I have quite a bit of trouble with this recommendation. Our whole system of justice is based on the principle of stare decisis, that courts will follow higher court decisions. If this recommendation were to find its way into legislation, I have a feeling that we would be monkeying around with that principle. I have a great deal of trouble with that.

It seems to me that the recommendation would take away, to some degree, the capacity of lawyers arguing the very point before a judge. When someone is charged with contravening a statute — in this case, a provincial statute — one of the arguments that will be made by counsel is that the statute is ambiguous, the meaning isn't clear, the person shouldn't be convicted because he interpreted it this way and someone else, a police officer, has interpreted it another way. The function of the court is to interpret those statutes, to interpret the law, and make that sort of decision.

I'm not really clear. Are we talking about the Provincial Court decisions here?

MR. HURLBURT: We're talking about any decision on a provincial offence. It could be that the first court is the Provincial Court and the second court is the Court of Appeal.

MR. STILES: Exactly; well, the second court would be the Court of Queen's Bench and then to the Court of Appeal from there.

One of the points I would make in terms of saying it would be a defence to a provincial offence to say you were advised of a Provincial Court judge's decision, for example, that the section should be interpreted thus-and-so, and therefore you acted accordingly . . . If anyone attempts to find out what the law is, and presumably goes to a lawyer to find that out, lawyers will advise what they think the statute says, among other things. They will also advise, "This is what I think the statute says, and my position is upheld by Provincial Court Judge so-and-so, who in such-and-such a case said the same thing. However, that's just one judge, and it's a Provincial Court judge, and I would not advise you to rely on that decision if there is some possibility of ambiguity here."

Given that in any society that there are always people who will walk that very fine line — if they can find something that's a little bit ambiguous, they'll test it; they'll try to walk on the other side of that line if they can, and try to get away with it — I really don't think we should create a situation by statute where people can say, "I was relying on provincial Judge X's decision in such-and-such a case." I realize that it's arguable. I think that person should make that argument before a judge and not have a defence created by statute, where he can say that if he heard that a Provincial Court

judge made a decision this way, that gives him a defence to the charge.

I think he should be making the argument before a judge. He was governed by what a Provincial Court justice has said. If the judge he is arguing that before disagrees with that other Provincial Court judge, he will bring down a decision accordingly. At that point in time the individual has the right to appeal the decision to a higher court, have it clarified by a higher court judge or the Court of Appeal, and the matter will be dealt with. But at least it will then come to the provincial Legislature's attention that there is an ambiguity in a section of a provincial statute that should be dealt with. But if we interfere by creating a defence which says that if you have heard that some Provincial Court judge says thus-and-so, you can go ahead and ignore what the section appears to say and do so with impunity, I think we are running a risk of interfering with the system to the extent that it would break down to some degree. I may be taking an extreme position, but I really do feel that we are treading on pretty thin ice to be adopting a recommendation of this kind.

The other point I would make is that if we're talking about Provincial Court decisions, very few Provincial Court decisions are ever recorded. You never have access to them unless you happen to have been in court that day and heard the decision rendered. Very few of them are reported or written.

MR. HURLBURT: There are two or three points there. Number one, about the system of precedent, I don't think we're interfering with that at all. The facts we're looking at are that a decision is made by a judge in which the judge says that the meaning of an Alberta statute which creates an offence is X. That judge could actually be a Provincial Court judge, he could be a Queen's Bench judge, and the over-ruling court could be the Court of Appeal. Or it could even be the Court of Appeal, and the over-ruling court could be the Supreme Court of Canada. In the case that brought this on, I think it was a trial division judge who made the first statement.

But you really have three cases: number one, a judge decides; secondly, a superior court over-rules; thirdly, the accused is back before a trial judge of some kind for something he did between the first two. He would not be able to argue that the law the first judge declared is right. He wouldn't be able to attack the decision of the over-ruling court. All he would be saying is: "During that period of time, the law, as it was basically held out to me to be, was what the first judge said it was, because I'm not brighter than that judge; I don't know more law than that judge. If that judge, who is set there to declare the law, thought that the law was so-and-so, then I shouldn't be held at fault because I believed him."

