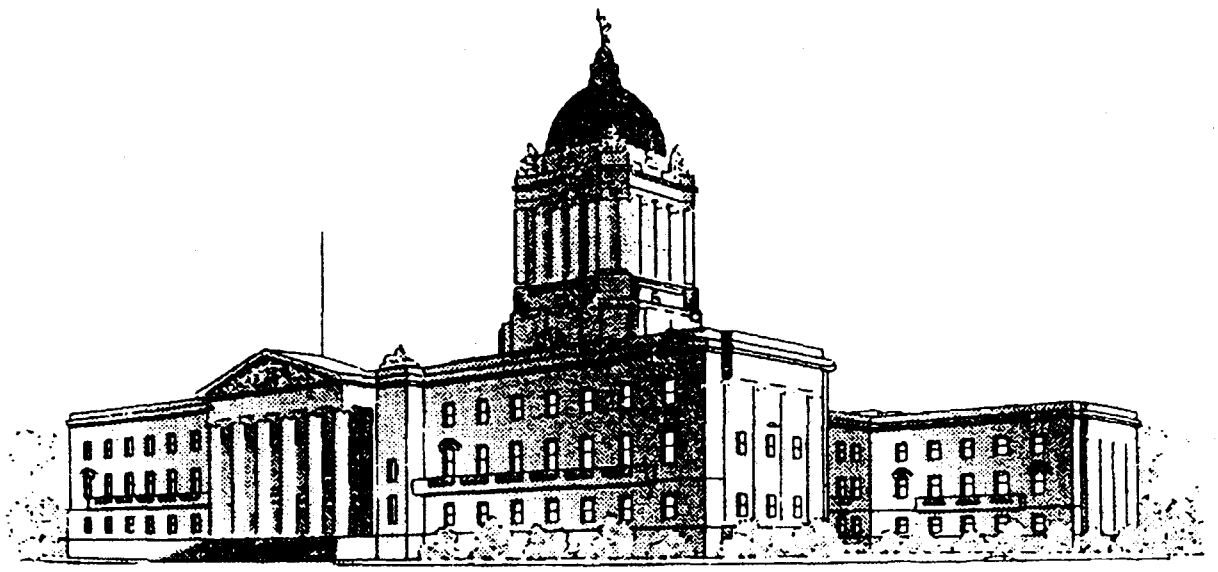
Third Session - Thirty-Sixth Legislature

of the

Legislative Assembly of Manitoba

Standing Committee on Law Amendments

Chairperson
Mr. Jack Penner
Constituency of Emerson



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MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Sixth Legislature

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LEGISLATIVE ASSEMBLY OF MANITOBA

THE STANDING COMMITTEE ON LAW AMENDMENTS

Monday, June 23, 1997

TIME – 7 p.m.

LOCATION – Winnipeg, Manitoba

CHAIRPERSON – Mr. Jack Penner (Emerson)

VICE-CHAIRPERSON – Mr. Peter Dyck (Pembina)

ATTENDANCE - 11 – QUORUM - 6

Members of the Committee present:

Honourable Mrs. Mitchelson, Honourable Messrs. Radcliffe, Toews

Ms. Cerilli, Messrs. Dyck, Helwer, Lathlin, Laurendeau, Martindale, Penner, Ms. Wowchuk

APPEARING:

Mr. Daryl Reid, MLA for Transcona
Mr. Gary Kowalski, MLA for The Maples

WITNESSES:

Bill 47–The Adoption and Consequential Amendments Act

Mrs. Joan Vanstone, National Director, Parent Finders of Canada
Ms. Darcy Lyons, Private Citizen
Mr. Roydon Kading, LINKS Post-Legal Adoption Support Group Inc.
Mr. Wayne Helgason, Social Planning Council of Winnipeg
Mr. Luis Coelho, President, Canadian Union of Public Employees Local 2153
Ms. Tamsin Collings, Private Citizen
Ms. Karen Linde, Private Citizen
Ms. Ellen Peel, Winnipeg Child and Family Services
Ms. Joan Wolf, Private Citizen
Ms. Linda Shapiro, Private Citizen
Mr. John Poyser, Private Citizen

Bill 48–The Child and Family Services Amendment and Consequential Amendments Act

Ms. Louise Malenfant, Parents Helping Parents
Mr. Wayne Helgason, Social Planning Council of Winnipeg
Ms. Alice Wright, Private Citizen
Mr. Dave Waters, Winnipeg Child and Family Services
Ms. Mallory Neuman, Canadian Union of Public Employees Local 2153
Ms. Tamsin Collings, Private Citizen
Ms. Eileen Britton, President, GRAND Society
Ms. Donna Ekerholm, Private Citizen
Ms. Linda Dorge, Private Citizen
Ms. Colleen Suche, Law Society of Manitoba
Dr. Charles Ferguson, Winnipeg Child and Family Services Abuse Committees
Ms. Helen Zuefle, Private Citizen
Ms. Linda Shapiro, Private Citizen
Mr. Garth Smorang, President, Manitoba Bar Association
Ms. Norma McCormick, Private Citizen

WRITTEN SUBMISSIONS:

Bill 47–The Adoption and Consequential Amendments Act

Mrs. Joan Vanstone, National Director, Parent Finders of Canada

MATTERS UNDER DISCUSSION:

Bill 47–The Adoption and Consequential Amendments Act
Bill 48–The Child and Family Services Amendment and Consequential Amendments Act

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Mr. Chairperson: Would the committee please come to order. This evening the committee will be

considering Bill 47, The Adoption and Consequential Amendments Act; and Bill 48, The Child and Family Services Amendment and Consequential Amendments Act.

Before committee can proceed, we need to elect a vice-chairman.

Hon. Mike Radcliffe (Minister of Consumer and Corporate Affairs): Mr. Chair, I would nominate Mr. Peter George Dyck.

Mr. Chairperson: Mr. Peter George Dyck has been nominated. Any further nominations? Seeing none, I declare that Mr. Peter George Dyck is elected vice-chair.

To date we have had a number of persons registered to make presentations to the bill this evening. I will now read aloud the names of the persons who are preregistered. The first presenter on Bill 47–and I will read all of the names, and we have two out-of-town presenters that we want to deal with, but the presenters are Roydon Kading, Wayne Helgason, Joan E. Vanstone, Darcy Lyons, Rosella Dyck, Luis Coelho, Tamsin Collings, Karen Linde, Ellen Peel, Dian Cameron, Joan Wolf, and Linda Shapiro.

On Bill 48, we have Louise Malenfant, Wayne Helgason, Alice Wright, Rosella Dyck, Dave Waters, Luis Coelho, Tamsin Collings, Eileen Britton, Donna Ekerholm, Linda Dorge, Colleen Suche, Dr. Charles Ferguson, Helen Zuefle, Linda Shapiro, Garth Smorang, and Norma McCormick.

Those are the names of the people that have registered so far. If there are any people in the audience that have not registered and want to make presentations, would you please indicate to the Clerk in the back of the room.

We have two out-of-town presenters who are registered to speak to the bill today. What is the will of the committee? Should we allow those two people to present first? [agreed] That will be done.

Secondly, does the committee wish to limit the presentations?

Mr. Peter Dyck (Pembina): Mr. Chairman, I would suggest, as we have done previously in other presentations, that we limit it to 10 minutes for presentations and five minutes for questions.

Mr. Chairperson: It has been suggested that we limit the presentations to 10 minutes and the questions to five. Agreed?

Some Honourable Members: Agreed.

Some Honourable Members: No.

Mr. Doug Martindale (Burrows): We have frequently objected in the past when the government insisted on time limits. We are objecting again tonight. We are dealing with two major pieces of legislation, The Adoption Act and The Child and Family Services Amendment Act. Both of these are making substantial changes in the area of Child and Family Services, and we know that some people have detailed and comprehensive briefs and probably cannot even read them in the time being allocated, and so we would like to and plan to vote against this motion.

Mr. Dyck: I can appreciate the comments made by Mr. Martindale. On the other hand, though, I think in fairness, in order that the people that are here tonight, and I know that many have come a long distance, in order for them to be able to do some planning as well, in order to accommodate them, I think it certainly would be in order that we allow and that we determine the time allocations for presentations, Mr. Chairman. On the other hand, I can also appreciate, as I indicated before, the comments that were made, but I would like for us, in fairness to the presenters, in order for them to accommodate the time allocations that they have for themselves, to be able to do that.

So, with that, I believe that I would like it to stand that it be at 10 and five, as was originally indicated.

Mr. Daryl Reid (Transcona): Mr. Dyck says that there are a lot of people that come a long distance. I have looked at the two lists here. There are two out-of-town presenters; one of them being out-of-province. Perhaps some of the people who are here this evening have come a long distance, but it does not indicate that on the list, although I would very much want the

members of the public to have the opportunity to speak to the bill. These are two major pieces of legislation; there is no doubt. I have some problem, though. I know the government was not intent in speaking to these pieces of legislation, and if my memory serves me correctly, only the minister spoke to the bills.

No other member of her caucus spoke to the pieces of legislation, so the government, it appears to me, to be intent on trying to ram through these bills in a very short period of time. I do not think it is fair to members of the public. Obviously, a great number of them that are here this evening want to have the opportunity to make their presentations. I think there needs to be some latitude in this committee so that if some of the presenters want to have a few minutes extra time to make their presentation, or if members of the committee want the opportunity to ask questions beyond the five minutes, I do not think it is fair and reasonable for us as legislators sitting here intently to the presentations to limit our opportunity to ask questions of the presenters and for them to give us their viewpoints. I think it is fair to the presenters. They have gone to a lot of work to put together these presentations, and for us to limit them to 10 minutes, I think, is unfair to the public, and I think it is unfair to us as legislators here to give us that two-way dialogue that we need to find out about the full intent of this legislation and its impact upon them.

Mr. Chairperson, with those words, I think we need to have some latitude on the 10 minutes and five minutes and go into a period of time, whatever the presenters might seem fair and reasonable to themselves having come here to make their presentations.

Mr. Radcliffe: Mr. Chairman, I have had the opportunity, the good fortune, I guess, to be involved with this legislation right from the outset when consultation was taken across Manitoba, and I can let this committee know that in fact there was very extensive consultation right across Manitoba. Many of the names that I see on the list here tonight are people who have already presented on the–a lot of the people who present tonight were at the public hearings. [interjection] My honourable colleague says that he was not at those hearings, and I acknowledge that; I understand that. As I have had the opportunity in years gone by to sit in your chair, I know that the Chair does exercise latitude and flexibility that, if a question is started or if there is a conversation and an exchange already in process when the time limit comes, the custom of the Chair is to let that particular exchange complete itself and that particular dialogue work itself out.

But I think just because there are in fact the number of people here who have identified that it is only fair to let everybody here have the opportunity to speak, because in fact there have been a lot of people in the past who have spoken, there are a lot of people here tonight, and if somebody should choose to take the opportunity and talk and make a major presentation all over again, due to the fact that they feel very strongly about some of these issues, because I know some of these issues are very, very emotional and very, very controversial, in fact it would end up having the effect of disallowing individuals who have made the effort to come out tonight to make their presentation.

* (1910)

So it is my feeling that, given the discretion of the Chair–and I do not think that your regime will be dogmatic and absolute–and if my honourable colleague is in the midst of a dialogue or exchange with an individual presenter, you would allow him to finish. I would urge that to happen, but short of that, as a guidance, as an outline, I would urge the 10 and five in order that we give everybody who is here the opportunity to come forth and speak. Thank you, Mr. Chair.

Mr. Chairperson: Thank you very much. Are there any other comments? If not, I will call the question. All those in favour of limiting presentations to 10 minutes and questions to five, would you indicate?

An Honourable Member: With some latitude?

Mr. Chairperson: With latitude, yes.

An Honourable Member: Yeas and Nays.

Mr. Chairperson: For clarification I think most of you have seen me in the Chair before, and I have normally allowed time for the question.

Voice Vote

Mr. Chairperson: All those in favour of limiting the presentations to 10 minutes, would you say yea.

Some Honourable Members: Yea.

Mr. Chairperson: All those opposed, would you say nay.

Some Honourable Members: Nay.

Mr. Chairperson: I would declare that the Nays have it.

Formal Vote

Mr. Martindale: Recorded vote, Mr. Chair.

Mr. Chairperson: Recorded vote.

A COUNT-OUT VOTE was taken, the result being as follows: Yeas 4, Nays 3.

Mr. Chairperson: I declare the item carried. The presentations will be limited to 10 minutes and the questions to five. As I indicated, I am going to exercise a lot of flexibility. We will then call–how does the committee wish to deal with out-of-town presenters? The normal practice is that we allow out-of-town presenters to come first. Is that agreed? [agreed]

Is it also the agreement of the committee that we will call the names of people that have registered, and if they should not be in attendance when their name is called, they will be dropped to the bottom of the list, and at the end of the presentations we will call their names again. Is that agreed? [agreed]

Ms. Marianne Cerilli (Radisson): I just want to clarify. Their names are called twice more after they are dropped to the bottom of the list?

Mr. Chairperson: No, once more. They will be called, dropped to the bottom of the list and when we finish the presentations, they will be called again for the second time.

We have also several people who have been registered to speak on both of the bills. Is it the will of the committee that we hear the presentations on both bills simultaneously or not? What is the will of the committee? That we hear them separately? Is that the will of the committee? Okay, then we will hear them separately. What is the will of the committee? Should we hear Bill 47 first?

Bill 47–The Adoption and Consequential Amendments Act

Mr. Chairperson: Presentations on Bill 47. I call then the out-of-town presenters. The first one on the list is Joan Vanstone. Is Joan Vanstone here? Would you come forward, please. Have you a presentation for distribution to the committee? We will ask the Clerk to distribute. You may proceed.

Mrs. Joan Vanstone (National Director, Parent Finders of Canada): Good evening, ladies and gentlemen and also the other people seated behind me here.

I want to, first of all, commend the minister for bringing in an entire adoption act in its own entity and taking it out of the Child and Family Services realm. Adoption is such a unique and important way of building a family, and it deserves to have its own act. I would also ask that you give the act as much time as you possibly can in your busy schedule, because I want you to look at me in front of you tonight. I am a 63-year-old wife, mother of three and grandmother of five, but I was once a tiny, helpless infant in a crib whose parents were not able to look after me, and the state had to take over my care. I was disabled by my physical ability to speak up for my own rights and I was disabled by my age–too small. So I think this is very important.

Now, Parent Finders, whom I represent as the national director, is a volunteer group with 35 branches across Canada. We are all unpaid volunteers. I am here; I am footing my own bill tonight. But we feel so dedicated about the work that we do. We work for free but that does not mean we are not wonderful workers. Give me a well-motivated volunteer any day.

Parent Finders started 23 years ago in Vancouver to meet the needs of adult adoptees, birth parents and birth

relatives, and adopting parents. We are really an analogous group, and we have been historically denied the full rights under Section 15 of the Charter of Rights as they are enjoyed by all naturally formed families in Canada.

As of this morning, before I left Vancouver, we had 46,500 people registered in our computer from all across Canada and, in fact, from many parts of the world, seeking to find more information about themselves in the case of adoptees or birth parents desperately wanting to know whatever happened to their child. If I may slide a sidebar in here, my birth mother was also an adopted person born in Brandon, Manitoba, and she died in 1972. She never knew where on God's earth she came from. No one would ever tell her, and when she died she never knew what had happened to her baby. To me, this is the most incredible cruelty that was wreaked upon a very nice woman whose only sin was to be born out of wedlock.

As regards our reunions, we have had over 11,000 reunions, and when you consider that most reunions take in a family group of five, we are talking about a ripple effect of 40,000 people. Very few families in Canada are not touched by adoption, and all of these people are citizens of one province or the other, and they are all voters. In our reunion research report–because when we do our work we feel a responsibility to report honestly on how the reunions take place–92 percent of the birth mothers we found, using discretion and tact at all times, were very pleased to be found. Eighty-eight percent of the birth fathers were pleased to be found. A few of them were a little surprised. They had not realized they were birth fathers, but, again, when you approach a person in a courteous manner, that makes a very large difference. Ninety-eight percent of birth sisters who became involved in a reunion were very pleased to have a new sibling and 96 percent of birth brothers.

The reunion statistics success rate–and we say success where it has brought contentment and the end of questions and yearnings to people involved. New Zealand's 10-year record is 85 percent successful. I really went through this adoption act with a fine-tooth comb. In fact, I was still looking at it at two o'clock this morning.

