

**LEGISLATIVE ASSEMBLY OF MANITOBA**  
**THE STANDING COMMITTEE ON STATUTORY REGULATIONS AND ORDERS**  
**Monday, 24 November, 1980**

Time — 2:00 p.m.

**CHAIRMAN — Mr. Warren Steen (Crescentwood).**

**CONSTITUTIONAL REFORM**

**MR. CHAIRMAN:** Committee come to order please. I was asked if I might identify the members of the committee to the persons in attendance, and do so by saying that my name is Warren Steen, I'm the Member for Crescentwood, a Winnipeg Riding. To my left is Arnold Brown from Rhineland; the next person is Henry Einarson from Rock Lake; Lloyd Hyde from Portage la Prairie; Gerry Mercier, the Attorney-General, who represents the City of Winnipeg Riding, Osborne; and Abe Kovnats who represents Radisson, which is a St. Boniface-Transcona area Riding. To my right is the Clerk, Mr. Willis; and the next person is your own Member for Brandon West, Mr. McGill, Member of the Cabinet; Mr. Blake from Minnedosa; Mr. Sam Uskiw from Lac du Bonnet; and Mr. Schroeder from Rossmere; and Mr. Larry Desjardins from St. Boniface.

Another question that was posed to me, could I tell you what their occupations are. We're all MLA's or Legislators. Now what members do outside of that, you'd have to ask them individually.

I understand that we have a third person that wishes to make a presentation this afternoon that was not indicated this morning, but the first two that are listed are the Westman League for Life and the representative from that group is present, I believe. Yes, would you come forward please.

I'm told by the Clerk that the brief has been circulated, and your name again is?

**MRS. MARLENE MacKALSKI:** Marlene MacKalski, M-a-c-K-a-l-s-k-i.

**MR. CHAIRMAN:** All right, thank you kindly. Proceed please. Oh, the Clerk missed your first name.

**MRS. MARLENE MacKALSKI:** Marlene.

Mr. Chairman, members of the board. A brief presented to the Committee on Constitutional Reform, Monday, November 24, 1980, submitted by the West-Man League for Life, Brandon, Manitoba.

The West-Man League for Life is a non-denominational, pro-life organization, concerned with the right to life of all human beings, particularly the unborn child.

"We will stand up every time that human life is threatened. When the sacredness of life before birth is attacked, we will stand up and proclaim that no one ever has the authority to destroy unborn life. When a child is described as a burden, or looked upon as a means to satisfy an emotional need, we will stand up and insist that every child is a unique and unrepeatable gift of God, with the right to a loving and united family." So spoke Pope John Paul

II, Respect Life, Sunday, October 7, 1979. The Mall, Washington, D.C.

To millions of Canadians no "Charter of Human Rights" is acceptable unless it includes the right to life for all Canadians, including those conceived but not yet born.

Logic must surely dictate that thinking humans reason that a Supreme Being is the giver of all life and the maker of basic laws. Man is the administrator, not the "maker" or "giver". Starting with this basic premise, every "Charter of Human Rights" must state clearly and precisely that God is the law giver. God gives the rights. God gives all rights. Governments and judicial bodies must use their powers in upholding these God-given rights. Governments and judicial bodies are in the final analysis accountable to God.

We would be in grave trouble, indeed, if the Constitution would establish a "Charter of Human Rights" solely on the whims and fancies of government, judges or self-proposed law givers, however noble their intentions may be. History is replete with injustices, prejudices, sufferings, tortures, blood and death, where such was the case.

The West-Man League for Life believes furthermore, that every individual is unique, made in the image and likeness of God. The enclosed poem expresses this thought beautifully:

**ONE AND ONLY YOU**

Every single blade of grass  
And every flake of snow,  
Are just a wee bit different  
There's no two alike you know.

From something small, say like grains of sand  
To each gigantic star,  
Each one was made with this in mind  
To be just what they are.

How foolish then to imitate  
How useless to pretend,  
When each one of us comes from a Mind  
Whose ideas never end.

There'll only be just one of me  
To show what I can do,  
And likewise you should feel very proud  
That there's only one of you.

All life, therefore, from the moment of conception until death by natural causes, is sacred and must be protected. Abortion, euthanasia, infanticide and senilicide are four walls of the same coffin, constructed from the same utilitarian philosophy of man and his destiny.

Since God is the Giver of all life, no human being or group of human beings, has the right to terminate life. Procured abortion is termination of life. Procured abortion remains a controversial issue because society has failed to recognize that the rights of the mother and her unborn child are not necessarily the same as their private interests or desires. Private interests can and often are in conflict, and while it

may be true that the mother does not want the child because of other plans, there can be no denying that the interest of the fetus, as a human, is to be born, to be raised, and to attain self-fulfillment.

Any "Charter of Human Rights" must therefore include full and absolute protection for the smallest, weakest, and most vulnerable of the human family — the unborn child. Dr. Richard Berquist has recognized this most clearly and perceptively when he says: "In a most superficial sense, perhaps, it is in the interest of an expectant mother who does not "want" her child to have him aborted. But in a more profound sense, it is not in her interest. For the value of her own humanity is also at stake. If she does not respect the little one growing within her, by what right will she ask for respect from those more powerful than she? Mankind must be ruled either by the law of mutual respect or by the law of power. The history of justice is a struggle between these two laws, and if the law of power comes to be recognized as the final arbiter of human relations, perhaps it is the women themselves who will suffer most".

Procured abortions must cease] India's saint of the gutter, Mother Teresa of Calcutta, upon receiving the 1979 Nobel Peace Prize, addressed the United Nations Conference and stated, "Abortion is nothing but murder". Thousands and thousands of Canadian boys and girls have died from salt poisoning and other violent forms of death through procured abortion.

Gentlemen, God is not mocked. Isaac Newton's Third Law of Motion states this: "For every action there is a reaction, equal and opposite. History offers no reruns. We as Canadians cannot afford to make a mistake on our Charter of Human Rights, particularly on the issue of abortion."

**MR. CHAIRMAN:** Thank you very kindly. Will you permit questions from members of the committee?

**MRS. MacKALSKI:** Within limit of course. I'm not a doctor, I'm not a theologian.

**MR. CHAIRMAN:** Mr. Kohnats. Perhaps, Mr. Kohnats, you could get the microphone closer please?

**MR. KOVNATS:** I have trouble moving, Mr. Chairman. On a point of order, I think when you recognize the Attorney-General in his position, I think as Deputy Speaker, I would like to be recognized as Deputy Speaker.

**MR. CHAIRMAN:** My apologies, sir.

**MR. KOVNATS:** Further to our discussion out in the hall and I mentioned to you that your brief is beautiful sounding and I think that you will find that most of us will agree with what you have in your brief, but the reason for this committee hearing is to hear suggestions from the people in the area as to how best to handle these different problems.

**MRS. MacKALSKI:** We are speaking today of course on abortion, the unborn child.

**MR. KOVNATS:** Fine, but let's just stick to abortion then.

**MRS. MacKALSKI:** All right.

**MR. KOVNATS:** How would you best protect the rights of the unborn child?

**MRS. MacKALSKI:** I would ask that all abortions cease.

**MR. KOVNATS:** Fine, I would ask that all abortions cease also, but how would you protect and see that it's done? Would it be through the Legislature or through the courts?