Secondly, as to the bad man who will take every inch he can find, there could conceivably be such a case. But in order for the defence as proposed to stand up, it would be necessary for the bad man to say, "Here is the judgment of Judge X." And it isn't just that, "I heard that he made it." He's got to be right, and I think this would normally involve a reported decision or at least a copy of reasons for judgment which were the correct reasons, and say: "I fall squarely within what this first judge said. My conduct was precisely the kind that he said was not bad conduct. I relied on that, and that's why I did what I did."

Again, a lawyer might advise him that there's a possibility it might be reversed later, but it's asking a lot of the citizen to say that although a judge, appointed by the province of Alberta or by the federal government, sitting in a court, has said that I can do this, I must nevertheless second-guess him and say that I can't. Again, he'd have to be right about what was there, about what the first judge had said. There's nothing that we would suggest that would say, "I understood from my friend on the street that he said so-and-so." He would have to be right on that point.

As to the number of reported cases, we could be talking about relying on a Court of Appeal judgment which is later over-ruled by the Supreme Court of Canada. We could be talking about a Queen's Bench judgment that's later over-ruled by the Court of Appeal or a Provincial Court judgment that's over-ruled later by either a Queen's Bench judge or by the Court of Appeal. But it would have to be reported or available in official form. If there aren't many judgments lying around, then the defence wouldn't be available very much.

The essential point really is that the citizen should have some way of knowing what the law is. If he relies on what a judge, whose business it is to know and declare the law, says it is,

then he should be able to proceed accordingly, insofar as provincial offences are concerned.

MR. ALGER: Mr. Chairman, the mechanics of this discussion are marvellous. The difficulty I'm having, and I think a lot of us are having, is that we don't have any examples of the offence or the charge. I have a hell of a time figuring out just exactly what we're talking about. In short, you learned folks are going over my head. Could I get an example of what we're referring to, Mr. Hurlburt?

MR. HURLBURT: There is an example; my problem is finding it. I've forgotten whether it's actually outlined here or not.

MR. ALGER: Is it where you can conveniently break the law — even though you know it isn't the law, you do it, sort of thing?

MR. HURLBURT: No, you can't break it, though you know it isn't the law. You break it because you've been told by a judge that what you're doing is not breaking it.

MR. ALGER: That's exactly what I'm getting at. What are we referring to there? Is this stock market stuff or land deals or what?

MR. CLEGG: Mr. Chairman, as I understand it, what the institute is proposing is that if a person does something which is legal at the time he does it, in accordance with the statute and the latest and best judgment, and that judgment is later over-ruled and it becomes illegal — the institute is not saying the later judgment shouldn't apply. That should be the law, but he should have a defence.

I can think of an example. I don't think it has actually occurred, but there's been discussion about it. Legislation defines the height range above the ground of bumpers on trucks. There has been some debate as to whether that height meant the centre of the bumper or the height of the lowest part of the bumper. Say, for example, there was a judgment of a Court of Queen's Bench that said it meant the lowest part of the bumper had to be a certain height from the ground, and a person, having been told about that decision, relied upon it and drove his truck on a highway. But that interpretation was over-ruled, and it said no, what the Act stated meant that it's the centre point of the bumper. He would find himself having committed an offence as a result of a later judgment, whereas the vehicle's construction was in accordance with the laws that stood at that time, as upheld by the latest available judgment. I don't know whether that's a good summary and a good example. You may have a better one.

MR. DALTON: I wonder if I might relate this one. I used to practise in a small town in the Northwest Territories, and it occurred from time to time that there would be an interpretation of one of the most difficult sections of the legal profession ordinance, and here, the Legal Profession Act. That is, when is a person deemed to have been carrying on the practice of law without a licence? Let's assume we have someone who is carrying on an insurance practice in a small town in Alberta, and he is incorporating corporations for purposes of his clients who come in and say, "Look, I need a corporation for a particular purpose." He attends to his solicitor, and he says, "Solicitor, can I do this kind of thing?" The solicitor says, "Well, there's a recent decision of our Court of Queen's Bench that says that a person who was carrying on a practice similar to yours and was incorporating businesses is not carrying on the practice of law in this province." So our insurance agent goes out, and his clients come in, and he incorporates corporations for them. It used to be fairly easy to do. It's an easy process, and you can fill these things out to incorporate.