I sadly did not feel that this legislation, although well intended, meets the only criteria that an adoption act should meet, and that is that it be in the best interests of a child. It started off well, but it fell off the rails. There is much good in the new legislation, and I do commend you, minister, I truly do, particularly the international adoptions, the openness agreements, the agencies. Many of these things I kind of sort of spotted some language from the B.C. adoption act which I was very much involved in. I was at meetings all weekend and worked five days a week. It was sort of effort by exhaustion on the part of many dedicated people.

But the one thing that must be upheld in your new act is the United Nations convention on the rights of the child. You cannot write into a Manitoba law something that violates international law. You just simply cannot. It is not fair to expect a birth mother or an adult adoptee or an adopting parent to have to hire a lawyer and pay $50,000 to come and challenge your act. It needs to be done right at the beginning.

* (1920)

No government has the right to build walls between a birth mother and her child, her own flesh and blood. This legislation, by attempting to hide a child's name and true blood and medical history, is imposing itself in a manner that it cannot lawfully impose upon a regular nonadopted family household. You cannot do this with other families. I do not think they would stand for it.

The secrecy provisions, taking a child's name off an adoption order, that is the child's name. You do not have the right to steal it. I am sorry, whether you are legislators or not, you do not. The government of British Columbia did not have the right to steal my full name. It belongs only to me. Its secrecy is obstructive, it is punitive, and it is not in the best interest of the child. It is not in the best interest of a child who was born in 1920, 1940, 1960 or the children that have not been born yet who will come under the openness provisions of the new act. We cannot have openness for future adopted children and slam the door on people that were born before. This is not equal law; it is discriminatory, and it is violating Chapter 15. So again, there needs to be some more work done, in my humble opinion.

Section 31(1) is a prime example of the archaic 1930's thinking, and I was amazed to see it there. The clause that says that an adopted child, as if the adopted child had been born to the adopted parent of the adopted child. You know, this is just a biologically untrue statement. I adored my parents, Thomas and Elsie Scott, my adoptive parents, but the blood in my veins here was given to me by a lady named Gweneth and a man named Cecil. So this is a fantasy clause. It has no basis in law; it has no basis in simple biology. My adoptive parents and I could all get the household cold germ, and we could all get the household flu bug, but my medical problems that were genetically and blood-based came from the two people that created me at birth, Cecil and Gweneth.

Now, Section 30(2) is, in my mind, a shameful clause. It seeks to steal a helpless infant's legal birth name. You are saying, do not put any names on there, put numbers. Well, excuse me, but a convict in jail has got a number on his back, but he knows what name to answer to. That is just so unfair to a helpless baby. You are stealing their identity before they are a year old, and you are deciding which is their name. They have a right to decide and claim both their names.

You are also, by this process, putting the child at medical risk, because I could not find anything in there, and maybe by exhaustion at two o'clock I missed something. I did not see a clause such as we have in British Columbia where the director has the power to go into an adoption, find the child's name, find the birth mother and get critical medical information for that child.

Mr. Chairperson: Could I interject just a wee minute. You have gone just a shade better than 10 minutes already. I mean, time flies fairly quickly when you are making a presentation. I am going to allow you some time to summarize and wind up your presentation.

Mrs. Vanstone: I am getting there, I am nearly there. Okay. So we have to be always mindful of the child's health, safety and well-being, and taking away the name is not helping to look after that issue. The child must have first an unobstructed right to their name, their medical and genetic information throughout their entire lifespan from their infancy to their death, because we all grow up.

The act in its present form is unacceptable in the closed aspects. So I really ask you to please take your time. Remember, try to picture, as we did in our committee in British Columbia when we got offtrack or we were getting confused, we tried to picture a newborn infant, and it has certainly homed us in very smartly, and it certainly polarized and focused whose rights we were and whose future we were deciding.

So, to the adoptive parents who are courageous in that they take on such a loving relationship with the children, please also remember that you violate their rights when you do not allow them to treat their children equally. If they have a naturally born child and they have an adopted child, and they cannot tell the adopted child the same information in history as they can tell their own birth child, you have put discrimination in a house, and it is cause for many behavioural problems.

So that pretty well sums up my remarks. I would close by saying that children and families are any country's strongest assets, and I believe that you can alter this bill at this stage and make it a stronger and a better bill in the best interests of that tiny baby that I ask you to remember.

Mr. Chairperson: Thank you very much for your presentation. If it is the committee's will, I would suggest that we print your entire presentation in the record so that it will be recorded in the committee hearings.

An Honourable Member: Agreed.

Mr. Chairperson: Okay, thank you.

Mrs. Vanstone: Are there any questions?

Mr. Chairperson: Are there any questions?

Mr. Doug Martindale (Burrows): Mr. Chairperson, I would like to thank the presenter, Ms. Vanstone, on behalf of Parent Finders of Canada for an excellent presentation. I am not a lawyer. However, you have a lot of quotations in your brief about the UN Convention and the Canadian Charter of Rights and Freedoms. I am wondering if you got legal advice on writing these sections.

Mrs. Vanstone: Four lawyers.

Mr. Martindale: Would it be your belief that if someone challenged the new adoption act in Manitoba after it passes–it will certainly pass; the government has a majority–if someone challenged it in court, do you believe that they would win under the legal opinions that you have cited in your brief?

Mrs. Vanstone: Yes, I truly–

Mr. Chairperson: Ms. Vanstone.

Mrs. Vanstone: I truly do. Oh, I am sorry. I was jumping the answer.

Mr. Chairperson: I have to do this as Chair so that the Hansard recording people can identify the speakers.

Ms. Vanstone, do you have further comment?

Mrs. Vanstone: Oh, I was just saying that I believe that, yes, there are two very strong grounds, and Mr. John Poyser is at the end of the list, and he is going to give you a lot of the legal rationale and case study so that Mr. Martindale will be able to answer your questions then.

Lastly, we have faxed to all of the legislative caucus offices all of those recommendations that I have gone through point by point through the bill so that every member, I hope when they take their seat for the third reading clause by clause, they will have our recommendations sitting right beside them. Thank you very much.

* (1930)

Mr. Martindale: I should have said when I asked you one of the questions about a legal challenge that I was referring to your recommendation that an order of adoption shall show the name of the child. I presume that your answers were referring to that part of your brief, that if you were to challenge this act that at least one of the grounds would be on children not being given their birth name. Is that correct?

Mrs. Vanstone: Definitely, because the UN Convention states that this absolutely must be given and this is international law. Canada, as a signator to the UN Convention in December of 1991, has guaranteed that the Government of Canada and all of its provinces who have ratified this agreement, which includes Manitoba, must conform.

Mr. Chairperson: Are there any further questions?

Ms. Marianne Cerilli (Radisson): One of the issues that I am interested in asking presenters about and I find is one of the most, I guess, contentious issues is the waiting period that should be given between the time–I guess it is like a probationary period–the child is born and put up for adoption and the time when the adoptive parents actually will have legal custody. I am wondering if your organization has a recommendation for what that period should be.

Mrs. Vanstone: One thing I saw in your act that I had a problem with was the right to surrender at 48 hours, but I suppose if that was the situation where you had a mother who had a drug problem, then there would be, in the best interests of the child's health, safety and well-being, a very good reason to apprehend as quickly as possible for the child's benefit. As regards the length of time to complete an adoption legally, years ago–because I have been around so long, I have been through I do not know how many adoption acts–the waiting period was one year. So the child was placed and sort of the calendar started to roll from there.

Some adoptive parents felt that was a very anxious period because during the one-year probationary period a birth mother, if she could make a plan and show that she could care for her child, could go to the courts and petition to have her child returned. So it was sort of one of those changes that evolved from the anxiety of the adopting parents. They said, really we would like to have this adoption formalized and so it drifted down to six months. Since that has been in effect for quite a long time, I cannot really say that I have an objection. I personally was with my birth mother in a baby home, in foster homes and my situation went on and on for 18 months. I do not think that is good because there is the bonding factor of the infant with the mother and the father. Again you see, I always default to the best interests of the child. I am sorry, it is just a bad habit of mine. I have little grandchildren and they remind me daily of the fragility of small children.

Mr. Chairperson: Thank you very much, Ms. Vanstone, for your presentation.

I call next Mr. Darcy Lyons. [interjection] Ms. Darcy Lyons, sorry about that.

Ms. Darcy Lyons (Private Citizen): I am not a cross-dresser.

Mr. Chairperson: I know a person by the name of Darcy and he is a man. Have you a presentation for distribution?

Ms. Lyons: Yes.

Mr. Chairperson: The Clerk will distribute. You may proceed.

Ms. Lyons: I am not a speaker portrayed like Joan, but I will do my best. I am just going to read from what I have.

I have waited a lifetime for this day. My name is Darcy Lyons and I am an adoptee. I was told that I was adopted before I could understand. My mother rocked me in her arms and said, my adopted little girl. My parents did what they were told to do. They told me I was adopted. My parents did not realize that an adopted child has different needs than a child born to them would have. Child and Family Services did not even acknowledge the difference. There is a saying, what you don't know won't hurt you. This saying does not apply to adoption because we know that we do not know. This is the basis of an adoptee's grief and the complicated identity formation that they have.

By the age of four, I spent many hours looking in the mirror wondering what my birth parents looked like and where I came from. I would tell everyone that I was adopted. Who knows, maybe they would know my family of origin. The search continued for years, looking and searching for a resemblance, for my identity in crowds, in people in shopping malls. I asked my parents questions about my family of origin. They did not know a lot. They were so excited about the adoption that they did not remember my history which was given to them verbally. They did not take these questions seriously. They just figured that I was going through a phase that would pass and that it was all just a matter of curiosity.

There is a well-known unspoken belief that if an adopted child has a need to know their origin, it is a negative reflection on the ability of the adoptive parents, so I grew up dealing with my grief alone, feeling insecure about my membership in this family. I wondered what was going to happen to me when I turned 18. Would I still be considered part of this family?

I had to be the perfect little girl so that my parents would not send me back. I grew up feeling second class, like my feelings did not count and I did not count. I had lost my birth parents, my heritage, my ethnic origin, my identity, all because I was too young to speak for myself and no one was there to advocate for me. It was just expected that I would take on the identity of my adopted family. I grew up knowing that I was different but was forced by the law to pretend I was not. My adolescence consisted of episodes of deep depression, angry outbursts and incredible emptiness and loneliness. I grew up being constantly reminded about what I did not know and what I had no right to know, and that is what adoption meant to me, all done in my best interest.

It was not until I was 26 after taking a class in loss and grief that I was able to identify how adoption had affected my life. I did not know why I was depressed, felt empty and alone. I now knew that I had a lot of unresolved grief, and this awareness allowed me to take care of my needs. I realized that as a child I was forced to deal with the reality of adoption alone. I realized that I had the right to know, even though the law did not recognize it. It was now my adoptive parents' turn to deal with the reality of my origins. I had to fight off the label of ungratefulness and insinuations that I had no right to interfere with my birth parents' lives. I had to risk rejection from both my birth parents and my adoptive parents. In addition, I had to reassure my parents that my needs had nothing to do with them and that I was not looking to replace them as parents, and I had to trust that time would prove this to them.

My name was on the adoption registry for eight years. My patience ran out and I decided to search on my own. I found my birth mother on my fourth day of

searching. Not all searches are that easy and successful. Some are even impossible. I feel so lucky I was not rejected. My birth mother did not register because she felt she did not have the right to interfere with my life. How ironic. She was also a victim of the same insinuation. She told me that not a day went by when she did not think about me. I told her that I thought a lot about her, too, and that I had saved a place in my heart for her.

I do not compare my parents. They are all individuals whom I love dearly. I believe people can love a lot of people, and these laws are based on comparison and role confusion. They instill fear in all members of the adoption triad. My birth parent gave up her right to parent me. She did not give up her right to love me. I believe that our birth parents felt that by giving us up for adoption they were giving us a chance in life. I believe this choice was without the realization that our childhood would be more complicated with grief and that we would experience more difficulty with identity formation.

Closed records instill fear of the unknown. They reject the adoptee's true identity, which in turn disregards a part of their unique identity. The secrecy of closed records is shaming. We become a source of shame when we want to know those who are responsible for our existence. We are blamed for the potential upheaval in our birth parents' lives, and this is the basis for closed records.

Adoption was done to us. A self-search allows adoptees to have control over forces they previously had no control. Self-search helps the adoptee to experience the self as capable of acting rather than being acted upon. The present recommendations to extend the services of Child and Family Services will continue to allow it to search for us for a fee. This fee holds no guarantee of reunion or vital information which we need. They are continuing to do to us and exploit us financially as well. This especially refers to those born after medicare who do not have their last name on the decree of adoption and therefore are unable to do a self-search.

Mr. Chairperson: Thank you very much for your presentation, Ms. Lyons.

Mr. Martindale: Thank you, Ms. Lyons, for appearing before the committee. I know that it is not easy to share a personal story with a room full of people, but we appreciate you doing so.

Are you concerned that the fee might be a barrier to people finding out their identity?

Ms. Lyons: Yes, I do, especially because the people that the fee is probably more directed to are children that were born after 1968, and so they are quite young yet. They might not be financially set. When they want to find out is when they are 18, and they do not have the finances to drop $200, $300 for a search or more.

Mr. Chairperson: Thank you very much, Ms. Lyons, for your presentation.

* (1940)

Hon. Bonnie Mitchelson (Minister of Family Services): Not any questions, but I do want to indicate to you, thank you for your presentation; it certainly does speak volumes about your feelings. I am pleased you have had success in the whole process and a positive response to the search.

I also did want to say to Ms. Vanstone, too, and I hope she is still here, to thank her for her presentation. I know she travelled quite a distance to be here and made a lot of good points. So thank you.

Ms. Lyons: So thank you for the opportunity.

Mr. Chairperson: Thank you very much. I call next Mr. Roydon Kading. Have you a presentation for distribution? The Clerk will distribute. You may proceed.

Mr. Roydon Kading (LINKS, Post-Legal Adoption Support Group Inc.): Thank you for this opportunity. While I did make a presentation in the fall, I am representing over a thousand or many thousand adoptees and adoptive parents and birth parents in the province of Manitoba, and it might be hard to condense 4,000 presentations into 10 minutes.

I am talking on behalf our organization called LINKS, Post-Legal Adoption Support Group.

For those of you not familiar with our organization, we are a volunteer, nonprofit, nonfunded adoption support group comprised of members of the triad: adoptees, birth parents, and adoptive parents. We help our members through the exchange of information and ideas, and provide them with emotional support to deal with adoption issues.

We would like to compliment the minister for acknowledging that adoption is such an important issue that it deserves its own law. We would also like to say our organization and birth families in general welcome the expansion of the registry to make it entirely active for all members of the triad. This, we feel, is long overdue and a very good step.

However, we have serious concerns with particular parts of this proposed law that violate the rights of the adoptee and that discriminate against both the adoptive parent and the adoptee.

Under Section 30(1), Order of adoption, which reads: "Where an application for an order of adoption is filed and all the applicable requirements of this Act have been complied with, a judge may, having regard to all the circumstances of the case, make an order of adoption."

Section 30(2) reads: "An order of adoption shall be in the prescribed form and shall not, except as provided in subsection (3), show the surname of the child prior to adoption, but shall identify the child by the birth registration number of the birth record or other identification acceptable to the judge."

There are other societies in this world who identify people by number, and I do not want to be associated really with any of them.

Section 30(2) must be deleted and rewritten to read: An order of adoption shall be in the prescribed form and shall show the surname of the child prior to adoption.

Section 30(2) continues the discrimination against adoptees and adoptive parents. It is stated that adoption records will be opened. This is false. Adoptive parents and adoptees will continue to be denied the birth name in full, and only 18 years from now will the adoptee be able to apply for a copy of the original order, and only if there is no disclosure veto, will they be given a copy of their original order of adoption. Therefore adoption laws will not be open for 18 years, not tomorrow.

Section 101, Court records are confidential, and it reads: "All records of the court relating to the granting of an order of adoption shall be confidential."

Section 101 should be changed to read: All records of the court relating to the granting of an order of adoption shall be confidential except for the parties named on the order of adoption, which is the adoptee and the adoptive parents. They were a party to the order. They should have access to it.