**MRS. MacKALSKI:** I do not think that the courts have the authority. If we look across the line in America, that's why they are in so much trouble, is because they have given so much authority to the courts; so much power, I should say. That's why they have so many abortions and they are in real problems. No, I do not believe that, when it comes to life, that judges would have that power.

**MR. KOVNATS:** Then I would assume that you are suggesting that the legislators in each province would best handle the problem of abortion in seeing that the rights of unborn children are looked after.

**MRS. MacKALSKI:** I think the provinces have to do their part but I believe the federal government, yes, the federal government also has to come out strong.

**MR. KOVNATS:** To be enshrined in a Bill of Rights?

**MRS. MacKALSKI:** If there is a Bill of Rights, what I am saying is if we are going to come up with a new Charter of Human Rights, let's put down that God gives life, God takes life. No one shall touch life in the womb and no one shall take life. It must come from natural causes. God, the giver of life, must come and claim his person who was born. That is our firm conviction. As a Canadian that's my privilege to express that view. It might sound extreme, but I feel that unless we bring God back and recognize Him as the Supreme, there is no use of speaking of rights, because rights come from God.

**MR. KOVNATS:** Except that, and you know, not to make light of it, God doesn't have a vote in the Legislature.

**MRS. MacKALSKI:** Well, God speaks through you.

**MR. KOVNATS:** Thank you.

**MR. CHAIRMAN:** Mr. Mercier.

**MR. MERCIER:** There is a section in the proposed Charter of Rights. It says, "Every one has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance of the principals of fundamental justice." I take it your concern is, the phrase "Every one has the right to life", is a phrase that will be interpreted eventually by the Supreme Court and I suppose it's possible with this wording that "every one" might be interpreted to mean a living person and not an unborn child.

**MRS. MacKALSKI:** That's right, that is our concern. We wanted to specify there also that it's the unborn

child. That fetus is a human being. Science considers that fetus a human being and that human being has rights.

**MR. MERCIER:** It's because of your concern that you do not know how the courts would interpret that phrase and what they would do with it that you would rather not have an entrenched Charter of Rights which might affect this whole matter. You would rather have the elected representatives and the respective parliaments and legislatures make specific laws with respect to this matter.

**MRS. MacKALSKI:** Yes, I think that's right. I think we would go along with that.

**MR. CHAIRMAN:** Any further questions, Mr. Mercier? Any other members of the committee wish to ask questions at this time?

**MRS. MacKALSKI:** I just would like to draw attention to one more thing. I am very concerned about the thousands of Canadian boys and girls who are being killed, and we as law givers or law makers within our government framework are going to have to give account to God for all those children. We must be concerned about the boat people, we must be concerned about the Third World, but we cannot afford to kill off our own true Canadians.

**MR. CHAIRMAN:** Just before you leave, I believe Mr. Einarson has a question.

**MR. EINARSON:** Yes, to the witness, Mr. Chairman. One of the things that concerns me, and I just want to make sure that I understand your perspective in regard to this, which I consider a very very important subject matter that you bring before us, namely abortion. If a woman became pregnant and she carries the fetus and she finds herself healthwise unable to carry out that pregnancy and she is told by her doctor that she will have to forego that, what is your views in that respect when we have a situation like that? Do you view that as God giving and God taking? I ask you that so I make sure I understand your position on that matter.

**MRS. MacKALSKI:** My position and West-Man League for Life's position is, God gives life, God takes life. Sometimes there is a lot of suffering with it, and I speak as a woman who has experience with this, there is, there is no doubt about it. Our position is simply, God gives life, God takes life. The woman is there, the mother is there to speak for her own rights but there are not very many people speaking for the unborn child. I want the unborn child protected to the utmost.

**MR. EINARSON:** I understand that part of it, but the example I am using is if the mother finds that her health is in jeopardy and her doctor says you can no longer go through with this; it's up to the mother I suppose. Would you say then that if the mother said okay, she agreed with the doctor, would you disagree with the mother if she made that decision because of the mother's health?

**MRS. MacKALSKI:** What do you mean by mother's health? We have mother's health right now that's

why we have so many sick people, that's why we 62,000 recorded abortions, eh? Have we got so many Canadian women who are sick; 62,000 abortions?

**MR. EINARSON:** No, I don't refer to 62,000 women, there could be the odd isolated case. If it's stated by her doctor and unknown to the mother when she became pregnant, but it happens maybe shortly after or maybe two or three months after.

**MRS. MacKALSKI:** My position is God gives life, God takes life.

**MR. EINARSON:** Okay.

**MRS. MacKALSKI:** That's our position as members of the West-Man League for Life.

**MR. EINARSON:** I think I understand.

**MRS. MacKALSKI:** And in those individual cases, by all means the doctor has also his say, but that is our position as West-Man League for Life.

**MR. CHAIRMAN:** Just before you leave, I believe Mr. Desjardins would like to ask a question. He is a former Minister of Health, to give him his proper introduction.

**MR. LAURENT L. DESJARDINS (St. Boniface):** Just one question, you're saying that people have a right to life, God gives life, God takes life. Does that in your mind and in your group cover capital punishment? Are you against capital punishment?

**MRS. MacKALSKI:** I would rather not answer that at this time because we do not deal specifically with capital punishment.

**MR. DESJARDINS:** But you have repeatedly said, God gives life, God takes life, and all your brief talks about is just natural death.

**MRS. MacKALSKI:** Do you believe that sometimes people . . .

**MR. DESJARDINS:** You know, I can't force you but it seems to me, if you're as forceful that you should at least expect — nobody can force you to answer — to be questioned on that, if you figure that capital punishment is God taking away a life.

**MRS. MacKALSKI:** Mr. Desjardins, my honest answer on that, since I am speaking for the group, would be that we have really never talked about that.

**MR. DESJARDINS:** Fair enough.

**MRS. MacKALSKI:** But we should maybe bring that up in it within our group.

**MR. DESJARDINS:** Thank you.

**MR. CHAIRMAN:** Any further questions? Seeing none, thank you very kindly.

**MRS. MacKALSKI:** Thank you.

**MR. CHAIRMAN:** Manitoba Action Committee on the Status of Women.

**MS BEVERLEY PETERS:** My name is Bev Peters. Before I start, our brief is in two parts and I'm going to stop halfway through and let Carol Potter read the second section.

**MR. CHAIRMAN:** That's fine.

**MS PETERS:** Okay, thank you.

Historically, women have been denied access to the mainstream of political and public life through both legal and social constraints. The struggle to involve women directly in the political process has been difficult and challenging. The Manitoba Action Committee on the Status of Women was formed in 1971 by women who had participated in the presentation of a comprehensive brief to the Royal Commission on the Status of Women. For 10 years, the Manitoba Action Committee has been concerned with improving the economic, social and legal position of women. Through non-partisan political action, we have worked for appropriate legislative and social changes.

We have followed federal and provincial discussion for patriating the Constitution with concern and optimism. We are concerned that Canadian women have not had a chance to equally participate in these discussions. Women do not have representative numbers in any provincial or federal governments. In 1867, the Fathers of Confederation were indeed fathers; there were no women present. Now, in 1980, the First Ministers are again all men. All Supreme Court of Canada judges, past and present, have been men. Women have not equally participated in the formulation of the law or the administration.