In between the time that he's seen his solicitor and he carries on incorporating businesses, there is a decision of the Court of Queen's Bench that goes the other way; it says that that is carrying on the practice of law. That decision is appealed to the Court of Appeal, and the Court of Appeal agrees that anybody who incorporates businesses is carrying on the practice of law. He is subsequently charged in relation to his carrying on the practice of law, because he's incorporating businesses.

That's the kind of circumstance we're talking about, that between the time he's gone to see his solicitor and has been advised that this is the law — and in fact the law at that time was that he could carry on incorporating businesses. He should therefore be able to rely upon that as being the law at the time, until it's overturned by a superior court. I think that's

what we're talking about here. It's one that happens often. When I was in practice, that particular section was one that seemed to come up quite often: can I do this kind of thing? The section itself is quite nebulous. It's really hard to tell what the practice of law is.

MR. ALGER: And what is the insurance agent guilty of, Clark?

MR. CLEGG: Practising law without a licence.

MR. HURLBURT: In the example we gave — unfortunately, I don't have the facts. I think it was something about how much clothing you have to wear when you're dancing or something like that. It was really an absurdity. A trial judge held that you can go so far. The accused then went so far, or their people did. Then the Court of Appeal reversed the original judge in the original decision. Then the accused were convicted; didn't appeal. Then the Supreme Court of Canada reversed the Court of Appeal, and restored what the trial judge had said. These people are sitting out here convicted, and there's nothing they can do about it. It was a truly absurd case.

MR. STILES: Mr. Chairman, I appreciate Mr. Dalton's example, and I think we should make a comment about that. That's clearly a situation, as far as I'm concerned — and the reason I don't really see the why we need to make this sort of statutory provision. If I was acting for that insurance agent and he was charged with practising law when he was incorporating these companies, when he had relied on a Court of Queen's Bench case which said that the activity he had been engaging in was not in fact practising law, and the period that gave rise to his being charged would be the period after that decision — he relied on that decision — and subsequently the senior court, the Court of Appeal, or another judge of the Queen's Bench reversed that decision and the second judge's decision was upheld by the Court of Appeal, and this man had not continued to incorporate businesses after the second decision was known to him, then you would argue very strongly that he could not be convicted, because he had understood the law to be X, as you said, Mr. Hurlburt. He relied on that decision. I don't think any judge would, under those circumstances, convict him of practising law when he had relied on a Court of Queen's Bench or an equal level court's decision in his conduct which was then later overturned, which then established the law, because the higher court established what the law is.

It is the function of the courts to interpret statutes, in part, and make those kinds of decisions. It is the function of lawyers to argue those kinds of arguments before a judge and win an acquittal for a client on that basis. I just don't understand why we need to put this sort of thing in statute, because it's the kind of thing that goes on in the courtroom every day. This is the sort of argument lawyers make if someone has relied on a court decision in his conduct which is later overturned. If he's then charged, during the intervening period, of having committed this offence, that's a defence now. So I don't see why we need to put it in the statutes and say that it's a defence.

MR. CHAIRMAN: Steven, I think the recommendation is that this would be statutory. He would not be charged during that period of time, and he wouldn't need legal aid. Is that right?

MR. HURLBURT: Mr. Chairman, our problem is that the argument that Mr. Stiles has put forward so vigorously, and which would certainly persuade me, didn't persuade the court. The court said, "The fact that you relied on this previous judgment is nothing to the point; you're guilty, period, boom." That's why we think a statute is needed. If the argument would succeed without a statute, we wouldn't be around. That's the problem.

MR. STILES: You're referring to the decision that you haven't been able to provide us.

MR. HURLBURT: Oh, I have the case — it's the Queen against Campbell — but I don't have a summary of the facts except that there was a decision, a reliance, a reversal, a conviction, and then, as it happened, a further reversal that didn't upset the conviction. But the argument that was put to the court and rejected by the court was specifically that the accused had acted on the basis of an earlier decision which was later over-ruled.