Section 102(2), Court may issue certified copy of order, and it now reads: "Despite subsection (1), the court may on written request issue a certified copy of an order of adoption to (a) an adoptive parent to whom the order of adoption relates; or (b) to an adult adoptee to whom the order of adoption relates; but where the original surname of the child appears on the order of adoption, the original surname shall be deleted from the certified copy and the birth registration number or other identification acceptable to a judge or master shall be substituted for the surname."

Section 102(2) must be deleted and the following substituted: The court shall on written request issue a certified copy of an order of adoption and a copy of the original birth registration to an adoptive parent to whom the order of adoption relates or to an adult adoptee to whom the order of adoption relates.

Disclosure Vetoes, under Section 112 of Bill 47 pertaining to disclosure vetoes, violates Section 15 of the Canadian Charter and must be deleted in its entirety. It is giving the birth mother discriminatory rights over the adoptee and the adoptive parents, who do not have that right to withhold anybody's name, and now you are giving it back to the birth mother to withhold it. That is absolute discrimination.

Sections 30, 101, 102 and 112 are in direct violation of Section 15 of the Constitution Act, 1982, Part 1, Canadian Charter of Rights and Freedoms.

Section 15, Equality of Rights, subsection (1) reads: "Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability."

Subsection (2) reads: "Subsection 1 does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability."

Sections 30 and 102 violate Section 15 of the Canadian Charter of Rights and Freedoms by discriminating because of age. Bill 47 provides for children adopted in the future to receive a copy of their adoption order with full birth name thereon, unless there is a disclosure veto, upon request when they become an adult. Adult adoptees, born and adopted prior to Bill 47, are being discriminated against by refusing to give them a copy of the adoption order with birth name in full. That is age discrimination. The adoptee at the time of the adoption was physically disabled and was disadvantaged by not being able to participate in the adoption process and to claim their rights. By the use of a disclosure veto, the birth mother is being given more rights than either the adoptee or the adoptive parent.

Sections 30, 101, 102 and 112 of Bill 47 also violate the United Nations Convention on the Rights of the Child, which was ratified by Canada in December, 1991, and the government of Manitoba signed a letter of agreement. Article 1 of the Convention states: Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions or beliefs of the child's parents, legal guardians or family members.

Article 7 says: 1. The child shall be registered immediately after birth, and shall have the right from birth to a name, the right to acquire a nationality, and, as far as possible, the right to know and be cared for by his or her parents. 2. Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8 states: Parties undertake to respect the rights of the child to preserve his or her identity, including nationality; name and family relations as recognized by law without unlawful interference. Where a child is illegally deprived of some or all of the elements of his or her identity, the parties shall provide appropriate assistance and protection with a view to speedily re-establishing his or her identity.

Where is this contract we hear so much about between the birth mother and the agency guaranteeing privacy? There never was a written contract. There is no such contract. Form 16, consent of parent or guardian to the adoption of a child through the director or an agency, does not guarantee privacy. Nowhere is privacy mentioned. From our experience, we have helped reunite 151 adoptees with birth mothers. Of that number, seven birth mothers did not want contact. That is 5 percent. Are adult adoptees being discriminated against because of the circumstances of their birth? To protect the privacy of 5 percent of the birth mothers, 100 percent of the adoptees are being discriminated and sacrificed.

* (1950)

As an aside, I would like to ask you one question, and you do not have to answer it, if any of you have adopted children who were born after 1967 who do not know their name, what will you tell that child, that he or she is not intelligent enough, mature enough to know their birth name, that they are not equal with their peers, and that they are particularly not equal with their parents' biological brothers and sisters who do know their names? That would be a pretty difficult question

to tell my son or my daughter that they do not deserve their name.

Adult adoptees in Manitoba are the only class of people who are deprived of their birth name in full. Our question is: How can this type of discrimination be legislated in good faith? Thank you.

Mr. Chairperson: Thank you very much, Mr. Kading, for your presentation.

Mr. Martindale: Thank you, Mr. Kading, for your presentation. I am wondering if post-adoption LINKS would consider going to court perhaps on your own or with your national organization and, if necessary, go to the Supreme Court in order to challenge the sections that you believe violate the Charter of Rights and Freedoms.

Mr. Kading: Yes, I feel that we would, but, of course, the question again comes up to money. Can we afford it? I think this is what all governments bank on, that people cannot afford to go to court to fight their legal battles, whether they are discriminatory or not. If the opportunity arose, yes, we would be there.

Mr. Martindale: Mr. Kading, as you know, I have been to your support group meetings, and I found them very interesting. In fact, I found the stories that people told quite poignant, including stories of adoptees who found their birth parents and birth parents who found their children and people who found their siblings, and I have some personal sympathy for some of the points of view you are putting forward.

However, one of the problems that I see as an individual on this committee is that we are hearing one point of view, and although we are not finished and we have more presenters on Bill 47, I suspect that we will not hear from people who want total confidentiality, because people are not going to come forward and identify themselves and argue for confidentiality.

I am wondering what you would say to this argument from silence, I guess. Do you believe that a disclosure veto protects their rights to confidentiality?

Mr. Kading: Mr. Martindale, I do not believe a disclosure veto has any place in an adoption law. That, again, is giving total control to the birth parent who gave up control of that child when they were adopted. Now we are giving it back to them with a disclosure veto? That does not make any sense at all. There are certain birth mothers, and birth fathers, no doubt, who do not want to be known, like 5 percent. Are we sacrificing all the adoptees for 5 percent of the people who do not want to be known?

They also could have made a written presentation. They do not have to appear in public. They could have written a presentation. Maybe some of them did, but they are asking for privacy. They never asked for privacy when they were 16 years old and 15- and 17-year-old birth mothers. They did not ask for privacy. They never said that they did not want their child to know who they were, what their background was. They never said do not give my child my name. They never said that.

This privacy business was instilled in their head at the time by somebody saying, you know, no one will ever come and look for you; the records are sealed; do not worry about it. It was a verbal statement made by a social worker that had no basis in fact at all.

So if anyone comes forward and makes a presentation about privacy, fine, that is their prerogative, but as far as we are concerned, they are definitely in the minority.

Mr. Martindale: What do you think, Mr. Kading, the minister would say if we asked her about the understanding about privacy at the time of an adoption?

Mr. Kading: Mr. Martindale, I would like to see something in writing that the government gave a birth parent, that there was privacy. I would also like to know how many court cases has the government of Manitoba received in the last 50 years that the records were supposedly so-called open.

From 1922 to 1968, they were open; that is 45 years. How many court cases did the government of Manitoba receive from people because of the invasion of privacy? I do not think one, not one. If there was, I would like to hear about it. Does that answer the question?

Mrs. Mitchelson: Thank you, Mr. Kading, for your presentation. I appreciate the good work that LINKS does on behalf of adoptees.

Mr. Kading: You are welcome, Madam Minister. Thank you.

Mr. Chairperson: Thank you very much, Mr. Kading, for your presentation.

I call next Wayne Helgason. Wayne Helgason. Mr. Helgason, have you a presentation for distribution?

Mr. Wayne Helgason (Social Planning Council of Winnipeg): Mr. Chair, I have on Bill 47. I am here, and the time on Bill 48 will be shared.

I would like to indicate initially that the Social Planning Council, with other groups, has looked at Bill 47 from an operational sense and has some ideas, and Karen Linde will go into more detail on them, but to express our support for the kind of permanency planning opportunities that we think the bill and the new process should include, some practical solutions that at your leisure you will consider the support you may give within an amendment process or ensuring the bill meets, I think, some of its objectives.

Some good work has been done by Ms. Linde and others, so we defer in a sense at this point, and I will be back when you are attending to Bill 47 with a written submission.

Mr. Chairperson: We are on Bill 47 right now.

Mr. Helgason: I am sorry, Bill 48.

Mr. Chairperson: Okay, so you will defer till 48. Is Ms. Linde–are you going to be making a presentation on their behalf or what?

Ms. Karen Linde (Private Citizen): Well, this is joint in a sense.

Mr. Chairperson: Well, then I would ask you that you have a bit of patience because you are No. 8 on the list. So I will call you when your name comes up. Is that fair?

Ms. Linde: Okay.

Mr. Chairperson: I will call next then Rosella Dyck. Is she not here? I call next then Luis Coelho. We will ask you to pronounce your name, so we all understand it.

Mr. Luis Coelho (President, Canadian Union of Public Employees Local 2153): Have a little education session. It is actually Luis.

Mr. Chairperson: Good. Have you a presentation for distribution?

Mr. Coelho: Yes, I have. It is being distributed.

Mr. Chairperson: Mr. Coelho, you may proceed.

Mr. Coelho: Good evening, Mr. Chairman, members of the committee. First, my thanks for the opportunity to speak to you this evening regarding the proposed changes to the child welfare act. I will limit my comments to Bill 47 while my colleague Mallory Neuman will speak to issues raised by Bill 48 when her turn comes up.

My name is Luis Coelho. I am president of CUPE Local 2153 which represents about 450 staff at Winnipeg Child and Family Services. These staff include social workers, clerical administrative staff and family support workers. I speak to you today on behalf of all of us.

On a personal level, I am a social worker. I have worked in child welfare for the last 15 years in a variety of capacities. Presently I work in one of the adoption units with Winnipeg Child and Family Services.

* (2000)

I would like to take this opportunity to thank the Minister of Family Services for her undertaking in reviewing The Child and Family Services Act. We were especially pleased with the discussion papers which talked about the need to strengthen communities and support families so that those families could better take care of their children. The minister also spoke about the sadness of too many children in care and the urgent need to address this.

Unfortunately, the proposed changes do nothing to address the issues raised with so much hope in the discussion papers. So for us the proposed changes are a disappointment, an important opportunity missed. After the implementation of the proposed changes, there will continue to be too many children in care, too many children in need of care and too many children without families.

Having said that, let me focus on Bill 47. We have a few concerns about what is the proposed legislation and what is not. What Bill 47 does not address is the plight of the majority of our permanent wards who are eligible to be adopted but for whom there are no adoptive homes. For a variety of reasons these children are not seen as desirable by adoptive applicants, and therefore, despite our best efforts, we are unable to find them permanency in a permanent family.

We have many aboriginal children who need permanent placements through adoption in culturally appropriate homes, but those homes do not exist. Native communities need to be assisted in developing these resources so that adoption can be a reality for these children too. Unfortunately, Bill 47 appears to be silent on this major problem. It focuses on a very small part of the picture–there are not that many young moms considering adoption–and it neglects the real needs of most of our permanent wards. These are children who despite our best efforts will never know an adoptive home.

Focusing again on Bill 47, some of the proposed changes are reasonable, and they are a step in the right direction. For example, the 10-day waiting period while baby lives in a neutral location did not make a lot of sense if both parties are willing to proceed with adoption. The reduction of time for the adoptive parents to apply for an adoption after 30 days instead of six months is a step in the right direction, although we wonder if 30 days is not a bit too short. Perhaps three months or even 60 days would be more of a balance.

Making the post-adoption registry fully active is a positive step and long overdue. We would hope, however, that this expanded mandate is matched with appropriate and adequate resources. The openness of adoption records, again, is a positive step. We know how critically important families are. Families give a sense of continuity, connectedness and define who you are. Adopted children need and deserve this. Parents who choose adoption also need to know what happened to the child.

So the openness and sharing of information is good. I am not sure that providing basic, vital information through Vital Statistics is sufficient or appropriate. We would suggest that at a minimum adopted children and birth parents be afforded the opportunity to discuss any issues around the information they find and to clarify events if that is what they need.

We are very concerned about the privatization of some of the adoption services. Although we appreciate the reasons why this is being proposed, i.e., that timely service has been problematic in some areas, the proposed solution is unnecessary. It seems to be somewhat of an overreaction, and it raises concerns. The problem of timeliness should be fixed where it exists. If the system has been allowed to deteriorate to such a level, then the Minister of Family Services should have dealt with the situation before implementing such drastic measures.

The whole idea of a not-for-profit agency as something new in child welfare is puzzling. Child welfare agencies have always provided service on the basis of need. They are funded almost totally by government, and they do not make any profits except perhaps in the quality of families' and children's lives.

We are concerned that although these private agencies will apparently be regulated and licensed, we do not know at present what those regulations will be. We are concerned that there needs to be real balance between the wishes of adoptive parents and the wishes of birth parents.

If a young birth mom decides to change her plans regarding adoption of her child, who will be there to support her in that decision? Who will be there to ensure that her rights are respected? Minor parents probably do not feel very empowered. That would be one of the reasons why they would be considering adoption for their babies. For some, adoption is a good plan and a good adoptive home is a wonderful thing, but for others they may have more difficulty in making

that decision. We need to be sensitive to this. We need to make sure that the needs of the adoptive applicants and the best wishes of the private adoption agency do not supersede the wishes of the birth mom. At a minimum, a child welfare agency should be involved with and available to the birth mom to ensure that her wishes and rights are protected.

In conclusion, although we support some of the changes proposed, we have some major concerns about setting up private adoption agencies. We are not convinced of the need for their creation, and we are concerned about the presence of real balance and how this would be regulated. We are disappointed that the changes do nothing to facilitate the process of finding permanent adoptive homes for the majority of our children who should be adopted.

Those are my comments. I will answer any questions you may have.

Mr. Chairperson: Thank you very much, Mr. Coelho, for your presentation.

Mr. Martindale: Thank you, Mr. Coelho. You said that Bill 47 does not address the problem of the large number of permanent wards who could be adopted. I am wondering if you have some suggestions as to how to solve that problem.

Mr. Coelho: Yes, Mr. Martindale, I mentioned that the number of aboriginal children who are in our care are permanent wards for whom adoptive homes are not available. I also suggested that perhaps some work and resources should be allocated to that area, so that we can find culturally appropriate homes for those children.

For those children who are not aboriginal, some of the same solutions mights also apply. I think that we live in a society where there are not a lot of people who may want to adopt children, especially children with difficulties, with developmental issues, children who are older, and I think we need to look at ways to facilitate families who might be willing to provide a permanent home for those children. That is something that is not in the act, and that is something that should be done.

Mr. Martindale: Mr. Chairperson, you suggest more resources I think probably for agencies and for families. Do you think this is something that should be put in The Adoption Act, or could the government address this in their budgeting process?

Mr. Coelho: I am not sure that I am knowledgeable enough to talk about where it should be dealt with. We have identified the problem because that is my area of work. I know that those children need homes. How it is done, it does not matter much to me. I would think that some mention of it might be made in The Adoption Act. Where the money is allocated, that is up to the government. It does not matter to me where it comes from. The resources for native agencies and for families who might want to adopt just should be there.

Mr. Martindale: On page 2 of your brief you said that timely service has been problematic in some areas. I wonder if you could expand and tell us where you believe timely service has been a problem.

Mr. Coelho: You know, frankly, I am not sure. I think the reasoning behind that led to the creation of the private adoption agencies or possible private adoption agencies. It may be in the length of time it takes for adoptive parents to find a child that they may want to adopt. I am not sure what we can do about that since I believe that there just are not a lot of young moms who are prepared to consider adoption as an alternative these days.

I know that one of the areas where timeliness is an issue, and I can tell you that from my experience, is in the post-adoption registry, who are trying to find information for people who were adopted many years ago. I think that sometimes they need to wait a way too long to get the information that they are looking for, and that needs to be addressed as well.

Mr. Martindale: You also said that the system has been allowed to deteriorate. I wonder if you could identify where you believe the system is deteriorating.

Mr. Coelho: Lack of resources, I think, specifically in the post-adoption registry. If we are allowing and agreeing that people should have access to information about their birth family, that information should be available much quicker than we are able to provide

right at the moment, so any step in that direction is a good thing. As far as providing young babies for couples who may want to adopt, I am not sure what we can do about that. I mean the babies just are not there.

* (2010)

Mr. Martindale: I wonder if you could spell out for us either more clearly or in more detail your objection to not-for-profit adoption agencies.

Mr. Coelho: Frankly, I do not understand the need for them. I think that if young moms think that adoption is a good thing for them, I know we have long lists of adoptive applicants who are waiting for babies, and it should not be very difficult to place that child. In fact, we can and we have reacted fairly quickly. When a young mom gives birth, if there is an adoptive couple who wants to adopt the child, I think the changes proposed by the minister make sense, and that child can be placed very quickly.

I am not sure why we need a not-for-profit agency, and I have some difficulty with the term, as I indicated, because as far as I am concerned all child welfare agencies have always been not for profit.

Mr. Martindale: Do you see a conflict of interest in private adoption agencies whereby they may be counselling expectant mothers on the one hand and lining up adoptive parents on the other hand?