Women have, in fact, had very little realization of their human right to equality. The weight of common law tradition effectively prevented women from voting in federal elections until 1918, and in 1928, in the Person's case, the Supreme Court interpreted Section 24 of The BNA Act as excluding women from personhood.

In 1960, the federal government adopted the Canadian Bill of Rights containing the following provision: "It is hereby recognized and declared that in Canada there have existed and shall continue to exist without discrimination by reason of race, national origin, colour, religion, or sex, the following human rights and fundamental freedoms, namely, the right of the individual to equality before the law and the protection of the law." These words have not protected women against discriminatory laws when tested in the courts. The following decisions stand as precedents.

In 1973, the Supreme Court of Canada heard the cases of Jeanette Lavall and Yvonne Bedard. They claimed that Section 12(1)(b) of The Indian Act was discriminatory on the basis of sex. Section 12(1)(b) provides that an Indian woman who marries a non Indian loses her Indian status, while an Indian man who marries a non Indian does not.

The Supreme Court judges ruled against the two women, holding: (1) That the Bill of Rights did not take precedence over The Indian Act, and (2) The words "equality before the law" referred to equality

of treatment in the enforcement and application of the law, rather than to the law itself.

The second decision concerns the case of Stella Bliss, who had not worked the required time for unemployment insurance maternity benefits, and was forced to stop work because of her pregnancy. Available for work after her baby was born, and unable to find a job, she applied for regular unemployment insurance benefits. Her claim was denied because she was still within the 14-week period during which maternity benefits were usually available, even though she couldn't collect them. Bliss charged discrimination on the basis of sex. She was denied her benefits although she met all the qualifications necessary for a male claimant to qualify.

The Supreme Court held that she was not denied equality before the law with other unemployed workers stating the distinction was made on the basis of her pregnancy, not sex, and was moreover a valid federal object. That is, the intent was beneficial, the provision of benefits to pregnant women. The problem was that Stella Bliss had not found it at all beneficial.

For further consideration of Canadian women's rights and freedoms, in principle and practice, we have the 1971 Report by the Royal Commission on the Status of Women. The commission produced over 160 recommendations commenting on existing inequalities in all areas of women's lives. These included the position of women in the economy, the education women receive, women's place in the family and women's participation in public life. Today, 10 years later, many of these recommendations either have not been implemented or have been only partially implemented.

It is clear that the sex of women has been consistently used to deny us personhood and equality of rights. We are concerned therefore that the rights of women as individuals be adequately protected and guaranteed in the new Charter of Rights and Freedoms. This does not seem likely to happen. The wording of the new Charter is almost identical to the present Canadian Bill of Rights. As previously stated, it has not protected women in the courts. We need a clause which makes it absolutely clear that women are guaranteed full equality. As suggested by the Advisory Council on the Status of Women, such a clause might be, "Every individual shall have equality of rights under the law without regard to sex."

The point is that women's equality of rights must be clearly formulated by the Constitution makers. It must be made clear, once and for all, that it is the sex of women that has been consistently used to deny them rights. This could be clarified by substituting "women" for "sex" in the non-discriminatory clause.

The principle of human right to equality must be defined and clearly expressed so that the court, as the final interpreter, could not distort the intent of the Charter. This is especially necessary in sex-inequality cases because of the all-male composition of the Supreme Court. Such a court may lack the essential judicial trait of impartiality, since sex role conditioning may consciously or unconsciously intrude on judgments. The appointment of women to the Supreme Court of Canada would aid in providing

a more balanced prospective that is currently lacking.

A Charter of Human Rights should express equality as a positive goal. That is, beyond preventing discrimination, it must aim to achieve equality of rights for all citizens. Thus, it must permit provision for affirmative action programs. These are special measures to help disadvantaged groups recover from past discrimination. Indeed, Section 1(15)(2) provides for such programs. However, women are not specifically identified as "disadvantaged persons or groups". If women are not specifically included, we could face endless court battles in order to prove that women qualify for affirmative action.

We also wish to comment on Section 1 of the proposed Constitution which states, "The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits as are generally accepted in a free and democratic society with a parliamentary system of government."

Consider that both legislative law and judiciary decisions have, at various times, been discriminatory to women, yet generally accepted. This section, as it is now worded, is clearly unacceptable. We must emphasize that women's equality cannot be subjected to such limitations. We stand firm in our commitment to end discrimination against women. In formulating the new Constitution the goals and perspectives of Canadian women must be taken seriously.

**MR. CHAIRMAN:** Just for the fact that the hearing is being taped, would you introduce yourself when you start off please?

**MS CAROL POTTER:** I am Carol Potter.

While we, as women, are aware that all of the issues in the Canadian Constitution will affect us as Canadian citizens, for purposes of this section of the brief we have directed our attention to the questions concerned in the area of family law.

Women's groups across the country have been responding to proposed changes in family law as were presented in the draft of the February, 1979, First Ministers' Meeting and were affirmed in July, 1980.

The present section concerning marriage and divorce is as follows: "Under Section 91 of The British North America Act, 1867, the federal government has jurisdiction over "marriage and divorce". Section 92 gives to the provinces "The Solemnization of Marriage" and jurisdiction over "Property and Civil Rights".

It is pointed out that with this division of power, both governments have been able to impose requirements for validity. The federal government has not been particularly active in this field and thus the present proposal to transfer all jurisdiction for valid marriages to the provincial government does not seriously change what in effect is happening at present.

The controversy has arisen with the proposal to transfer a large part of the federal power over divorce to the provinces. It is encouraging to see that the initial federal government proposal of October-November 1978 has been seriously questioned. That

proposal was to transfer all jurisdiction over to the provinces.

As we now understand the present plan, "jurisdiction over divorce" would be transferred to whichever provinces want it. Those which do not would continue to have in effect The Federal Divorce Act.

Secondly, the federal government would continue to keep control over the jurisdictional basis upon which divorce can be granted and over the recognition of divorce decrees. This means that the federal government would stipulate for all the provinces certain minimum requirements which must be met before a person could get a divorce. It is also designed to allow the federal government to set uniform standards about when one province should recognize as legal a divorce obtained in another.

The purpose of these provisions is to reduce concern about "divorce havens" and to guard against situations where indeed one individual might be considered married by one province and divorced by another.

Uniformity in the grounds for divorce across Canada is not ensured by this proposal however. Since the 1968 Divorce Act, grounds have been uniform throughout the country but this was previously not the case.

With the 1968 Divorce Act and considerable work done in the area of family law in individual provinces, we have come a long way. The Manitoba Action Committee fears that considerable ground will be lost if some of the present proposals are not seriously examined. A brief look at past history can be quite frightening. Consider the fact that until 1925 a man could obtain a divorce on the grounds of his wife's adultery, while his wife on the other hand, would be compelled to combine these grounds with incest, bigamy, cruelty, desertion or bestiality. It has been only since 1925 that either spouse could petition on simple adultery.