MR. STILES: If I could make an observation, Mr. Chairman, I think that was a bad decision. I

think it's the sort of thing that can happen in any justice system and, in fact, does happen. I really question, however, the probability of that kind of decision being rendered very frequently, which would make it necessary for us to carve that sort of principle in stone by putting it in legislation. It seems to me that's why we have courts of appeal, to correct bad decisions. I really wonder if we should be invading this area to this extent, because it really is the function of the courts to deal with these matters as they come up.

If we do put it in legislation, I'm concerned that we then have the element I referred to earlier, and I don't have a great deal of -- I'm not one of those who views the world through rose-coloured glasses. If we do this, I believe people will take advantage of this kind of legislation, to their benefit and to the detriment of many other people. I think there are people who walk that fine line. If there's something like this they can rely on with impunity, they will do so. That's the concern I have.

MR. HURLBURT: Mr. Chairman, Jim Robb reviewed the law, concluded that there is a problem -- that is, the argument has not been accepted -- and we have proposed a solution.

MR. CHAIRMAN: Okay.

MR. R. MOORE: Mr. Chairman, if I may. I heard another of my colleagues say he moved a negative vote. I'd like to move that we reject this proposal.

MR. CHAIRMAN: Any more discussion on it? The motion is that we reject the proposal. Agreed?

SOME HON. MEMBERS: Agreed.

MR. CHAIRMAN: Opposed?

MR. CLEGG: What was the count?

MR. CHAIRMAN: We'll take the vote over again. Agreed?

MR. STILES: Mr. Chairman, I suggest that someone should make a motion in the other fashion -- make a positive motion -- and see if it passes.

MR. FISCHER: I'd like to make a motion that we accept this proposed change.

MR. CHAIRMAN: We'll have to have a vote with a show of hands. In favour? Opposed? Three opposed.

That is the last of the discussion . . .

MR. HURLBURT: I'm sorry; there is one other, Mr. Chairman. It goes along a little farther, you may think; I don't know. If the accused has gone into the government department that administers a piece of the law and is told he can do what he proposes to do, and relies on that, then he is equally protected. If I go into the planning department and say, "Is my proposed use legal or permissible?" and am told, "yes," then he can proceed to do what it is he's going to do, without a permit or what have you -- that sort of thing. The basis is that you want to encourage the citizen to go to the government and consult the government to find out what it is that he's supposed to do, and you shouldn't convict him when he relies on it. I think that's about the way it was put.

MR. R. SPEAKER: Mr. Chairman, a question to Mr. Clegg. In terms of Mr. Clegg's role here in the Legislature as a legal adviser to us as MLAs, how would that affect your role? You give us advice in a number of areas as to whether we should or should not do something, in terms even of the Legislative Assembly Act. How would that affect your role?

MR. CLEGG: Mr. Chairman, I understand the question. It would probably arise in cases of conflict or whether to declare certain persons as being directly associated. If I advised you that corporation X is not a direct associate under the Legislative Assembly Act and later you find that I was wrong in my interpretation, you would then say that I was the correct official to come to. It might be a difficult example because . . . I suppose it would be argued that I was an appropriate official to come to. There's nothing in the Act, of course, which deals with that, but there isn't any statute which says that if you want to find out what the regulations are in Agriculture, you can go to the Department of Agriculture and they'll tell you.

I suppose that would be an appropriate example. I suddenly feel the weight of

responsibility descending even further onto my shoulders. But then, of course, I would feel badly if members got into trouble on the basis of my advice. This proposal does assume that the advice was wrong. Otherwise, the person wouldn't be in court, or there would be another defence open to him. We're dealing with a situation where the advice was given incorrectly. But that certainly is an example; that would be a case in point.

MR. HURLBURT: Actually, it's broader than what we had in mind, though it may be within the wording. What we had in mind, really, was the kind of official who is administering something. He is the administrator, and the request is made to him. In the case you put, I think Mr. Clegg isn't sort of the official responsible for administering the Act -- I don't even know what legislation we're talking about -- but he is certainly an official of the government whose function it is to give you that advice. So he's within the actual wording we've adopted.