Mr. Coelho: That is a very good question and I referred to that. If I was not as clear enough about it, I think that is what I was getting at. I think that we need to be very careful that if we end up setting up not-for-profit agencies whose interest is to try and locate babies for young couples or families who may want to adopt, we need to make sure that there is a real balance between the need of that unit who wants to adopt a child and the birth mom who may be having a difficult time making that decision.

I have had personal experience where young moms changed their minds after having birth to the child, when it looked like all along they knew exactly what they wanted to do. They wanted to give up that child because of very good reasons, and after the birth of the child, it did not happen. Those young moms need to be respected, and their wishes need to be respected. We need to make sure that they do not get caught in someone else's wishes to provide a baby for a very nice family that may want to adopt a child. We need to be very, very careful about that.

Mrs. Mitchelson: I want to thank you, Luis, for your presentation. I notice on page 1 of your presentation that you say that there are many aboriginal children who need permanent placements through adoption in culturally appropriate homes but those homes do not exist. I guess my question would be: How many aboriginal workers are there in the adoption area of Child and Family Services agency in Winnipeg?

Mr. Coelho: I take it in number, not very many.

Mrs. Mitchelson: Mr. Chairperson, does the agency work really closely with some of the other non-main mandated and not-for-profit agencies that deal with aboriginal children to try to recruit those culturally appropriate homes? What kind of work is done?

Given that the issues in the Winnipeg agency are certainly a lot of aboriginal children involved as permanent wards–and I know that I get the statistics on a regular basis, and I know you deal and work in the agency on a regular basis–my question would be: If the workers working on adoption in the agency are not of aboriginal background, what work do you do with agencies that are aboriginal and deal with aboriginal children? How aggressive is the work that you do with those agencies to try to determine how we recruit the adoptive homes that might be necessary for children of aboriginal descent?

Mr. Chairperson: Mr. Coelho, for a final response.

Mr. Coelho: I am not sure that we recruit native homes or work with those agencies. I know that in each case where a child is aboriginal, especially a Status child, and is ready for adoption we cannot even think about adopting that child without informing the band where that child comes from and asking them if they have any resources. Very often that is where the planning stops because we are told that, no, unfortunately, they do not have an adoption home for

this child, and neither are they prepared to consider adoption in a not culturally appropriate home. I respect that, but it leaves the child in limbo.

So I do not know how we get past that, and that was my suggestion, that those particular agencies that tell us that they are not able to find an adoptive home for our child, those are the people I think we need to look at trying to assist so that when we let them know we have a child and we are looking for an adoption home, that in fact they say, yes, we have one, let us do it.

Mr. Chairperson: Thank you very much, Mr. Coelho, for your presentation.

I call next Tamsin Collings–I almost called you "mister." Ms. Collings, have you a presentation for distribution? Welcome back to the building. You may proceed.

Ms. Tamsin Collings (Private Citizen): Thank you for the opportunity to present on the proposed Bill 47 and to voice my concerns about some of the impacts of this legislation. As a social worker with Winnipeg Child and Family Services, Central area, the primary area I looked at when reviewing the proposed bill was in regard to its impact on the permanent wards of our agency, the children with whom I have had the opportunity to work.

I wish to address three main areas of concern: the need for adoptive homes for permanent wards of the agency; concern about the increased privatization of adoptions; and proposed changes to the post-adoption registry.

The proposed legislation in Section 34 maintains the current practice of allowing for some limited financial assistance for persons adopting a child whose needs may present a financial barrier to the adoptive parent. This type of assistance is not new and has been offered in specific cases in the past in the form of payment of therapy costs, et cetera. Unfortunately, this has not provided an adequate lowering of barriers to adopting children to make the difference for a large number of children who are older, part of a sibling group, live with a physical or developmental disability, have a history of abuse or have treaty status.

The cost of maintaining these children in foster care is high, and it does not meet the need or right of these children to have permanent homes. I am disappointed that the proposed legislation does not address these needs in a substantive way. One way to begin to address this would be to continue community initiatives to increase awareness of the need for homes for these children. It would also be helpful to establish resources within the agency to provide ongoing supports to adoptive families, especially for those with children with higher needs.

I am concerned about the increased role for private nonprofit agencies in providing services for birth mothers signing voluntary surrenders of guardianship. The inclusion of the agency in this service in the past has meant greater attention paid to the rights of birth mothers, who are often not aware of the details of the legislation that impact them. I am concerned about the voiced intent of this government to pursue a fee to be paid by adoptive parents for a home study. I fear this would discourage people with lower incomes from applying to adopt. The other concern I have is that this move to seeing adoptive parents as consumers would have other repercussions, such as implying the right to choose which agency and worker did their home study. Surely the children involved are entitled to a more objective, impartial service.

My final concern is about the proposed changes to the post-adoption registry which would make it fully active. My concern is that there is no provision in these proposals to address the different situation between children who are voluntarily relinquished and those who are permanent wards of the agency. I have serious concerns about releasing identifying information on adoptive children to birth families in situations where they were removed because of protection concerns, and where the birth parent presented a risk to the child. This could result in dissuading people from being open to adopting children who are permanent wards of the agency, as well as being a possible risk to that child. I am also concerned that the changes proposed would no longer provide for the involvement of a social worker if needed to facilitate what is often a highly emotional process.

As I have outlined, my main concerns about the proposed legislation, Bill 47, are in regard to its failure

to address the needs of children with higher needs for adoptive homes, the increased privatization of the system, and the move to a fully active post-adoption registry. I believe these proposals will have a negative impact on all of those involved in the adoption triad, but especially on children who are permanent wards of Winnipeg Child and Family Services. Thank you for the opportunity to address this committee. I hope you will review some of the concerns I have raised.

Mr. Chairperson: Thank you very much for your presentation, Ms. Collings.

* (2020)

Mr. Martindale: Thank you, Ms. Collings. I guess my question is similar to a previous one. That is, if there is limited financial assistance for families, is that an issue that should be addressed in legislation, or could the government address it in their budget allocation to a Child and Family Services, and if so, which would be the best way to address this problem?

Ms. Collings: I think it could probably be done in both ways. I think obviously Section 34 does spell out that there can be some financial assistance, and I do not know if it would be possible within that section or within the regulations to perhaps go into a bit more detail about what that can cover. I think one of the main areas that has certainly been an issue for adoptive families has been because of waiting lists for therapy services. If families are able to be assisted in things like that, that has been very helpful for them.

Mr. Martindale: You are also concerned about a fee to be paid by adoptive parents for a home study. Are you concerned that adoption could become a privilege for the affluent few rather than an opportunity for all parents?

Ms. Collings: Yes, that is one of my concerns. The other is my fear that, if you are getting to pay for who does the home study, then presumably you are a consumer and you get to choose who does the home study. If you get to choose who, then do you go to, you know, the friend of the friend who runs this agency? You can go there, and you know you will get a nice home study. I have some concerns about the appearance of lack of objectivity in that.

Mr. Martindale: You anticipated my next question about being consumers, adoptive parents as consumers. Are you concerned that people might shop around and request a home study for more than one individual or organization until they were successful in getting the home study approved so that they could become adoptive parents?

Ms. Collings: Yes, that would be one of my concerns.

Mr. Martindale: Is there some way that we could address that in the legislation?

Ms. Collings: I am not sure if it is possible to. If you are asking people to pay for a service, then you are in a sense turning them into consumers. I guess the way I would see to address it would be to remove the fee for the home study, and I guess that is one of the reasons– well, I would have concerns around privatization, and I would prefer to see less privatization of adoption services.

Mrs. Mitchelson: Mr. Chairperson, I want to thank Tamsin for her comments and her brief.

When you looked at the legislation that was being introduced in Manitoba, are you aware of what other provinces have done when they have made changes to their adoption legislation? I guess the two that might stand out most in my mind would be Alberta and British Columbia that have probably, in some instances, gone further than we have in our legislation.

Are you aware of any of the instances that you cite about the payment of fees for a home study where, as a result of any experience that has happened in British Columbia or Alberta, there has been a hardship issue or if there has been a lot of concern around that fee being paid?

Ms. Collings: I do not really have a lot of background on that. I guess what I am more concerned about certainly in other areas of my work is that the issue around home study certainly for foster homes, for looking at placement of children, has been raised as an issue in the courts around who has done it, and so I would fear that that could become an issue in adoptive homes.

Mr. Chairperson: Thank you very much for your presentation, Ms. Collings.

I call next Karen Linde. Would you come forward, please. Have you a presentation for distribution? No? You may proceed.

Ms. Linde: I have to say that this heat is the greatest challenge to character I have had in some time.

I am speaking tonight as an adoptive parent of two boys, 15 and a half and 11, and also as a person who looks at the issues of adoption, I believe, as well as I can from every perspective. It is important to me and my children that my birth parents are healthy, and all of us are related.

There are actually five realities of adoption. It is a livelong process. Once you are into it, it does not end. It is not a cure for infertility or unplanned pregnancy. It is a second step. The actual placement of a child is separate from the relinquishment of a child. These are two things that children have to deal with, and neither is a cure. Adoption is not a cure for anything. It is based on loss, and adoptive families are different than biological families, and all people in the triad are linked forever, forever. That is a reality in adoption. So as much as we want to dispute the rights of one versus another, we belong to each other forever.

I have two parts to this, and I am attempting to figure out how on earth I can cover something as important as adoption is to me, which is my life, in five minutes for each topic, one being the support piece and how significant that is to have stakeholders involved in support, and, in fact, involved in this legislation at every step of the way. These are our lives, our children's lives and our birth parents' lives. The other is the open records and the significance of a name.

I would like to start with the support piece and challenge the legislation to include stakeholders as a significant player in support. I have been working with organizations that do provide family support throughout the province on a daily basis and for the most part might only need adoption sensitivity training. The Family Centre of Winnipeg, South Winnipeg Family Information Centre, the Social Planning Council with Wayne Helgason and Project O out of New Directions, everybody interested in helping and healing and all interested and wondering how on earth we can deal with the adoption piece of it, or how do we support families who are not being raised in biology. It is different. It is not second best, but it is different.

We have come up with a plan that takes a look at protection being separate from support and placement being separate from support, and it follows Tamsin's speaking to it quite clearly in that there is a worry that if a birth mom goes directly to placement without having a community support base and an advocate, whether it is approaching CFS, whether it is approaching a private organization, that they should have someone there who is a neutral person who understands the complete range of issues and the law to say that I will be there with you and you will understand completely what is happening and what your decision is has no reflection on me; it does not matter to me what your decision is; you have a right to choose.

One of the things in working with the Social Planning Council–and I should give a little bit of history. I was on the panel for the consultation review, and that was a complete eye opener. I could not believe how many channels were trying to work parallel to each other in trying to establish support. To listen to the presentation made by the Social Planning Council made me believe that we all want the same thing; just how can we do it, and we have to be smarter than this.

The point with all the children in care, over 3,000 children in care, and making permanency plans for children, the stakeholders need to be a piece of this, exactly as–I have forgotten the name that presented and talked about aboriginal and band representation. Is it not possible to have a review panel prior to the placement or decision of placement of a child and the outcome being either reunification or placement with a wide range of placement choices. If you have had community professionals involved in the child's life, it seems logical to me that they be part of a meaningful decision in terms of that child's future. So that is basically the essence of support and the hope that with the organizations already in place, that we could build a significant support model for Manitoba and the people who are making these choices.

Every step of the way until I received this draft legislation, I felt confident that we were being heard. I felt that this was a great process to have people to be able to speak and such good listeners, but the panic sets in right now to think that this is going to be decided now, and it is sort of a fait accompli.

Do we have any input anymore into some of the wording and the statements? I am a little confused even about some pieces of it in terms of, first of all, the application for international adoption, 71(1): "A prospective adoptive parent who has been placed on the central adoption registry may request that he or she be considered for the placement of a child who resides in another country and who is legally available for adoption."

If those are the only people who can seek international adoption–to my understanding, there are only a hundred families on the registry, and not very many are interested in international adoption. There are over 1,800 families, to my last piece of knowledge, that are interested in adoption of a variety of forms. I am not sure what that means.

* (2030)

The other piece that I question is 31(1), Status of adopted child: "For all purposes of the law of Manitoba, as of the date of the making of an adoption order, (a) the adopted child becomes the child of the adoptive parent and the adoptive parent becomes the parent of the adopted child."

The child does not become anything. The child is the child forever. He is still the child of his birth parents. He is still the child of the adoptive parents. What has transferred is the legal responsibility and the right to parent. It is us who are making this. He has not changed one iota. That is scary, and then to say: "as if the adopted child had been born to the adoptive parent." It is not. It is not "as if" at all.

So there are just some pieces of this that just with minute changes give a perspective that is more real, and I ask if stakeholders could possibly be involved in the next steps that happen in terms of regulations or before this in fact becomes finalized.

There was the question that the silent majority is here because they believe in the status quo. I challenge you on that because I do not believe that people, for the most part, know what we are doing. In fact, we certainly do not know what we are doing tonight. This, I heard about last week, and I first got the draft legislation on Friday, so I have only had a chance to read it over the weekend and attempt to figure out what is happening. This is not something like land transaction and this is not MTS; this is life. This is a very, very important thing that we are doing here, to decide the future of people. I just do not want to see pieces of it rushed into if we are not absolutely sure of the fallout and who it is that we may be hurting in the process of this.

I also was thinking is it truly this prior contract that we are so afraid of with the birth mothers, so afraid of breaking, or is it these circulating myths that we have out there about who this birth mother is–she must be an awful, evil person–if she was going to be given information, or this adoptee must be some radical who is going to take down walls.

The four clear myths that circulate, not just here, by the way, internationally, that the birth mother obviously does not care about her child or she would not have given him away, that secrecy in every phase of the adoption process is necessary to protect all parties. I have had the fortune of being an adoptive parent in an open placement and a closed placement. There is nothing on this earth that is greater than to have the blessing of your birth family–nothing–to say, yes, you are the parents and support you in that. Secrecy does not support you; you never really know what the conditions of that birth mother were and did she really want adoption or did she really want you, and that is what I wonder. I have two and a half years before my son turns 18; I do not know any of those things about his birth mother.

Mr. Chairperson: I am sorry, your 10 minutes have expired. I will give you some time to wrap up.

Ms. Linde: Okay. The second thing with the birth moms, worries about the future and whether correct information is shared. Then, as my son said to me at the kitchen table one day, where did I come from anyway? Did I just drop from the sky? Interestingly,

we did pick him up at the airport when he was born, so we have photos to say that he did drop from the sky.

The fourth thing, if an adoptee really loved his adoptive parents, he would not have to search for his birth parents. What he is searching for is a sense of who he is and his roots, and it is not to replace you. Every single search shows that adoptive parents who support their child in this the most challenging piece of their life are truly supported by their children.

Mr. Chairperson: Thank you very much for your presentation, Ms. Linde.

Mr. Martindale: Thank you, Ms. Linde, for an excellent presentation with many good ideas. I wish that I had time to draft amendments based on some of your ideas. However, this bill is probably going to pass clause by clause in the next couple of days, or tonight, if the government majority has its way, so there really is not time to write your ideas up as amendments to this bill, but it seems to me that having a review panel prior to placements is one of the many good ideas that you raised.

I am also interested in your concerns about support to adoptive parents. I am familiar with Project Opikihiwewin, and I believe that there should be a lot more cross-cultural education going on and awareness of aboriginal culture for nonaboriginal parents who adopt aboriginal children.

Do you know if some of the existing nonprofit adoption agencies or practitioners incorporate cross-cultural awareness for their adopting parents?

Ms. Linde: That is an interesting question, because you are talking about nonprofit agencies, and really there is only one nonprofit organization manned by one person who is paid part-time and volunteers. So, within training sessions, it is addressed, but referrals are made to supports that are already in place, to my knowledge, but I cannot speak beyond that.

Mr. Gary Kowalski (The Maples): Thank you for your presentation. I have an advantage. I could listen to the presentations downstairs in my office while doing paperwork, and I found yours so interesting I had to come up and listen to it a little bit more closely.

I have a question about process. You mentioned in your presentation about the lack of time to review this bill. Under the rules that we were working under in the last session, all bills were presented in the springtime, and they were not considered until the fall, which gave members of the public an opportunity–such as yourself–to review the bill in great process, consult with other people in the field.

Do you think that is a better process than this short notice on major changes to Child and Family Services or any other act, that it is better to receive the bills in the springtime and pass them in the fall so that the public has a chance to review them?