Many also fear a return to the situation where divorce may be easier to get in one province with more "liberal" grounds than in another. This situation most adversely affects women. In still the largest percentage of cases, women have custody of the children upon divorce. In addition, if employed, women are generally in jobs which pay much less than the average man earns. Following divorce, it is often necessary for women to return to school to get the training they require if they have not worked outside of the home during the latter years of their marriage. Financial assistance for their training is often only available in the province in which they have been residing. It is therefore, very often financially impossible for a woman to move to another province. We must also bear in mind the fact that one out of every six Canadian women is living in poverty, compared to only two-thirds that number of men. Mobility, or the lack of mobility, becomes a more major factor, upon divorce, for women than it does for men.

Previous to the 1968 Divorce Act the provinces had the constitutional power to pass laws dealing with the custody of children and the support of spouses. Since then, areas have been uniformly covered in the ancillary matters which have come under federal jurisdiction. Although this has not been the answer to the problem of enforcement of support

and custody, there is little doubt that the return of the ancillary matters of custody and support to the provinces will make enforcement fragmented and much more difficult to ensure.

It is not that it is difficult to see some of the reasons for recommending the transfer of marriage and divorce to the provinces. It is of concern however, that these points might be supported without a serious study of all the implications of such a move.

It has been stated that the social policy, where possible, should be within provincial jurisdiction because "the essential role of the provinces is to take the main responsibility for the social and cultural well-being and development of their communities".

We are aware that there are indeed some women who favour the transfer to provincial jurisdiction, feeling perhaps more comfortable and less intimidated with a more local and "closer to home" approach to their personal crises. There are many instances where this may result in a more conservative and localized decision which would be to the detriment of a woman and her dependents.

The Federal Divorce Act now provides certain standards in the support and custody areas which are uniform across the country and some protection against a more conservative local approach. Both parents are equally entitled to apply for custody in a divorce, the standards applied to measure fitness for custody are the same for both. Both spouses are entitled to apply for maintenance where local variations in laws applicable to the couple after they separate and before they divorce may still perpetuate differentiation between the sexes according to their stereotyped roles, the federal divorce standard offers a "last chance" to secure equal treatment.

We wish also to recognize and support the federal government in its recent recognition of the need to reconsider the proposal dealing with the enforcement of maintenance and custody.

The options suggested: 1) federal jurisdiction over extra-provincial orders and, 2) constitutional provisions requiring that one province enforce the orders made in another province, may assist the improvement of enforcement. Women will look for a serious commitment from the First Ministers to study further every implication of such options.

We also support the fact that the enforcement problem is not going to be remedied solely by constitutional change. This recognition by the federal government is encouraging and we are asking that the non-constitutional means of solving this problem be explored with seriousness.

We recognize the provision to permit the creation and staffing of unified family courts by the provinces, but question whether the provinces will be required to appoint women to these courts.

If divorce law is transferred to the provinces, there is nothing specified in the proposals to guarantee standards of equality.

In our past, sex discrimination has been embedded in our family law and we demand assurances that these discriminatory laws will not be repeated.

In conclusion, we wish to make it clear that we feel it is only with the retention of jurisdiction over divorce at the federal level that Canadian equality in divorce laws can be a realistic goal.

**MR. CHAIRMAN:** Carol Potter and Bev Peters, would either one of you or both of you consider answering questions to members of committee?

**MS POTTER:** Yes we would, within our capacity.

**MR. CHAIRMAN:** Are there any questions? Mr. Mercier.

**MR. MERCIER:** I believe your organization received a copy of the issue of the paper of the Manitoba government on Family Law constitutional proposals. Have you had an opportunity to look at that document yourself?

**MS POTTER:** You mean the one that's been out for some time?

**MR. MERCIER:** Since September.

**MS POTTER:** No, we haven't. It may be that a copy has been sent to the Winnipeg office.

**MR. MERCIER:** We opposed the transfer of marriage and divorce jurisdiction from the federal government to the provincial government. Some of the matters which you refer to in this paper that modify the original federal position have been brought forward, I think as a result of our opposition. We still continue to oppose that transfer. You say any proposal should be seriously looked at. Do you still oppose the transfer of marriage and divorce jurisdiction from the federal government to the provincial government?

**MS POTTER:** Yes, we oppose it and support the provincial government in that stand. It's just to add more force to that that we we presented this, and also some of our concerns about having women's opinions and feelings solicited about this issue we feel is important.

**MR. MERCIER:** On that point, the position of our government is being circulated to your group and to groups right across the country, and in fact a member of our department has gone to a number of meetings across the country and more are coming up. Do you support also then the suggestion we made that there be a national enforcement system for maintenance payments?

**MS POTTER:** Uniform across, from province to province?

**MR. MERCIER:** Right.

**MS POTTER:** Yes. We all are aware that the realities of ensuring that enforcement are far beyond what can be in the Constitution.

**MR. MERCIER:** Earlier on, I don't know whether you wish to answer this question, there was a suggestion that women should be appointed to the Supreme Court of Canada. We've had some briefs that indicate earlier on this morning that Supreme Court judges should be appointed by the provinces. Do you have any opinion on whether the federal government or the provincial government should appoint Supreme Court judges or other judges?

**MS PETERS:** I would say that the Action Committee hasn't studied that, but that they would be adamant that however it was done that there would be some chance to appoint women. I suppose it would depend on whether we perceived that we would have a better chance through provincial governments or federal governments.

**MR. MERCIER:** Earlier on in your brief you made a statement about the principle of human rights to equality. It must be defined and clearly expressed so that the court as the final interpreter could not distort the intent of the charter. Are you worried about how the Supreme Court with nine male judges particularly, will interpret an entrenched Charter of Rights?

**MS PETERS:** Very much so, and I felt some of the things that Mr. Pearson was saying this morning were the same. He has the same viewpoints that we do. There's no question about it, that's why I presented the historical picture that I did to show that's what they have done. The Supreme Court has narrowed the Bill of Rights to the point where it is practically ridiculous, that it hasn't been effective at all through interpretation.

**MR. MERCIER:** Tell me this, with the improvements that have been made in family law and the equal sharing of property on separation and divorce, that have been made right across the country with the provincial governments in the last few years, would you not agree that with the success that I think women's groups have made on that issue, in view of that, why would there be any suggestion you would want to give up that right, to lobby your elected representatives to get the kind of social and economic changes you want in society? Why would you want to give that up because you couldn't lobby a Supreme Court judge who would be making the final decision under an entrenched Charter?

**MS PETERS:** If the Supreme Court was more representative of the people, if we had somebody on those Benches who was other than a male, Caucasian and middle class, then that wouldn't be the problem, that there would be more of a chance to have a representative decision. There is no mention in the brief of whether or not we favour entrenchment of a Bill of Rights. I have a feeling that if wording was such that we could see that it would effectively protect women's equality that they probably would be in favour of it, but they haven't made a decision on that one way or the other.

**MR. MERCIER:** So you're not in favour of entrenchment?

**MS PETERS:** No, did I say that some place that I was?

**MR. MERCIER:** Somehow I got the impression that you — well, I'm glad then you clarified that.

**MS PETERS:** We haven't taken a stand one way or the other. We are concerned that the way discussion is going now that the wording that is in the Charter is what we're concerned with, that we don't see that

whether or not that is entrenched or not, it will have very little effect on the way women's equality of rights are actually treated.

**MR. MERCIER:** One final question. What would be your answer to Senator Harry Hayes, the Co-Chairman of the Joint Senate House Committee on the Constitution?