MR. CLEGG: In that particular case, the Legislative Assembly Act is administered by the Speaker, and the deputy minister equivalent is the Clerk. In administrative matters I am the Clerk's deputy in his absence, so I'm a sort of assistant deputy minister. There would be a strong argument to be made that I am an appropriate official to do that, although I'd hesitate to take that kind of responsibility.

MR. R. SPEAKER: I raised the question to see if that's the kind of response that often comes. Is the person really responsible or not? Let's say that a district agriculturist tells me, in terms of treating my land with a spray, that I can spray a certain chemical. All of a sudden I find that in the Department of Agriculture that's a restricted chemical, and I shouldn't have used it because of its effect on the health of my neighbour. Through the Public Health Act there are restrictions. What about the district agriculturist? He told me. My neighbour charged me and took me to court. Are we saying that because he said it was legal, I'm acquitted?

MR. HURLBURT: Probably. But you could only do it up to that point. Once you find out he's wrong, then you can no longer use the chemical.

MR. CHAIRMAN: Are we not talking about provincial charges rather than suits between . . .

MR. HURLBURT: I think Mr. Speaker had in mind an offence against something or other because you used the chemical that something or other said you shouldn't.

MR. CLEGG: Mr. Chairman, would this not come within the kind of defence of due diligence, which we discussed before? I know that where you're making this a defence, it would apply as a defence even if the charge were one where due diligence wasn't normally a defence.

MR. HURLBURT: If it were included, obviously, I wouldn't care whether we had it specifically. The defence of due diligence is really based on facts: exercise reasonable care to avoid or prevent the performance of the acts constituting the offence or reasonably believed in the existence of facts which, if correct, would not have constituted an offence. That part of it left the law out. This would build a bit of law in.

MR. R. MOORE: Mr. Hurlburt, we have an offence, and we're giving the person charged the exemption because he got advice from a government official. It doesn't clear the air that the offence was there. Somebody is responsible; it's a government official. He's an accessory before the fact, I guess you would call it. Is there such a thing in law as shared responsibility to that charge? They're both guilty, rather than let the one who committed it go off scot-free. The fellow who allowed him to do it or told him to do it is the guilty party. Isn't there some way of bringing that responsibility back, so we don't get these cases coming up?

MR. HURLBURT: Mr. Chairman, the ordinary government official is under supervision and discipline. I won't look too closely into Mr. Clegg's particular position on that subject. If he's been giving bad advice, I'm sure his administrative superiors will do what they can to make sure he doesn't and make him wish he hadn't. As to the accessory bit -- the trouble is that we are wandering in fields that I don't know that much about -- I'm inclined to doubt

whether you're an accessory simply because you tell somebody that it's legal to do something, if he then goes and does it. So I doubt that the government official would be guilty of the provincial offence.

MR. LYSONS: When you talk about wandering into a field that you know nothing about, I think we all are. I don't know that this is something this committee could properly deal with. Maybe we could properly deal with it, but I think we're over our heads in this. I'm not suggesting for a moment that we shouldn't be able to rely on the advice of government officials. I'm not suggesting that what you're proposing is not correct. However, I am very concerned as to whether or not we could actually draft legislation that would be specific enough to show who the official is in this particular instance. In provincial matters it's one thing, but you get into smaller municipalities. Who is the proper official? I don't think we should be touching that. Certainly, I wouldn't want to see us do it without being able to have a whole lot more time and consideration on it.

MR. HURLBURT: Mr. Chairman, if the problem is concern about wording, which would be a very proper concern, we could certainly be instructed to go back and produce something more — satisfying Mr. Clegg, if you like — with a report back to the committee. I don't know. If it's primarily wording and breadth of wording that you're concerned about, I think we could do something about that. If it's principle, that's something else again.

MR. LYSONS: It's partially principle and partially the wording. What I wouldn't want us to ever have would be where a court could let somebody off because of the interpretation of who the official is. On the other hand, we wouldn't want all our district agriculturists — and we have lots of them. Some of them are experienced veterans, and some of them are brand-new. If they had to know the law and the legal implications of everything, I'm afraid we'd lose a lot of the . . . We would need a bunch of lawyers out there rather than people that know how to advise people how to farm.