Ms. Linde: Well, I would certainly have liked to have had this on paper, because it is significantly different from what even the panel recommendations were, because I do not understand a lot of the legalese. Perhaps, my mind is put at rest if we could just go through some of it and it is better understood, but there are some parts that are not clear and I certainly would like to have had the actual bill before me. It was a comment made, like why did people not show up before tonight, and I think that is it exactly. Until you see exactly the direction that is planned, it is hard to know what you are speaking to or for.

Mr. Kowalski: There is a process of which a motion could be brought forward to in the third reading–it is called a hoist motion–that allows this bill to be taken off the table for six months and read again six months hence. Do you think that if that was done there would be any improvement in any of the input or in analysis of this bill? Do you think that is something worthwhile doing, to delay the passing of this bill for six months?

Ms. Linde: I am so unaware of this process. I would hesitate to agree with that. I mean, there has been such invaluable significant change in some areas. I could not even comment on that. I do not know enough about it to know what might happen.

Mr. Martindale: Mr. Chairperson, usually the government prides itself on listening to the public when they appoint a public review panel and then enacting legislation based on what they heard, and frequently government members will mention that in their speeches and brag about how they toured the province

and listened to hundreds of submissions. However, is it your view that, in the areas that you are concerned about, the legislation does not reflect what the public was saying?

Mr. Chairperson: Ms. Linde, for a final response.

* (2040)

Ms. Linde: No. That is unfair. No. I am contradicting myself. I am not sure how to respond to that. There are just some pieces of it that it would be nice to say, if wording was changed in terms of even the status of the child–like, I am not changing the content of what is being said, I am saying there are ways to change that are more accurate.

Mrs. Mitchelson: I will not take long, Mr. Chairperson. I just want to thank Ms. Linde for her presentation. I would like to offer, if at all possible, I know there were some issues that you raised around international adoption. We can try to answer them as we go through clause by clause. You might not have the opportunity to be here. It may be the wee hours of the night or it may be another day. If we could attempt to answer some of the concerns and issues that you have, I think it is probably clarification of the legalese, or the legal language, because it is something that I certainly need advice from those in the legal field to interpret from time to time exactly what legislation means. I have difficulty interpreting that personally, so you might feel some comfort in some of the explanations. I understand the issue around maybe a word change here or there or a phrase change that might be a little more sensitive to the issues. I guess we do our best to try to draft it in a way that does reflect our intent, so I would offer individual discussion, or if you prefer to be here at clause by clause, I am sure that members of the opposition will be asking questions on comments that are made through presentations. I just want to leave you with those comments and thank you.

Mr. Chairperson: Thank you very much for your presentation, Ms. Linde.

I call next Ellen Peel. Ellen Peel, would you come forward, please. Have you a presentation for distribution? Thank you. You may proceed.

Ms. Ellen Peel (Winnipeg Child and Family Services): I am here as a member of Winnipeg Child and Family staff who has worked in the adoption field for many years. I am representing a number of the other staff who also work in this field. We have had the opportunity to review the legislation and also had the opportunity to present to the committee last fall. We were very pleased to be able to do that and, overall, most of the people in the agency working in the adoption field are generally very supportive of a number of the changes that are being recommended.

I am here today to speak to a particular issue and that is related to Section 34, regarding financial assistance for a person adopting a child. The proposed legislation is similar to the existing legislation where there is financial assistance available to people who adopt high needs children to attend to their particular needs and also to people who adopt siblings. We are very appreciative for those opportunities for adoptive parents and there have been several adoption subsidies since that legislation was introduced.

We are recommending an additional type of financial assistance specifically to do with financial subsidy for permanent wards adopted by their foster parents. Many children in permanent care have positive and long-standing relationships with their foster parents. The foster parents would like to adopt them and have these children as permanent family members. Many foster parents though certainly did not start down the path of adoption, and children were placed with them on a temporary basis, the planning was uncertain. The years go by and the child becomes a permanent ward, the family connections form, but the foster parents perhaps have other children, low income and are unable to look at assuming all financial costs for the child. We feel that a basic maintenance subsidy for foster parents would ensure an appropriate adoption for some older children, often high needs children, and at a significantly reduced cost to our province vis-a-vis maintaining them in the regular foster care system until they become adults.

So we are recommending that type of a maintenance subsidy based on the social allowances board-and-room rate. We think that it would increase, to some degree, the number of adoptions in the province, and it would be consistent with the best interests of children. It

would also be fiscally responsible in that the costs overall, we believe, would be reduced. I have given you one example of the difference, taking a five-year-old child and looking at what the system would minimally spend on this child until age 18 in the foster care system vis-a-vis the kind of proposal that we have of a social allowances rate, and the net difference in the cost is in the neighbourhood of $45,000.

So that is our recommendation, and I thank you for the opportunity to present it.

Mr. Chairperson: Thank you very much for your presentation, Ms. Peel. Are there any questions?

Mr. Kowalski: I wonder if you could help me understand this. So if I am a foster parent and I have a child for a long period of time, if I understand your presentation I would be reluctant to adopt that child as opposed to having that child as a permanent foster child because I would lose, well, in your example, $81,000.

So it would be a financial burden to my family to continue with that child if it was not a foster child any longer, and what you are proposing is that there be a reduction in the amount of money that I would get from government, but that child would be adopted by me.

Ms. Peel: I think certainly there are some foster parents where adoption is not of interest to them and perhaps would not be appropriate. What I am referring to is a group of foster parents who would like to adopt the child in their care who are not looking at losing substantial amounts of money. They are asking us to have a basic amount of a maintenance subsidy to enable them to meet the costs of feeding, clothing, housing and so on the child.

Mr. Kowalski: But as far as the relationship, whether that child is in foster care or is adopted, between those foster parents or adoptive parents there would be no difference in the relationship, would there?

Ms. Peel: I think there is a significant difference to the child in believing and growing up as a foster child and with the differences and the uncertainties that come with that to being a person who is adopted and is a full member of the family. I think that is really where the critical difference is.

Mr. Martindale: Thank you, Ms. Peel, for your presentation. In reading Section 34, and I appreciate your pointing this out to us, subsection (a) says: "the child to be adopted has a physical or mental condition which will make caring for that child far more expensive than the care usually provided to a child."

Is the problem with this clause the word "far"? If the government were to remove the word "far," would that cover your concern that the child may be more expensive to care for than normal?

Ms. Peel: My concern and the agency's concern around this is the foster parent who does not have the income to meet basic needs.

So the degree of the child's difficulty is not really the focus of this proposal. I think, in general, it has been covered quite well by the existing legislation. This is more to do with families who do not have the funds.

Mr. Martindale: Your brief says, and I quote: "A basic maintenance subsidy to foster parents would ensure an appropriate adoption for some older, often high needs children at a significantly reduced cost to our province."

If my reading of the legislation is correct, the existing Section 34 should cover the part of your brief that says high needs children. Do you agree with that or not?

* (2050)

Ms. Peel: Well, it would cover and does cover the cost of some high needs children for therapy, for certain kinds of medical devices and so on. For children with high emotional needs, I do not think it covers that unless there is a need for a particular kind of therapy. For many children, what they need is to know that they belong in a family.

Mr. Martindale: Would it be correct to say that Section 34 does not cover your concern about some older children, that it is the expense of some older children that prohibits them from being adopted and that your amendment would cover this concern?

Ms. Peel: I am not quite sure how to answer that because my concern is for older children who are going

to grow up in foster care who could be adopted. I am not sure I can comment beyond that. Sorry.

Mr. Martindale: Do you think that the focus of this section should change from the discretionary focus of the director to give more assistance to assisting low income parents to make adoption affordable?

Mr. Chairperson: Ms. Peel, with a final response.

Ms. Peel: The focus of our concern would be people who are already parenting the children. These are people who generally have parented them for long periods of time and also have the low income that you mentioned. So the family relationship in a sense is in existence already.

Mr. Chairperson: Thank you very much for your presentation, Ms. Peel.

Mrs. Mitchelson: I just wanted to say thank you for your presentation and some really interesting comments.

Mr. Chairperson: I call next Dian Cameron. Dian Cameron. Not seeing her, I call Joan Wolf. Have you a presentation for distribution?

Ms. Joan Wolf (Private Citizen): Yes, I do.

Mr. Chairperson: Thank you. You may proceed.

Ms. Wolf: First of all, I would like to say good evening and thank you for allowing me this opportunity to give a brief presentation. I speak to you as an adoptive parent, and I feel strongly that our adult adoptees should be allowed to know their real identity, not just go through life with a number as their last name.

We have a law which states that relatives are not allowed to marry; however, on the other hand, we are not allowing our adoptees to abide by this law. Adoptees cannot search for their heritage as there is another law that prohibits them from having access to open files, which will disclose their biological last name.

Consider the feelings of so many young adult adoptees who are approaching the point in their life where they would like to be considering making a lifetime commitment of marriage but are left with inner thoughts: Is it a possibility that I may be related to the person I am choosing as a lifetime partner? What are the drastic consequences that would result if I were to discover at a later date that I am related to this person?

We need not destroy so many lives and relationships. Allow our adult adoptees the freedom of knowing their heritage and identity. Please amend this law from closed files to open files and allow our adult adoptees to have a life with an inner peace. Thank you.

Mr. Chairperson: Thank you very much for your presentation. Any questions?

Mrs. Mitchelson: I, indeed, have had opportunity to speak to individuals that have–one couple I know personally who married. He was adopted at birth and had a very good life, but it was a dilemma for both of them when it came to the decision to start a family. Certainly, I know that he had much information on his health personal background, but he still to this day does not have any identifying information on his birth parents. It is an issue I know that does arise; I have had personal experience with that. I do know that she has just become pregnant, and they are looking forward to the birth of their child, and there still are no guarantees though. It is an issue. I hear where you are coming from when you make those comments. Thank you.

Mr. Chairperson: Thank you very much for your presentation.

I call next Linda Shapiro. Ms. Shapiro, do you have a presentation for distribution to the panel?

Ms. Linda Shapiro (Private Citizen): No.

Mr. Chairperson: Thank you. You may proceed.

Ms. Shapiro: I come as a parent of adopted children, and I come bringing their message for I have spoken to them before I present this. I have adopted two young women cross-culturally, and it is their wish that I speak and say that they want to know from whence they

came. I am interested that the act says that the adopted child becomes one of the family, and I am sorry but somebody who has black hair and beautiful big brown eyes and very brown skin cannot be of me. The children know it, society knows it and people who are adopted need to understand from where they came. There is no discomfort with my children finding out their biological parentage.

We have wonderful rules in our society to know where our cars came from. We can trace a car back to the dealership, and yet we cannot do the same with a child, and a child is not a thing. A child is a human being with enormous emotional baggage when they cannot say who their biological mom was, that other lady who is in their life. It is a mysterious dark person–I do not mean "dark" in the colour, I mean dark in the unknown–whom they suspect is a part of them, and they may have been told is a part of them, but unless they can physically have some sort of attachment, it is a great void in their lives. For some children–one of mine in particular–it was a driving force that took her to the streets. It was a driving force that took her into a lot of places that I did not want her to be and that she has since left, but it is a place that she sought out to seek the answers that I and the agency could not provide for her.

I work in the field of health and if a new antibiotic is found today, we give it to people who were ill a month ago. We do not say, sorry, this was found after you got sick so we are only giving it to the people who got sick after we found the antibiotic, and this law says similar things to me. We are telling new people that we are going to open records more easily, but just because our kids were born at the wrong time, do they not have that same right to fit that last piece of the puzzle in? It is not a threat to me. If the biological parents cannot handle it, we have to be able to support our children in saying they are not ready, but they are adults. I am an adult and my kids are now adults; we need to be given the grace of choice. Thank you.

Mr. Chairperson: Thank you very much for your presentation, Ms. Shapiro. Are there any questions? Thank you again for your presentation.

Ms. Shapiro: Thank you.

Mr. Chairperson: John Poyser. Is John Poyser here? Have you a presentation for distribution?

Mr. John Poyser (Private Citizen): No, I do not.

Mr. Chairperson: You may proceed, Mr. Poyser.

Mr. Poyser: I do not have a written presentation to submit to the committee, but, at the same time, I am pleased and honoured to say that I am one of the four lawyers who was involved in the preparation of the legal arguments you have before you, which you will find in the position paper which was submitted by the first speaker. That was Ms. Vanstone, on behalf of Parent Finders.

In addressing the legal issues which this bill raises, I was able to build on the work of lawyers in Vancouver and Toronto, and I came away with a deep and abiding conviction that there are some real legal issues to address in the manner in which this bill has been structured. So I do not appear before you to make comment today as the lawyer for Parent Finders but, instead, as a private citizen who has come to believe that the statute has some serious constitutional questions in its current formulation.

* (2100)

I think, firstly, in terms of the access to information and the barriers this bill perpetuates, I think it goes without saying that we are, in this bill, fostering a discrimination, a discrimination against participants in the adoption process. If I want access to information relating to my birth, to my parentage, to my birth name, as a nonadoptee, as an individual who remained for my entire life with my biological parents, there is no barrier. That information is readily accessible to me. There is no government hurdle if I wish to research my past. As an adult adoptee or as a natural parent, this bill, in common with legislation before it, raises that hurdle and blocks the access to that information. Participants in adoptions are dealt with differently than I am and differently than the majority of people in this room.

Discrimination comes in many shapes and forms. Some of it is legally repugnant and some of it is not. The issue here becomes whether under Section 15 of

the Charter, the particular discrimination that I have described is one which is prohibited. I think the judiciary in Canada are starting to move in that direction. There is a 1996 case out of Ontario, Schafer v. Canada, in which this very point was addressed. It was held by a federal judge that adult adoptees were a group, what is known as an analogous group, under Section 15 of the Charter. That means that they were capable of being a ground of discrimination, and the court there held that they were being discriminated against.

The great legislative rescuer in all of these instances is Section I of the Charter. That is the section which a legislator will point to and say, well, we may have trammelled on a Section 15 right, but at the same time we feel that the particular provisions, as drafted, can be justified against some objective and justifiable, reasonable, social purpose which is the basic reason why Section 1 is in the Charter. Here, if effort is made to prop up the bill with recourse to those Section 1 rights, I am afraid that the legislators will come face to face, and quite quickly face to face, with two decisions of Chief Justice Dickson of the Supreme Court of Canada. He has discussed in two separate cases, one of which is fairly recent, he has pointed in two separate cases to the relationship between international law and Charter law. What he said is that if there is an international convention, an international right for a natural Canadian individual and a provincial statute affects discrimination and runs contrary to the terms of that international law, then the Section I protection or the Section 1 argument becomes very difficult to raise for the people defending the legislation. Here we have a ratified international convention put in place by the United Nations, which says in Article 8, in completely unequivocal terms, that a child in a country like Canada has the right to their identity, including their name at birth. The bill in its current formulation flies in the face of that right. If any effort were made under Section 1 to say that the provisions of this bill could be defended under Section 1, I am afraid Chief Justice Dickson, in any event, at least in the comments he has made in similar cases, would say that that is just not available here to defend this kind of legislation.

Often in drafting legislation, and it is by no means an easy job, the effort is made to balance the rights of different groups who have different competing interests. I think the case law referred to in the submission from Parent Finders makes it clear that because of the international laws that same balancing does not have to occur. But, even if it was the object of the game, even if that is what we were here to do, the position of Parent Finders and my position after having researched the issue are that this bill does a very poor job of balancing those competing interests.

It is all about power, if you will. At the time of an adoption, of all of the parties who are involved in the adoption, only one has no power. The child is not old enough to participate in the process. The child is not entering into any contract of secrecy or otherwise. The child does not choose to be an adoptee. That is something which is forced on the child or happens to the child by virtue of adult decisions. When the child becomes an adult, what do we do with the power? I mean, once the child is an adult and within the context of this bill, we get to carve it up. The effect of the balancing act which has been done in this particular legislation is to deny again the child the power that the child was denied at birth in the sense that the child cannot gain access to their personal identity without having to come across several hurdles which may prove insurmountable under this bill.

In closing, we would like to exhort the government to give careful scrutiny to this bill, to look at through the prism of both the Charter of Rights and the ratified international convention on children's rights and redraft it. Make those changes which are necessary to ensure that individuals are not barred access to their identity if they happen to have been through the adoption process. Thank you.

Mr. Chairperson: Thank you very much, Mr. Poyser, for your presentation.