**MS PETERS:** What was your answer?

**MR. MERCIER:** Pardon me.

**MS PETERS:** What was your answer? Do you think that —(Interjection)— Are you referring to what he said to the National Action Committee on Friday? Obviously, it's disappointing that legislators, people that are in a position of authority, still make those sorts of statements. The question was asked whether it was in seriousness or as a joke, either way it wasn't funny.

**MR. MERCIER:** Thank you.

**MR. CHAIRMAN:** Any further questions? Mr. Uskiw.

**MR. SAMUEL USKIW (Lac du Bonnet):** I've always felt that women's groups do themselves a disservice by wanting special protective devices built in for them, that in the long run they are entrenching a less-than-equal participation in what is happening in the community by asking that special provisions be made for them in particular because they are women. I think that's a defeatist attitude on the part of women. If you have to pass a law that says women are equal, that means they are not equal.

**MS POTTER:** They aren't?

**MS PETERS:** Well, it's pretty obvious that they are not.

**MR. USKIW:** I don't know where the law says that they are not equal. You are saying that we don't have many members in the House of Commons that are women. There is no legal reason why they are not there. There is an electoral reason why they are not there.

**MS PETERS:** There is a historical reason and a social reason.

**MR. USKIW:** Yes, that's right, I appreciate that. I don't think you can change that by putting something in the law. My question is, what would you do, what do you recommend be done to change that?

**MS PETERS:** I'm recommending implementing it in the law. I mean . . .

**MR. USKIW:** Implementing what in the law?

**MS PETERS:** Something that gives them rights to equality and that's why I talk about . . . you're objecting to affirmative action programs? No?

**MR. USKIW:** No, I am saying the more you do that, the more you are saying that you are not equal and I

have always had the view that you were. You keep telling me that you are not and you want to be, you see, so what I am saying is, what is your formula for electing more Members of Parliament that are women? What could be done that would assure you that there would be more women MPs, for example?

**MS PETERS:** The number of women MPs is simply a reflection of the number of women that there are in other areas in our society and you obviously can't pass a law saying half the MPs or half the MLAs have to be women, that's obviously ridiculous, but you can make provisions to assist women in overcoming past discrimination. I don't think that you can argue that point that women don't have equal opportunities in this society so that is one thing that affirmative action would do.

It's fine to say you shouldn't make a law, but we can take Supreme Court judges for example. It has been ten years since the Royal Commission recommended that women be appointed to the Supreme Court. I think something like eight judges have been elected in that timespan and they were all men. So if you don't put it in the legislation, I ask you, how else can you do it? You know, you can do it with your public education to a certain extent but . . .

**MR. USKIW:** So what you are saying is that you would want entrenched in the Constitution that the Supreme Court appointments be based on sex, half men and half women. Is that what you are suggesting?

**MS PETERS:** That might have to be for an interim period, to reach a point where it would be assumed a matter of course, that if there were eligible candidates that their sex not be considered. Obviously it's best to have the person with the best capabilities for the job, but I think you can understand the problem that women face in getting to that point. So something like affirmative action program I think is needed for an interim period.

**MR. USKIW:** You know we have a group in our own party, a Status of Women's Group, who have recently dedicated themselves towards the nomination of women candidates. I think that is a negative thing. I think they should dedicate themselves to nominate the best people that are available in any constituency and if they are women, that's great, but I don't think that it's positive, I don't think it's positive for women to say we will work hard to nominate women candidates. I don't think it's a positive thing. I think that detracts from equality of women.

**MS. POTTER:** I am wondering how far back in history you would say that?

**MR. USKIW:** Pardon me?

**MS POTTER:** I am wondering how far back you would be able to go in history and make that kind of a statement?

**MR. USKIW:** I know what you are saying. Historically, you are saying women were not looked

upon as equals, but in this day and age I don't believe that is true.

**MS POTTER:** I guess we're saying we don't feel we have come all the way.

**MR. USKIW:** I agree with you, but once you start enshrining it in legal terms you are really enshrining that you are never able to be there on your own, you have to be propped up by some instrument, and I'm saying that defeats your goal of equality if you take that approach. I think you've come a long way quite frankly. There's a long way to go, I appreciate that. But what I'm saying is the moment you try to artificially do it, I think you destroy yourselves in the process — that you are really saying you are not equal, and you never will be unless there's something done to make you equal.

**MR. CHAIRMAN:** Mr. Uskiw, could you try and refrain your comments to questions rather than trying to debate with the women whether they've come a long way or haven't.

**MR. USKIW:** I don't want to debate. I simply want to ask them whether or not they don't see that as a problem in itself, the fact that you want to write things in that will give special attention to rather than a equality to.

**MS PETERS:** I can only restate that that seems to be the only way to do it. In a sense you are probably right. The question is that women are not equal. We can't depend on voluntary . . . We don't have equal opportunity. You talk about being elected to be an MP — for one thing you can look at the funds available for that, that costs a lot of money. You look in Canada at the women, and who has the money and who doesn't? Look who the poor people in this country are. They are women, that's the sort of thing that you can't argue about — that's true. So that is just one, it would be one aspect of being elected to Parliament. You have to look at it in a context of the way we live in our society.

**MR. USKIW:** There I see that you have misinterpreted what is in fact a reality to me. Women are not denied office in Parliaments or Legislatures because of lack of financing.

**MS PETERS:** I didn't say in total. Would you argue with me that that was one of the problems with running for Parliament?

**MR. USKIW:** Yes, I would argue that point.

**MR. CHAIRMAN:** Mr. Uskiw, please keep it to questions and not arguments.

**MR. USKIW:** Yes. Are you not aware that — and I don't know how the Conservative Party functions but I know how we function — that candidates are not the people that put up the money for their own elections, it is put by the constituency associations and the party.

**MS PETERS:** Yes, but if you're operating on the fringe of actually making a go of it in terms of one's livelihood, it does entail things like taking time off



from a job, leaving your family, going on the road, all sorts of other responsibilities that women have that are part of their everyday lives.

**MR. USKIW:** But how is that different from men who do the same thing?

**MS PETERS:** It's obviously much easier for a man to leave and go on the road for a week then it is for his wife to leave the man and the children behind and campaign for a month or two months.

**MR. USKIW:** Well then, what is your solution for that? What will change it? If you have three children and you want to be a candidate, how will changing the Constitution solve your problem?

**MS PETERS:** Now you see you see you've narrowed me down to one very specific individual, which isn't . . .

**MR. USKIW:** That's an example. Changing the constitution won't do anything for you, will it, in that respect?

**MS PETERS:** Probably for that individual it wouldn't, but it would for a lot of the other individuals who might like to get involved in political activity.

**MR. USKIW:** I think men have the same problems in that same situation, maybe somewhat different, but very much along the same lines. They have jobs that they either must take leave of absence from or forego salaries and so on. Women have their domestic duties, if they are housewives and so on, that someone else has to take on or whatever, so we are equal in that sense.

**MS PETERS:** That's true, you are talking about some of the problems of being involved in political office, which is only one of the things that I'm concerned about when I'm talking equality of opportunity for women.