MR. HURLBURT: Mr. Chairman, any official could refrain from telling somebody what the law is. That's no problem. Again, to take Mr. Speaker's case, I doubt that your average DA is in fact telling, or purporting to tell, people what the law is. I should have said this, I think. Our proposal really envisages that the citizen is coming to find out what the law is and whether something is legal, that that's the particular question in mind. If I may read it, the wording of the actual draft legislation that we'd put forward is:

It is a defence to an offence

(a) that the accused made a diligent attempt to ascertain the law relating to the conduct upon which the charge is based, or conduct of the same kind,

that is, both things have to be satisfied, and

(b) that the accused honestly and reasonably relied upon a statement of the law . . .

(i) made to him by an official or employee of the government or a municipality acting within the course of his employment and scope of his authority.

Really, this has to mean that I come to Mr. Clegg, if you like, and say, "Is it legal for me to vote on this?" — whatever it is that I'm worried about, if I'm an MLA. Or I go to, I suppose, the wildlife service and say, "Is it legal for me to go out and bag certain kinds of game at a certain time of the year?" That has to be my question, and I'm making a reasonable attempt to find out what the law is. It's all based on that.

MR. SHRAKE: Mr. Chairman, I think the public has some right, though, to expect that if they go to the appropriate areas — say, the city of Calgary planning department. The guy brings in these plans, and he shows what the land-use classification on this piece of property is. If the development control officer says, "Okay, you can go ahead a build and 'three-suiter' there," in my thought of what is justice and what is proper — I might say natural justice. If he built that 'three-suiter' and the city came along later and said: "Wait a minute. That piece of land has an R-2 land-use classification. You can only build a duplex. You built a 'three-suiter' there, and you will have to tear out one suite." — that would not be just or fair. If they were to take him to court and want to fine him or this type of thing, I think the public should have protection. If they've gone the route and gone to the

appropriate officials, and the officials have said, "Yes, these things are permitted or allowed," and the guy goes ahead and uses that information, I don't think it would be just to come back at a later time and prosecute him or take him to court and give him fines and so on. So to me, this seems to make sense.

MR. HURLBURT: Mr. Chairman, I should point out that we haven't gone all the way that Mr. Shrake was talking about. On his facts, our proposal would say that he could not be prosecuted and fined. It would not say that he couldn't be made to rip out the extra suite. There's probably another section somewhere, and it isn't based on an offence; it's based on seeing that the bylaws are complied with.

MR. SHRAKE: If this were in legislation, I would feel very strongly that he could go up in front of the judge and say, "There is this legislation regarding being fined or being prosecuted or whatever." It's going to have a bearing; it will come out. I think a judge would take a look at it and say, "No, the city of Calgary is not going to force that man to rip that suite out," because in good conscience, and so on, the man went ahead, thinking that he had the proper authority.

MR. HURLBURT: I'm certainly not fighting your proposition, but we haven't gone to the extent of leaving the suite there.

MR. CAMPBELL: Mr. Chairman, I'm in agreement with this proposal. Where would the individual go for this information if he couldn't go to a government official? I think it's covered in the proposal, "an appropriate government official." I think that's spelled out, so I'm in favour of the proposal.

MR. CHAIRMAN: All agreed? Opposed? Maybe we should have a show of hands. All in favour? Opposed?

MR. R. SPEAKER: Mr. Hurlburt, in opposing it, I'd like to use Mr. Clegg's example. When Mr. Clegg gave me examples in terms of what an MLA can do and what he can't do, I've always felt that that was advice to look at, as a piece of information, to make a judgment as to whether I know the best facts in terms of the circumstances; for example, what has occurred in the last few years in the Legislature here. There have been grants of money made available to persons if they're farming or in business — interest rebates and programs like that. The legislation has changed, and Mr. Clegg has given opinions on that. Further to that, though, I've always felt that through the Legislative Assembly Act the citizenry at large, if they felt a public official or an elected MLA was not living within the law or had done something that could be challenged, had the right to do it, and that would happen through the court procedure. I was always quite aware of that being the process, knowing, though, that I had the best advice I could have from Mr. Clegg in making my personal judgment on whether or not to do something. I always saw that as the court process being there, and I would have a fair hearing or a judgment in case something occurred, but I would also have this added piece of good advice on paper that would substantiate what I did. I did it with the best intent and with the best advice. So I saw that as a process to protect me as an MLA and also the citizenry.