Mr. Martindale: If you believe that the United Nations covenant is being violated, where would you go for redress? Would it be the International Court at The Hague?

Mr. Poyser: I like to travel. There is a short answer to that perhaps, but I am a lawyer and I will give you the lawyer's answer. If one wants to invoke, to try to sue under the international convention, you have to first

exhaust your recourse within the laws of your own jurisdiction. That would mean that a case would have to go through here, the Court of Queen's Bench or a federal court. I guess here, the Court of Queen's Bench, Court of Appeal, Supreme Court of Canada, and only after you had exhausted all of your remedies there could you then send your lawyer on a nice trip to take advantage of an international adjudication. Even if you do get to the point of conducting an international adjudication, the result is merely directive. The International Court cannot force the government to do anything and cannot overrule legislation.

Mr. Marcel Laurendeau (St. Norbert): When you were speaking about the balancing of the rights, how do you balance the right of the biological parent with the adoptee? I did not quite hear that response.

Mr. Poyser: It was intentionally absent, and it was absent because we do not believe that this is the sort of situation where balancing is called for. I say that because we believe there is a clear right for an adult adoptee or a biological parent to have that information, to get beyond the secrecy, if they choose to. They should be in no different position than I would be if I wanted to make inquiries about my birth, no balancing involved.

Mr. Laurendeau: So, in this instance, then, if the child did not want to be found, the adult child, and the parent came looking, he should still have under your system the right to find that child, the adopted child?

* (21 10)

Mr. Poyser: I am going to defer on that question simply because the results of my focus have been in looking at the question primarily from the perspective of the adoptee.

Mr. Chairperson: Thank you very much for your presentation, Mr. Poyser.

I will call now the two names that were not here when I called them first. Rosella Dyck. Rosella Dyck, is she here? Not seeing her, her name will be dropped off the list. Dian Cameron. Dian Cameron? Not seeing her, her name will be dropped off the list.

That concludes the presentations, unless there are any other people who have since registered that I am not aware of. If there are any, would you please identify yourself? Seeing none, that concludes, then, the presentations on Bill 47.

We will next move to Bill 48, but prior to doing so, I would propose to the committee, if it is the will of the committee, to recess for five or 10 minutes to give us a bit of time to recoup our thoughts. Is it agreed? [agreed]

The committee recessed at 9:11 p.m.

After Recess

The committee resumed at 9:32 p.m.

Bill 48–The Child and Family Services Amendment and Consequential Amendments Act

Mr. Chairperson: Will the committee come to order. Bill 48, The Child and Family Services Amendment and Consequential Amendments Act.

The first presenter is Louise Malenfant. Would you come forward, please? You have a presentation to distribute?

Ms. Louise Malenfant (Parents Helping Parents): Yes, I do.

Mr. Chairperson: You may proceed.

Ms. Malenfant: Mr. Chairman, thank you, Mrs. Mitchelson and the other familiar faces around the table, it is good to see you again.

I have made a written submission, but I wonder, Mr. Chairman, I understand there is a 10-minute restriction, and it has been my experience in the number of times that I have made presentations that very often there are no questions, and I wondered if I could use the 15 minutes because I have something very important to say for the people who are here. Is there any objection?

Mr. Chairperson: I think that is acceptable, yes.

Ms. Malenfant: Okay. Ladies and gentlemen of the committee, my name is Louise Malenfant, and for the past two and a half years I have operated a family advocacy project known in the community as Parents Helping Parents. Basically, I assist families who are dealing with Child and Family Services or who are deprived of access through the divorce process. Often the two go hand in hand, as in Winnipeg CFS as many as 25 percent of all allegations arrive in the context of divorce.

I have spoken to the government regarding the problems in the child welfare system many times before, and it is usually my practice to provide a significant amount of research to substantiate the problems we have identified as we assist the families involved in the system. Today, however, I recognize that Bill 48 will be very difficult to change at this late stage, and so I have decided to speak from the heart in the hope that somehow the members of this committee will be moved to take a little more time to examine The Child and Family Services Act and ensure that we will all not have to return to this process again for many years to come.

I have been called the harshest critic of CFS, and I have worn that title like a badge of honour. To me it is a recognition of the commitment I have made to changing the child welfare system for the people of Manitoba. This critic, however, has some wonderful things to say about the new CFS. I am going to begin my comment on Bill 48 by noting some of the dramatic changes I have seen taking place in the child welfare system in the past year, for they have been nothing short of revolutionary.

In early 1996, the Minister of Family Services named Mr. Phil Goodman to the post of the director of child welfare. Not long after, Mr. David Langtry was named to the office of assistant deputy minister responsible for child welfare. What a team and what a difference these two men have made in the short time they have held these offices. If I may use a Hobbesian analogy to describe their impact on the system, I would say that Mr. Goodman has provided a new heart to the child welfare system pumping the blood of ideas throughout CFS in a dramatic and healthy way. Mr. Langtry provides the soul of the new child welfare mentality. With his thoughtful compassion, his refreshing honesty and hard-working commitment to change, Mr. Langtry has earned the admiration and respect of the family advocacy project right alongside Mr. Goodman.

What can I say about the Minister of Family Services Bonnie Mitchelson? Only that I credit her with the courage to address the long-standing problems of this portfolio with the fortitude to make the tough decisions which have been made over the past year and with the creative intelligence which has brought this revolutionary spirit of change to the child welfare system of Manitoba. In the eyes of this harsh critic, the Honourable Bonnie Mitchelson has achieved greatness as Minister of Family Services, and I reserve my highest respect and admiration for her and her accomplishments.

I am going to now, generally speaking, just summarize some of the points that I have made directly addressing Bill 48. I think the biggest point to make is addressing the problems of accountability and fairness. The report of the Child and Family Services review committee summarized the problem in the following way. From one end of the province to the other that repeated theme in child protection was that the mandated agencies were a force lacking in accountability to families and the communities they serve. The legal system which supports the apprehension of children at risk currently contains systemic impediments which sometimes work to the detriment of the children it serves.

Now we are going to take a look at Section 4(2)(d) which is basically stating that the director will "establish procedures to hear complaints under this Act." I would respectfully say that no matter how good the director is it is illegitimate for the director to simultaneously implement the act and at the same time to provide a complaint process to criticize the act. I believe that this is a problem with Bill 48. It is therefore illegitimate to invest his office with the responsibility of establishing complaint procedures to review the effectiveness of his own office. To do so abrogates the rules of natural law and invalidates the legitimacy of a review process.

On the positive side, we are very supportive of the increased powers provided to the director to investigate and review the conduct of the agency as articulated in

Sections 4(2)(a) through 4(2)(b.2). The following recommendations are made with respect to these matters: that an additional paragraph be added to this section to provide the director with the authority to make recommendations to CFS agency offices; and, further, that the director's office should be invested with the authority to enforce the implementation of recommendations. Provisions should be made to provide a direct appeal to the minister's office through the deputy minister where agency offices dispute the director's recommendations.

Let us put a little force behind the words. It is also recommended that the responsibility to establish complaint procedures be retained by the Minister of Family Services who should give serious consideration to the establishment of an external review process for CFS complaints. This will not only be fair and just but will be seen to be fair and just.

I did make some comment with respect to Section 8, the foster caregivers section. I am just going to read the recommendations because it is relevant to the review process: The technical expertise available on the Social Services Advisory Committee should be enhanced with new members familiar with the investigative methods and assessment procedures required for child abuse allegations.

Second recommendation: Families who initiate a complaint process should be entitled to a written decision of the conclusions made just as are provided to the foster care community.

Finally, the Social Services Advisory Committee should be enhanced to provide a legitimate third-party review process for all complaints regarding CFS practice, and this should include complaints made by families in the community.

Now, with respect to the legal process, one of the most common complaints that I hear from families is that there is no review of the agency's decisions until a matter reaches trial. I note that Bill 48 tries to address this problem with Section 29(1) on page 16 of Bill 48. While it is commendable that CFS would have to bring a matter to its first court appearance within seven days of apprehension rather than the current 21, this measure will do nothing to improve the fairness of the court process. It is not the length of time a matter is returnable that is the problem in the legal process. The problem is that no court proceeding prior to trial provides a judicial review of the CFS decision to apprehend a child.

* (2140)

My recommendation on this section, that an additional paragraph be drafted which will allow for the review of the circumstances of apprehension at the first appearance in court, known as the returnable date, when viva voce evidence can be provided by legal representation for both the agency and the accused. It is further recommended that application for access provisions, pending trial, should also be heard at this earliest proceeding, so that families do not feel they are being coerced into agreement by the deprivation of access to apprehended children.

With respect to Section 19, I think, at the risk of stating the obvious, Parents Helping Parents is highly impressed with this section. The only concern we have in this regard is that the child abuse committees that are going to be making the referrals to the Child Abuse Registry, Section 19(3) states the following: The committee shall, in the prescribed manner, give to the person who is suspected of child abuse an opportunity to provide information to it. "Of child abuse" is my own addition there. In the prescribed manner, I would just like to know who is prescribing the manner, where is it prescribed and when do we hear about this. That is what I would like to know about that section.

My recommendations on this section: The prescribed manner for the provision of information to child abuse committees must be more clearly spelled out in the act, and it is further suggested that the accused be given the opportunity to face the committee in person in order to provide an opportunity to the committee to question the accused on specific issues.

Secondly, an additional paragraph should provide for a waiting period before a matter is referred to the Child Abuse Registry so as to allow for a decision by the court in either criminal or family court proceedings. This will eliminate the duplication of legal fees

required to be paid by those accused of child abuse and further will respect the Legal Aid funding constraints for those who are represented by Legal Aid.

I am really very excited about 78(1) and 78(2), the new provisions for the ability of families and other people who care about children to apply for access. It is gorgeous; I love it. Section 75(1) and (2), you are merely amending the grammar there, but it is the secrecy of the CFS legal process that I object to. I recommend that public accountability for the family court requires the elimination of the secrecy laws.

Now, I am going to get to the most important issue for Parents Helping Parents, and I hope I will have the time to get through it. It should be noted by this committee that Parents Helping Parents views the subject of children being submitted to false allegations of abuse during divorce proceedings as its No. 1 priority. We have seen the horrible damage done to the falsely accused, and we have observed first-hand the damage imposed upon helpless children from this insidious problem. Eighty percent of all the cases examined by our organization have to do with allegations arising in divorce.

It is a shock to us that the Ministry of Family Services is refusing to deal with the impact of this problem in Manitoba. It has been acknowledged by Winnipeg CFS that as much as 25 percent of the allegations they investigate occur during the divorce process. Perhaps the greatest disappointment to us is that we have been advised by many people of authority within the child welfare system that this issue would be addressed in Bill 48. As well, in the documents preceding the implementation of the CFS act review, namely the consultation workbook, the Ministry of Family Services recognized the impact of a false allegation of abuse to the well-being of a child.

Manitoba CFS has serious investigative and training problems when it comes to child sexual abuse allegations. Even the competency-based training package recently implemented in the province will not address this problem. The sexual abuse training segments are based on a textbook published in 1981, a veritable eternity when analyzing the progress of assessment technology regarding sex abuse allegations.

The CFS act review panel all but ignored the issue when it dismissed the problem by saying families torn asunder by a false allegation were requesting a lesser quality of investigation. Set aside for a moment the profound ignorance of such a comment, for the fact is allegations in divorce require a more in-depth and higher standard of investigation with additional units of analysis taken into consideration.

All right, I am going to go over a couple of cases now. Can you please tell me the time, Mr. Chairman?

Mr. Chairperson: You are 11 minutes.

Ms. Malenfant: Okay. Number one, the case of T.B. versus C.B. involved the violent degradation of a four-year-old child who recounted stories of knives being thrust into her private parts, of pliers used to torment her, and of being held down by her father while being raped by her grandfather as her grandmother watched. These events were said to have occurred under the eyes of a paid professional supervisor. Today, the mother has succeeded in permanently depriving the paternal family in this case of access to the child. Still, this mother continues to bring her now 10-year-old child to psychologists, and the child continues to bring forward new tales of horror. No one protects this child from the continuing torment imposed by this mother. The mother was represented by Legal Aid, a further cost to society.

I refer to case No. 2, the case of D.W. versus D.W. This is a case that started in a Manitoba women's shelter at the onset of marital separation. Soon after, a four-year-old child was dragged into a nightmare when she accused three paternal family members of stabbing her in the vagina with a real knife. The case was clinically assessed where it was determined that the mother suffered from paranoid personality disorder. The paternal family was subsequently cleared of all allegations, but the mother continues to have custody of her three children. This mother is also represented by Legal Aid.

Case No. 4, the case of G.B. versus D.B. began with the allegation that the father was deliberately ignoring the medical well-being of his two children, aged five and seven years old today. For five years, the legal file shows a chronic pattern of alleging the children were

sick either before a visit or immediately following a visit, which succeeded in curtailing the father's access rights to the children. Recently obtained records from Manitoba Health showed that the mother had brought her children to the doctor a total of 345 times. The seven-year-old boy has had four surgeries and has also been brought to psychiatrists since the age of four for alleged violent aggressive behaviour. No secondary corroboration of illness or psychiatric disorder is present for these children. Yet, the mother continues to maintain custody of her two children, and she is also represented by Legal Aid.

Number seven, the case of D.M. versus C.M. started January 1997, where the mother alleged that the father had sexually abused a four-year-old daughter. CFS investigated and made no finding of abuse, and I might add that they did a textbook case of investigation here. But the lawyer for the mother continues to repeat the sexual allegations in affidavit materials, and the mother has brought the child to at least three psychologists in an attempt to verify the allegations in the past four months. It is anticipated this child will soon be making a sexual disclosure.

The case of J.P. versus C.P. began two years ago, No. 9, when a mother took herself and three children to a Winnipeg women's shelter. Within weeks, she had accused the father of raping and sodomizing his two-and-a-half-year-old daughter, though no physical evidence was present on examination. It was discovered that the mother began her allegation history as a young woman when CFS apprehended her due to claims that her father, sister and brother had sexually abused her. So many of these children go on to make a number of false allegations.

What all of these cases demonstrate in graphic detail is that parents who perpetrate false allegations on their children usually have underlying psychological problems. We recommend that an additional paragraph be added to Section 17(2) being the part of the CFS act which defines a child in need of protection. The act must stipulate that children who are submitted to false allegations of child abuse are in need of protection from the perpetrating parent. Attached as Appendix 1 is the wording of the law addressing false allegations in the United States of America.

As advocate for Parents Helping Parents, I cannot in good conscience allow the province of Manitoba to ignore the terrible toll extracted from the children who are used by disturbed parents to further their own selfish or psychiatrically disturbed ends. The proposed CFS legislation is silent on the plight of the children submitted to false allegations of abuse. I know that it will likely be another 10 years before the CFS act is again revisited for amendments and, in the meantime, children will continue to have their innocence destroyed by disturbed and unscrupulous parents and the legal and medical helpers who assist them in the destruction of children.

John F. Kennedy once said that an error is not a mistake until you choose to do nothing about it. I am not willing to make the mistake of allowing the practice of using false allegations to continue. For that reason, I hereby advise this legislative committee and the government of Manitoba that I am hereby embarking upon a hunger strike of bread and water for a period no shorter than 30 days in order to protest this government's inaction in protecting Manitoba's children from the scourge of false allegations in Manitoba. I am begging this committee to follow the advice of the Civil Justice Review Task Force and stop false allegations of child abuse in the province of Manitoba. If we allow this opportunity to pass us by, then the error we will make will haunt our collective conscience as the biggest mistake we have ever made. Let us all remember that the children of Manitoba cannot speak for themselves.

Mr. Chairperson: Thank you very much for your presentation.

I want to remind all people in the gallery that the rules that apply in the committee rooms are the same rules that apply in the House, and that is there will be no applause or disruptions allowed from the gallery. I ask, as kind consideration, that we abide by the rules that have been set, not by us but by our predecessors, and we as legislators ask the people to abide by those same rules we have to abide by. Thank you very much for that consideration.

I want to ask the indulgence of the committee if there is anybody who has comments. No? Okay. Thank you very much for your presentation then.

Ms. Malenfant: Thank you, Sir, for the opportunity.

* (2150)

Mr. Chairperson: I call next then Wayne Helgason. Wayne Helgason. Welcome, once again.

Mr. Wayne Helgason (Social Planning Council of Winnipeg): Thank you, Mr. Chair.

Mr. Chairperson: Do you have a presentation to distribute?