Obviously, if you're going to take it down to specific individuals, it does become a bit ludicrous to talk about changing the Constitution, but I'm concerned in a broader context with equality of opportunity and equality of right before the law for Canadian women. As I have already stated, it seems to me that passing legislation seems to be one of the ways to do it because it has not been done on a voluntary basis. You were talking about language rights this morning and it comes down to the same thing. We can say we would like to people, individuals, to voluntarily do this, but it hasn't happened.

**MR. USKIW:** Let me try, just an example, for size. In the area of employment, do you think it's proper for an employer to take the position because I'm an affirmative action employer and notwithstanding that this applicant cannot do the job, she will be hired because she is a woman. Is that a good position?

**MS PETERS:** No, obviously not.

**MR. USKIW:** See, that's my point though. You can get too far in that direction; we still have to use common sense is what I'm saying in the end.

**MS PETERS:** My position is, we haven't gone anywhere in the affirmative action program. The federal government, on sort of a voluntary basis, has been trying to encourage employers into affirmative action programs, but it still has a long way to go, and that's another argument. There are obviously some arguments against affirmative action, I grant you that, and I would not like to think of women being hired for positions if they weren't capable of filling them. I have a feeling that some employers might do that intentionally to sort of, in essence, sabotage affirmative action programs. I mean that could be done. I'm hiring this person because she's a woman and you know full well when you hire her that she isn't qualified to do the job. I wouldn't put that past employers.

**MR. USKIW:** So you're merely suggesting then that if you have a situation where you and another applicant, who is a male, are equally qualified for a position that — let's say there were 10 positions, five of those should logically be held by women, that's what you're saying?

**MS PETERS:** That's what I'm saying.

**MR. USKIW:** If you're equally qualified.

**MS PETERS:** If there was equal qualifications. Women make up 50 percent of the population so there is no reason why they shouldn't roughly make up 50 percent of whatever category you're talking about.

**MR. USKIW:** Okay, how do you then do that without taking away liberties from people who are going to be in a position of having to live by that kind of law, if you like? If you entrench that in a Constitution and you say to Mr. Blake that you have 10 people hired, they are all males, and now we're going to insist that five of them become females, are you not interfering with his right to make that decision as to who he wants to hire? You see, that's the realm we get into and it becomes a very very cumbersome thing for the state to try to tell Dave Blake how to run his business.

**MS PETERS:** It's very cumbersome if you're a woman and can't get a job because there is sex discrimination in the workplace.

**MR. USKIW:** I appreciate that, but what I am saying is, how do you enforce that kind of a thing even if it was written in law. It has to be an accepted thing before it works ultimately.

**MS PETERS:** Lots of times legislation comes first and then the acceptance comes second. It is cumbersome for a while. I'm sure it would be to make sure that Mr. Blake hires women to take the place of his staff.

**MR. USKIW:** I know he'd like to but, you know . . .

**MR. DAVID BLAKE (Minnedosa):** I've got three girls; I haven't got any men.

**MR. USKIW:** He's got the reverse there, he's got reverse discrimination.

**MS PETERS:** Reverse discriminations are affirmative active programs simply making up for past discriminations. They are not in any sense established to have one group of citizens having more rights or opportunities than another group.

**MR. CHAIRMAN:** Mr. Desjardins.

**MR. DESJARDINS:** Mr. Chairman, I was ready to disagree with my colleague in my understanding of your brief. Mr. Uskiw kept saying that you are equal as far as he was concerned, but you said you weren't. It might be just a nuance, but I think it's important. I don't think that you saying that you are not. You are saying that you want to be treated as equal. I think that is the big thing and I think that you are saying that you look at past performance and you're looking back at society. I think you did say that legislation alone — it doesn't matter if it's the courts or an enshrined Bill of Rights won't do it, but you want them to nudge, you want the legislator to nudge public opinion in that direction by insisting that — and there is discrimination, a way less, but there is certainly discrimination in wages, equal pay for equal work and that kind of thing. I was getting quite a case against Mr. Uskiw, but then something changed that. When you said, which I agree with him, and I want to make sure that when you talked about 10 judges, five women. I think, if that's what you're really ask, now I'm siding with Mr. Uskiw, and I think you are on dangerous ground if you start that, because then you will not — if you do that — you are going to do that, you can do that in society all the way around. I understand that you should have some legislation, something to push in that direction and it is only when society changes. This is, well, I can do like the Attorney-General and say, don't you agree with me, and then I'll put the question, don't you agree me that if you do this it is very difficult? If you don't change anything, nothing prevents you from becoming an MLA now, until society, including other women, vote for you. I think this is what you're saying. Don't you think that it could be dangerous if you start insisting that half of the positions be women? Then you can say, well, how many lawyers? You should have so many of them and the best lawyers are there, and there are other steps. If you stop this discrimination, won't that come naturally when you reach a parity?

**MS PETERS:** How long will it be before the federal government appoints a woman to the Supreme Court?

**MR. DESJARDINS:** If they're smart, it won't be very long.

**MS PETERS:** It's been 10 years now.

**MR. DESJARDINS:** All right, I can't answer for them, but do you think it would be better if you said, okay, starting tomorrow, there's going to be — so

that would mean that the next five judges would be five women. That's what's scares me. That, just that, I understand your brief . . .

**MS POTTER:** That's providing that the women are there to receive those positions and have equal qualifications. We're not saying that just any woman should be appointed as a judge of the Supreme Court just to have a woman's name on it.

**MR. DESJARDINS:** Who is going to decide if they have the qualifications? You are going to say men again are deciding, we haven't got women. You won't be satisfied until you get the . . .

**MS PETERS:** Yes, you're right. I will not be satisfied until I have equal representation, not only on the Supreme Court, in all other judiciary . . .

**MR. DESJARDINS:** I agree with this in general. The point I am trying to make, if you try to bring by law that they will be half-and-half, that's what I'm against. Bring in your law of stop discrimination, bring in those kind of laws for representation, but when you start to cut down and look at the percentage, I think you are going to be in danger.

**MS PETERS:** In what sense do you mean in danger?

**MR. DESJARDINS:** I don't think you are going to necessarily have the best, it could be that 10 of them should be women. First of all, now until society changes, how many lawyers have you got? What is the percentage of female and male lawyers? Now if you want to half — you're taking half of maybe, I don't know, one-fifth or one-tenth, are you going to get the same choice? You're limiting certain people, so it is very difficult.

**MS POTTER:** So that there is a time lag there until you have an equal number of lawyers to choose from, that's true.

**MR. DESJARDINS:** But it's the principle, I think, of saying by enshrining something in the Constitution and saying we're going to have equal, then you are not doing what I thought. You people were saying that you wanted to be treated not any better, not worse, as persons. Forget the Mr. or Mrs., as persons, and it could be that as long as there is no discrimination, that's the main thing, isn't it?

**MS PETERS:** That's true.

**MR. DESJARDINS:** Not necessarily that there's five women and five men.

**MS PETERS:** That's what we're saying that affirmative action programs have to be part of the concept. I'm not saying tomorrow I want to have five.

**MR. DESJARDINS:** I agree with that part. I agree with all your brief except that one . . .

**MS POTTER:** I think we should make it clear, too, that this point of five women, five men, came up in the point of this . . .