Now, in terms of — maybe the district agriculturist wasn't a good example — let's say, the public official, I know that in those cases, when I get advice from a government official, I personally always double-check it and think that that's one piece of information and I've got to make a judgment: is he right or is he not? There are cases when they're not, and then I go further. But this same process is in place for me to work through.

MR. HURLBURT: Again, I would say that the Legislative Assembly Act example was not one we had in mind. It may be that we've caught it with the wording. I think I'd want to go away and think about that. I'm certainly prepared and would be very happy to take concerns of that kind and see if we could come up with better wording. I have the feeling that if the government provides a legal adviser, it's not giving absolute protection to the person who receives the advice, which is your point. I certainly wouldn't want to suggest that a member of this Assembly leave his conscience with the legal adviser. That would not be a good thing. I think you're right in saying that everybody has to make his own judgment on that kind of thing. But the advice of a lawyer may very well say, "Not only did I act in good

faith, but here's what I did and here's one of the elements on which I acted."

I would be very happy to look at this wording again and see whether we can tighten it up a bit to meet some of the problems that some of the people who don't like the recommendation had. We will do so.

MR. CLEGG: Mr. Chairman, I'd just like to add a point here. I think my position is a very difficult example to take. Having thought about it a bit more, it might help to rationalize the situation if I analyze it this way.

When a member consults me privately, we have a solicitor/client relationship; at least, I try to create that. In that particular case, I think I'm giving him advice as any other solicitor would do. If I happen to be wrong, the member will have to live with the consequences of my error. If I do that, of course, the Members' Services Committee will ultimately decide to look for a new Parliamentary Counsel.

Because we're a small organization, there aren't many people around, and people tend to wear more than one hat. If, on the other hand, members were to go to the Speaker and say, "You administer this Act; we would like an official ruling, or we would like to get a policy statement issued by the Speaker or the Speaker and the Clerk about what this means," pending an amendment or what we think it's clear that it means, and a member relied on that official policy statement, then it would be the kind of circumstance which is covered here. It would be acting in the position of the function of the administrative officials who were charged with administering the Act.

The reason it's confusing for me is that I would inevitably end up advising them, but in that case I would probably not be directly advising the member. The Speaker or the Clerk would issue policy advice about how things should be done. I think members should be entitled to rely upon that or at least have a defence if they found themselves disqualified by having done something the way the Speaker directed. I might have been involved in that, but that's why there's the distinction there. I think that analysis might help you to rationalize my particular position.

MR. HURLBURT: Mind you, I don't think our recommendation would go to the disqualification anyway. It would only go to laying a charge of breaking the law, as differentiated from saying what the consequences of the breach are.

MR. CHAIRMAN: So we have some points to clear up on that Matrimonial Support.

MR. BATIUK: Mr. Chairman, I just wonder what your time planning is. A few of us have another commitment at 12 o'clock, and I wonder what your intentions are.

MR. CHAIRMAN: As I recall, last night we had three points left on the recommendations.

MR. CAMPBELL: Mr. Chairman, Mr. Batiuk had something to say.

MR. BATIUK: Mr. Chairman, I wonder whether you heard me. Before you started this, I mentioned that I wondered what your time scheduling is for the continuation of this meeting. There are about five of us who are committed for another meeting at 12 o'clock.

MR. CHAIRMAN: I hoped we would take only a few minutes on this, but it does look like a fairly long document.

MR. HURLBURT: With 15 minutes, I'm afraid you would feel rather rushed, Mr. Chairman.

MR. CHAIRMAN: The next item on the agenda is to pick a date for further meetings.

MR. CAMPBELL: Mr. Chairman, in regard to the meetings, I think it should be at the call of Chair and that Tuesdays and Wednesdays seem to work out very well.

MR. CHAIRMAN: Mondays are not very good.

MR. CAMPBELL: Not really, Mr. Chairman.

MR. CHAIRMAN: How about February 26 and 27?