Mr. Helgason: Yes, I do.

Madam Minister, committee members, I appreciate the opportunity to address you here tonight and context my comments by saying that in the short time we have had to review the legislation–and I realize that the legislation is one mechanism by which changes can occur–and recognize that discussions with the minister and with departmental staff, we believe there is sufficient capacity to implement some of that about which this presentation speaks.

The Social Planning Council of Winnipeg appreciates the opportunity to address the proposed amendments in The Child and Family Services Act under Bill 48, The Child and Family Services Amendment and Consequential Amendments Act. We are concerned that the proposed changes fail to address sufficiently the very pressing issues at the heart of building stronger families and nurturing environments for children. The proposed legislation does not adequately, in our view, address issues of protecting children through strengthening families, issues of family poverty as a risk factor for child maltreatment, nor issues related to more appropriate interventions in aboriginal communities.

There must be more emphasis on a family-oriented system that attempts to prevent family crisis and to provide support to families in order to protect children. This approach necessarily involves issues of child poverty as it disrupts children's lives. Poverty increases family stress and it interferes with a family's ability to cope. With respect to aboriginal people, a commitment to aboriginal service delivery must be established in order to ensure that intervention is relevant and community based. It is within this context that the Social Planning Council submits the following presentation as SPC supports community based and preventative approaches in protecting children. The proposed legislation falls short of the announcement on July 25, 1996, by the Honourable Bonnie Mitchelson, quote: Manitoba Family Services would be embarking on a new direction to preserve and support Manitoba families.

In the document, Families First: New Directions for Strengthening the Partnership, the minister discusses the needed shift from moving children out of their families to building healthy and self-reliant families and nurturing environments for children. Families, therefore, need to be supported in their parenting and must have access to a full range of supports that may be necessary for maintaining children within their family of origin. The framework of family support services not specified within the existing legislation and the proposed legislation makes no improvement on this. Development of a statutory base for a range of services which agencies must offer is necessary in our view to implement the new direction as promised by the minister. The government of Manitoba should be obliged to ensure that all Child and Family Services agencies and facilities have adequate financial resources to provide these services.

There must be also a thrust towards community-based and preventative approaches in building stronger families. A family-oriented system must include opportunities for community-based organizations that have the capacity to support families which must, in turn, be supported. Community-based organizations, such as the Ma Mawi Wi Chi Itata Centre, the friendship centres of this province, seven Head Start programs, the Andrews Street Family Centre and the Broadway neighbourhood centre, are grassroots in their governance, and families and children from the communities are involved in significant and relevant ways; ways which enhance the strength of these families. Community-based organizations must be more significantly involved in the delivery of preventative services. So we recommend that The Child and Family Services Act be amended to require agencies to provide homemaker services, parent aid services, daycare accessibility or services, counselling services and access to recreational and respite services

in the home of the child unless removal from the home is essential to the child's safety.

On the issue of child poverty, in the document again, Families First: New Directions for Strengthening the Partnership, the minister points out that Manitoba is faced with an unacceptably high number of children in care. This is a situation we must strive to change. Addressing the issue of the number of children in care necessarily requires consideration of child poverty. Volpe in 1989, after reviewing the relevant literature, states that poverty debilitates families and can be a catalyst and intensifier of child maltreatment. The proposed legislation does not put in place measures to limit children coming into care. Further, the proposed legislation does not address the fact that children should not come into care due to the stresses of poverty.

Statutory requirements must be put into place to provide financial support to families to prevent children coming into care. Agencies should have a financial obligation to support families in their environments, and mechanisms must be in place to ensure that agencies are financially capable of doing so.

Section 15 of the act removes what may have been a financial determinant for families to place children in care through required parental payment. Removal of any financial incentive to place children in care should be achieved through income support to families which care for their children at home rather than by making parents and guardians pay for the costs of children in care. This is backwards and a punitive approach. The recommendation that we are asking you to consider is that The Child and Family Services Act be amended to require that agencies provide a range of financial support to families where financial stress is a factor in placing children at risk.

On the issue of aboriginal issues, despite some modest family support resources being available to the aboriginal community through the Ma Mawi Wi Chi Itata Centre established in 1984, the numbers of aboriginal children in care have continued to increase embarrassingly. Through directive 18 and then standard 421, I believe, the notification procedure has failed to produce the desired results. This, in large part, is due to the limited and inconsistent capacity of the reserve-based Child and Family authorities to address adequately the transfer requirements even when notification was complied with. For Metis children the situation is even worse as no authority currently exists to accept the transfer.

The Ma Mawi Wi Chi Itata Centre has matured over 13 years and will play an important role of family support. The newly created aboriginal health and wellness with a clearly defined mandate of family health will have an important bearing also. Additionally, the Indian and Metis Friendship Centre of Winnipeg is a valuable community resource with youth support capacity. The Aboriginal Council of Winnipeg could be involved in the consultation, design and delivery plan for a mandated, urban-based child and family service agency in Winnipeg.

The Social Planning Council could assist in this process along with First Nations and Metis authorities in developing a model, identifying the appropriate delivery mechanism and negotiating with Winnipeg Child and Family Services regarding transfer processes and resource allocation. We recommend that an urban-mandated agency, mandated child and family service delivery agency be established. We further recommend that inasmuch as the Metis are concerned that a provincial Metis working group be established to negotiate appropriate authorities in terms of child and family services for the Metis of Manitoba.

Families need to be supported so that they may support and nurture their children adequately. Supports to families, economic and social, must be lodged in the community and partnerships formed in relation to these supports. Community-based organizations have the capacity to support families and must in turn be recognized and supported in that role.

Furthermore, opportunities for community-based aboriginal organizations to take a more active role in the design and delivery of child and family services must be initiated at this time. The Aboriginal Council of Winnipeg is reaching an agreement with the federal and provincial governments on a tripartite process and, from the extensive community consultation on the issue of child and family services, has been identified as one of the four priorities. A follow-up process for further design and implementation is included within the

tripartite agreement. I have attached "further" because in a very real way, children in our view must be dealt with in a holistic context which includes issues of housing, issues of early childhood, issues of employment, support, training in the context of adequate family support.

So what I have included, but I will not go through, is this document Investing in Children, A Policy Framework, that is comprehensive in its nature. I give a lot of credit to the committee which worked on this, some notable people in Manitoba. We hope this is of significant use in establishing not only legislation but action plans within the department, regulations which will meet some of the policy objectives that we think will enhance the quality of life for children in this province.

That concludes my presentation, and if there are any questions, I would be more than happy to attempt to respond.

* (2200)

Mr. Chairperson: Thank you very much, Mr. Helgason, for your presentation.

Mr. Doug Martindale (Burrows): Mr. Chairperson, since the minister has been informal and calling people by their first names, I will adopt the same practice and ask Wayne first of all about recommendation No. 1 which I think is a good recommendation. I am a little surprised that it is included here because I would have assumed, wrongly perhaps, that this is already happening now. Is it your experience that this is not happening now and, therefore, that is why you are making it a recommendation to include in the legislation?

Mr. Helgason: Well, having actually been a mandated Child and Family Services worker myself, and I am advised the situation has not changed considerably, it seems as though the administrative structure by which the Child and Family Services operate provide all too easily for resources to be available when a child comes into care. I mean as a worker, it was difficult to bring resources of a preventative nature, certainly, or even in a crisis, into the home, whereas if I put the child in care, I could buy them a $200 tracksuit without anybody blinking an eye. I think the obligation or the stature of the importance of these kinds of services could be at the most senior or the most significant level, that is the legislation, identified as agencies not necessarily only having the discretion to provide this but in cases where this would be appropriate, being obligated to provide them.

Certainly, Child and Family Services have homemaker service, parent aid service, daycare, although the processes internally to access them are sometimes much more rigorous than placing the children in an institution or foster home.

Hon. Bonnie Mitchelson (Minister of Family Services): If I could just seek some clarification, because it is on the same point that I would like to ask him some questions. I guess my question would be, are you recommending that the money flow through the mandated agency or, in fact, would this recommendation mean–because I know that further on in your brief you talk about community and how community and community agencies know best how to deal in their neighbourhoods with the families that they deal with on a regular basis. So, I guess, my question would be, is it the mandated agency that you believe needs more resources or are you talking about community agencies that need more resource to serve the people in their neighbourhoods?

Mr. Helgason: I believe that the mandated agency has an overall responsibility. It is an agency established under the act that with appropriate governance and community involvement, those decisions would flow. There are examples at times of the mandated agencies negotiating and ensuring that community agencies receive support; they are limited. They could be expanded upon–I guess, I believe, the mandated agencies, whether they be an aboriginal agency that is established or the current one, should have some involvement in the directing of resources rather than–and perhaps should be involved in the further contracting for those resources. So, I do not know if I have answered you. Ultimately, in the final analysis, I believe that community supports are best done as close to the family as possible by people who see and understand the family in the context of their family life and their neighbourhood and their supports within the community much like Andrew Street, much like the

neighbourhood centre, and the mandated agency I do not think could be left out of that, but I think good leadership and community involvement may establish some outcomes in that regard.

Mrs. Mitchelson: Thank you, Wayne. I guess then just a follow-up question to that would be, do you believe that those community agencies that are working in their own neighbourhoods might have the ability to, in working with families, have the ability to prevent children from coming into care and, therefore, not need the resources that are available through the mandated agency?

Mr. Helgason: Yes, very much so and in the capacity to plan the family plan and to commit to a strengthened–as long as the community agencies know that that is what their responsibility is. There is not an assumption that it is done somewhere else.

Mr. Martindale: Regarding your recommendation No. 2, are you aware that an environmental scan of Winnipeg Child and Family Services was conducted I believe last year and they identified three factors that put children at risk of coming into care which were, being aboriginal, having a single parent and being poor. It seems to me that one of the three things that government can influence most directly is poverty. Do you believe that your recommendation would address that? Secondly, what is the best way to do it? It seems to me that we are really talking about thousands of families and that there are a number of different ways of approaching it.

You can either provide those resources through increased social allowance rates or by supporting children that are in contact with an agency or through community organizations like the ones that you identified in your brief. Which do you think is the best way to reduce the risk of children coming into care by addressing the problem of poverty?

Mr. Chairperson: Mr. Helgason, with a final response.

Mr. Helgason: I think the answer is probably more in addressing the policy document. It looks at a framework for family capacity. Recommendation No. 2, and I should explain, more or less suggests in many cases, because of poverty and the response on the part of a child and family worker, is not appropriate that resources be brought necessarily into the home.

As a Child and Family worker, I remember having to apprehend two children because the mother had not paid a $55 fine, was in the welfare office where a red flag goes up and I could not get $55, even by way of a loan, to avoid taking those two children into care. I thought what a good investment. She was willing–even to loan her the money to do something a little more creative to take those families over those times of stress. I mean, this can be looked at. We have the capacity to responsibly monitor the arrangement–it is not like a handout; it might be a negotiated arrangement, maybe the family would contribute back something in some way, if not materially or financially in response–but added capacity to recognize that we do have families in poverty. Those poverty circumstances are leading to hopelessness and despair and apprehensions and children in care. What is the most sad circumstance is that when a family, through those kind of accumulated circumstances, actually believes the child welfare system has more to offer than they do as parents. I think that is something we have to address across the spectrum of services and opportunities that all governments should attend to.

Mr. Chairperson: Ms. Cerilli, with one short question.

Ms. Marianne Cerilli (Radisson): Mr. Chairperson, to me, the two first recommendations are also about linking services, and, if nothing else, I would hope that these would go to the Children and Youth Secretariat that has a mandate for ensuring that services are going to be linked, particularly between Social Allowances and Child and Family Services. The question I wanted to ask you is related to the suggestion that financial stress is a factor in placing children at risk. I am wondering if you know if currently when Child and Family Services does an assessment on a family and they are looking at removing a child from the home, taking them into care, if financial stress and poverty are assessed, and currently, if you have information about how that is being done. Is that assessed as part of the assessment by Child and Family Services when they are going in to do an investigation and figure out how best to deal with problems in a family? To me, that would

be the start, to make sure that there is a mechanism in place for Child and Family Services to assess financial distress or poverty.

Mr. Helgason: Well, I know that the state of the financial circumstances of the family is considered, their access to further supports where required, whether it is for babysitters in the event of family difficulties, hospitalization or some other form of requirement for the parent to be out of the home, do they have access to resources, somebody to babysit, or would they have to pay to have an appropriate babysitter in place. I do not know that I can answer your question. I have not actually delivered–I have not inquired recently specifically about that, but certainly the financial circumstances are reviewed in relation to the family's sense of capacity, although I do not know that the agency currently has a mechanism to respond to it as well as they might.

* (2210)

Mr. Chairperson: Thank you very much for your presentation, Mr. Helgason.

I call next Alice Wright. Alice Wright. Come forward, please. Have you a presentation for distribution?

Ms. Alice Wright (Private Citizen): I have 15 copies.

Mr. Chairperson: Thank you. You may proceed.

Ms. Wright: My husband and I are the next generation of grandparents. My husband was born in 1940. I was born in 1950. Our grandchildren were born by parents who are not married, not living common-law or married; they are single. They live at home or they have their own apartment. In our case, my son and my husband and I have not seen our granddaughter, our first granddaughter from birth. She is six months old now. I do not know what the hell she looks like. Do you know what the hell I went through? My first grandchild–my son saw her at four months old.

Mr. Chairperson: I am going to just interject.

Ms. Wright: I am sorry for swearing, but I am angry.

Mr. Chairperson: Yes, but we have to watch–

Ms. Wright: I am sorry. All right.

Mr. Chairperson: –our p's and q's in this committee.

Ms. Wright: Fine, I am sorry.

Mr. Chairperson: I ask you for that consideration. Thank you.

Ms. Wright: Yes. The reason why we were denied access is because the social workers at all hospitals, maternity wards, tell this mother to put father unknown on the baby's birth certificate. That is the street term, father unknown. Legal term is not stated. This denies access until the father is finally told if he does not have a peace bond put on him while the mother is pregnant, to deny access to this child at delivery. This is what the mother did. At eight months she got a peace bond order on my son. I had to go to Transcona Child and Family Services to get a social worker, so he could be present at the delivery and in the nursery to hold his daughter. The mother was supposed to contact me or her family, because my son, through the courts, was not allowed to speak to her. She refused. She has, till this day, no intentions of letting us know. Also, she was born December 12, we found out Christmas Eve through a friend. There is a 19-day period.

I also found out through Women's Centre that the social workers who tell these mothers to put father unknown or not stated also tell them that they can place these babies for adoption. This mother had 19 days if she wanted to change her mind to put my granddaughter up for adoption, and I would not know it and neither would my son until we had gone to court April 10. And this is justice in our laws? We have gone to court–everything is on the mother's side because you know why? She has custody at birth. I want joint custody at birth, both father and mother.

These children, their rights have been abused at birth. It is bad enough when these children are abused with their rights and access to fathers and grandparents through a divorce or separation but denied right from birth, right when the umbilical cord is separated from a mother. They misused this DNA act in the maintenance to prove parentage. It is a loop so they

can go on welfare, because all these mothers go through a pregnancy test and an Rh factor is done at four months. In our case, the mother has Rh negative. She had to get injections to prevent a blue baby. My son is Rh positive, so she cannot say that she had sex with somebody else or whatever. This was proved at four months. This is why my son and her did not have to go for DNA testing and pay $900.

A lot of these fathers do not want to pay child support. The mothers will say, well, look, I want to go on welfare for six years. I will put father unknown, we will date, then shack up in low rental for six years. In between, they will have a second child or third child with another unknown father. Women who are 16 in senior high with day care, they know this unknown father law. They cannot get a job, they go and get pregnant so they can sit on welfare, because they have seen their friends do it over and over again. With the laws today, they look at all fathers as deadbeat fathers and the single mothers as, oh, poor little mothers. They abuse the system and they abuse their children in court.

The mother told the court and the judge she cannot leave the child because she is breastfeeding. The judge gave my son one hour because of that breastfeeding. Do you know what? She sits in the doughnut shop for two and a half hours with no baby. If she was concerned about breastfeeding–like I told the lawyer, that is abandonment. Mothers who breastfeed do not leave their babies. They even take them to work or they have their milk–I cannot even say the word–[interjection] Expressed, thank you, and put it in bottles. But she let this judge, because he is probably male, and my son's lawyer who is male, and they have no idea about breast milk or anything–he was only granted an hour. She is making a laughingstock of this system. This is what these young mothers do from the time they are 15 to adult. I want to see these mothers charged, fined, like for not denying access, mental cruelty of a child's right from birth and misuse of their child support payments. The mother is living at home; my son is paying $225. She gets over $200 baby allowance or family allowance, that is $600–well, $400 or whatever. She is living at home with her mother, her father, her brother. She is using my granddaughter's money to buy groceries for her father, her mother, her brother who is a teenager, and teenagers have kids, friends on the weekend. I want to see a child trust fund set up that fathers can put this income in a trust fund. Fathers spend a lot of money when they are visiting with their children on top of that.