**MR. DESJARDINS:** In a question.

**MS POTTER:** Yes, in the discussion. We didn't come saying that the Manitoba Action Committee has discussed this and is recommending that we are frustrated with the 10 years since the Royal Commission, and each judge being appointed, and no women on this . . .

**MR. DESJARDINS:** Thank you.

**MR. CHAIRMAN:** Mr. Blake, do you wish to be recognized as Government Caucus Chairman?

**MR. BLAKE:** Caucus Chairman.

**MR. CHAIRMAN:** All right, my apology to you.

**MR. BLAKE:** Or any other title you wish to give, Mr. Chairman.

Just as a word of encouragement to Ms Peters and Potter, the president of a fairly large financial institution in Canada, that I happen to be associated with, was asked about two years ago, I think, why there were no women on his Board of Directors. He raised a remark somewhat ill advisedly, I suppose, that what really could have a simple little housewife contribute to a large, financial organization like his bank. The world came down on him in such great numbers from the female side of the business community that there are several women on the Board of Directors of his bank today, and they are performing quite capably. One of them happens to be in Manitoba, a very fine capable lady, she makes a good contribution to the board. So for your encouragement, it's coming. You might just keep pushing but it's coming. You might not get it all overnight, but if that's any encouragement to you, it is happening.

**MR. CHAIRMAN:** Do you have a question now, Mr. Blake?

**MR. BLAKE:** Just a statement, sir.

**MR. CHAIRMAN:** A statement, all right. Any further questions? Mr. Schroeder. Please, a question though.

**MR. SCHROEDER:** Thank you, Mr. Chairman. Just back, to attempt to clarify this matter of the Supreme Court judges, and I recognize that question came from here as opposed to being in your brief. But as I understood what you were getting at, it was something like this, that right now and in the past, in the past 100 years, we've always had only men on the Supreme Court and you would like to see some legislation which would require government to make this somewhat more equal providing that women are appropriately qualified. That is, you believe as I do that probably there are several women in Canada who could appropriately be named to the Supreme Court and do as good a job as the people who are currently on that Supreme Court. You are not saying that you want five women, no matter how well or poorly qualified. What you are saying is, assuming that they are qualified, you would like to see the Supreme Court more equal. Is that your position?

**MS PETERS:** That's correct, but I want to warn you, we are bogged down in the Supreme Court, that was only an example of one area where inequality presently exists and I would hate us to go away thinking it's the federal government's problem in appointing judges to the Supreme Court. That was just an example because they happen to be the final interpreter of the laws in Canada.

**MR. SCHROEDER:** Yes.

**MS PETERS:** Okay?

**MR. SCHROEDER:** Thank you.

**MR. CHAIRMAN:** Any further questions? Seeing none, thank you very kindly, ladies.

**MS PETERS:** Thank you.

**MR. CHAIRMAN:** Mr. Ray Howard. Mr. Howard, you don't have a prepared brief, I understand? Is that right?

**MR. RAY HOWARD:** Thank you, Mr. Chairman, members of the Legislature. I apologize for not having a prepared brief. This stack of paper I have here before me is actually working papers that I prepared in person in order to hopefully arrive at a Union of Manitoba Municipalities position for these hearings. Time constrictions, etc., and the difficulty at arriving at a consensus have prevented this happening as yet and I'm certain some of the statements that I'll make today would be accepted by the union. Some would not; some of the conclusions would be questioned; so I want to make it very clear at the outset that at this particular time I'm speaking entirely on my own behalf. I felt inasmuch as I had spent quite a number of hours, in ten and fifteen minute and half-hour batches in between other duties to try and come up with my thoughts on the Constitution and the Manitoba position, that I should at least come before you and bring my thoughts before you, and I hope they will be considered.

First of all, I believe that efforts should have been made much earlier than this to get public participation in developing a position for Manitoba. We're now considering positions that have been adopted as a Manitoba position and entered into the records as such through two or more Constitutional Conferences. I am disappointed, especially in rural Manitoba, for the lack of interest in these hearings, I am very disappointed in rural Manitoba in that regard. I understand you had a pretty good turnout in Winnipeg.

As a further general comment, I feel that altogether too much political partisanship from all sides has entered into the constitutional discussions. I believe that the great majority of Canadians wish that the national and provincial leaders would set aside their political and regional biases and get the job done. The continuing furor has to a great extent reduced the expectations, I think, of all Canadians at this being possible, and the best we can expect is the imposition of a solution by the way of political majority strength in Parliament. I don't think this can be blamed on the Prime Minister entirely, or on any particular premier or province. We have observed, all

I would fervently hope that the government structure with the ultimate power could be made more representative of the entire population. Inasmuch as Canadians are proportionately represented by their Members of Parliament, consensus national interest decisions relevant to all constituencies and regions should be possible if it were not for the degree of political partisanship and the polarization of representation that is so profound now. There must be a tempering of the concepts of the narrow roles of the governing party and the opposition parties. The adversary process now so prevalent only seems to work when there is a judge and a jury. The electorate jury is not able to decide the case, only to decide which party plays which role.

We question the desirability of placing the responsibility to design the government structure for all Canadians so heavily on provincial governments, but we are not capable of suggesting alternatives other than attempting to reach a non-partisan consensus or consensi from all members of the Legislature rather than only from the governing majority. Of course, if this were possible to achieve in the Canadian Parliament, the Parliament itself should be able to arrive at an acceptable design.

I believe that the first step is for Canadians to recognize that if Canada is to stay intact as a nation, there must be a national purpose and a national governing structure that supercedes provincial purposes and provincial governing structures.

Step two would be to devise the best framework of levels of government to achieve the national purpose. This can be achieved only if it is recognized that there has to be an ultimate power whose jurisdiction is all of Canada. I oppose the right of veto for any province or amending formulas which depend on unanimity or allow for exemption, veto, or withdrawal for any part of the nation.

Failing the ability of Members of Parliament of all the constituencies being able to develop some positive consensus that might result in the best possible patriation and preliminary revisions and inclusions, there would seem to be two alternatives: 1) Proceed on the basis of political majority in Parliament; 2) Recognize that the present series of negotiations have not succeeded and start the groundwork for a new attempt. If one accepts the concept of there being a Canadian government structure with the ultimate power in matters of national interest, the first alternative would be the most acceptable. It is obvious that a new or continued effort to write a Canadian Constitution would have to follow a different recipe than has been used in past efforts.

Inasmuch as the federal proposal for patriation will not bring a final product into being, leaving much to be negotiated in the most important areas, it would seem that much of what is required in a new attempt is also required in those matters which must be covered in finalizing the Constitution after patriation. I would favour bringing the constitutional issue at least to the point where it is entirely in the control of Canadians. This can be achieved argumentatively, I suppose, by the proposals of the federal government, either as proposed or as modified by the Parliamentary Committee or as amended by Parliament.

It is certain that extensive and detailed negotiating will be required for some time to come. It is also certain that if these negotiations are to take place in a more positive atmosphere, a great deal of the political partisanship must be removed from the negotiators. We would favour the development of a formula that would broaden the position making the procedures of the constitutional writing, position making, and the procedures of the Constitution writing; these procedures we would like to see broadened in each Legislature and in the Parliament.