MR. BATIUK: The 25th and 26th are Tuesday and Wednesday. Mr. Chairman, I move that we adjourn and that the next meeting be set for the 25th and the 26th, Tuesday and Wednesday.

MR. CHAIRMAN: I'm might be gone the last half of that week. How does the week of the

19th and 20th fit?

MR. R. MOORE: There are a lot of different committees meeting that week. In my case, it's going to conflict with two.

MR. CHAIRMAN: On the 19th and 20th?

MR. R. MOORE: Yes. The 12th and 13th and the 26th and 27th don't conflict with too many committees.

MR. BATIUK: The 26th and 27th are also good for me.

MR. CAMPBELL: Mr. Chairman, I suggest the 26th and 27th. We're having an ag caucus meeting with Unifarm, and there are quite a number of this committee that are regular attenders and are also on that committee. You're tied up, though, aren't you?

MR. CHAIRMAN: Maybe I can . . .

MR. CAMPBELL: Are March 5th and 6th too far away?

MR. HURLBURT: I will come on March 5th and 6th, if the committee says so. I do have the problem that I'm chairman of a federal/provincial committee on confidential commercial information, and I'm supposed to be in Quebec City on those days. Again, if this committee tells me to come, I will come.

MR. R. SPEAKER: Mr. Chairman, there is a deputy chairman for the committee, is there not? Could he take your responsibility?

MR. CHAIRMAN: No.

MR. R. SPEAKER: Could we appoint one at this time?

MR. CLEGG: The committee has the power to appoint a deputy chairman.

MR. R. SPEAKER: That would give you the opportunity of doing what you have committed.

MR. CLEGG: But they should do that today. If they wish to do that, they should do that now.

MR. BATIUK: Mr. Chairman, I just wonder if we could set our date and have it on those days. If you are not available . . . If we appoint a deputy chairman today and he doesn't show up, we're out. So for that one day, if we haven't anybody, maybe from among us we could appoint one on that day for that purpose.

MR. CLEGG: The committee can appoint an acting chairman on the day if no chairman turns up, or the committee can appoint a deputy chairman now who will be the deputy anytime Mr. Musgrove isn't present.

MR. CHAIRMAN: It might be better to appoint an acting chairman on the day, if it's not possible for me to make it.

MR. CAMPBELL: Mr. Chairman, I'd like to nominate Harry Alger as the deputy chairman.

MR. ALGER: Mr. Chairman, I'd be delighted to accept that nomination, but I'm going to be one of the ones who writes in to be unable to be here. Sorry about that. I regret that, Mr. Chairman, because I kind of enjoy this.

MR. CAMPBELL: In that case, Mr. Chairman, I nominate George Topolnisky. George was on this committee previously.

MR. TOPOLNISKY: I'm not sure that I'll be in, Mr. Chairman. We may take a couple of weeks off.

MR. CAMPBELL: Well, that's a way to make sure he's in.

MR. CHAIRMAN: Agreed?

HON. MEMBERS: Agreed.

MR. HURLBURT: Mr. Chairman, might I ask one thing before you adjourn, if you're about to. Is there anything you have to say to us about how to carry on our part of these operations? Are you satisfied with the way we're doing it? Have you got any suggestions, comments, criticisms?

MR. CHAIRMAN: When we bring in these handouts that are a summary of what the discussion is on that day, I think it's certainly of benefit to the committee members sitting here.

MR. HURLBURT: That's very apparent. I quite see that, and I will undertake that everything will be covered next time.

MR. SHRAKE: Mr. Chairman, it seems we were agreeing on the 26th and 27th. Then, when we started looking for a deputy chairman, it seemed everybody expressed that they may not be here. For the benefit of the Clerk and the rest of us, could we just have a show of hands of who can be here on the 26th and 27th? There's no use having it if there are only going to be a few that come.

MR. CHAIRMAN: There could be some other people that could be here too. Miss Conroy will do a survey of all the members to see who can attend on those two days. It's quite possible that there are people who aren't here today who might be able to attend on those.
Any other business?

MR. FISCHER: I move that we adjourn.

MR. CHAIRMAN: Thank you.

[The committee adjourned at 11:54 a.m.]