We would like to envision, and I understand there is a fair bit of simplistic views in this, but I would like to envision the provinces drafting a true consensus position for their individual provinces and the Parliament of Canada acting as the ultimate power and weighing all positions and eventually enacting the provisions of the constitutional amendments. This may be simplistic and naive, but the alternative is simply imposition by political strength.

**MR. CHAIRMAN:** Mr. Howard, would you permit questions?

**MR. HOWARD:** Yes.

**MR. CHAIRMAN:** Mr. Mercier.

**MR. MERCIER:** Mr. Howard, you made some comments about the Community Services Program and the publicity, and acknowledgement given to the federal government at the inception of the program. Taking into consideration the facts that the Community Services Program was a mere continuation of longstanding federal programs in the areas of water and sewer, of which I am sure you should be aware of, in the Neighbourhood Improvement Program. Are you aware that on the signing of the agreement in Manitoba, there was a press conference held with the Federal Minister, the Mayor of the City of Winnipeg, the Mayor of Brandon, the Mayor of Flin Flon, the Mayor of The Pas, the Mayor of Dauphin, Steinbach, and a number of other people in municipal government.

**MR. HOWARD:** Yes, I am aware and I may apologize for using that as an example. The reason I wanted to make a point there is that I think in fairness on many government approaches, many shared funding programs, there is a tendency from either side to downgrade the contribution from one level of government and another, and if that statement is argumentative or troublesome, I would be, inasmuch as you could put toothpaste back in the tube, I would withdraw that as an example. I believe that is a case. I think you would have to agree that maybe not in that particular program but there is a need for accountability from both sides and I suppose credibility on both sides.

**MR. MERCIER:** You are withdrawing your comment then as it relates to . . .

**MR. HOWARD:** I would withdraw that as an example.

**MR. MERCIER:** Okay. You made some comments about this committee, the time taken for setting up

this committee; are you in favour, sir or in agreement with the deadlines which the federal government imposed in requiring four or five weeks of negotiation over the summer months and followed within two weeks by a First Ministers' Conference, at which everything was supposed to be settled, and then following up with a unilateral bill imposing closure in the House of Commons, imposing closure in the committee by requiring them to report on a certain date? Are you in favour of those time deadlines?

**MR. HOWARD:** Not in their restrictiveness. I believe the impatience of Prime Minister is perhaps somewhat too great. The comment I did make though initially was, I feel that Manitoba, not necessarily through the governing party but through all of the members in the Legislature, could have made greater efforts to have these hearings take place at an earlier date and perhaps could have used various measures to generate a better response from the public.

In answer to your question, Mr. Mercier, I do feel that there has been too much impatience in recent months, not enough impatience over the last fifty-some years to force the matter. I think it has come to the stage that if we are going to have patriation, it looks like it is going to have to be forced and it's unfortunate that I perceive it that way, but I believe other people perceive it that way as well.

**MR. MERCIER:** Sir, when you say that discussions have taken place over the last 50 or 53 years, you don't want to leave the impression do you, that constitutional discussions have been taking place throughout that period? Would you not agree that the discussions that have taken place throughout those 50 or so years have been very sporadic?

**MR. HOWARD:** Yes, I would agree and I would also expect that if the present attempt comes to too severe a block or a log jamb, that future governments will find other pressing things to deal with for perhaps some time to come before making a further attempt. It is unfortunate, we should have as Canadians been able to rectify this issue a long time ago.

**MR. MERCIER:** You made some comments about equalization. Have you had an opportunity to look at the actual wording of the federal proposal?

**MR. HOWARD:** I have not.

**MR. MERCIER:** You haven't. So you can't make any comments then about the wording that's used on the equalization.

**MR. HOWARD:** Not on their proposal, no.

**MR. MERCIER:** On entrenchment of the Charter, you indicated you didn't know whether the right should be in the Constitution, and you didn't know whether the court should be trusted, and you didn't know whether the Legislatures or Parliament should be trusted. I wonder just where you . . . who's left?

**MR. HOWARD:** I don't know whether there is anyone left. I wanted to imply by saying that I didn't have that great amount of trust in the courts was

that this is particularly a fence-sitting position that I have taken on this and it's my own. Hopefully I can receive some argument that could lead me to accept either side of that position on entrenching of rights, but the statement I made and I believe it very firmly is that if there are rights entrenched in the Constitution, it should not prevent the Parliament or the Legislatures of Canada from broadening those rights. It would prevent them from taking rights away, but there should be nothing preventing the Legislature of Manitoba, for example, of broadening those basic rights if they are entrenched. I would hope that wouldn't limit them.

**MR. MERCIER:** You're open to persuasion, then I'll send you copies of some speeches . . .

**MR. HOWARD:** I would be happy to receive them, Mr. Mercier.

**MR. MERCIER:** On the amending formula, the one that is proposed as the . . . Charter, which gives Ontario and Quebec a perpetual veto, I take it you do not support that amending formula.

**MR. HOWARD:** No, I would not and I wouldn't — the thing that disturbs me most about that formula is the provision that is in there to allow a province to withdraw. Withdraw may be not the right word, but there is a provision in that formula, as I understand it, that would allow the first baseman to take off if he didn't like a call. That seems to be the thing that I object to most of that formula and I haven't read that formula verbatim, as you must have had the opportunity of reading it, but that is the main thing I would object to but I also object to any province having a veto. I think that will be destructive of our system, if a province can withdraw or can say, well, no, boys, I won't go.

**MR. CHAIRMAN:** Thank you. Mr. Uskiw, do you have a question?

**MR. USKIW:** Yes. Would you support, since it's obvious that you're not quite sure about the whole question of entrenching rights and many people have not been able to find a position one way or the other on that question and are somewhat ambiguous about it, would you have any reason not to support as a minimum language rights entrenchment in the new Constitution?

**MR. HOWARD:** Personally not, no.

**MR. USKIW:** No qualms about it?

**MR. HOWARD:** I would not have.

**MR. CHAIRMAN:** Any further questions? Seeing none, thank you, Mr. Howard.

**MR. HOWARD:** Thank you.

**MR. CHAIRMAN:** Are there any other persons present who haven't had an opportunity to present a brief but would wish to do at this time?

Seeing none, I might point out to the persons in attendance and the committee that on November 8th in the Winnipeg Press and other dailies, and the

**Monday, 24 November, 1980**

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week of November 15th to the 19th in Manitoba weekly newspapers, an advertisement went out that said that this committee would meet in Brandon on Monday, November 24, from 11:00 a.m. to 1:00 and from 2:30 to 5:30, and if required would again meet tomorrow morning. As Chairman I would say that since there are no others that have indicated by telephoning or writing or have appeared here in person to make a presentation, that I would deem it not required to have a meeting tomorrow morning.

Mr. Schroeder.

**MR. SCHROEDER:** Mr. Chairman, I'm just wondering whether you could inform us as to whether you have now received any indication of anyone wishing to present briefs in Swan River.

**MR. CHAIRMAN:** The Clerk tells me that he has no record of such.

**MR. SCHROEDER:** Thank you.

**MR. CHAIRMAN:** Any other comments before we wind up our meeting?

**MR. KOVNATS:** Mr. Chairman, when you wind up, this committee will resume in Swan River for . . .

**MR. CHAIRMAN:** 10:00 a.m. on Wednesday, November 26th at the Legion Hall in the Town of Swan River.

It's been moved that committee rise.