In our case, there are two homes, the mother's home and the father's home, but the courts do not see it; the justice does not see it. I have to pay–you want to hear this?–$25 to see my granddaughter for a lousy hour. It is like an admission price, you know, to the Man and Nature Museum, the hand-and-fill thing, that is the slap in the face by your laws to me and my husband while the mother, scrap mother, is present at every one of these visits from April to now. She is the baby's pickup-and-delivery person appointed by the courts. She does not pay $25. She stays there for the whole hour and a half–as a grandmother. She does not leave the baby and come back after an hour and a half. She stays there, and I have to put up with that nonsense, because if I say anything, then they will say that we do not get along, and then I am denied permanent access until the court case of July 21.

In fact, you might have even heard me on Peter Warren's show. Do you know what her lawyer tried to pull? They tried to not only cancel my access to my granddaughter on our first visit–but my son. This is the lawyer. The lawyer tried to disobey a judge's order until my son's lawyer reminded her that this was a judge's order. She did the same thing on my son's first visit, her lawyer. She was waiting for papers with child support payments. He was supposed to see his daughter on a Tuesday. She said no until I got through to the judge, whoever was dealing with this case, and says, that father sees his daughter this Saturday–or, pardon me, Sunday.

* (2220)

This is what these mothers do and the laws. You know, they get away with it, because of this law, this father unknown or not stated on the birth certificate. The Vital Statistics Act, what it is, is mothers do not have to put the father's name on the birth certificate, meaning the baby's last name. Like the last name in my case could be Wright instead of the mother's maiden name. They go one step further and they eliminate the father. There is a form which they know is called joint form, which the mother knows before they go into hospital, but they ignore it, because it gives consent that

the baby has a last name, in the father's name. They know this joint form. They knew in our case, but to make sure that he was not at the labour room, because afterwards he was supposed to ask the nursery for these forms, the nursery nurses. She got a peace bond order with no medical evidence, no police record. Now, when I phoned Legal Aid about the charges for a peace bond, it was all physical abuse, not just getting angry and saying–walking into their home and looking into the baby's bedroom to see what he needed to buy, and the grandmother called the police and he got a peace bond the next day.

Mr. Chairperson: Your 10 minutes are–

Ms. Wright: Fine. Any questions? Also, I want grandparents stated in every aspect of child health, education and protection. I have glaucoma. Did you know that she could have been born blind? I tried phoning the obstetrician, and you know what I got? Patient confidentiality.

I said to them, that baby has to be examined right at birth by an eye specialist to make sure she does not have glaucoma pressures. It cannot be detected by just an ordinary doctor. They do not have the equipment. You know what I got? I am sorry, Mrs. Wright, I am not a baby doctor.

Mr. Martindale: I would like to ask the presenter if she is aware that The Child and Family Services Act is being amended by this bill to allow for grandparents and other family members to apply for access. We have an extra copy of the bill, and we have highlighted the section. We will give it to you right now. Since we have pointed it out to you, do you think that this would be helpful in your situation? Would you make use of this new provision to go to court?

Ms. Wright: Yes, it would, but I want to go one step further–

Mr. Chairperson: Ms. Wright, I am sorry, I am going to ask you to wait for me to recognize you so that Hansard can properly record who is responding.

Ms. Wright: Oh, sorry. This will help 100 percent for us grandparents to get access to our grandchildren, but I would like to go one step further. I want grandparents noted in health and education, not just access, because we are the closest to these grandchildren next to their parents. We are used as babysitters and God knows what else, and in my case, I want to know how my granddaughter is doing with the glaucoma because she could go blind even up to a year if not checked, and if I phone the doctor, they will not give me this information. They will give me again, patient confidentiality, until she goes blind, and then I can sue the mother for damages.

Even in family law, the word "grandparents" has to be stated, because the judges look at this and the lawyers. You lump us under "others," it could be the milkman, the breadman or whatever or her boss and all her friends and family. They have seen this child; I have not. She is six months old. I have not hugged her or kissed her. Do you know what that is like? How many of you have single sons who have been dating? In my situation, they were dating for a year; they were going to be married this year. But the relationship went sour, because my son did not want his daughter being raised with an alcoholic grandfather, so they just continued fighting until they broke up.

But these mothers use, like I said, the harassment law, the peace bond, to deny access, not only to the father but to me. When I phoned to see our granddaughter right after birth, she said she would get a peace bond on me the next time I called. I have seen her twice at Robin's Donuts. I cannot even go up to her and say, how is my granddaughter, because she will go in the phone booth and phone the police and get a peace bond on me, because they hand them out in the law courts like a deck of cards or greeting cards without any victims or medical proof, and you have to spend $3,000, because that is how much it cost my son for lawyer's fees for that case, to prove that there is no just cause for a peace bond.

Then you get to court and it has been remanded four times because they ran out of time, or his name was not placed on the docket, which happened to my son, and he just could not afford it. He said, the heck with it; I am agreeing with it. Three times it has been remanded, the peace bond, because of delays in the court system. They run out of time, and the last time the court forgot to even put it on the docket, but they do not realize you

have to pay a thousand dollars every time you go to court. I have to lend him money to pay his lawyer's fee.

As I say, if grandparents were stated on everything from education, health and protection, the word "grandparent" or "grandparents," because there are also grandparents who are widowed and have just the one.

Thank you very much.

Mr. Chairperson: Thank you very much for your presentation.

I call next Rosella Dyck. Rosella Dyck. Seeing her not, I call Dave Waters.

Mr. Waters, have you a presentation for distribution? You may proceed.

Mr. Dave Waters (Winnipeg Child and Family Services): Thank you, Mr. Chairperson, and members of the committee. I will be very brief. Although I consulted with our lawyers for the agency, we are still able to be brief, and that is unusual.

There are a few technical points that our legal counsel recommends be referred to Legislative Counsel for further review. They are in the report before you underlined under definition of court, Powers of the director, Licence required for foster home, Appeal to Social Services Advisory Committee, Access by agencies, and Application to remove name from registry. They are more technical in nature, and perhaps what is written there would be sufficient for you.

Other than that, I would like to make comment on–read comment actually, on a couple of sections very quickly. One is your Section 6(1) amending Section 15(2) of The Child and Family Services Act, Financial information and maintenance agreement. The existing Section 38(3) requires parents to pay to the agency all or part of the costs incurred by the agency. The onus is on the agency to seek the financial information required from the parents and then to apply to the courts for an order of financial contribution.

The section was followed by directions from the director of Child and Family Services that we were to require contributions and were to request financial information as appropriate. The agency acknowledged that these sections were appropriate and that they were used with some measure of discretion.

The new Section 15(2) takes away all forms of discretion, makes the order for financial contributions mandatory and makes the filing and service of financial information, as well, mandatory.

These sections do not take into account the actual nature of the services provided by Child and Family Services. The agency found, in dealing with the existing section, that the requirement for financial information and financial contributions was not realistic and that the amount of money that was ever recovered by the agency through the most dutiful application of the existing sections was negligible, continues to be and failed even to recoup the costs that the agency was required to put into the program in order to obtain the financial information.

Virtually all the Child and Family Services cases are defended by lawyers on Legal Aid certificates. This means that the parents are sufficiently indigent to be able to qualify through Legal Aid financial guidelines. Further, the reality is that most Child and Family Services apprehensions take place in the inner city. Possibly 80 to 90 percent of parents whose children are apprehended have no sources of income other than social services.

The amendment to Section 15(2) will do nothing more than to make an existing system more cumbersome, in our opinion, and will contribute to the workload of agency staff to ensure that financial information is filed and reviewed and that it is brought to the court's attention when such information is not forthcoming.

It is anticipated by the agency that the new amendments will be no more effective in having parents pay for the cost of their children in care than do the existing sections and that these sections of the act will create nothing but an administrative snarl of red tape.

* (2230)

The second section, briefly, is with regard to Section 8(2) amending Section 18.4(2) of The Child and Family Services Act: Report of conclusion with regard to investigation of child in need of protection. The new wording amends the current section by deleting several words as follows: "Subject to subsection (3)," and the words are: where an agency concludes after an investigation under subsection (1) that a child is in need of protection, the agency shall report its conclusions. In other words, whatever those conclusions are, negative or positive. The implication here is that the agency is required to report those results where the findings are either.

Again, the rationale is understood, but in the case of an allegation which proves to be invalid, the effect of this particular wording could be, for example, that an employer who may have heard nothing of this allegation will end up being told that an investigation of an employee has been undertaken, but the results were negative. Some employers will, of course, treat this information in an appropriate manner, but it could lead to further persecution of an innocent person. One way of dealing with this would be to amend 18.4(2) by moving subsection (d) to the end of the section and adding: where appropriate, immediately before the newly placed subsection.

The third section we just wish to comment briefly on are Sections 16 and 17, our Sections 16 and 17, amending Sections 29(1) and 30(1) of The Child and Family Services Act. These are applications for protection hearings four days after apprehension. Section 29(1) reduces the returnable date of seven days from 30 and provides in Section 30 (1), that the agency is to provide particulars of the reasons for apprehension when the notice is served.

The agencies see these amendments are laudable amendments, and that they are intended to speed up the court process and to decrease the number of days that children remain in care. On the other hand, the agency would point out that these amendments will be implemented at substantial cost, which cost will be ultimately borne by the government.

With respect to the service of documents, it will mean that agencies will not be able to have social workers serve these documents and that they will have to resort to private process serving on a standardized basis. This is both good and bad. The agency has always taken the position that it is not desirable to have bailiffs or sheriff's officers serve petitions relating to the best interests of children. The agency has also thought it best we have social workers, who are dealing with the parents on a regular basis, serve the petition, be able to at the same time discuss with the parents how best to resolve the issues with the agency and how best to have their children returned to them.

These services of documents often take place within a week or two of the apprehension when the parents contact the agency and make arrangements to see their children who are at that time in care. The new amendments would provide that this sort of informal arrangement for the service of documents would no longer be appropriate and that in all cases parents receive a knock on the door and be provided with a copy of documents related to an appearance in court. The requirement that particulars be provided to the parents and other parties at the same time as documents are served will place an onerous task upon social workers involved. Social workers in the inner city in particular are overwhelmed by the caseloads which they presently handle.

If a social worker is to have to provide particulars in every case in which an apprehension takes place, it may require the social worker to spend two or three hours extra per case providing paperwork. The front-line worker, busy in his busy inner city office, may conduct as many as five to 10 apprehensions a week. If these social workers are required on an immediate basis to provide particulars to parents, then the agency will require additional staff and cost to the additional staff will be significant.

Of further note is that in the majority of these cases, particulars are never sought by the parents or their counsel. Parents are often fully aware of the reasons for apprehension, either through discussion with the social worker or because of the nature of the apprehension. In most cases, the parents will either consent to an order on the first or second court appearance or the children will return to the parents without the necessity of even the request that formal particulars be provided. It is questionable, therefore, that the requirement for formal particulars at an early

stage of the proceedings will improve the parents' access to information or will speed up the system in any appreciable form. The agency would respectfully suggest that it would be preferable for the agency to provide particulars upon request of either the parents or their counsel and to provide these particulars within the seven days.

Mr. Chairperson: Thank you very much, Mr. Waters.

Mr. Martindale: Thank you, Mr. Waters, for your presentation. I wish I had more time for questions; however, we have been limited by the government majority here in asking questions. We voted against that time limitation, but we are in the minority here.

I would like to ask a couple of questions regarding the last page of your brief about having to provide particulars. I have talked to front-line staff who identified exactly the same concern that you have identified, and given the high caseload, especially in protection caseloads, and the extra time that this is going to require, do you anticipate that workers would be putting in overtime as a result of this amendment?

Mr. Waters: No, I am presuming that the eminent minister seated at the end of the table will make the resources available to us to ensure that we do the fine job that we are doing now.

Mr. Martindale: Well, I like that suggestion, but do you think there is any hope that the government would implement it?

Mr. Waters: I will let you answer your own question. I have no comment on that.

Ms. Cerilli: I wonder if you can explain to me, Mr. Waters, the implications in the first recommendation that you have about the definition of court.

Mr. Waters: I cannot, frankly. I think I would defer to our lawyers, one of whom could have been here today, but I did not expect that kind of question. I would assume that those that are lawyers here would be able to answer the question. If they cannot, then I will ask Norm Cuddy to call him this evening or tomorrow morning.

Ms. Cerilli: Maybe we can ask that question when we are dealing with the clause by clause with the minister.

The other thing I wanted to ask is–we have a lot of lawyers across the table, but I will carry on with my next question. You have an interesting statistic here, amazing that possibly 80 to 90 percent of the parents whose children are apprehended have no source of income other than social services' social allowance. I am wondering if you agree with the recommendations from one of the previous presenters that you heard from Social Planning Council regarding poverty, and if the fee-for-service approach here for Child and Family Services is not going to, rather than have CFS try to deal with the implications and deal with poverty–that it is going to help create poverty.

Mr. Waters: If you are asking whether there would be a big push on to drain money–I am sure you are not–out of the poor in this case, I do not think so. I think it is a lot of statute for dealing with very few people that we would be dealing with, frankly, and our success rate with getting what we think is required according to the current legislation is not very high. So we do not see why this legislation change would make it any higher.

Mr. Martindale: I would also like to comment on the amendment which requires agencies to go after parents for support. Surely, the government must know that many of the parents, most of the parents, a vast majority of parents cannot afford to pay. So why would the government be bringing in this amendment?

Mr. Waters: You are asking the wrong person again.

Mr. Martindale: I will certainly ask the minister when we do clause by clause. One of the front-line workers also suggested that this is going to further hinder the relationship between workers and their clients, because already they are in a difficult situation because a worker will have to tell a family that their children are being apprehended, and then they will have to inform them about the requirement for all the financial information and the requirement to pay. Surely workers do not need this additional burden, do they?

Mr. Waters: That I can answer, and the answer would be very clearly, no, we do not need that extra burden. I think we are already relatively unpopular moving into

a situation like that, and we need very much to deal with the issues at hand which are not financial issues of this kind but service issues and family support issues and all the rest of those child protection issues.

* (2240)

Mr. Chairperson: Thank you very much for your presentation, Mr. Waters.

I call next Luis Coelho. This does not look like Luis.

Ms. Mallory Neuman (Canadian Union of Public Employees Local 2153): No, I am not Luis. I am Mallory Neuman.

Mr. Chairperson: Mallory Neuman, have you a presentation for distribution?

Ms. Neuman: Yes, I do.

Mr. Chairperson: Thank you very much. You may proceed.

Ms. Neuman: I am also here with Luis Coelho on behalf of CUPE Local 2153, the union representing Child and Family Services workers in the city of Winnipeg.

My presentation will be very brief this evening. I want to say, first off, that I really agree with and endorse the recommendations brought forward earlier by Mr. Helgason on behalf of the Social Planning Council.

I am here today to speak briefly to this committee on behalf of CUPE Local 2153, regarding some of the proposed changes to The Child and Family Services Act that followed the recommendations from the report of the review committee. I will be brief.

My union represents over 400 front-line workers, including social workers and support staff in the city of Winnipeg and some surrounding rural areas. I believe that all of the staff within this agency work at all times with the best interests of children and families in mind. We feel that some of the changes recommended in Bill 48 will do little to put families first.

In the interests of brevity and continuity, I will respond to each of the suggested changes in turn as they were brought up in the recommendations. Subsections 29, 30 and 32, dealing with amendments reducing time frames for court hearings, notice and the filing of particulars in cases of apprehensions in and of themselves are matters which would, if realistic, expedite the dispensation of the case and allow for earlier decisions to be made regarding planning for children. However, these changes are unrealistic for workers to carry through unless accompanying changes are made to the size of their caseload and the supports available to caseworkers. At the time of apprehension, the crisis that the family is undergoing should be the first priority of the worker, and the worker should be able to ensure that the family gets through the court process as quickly as possible. However, too often there are several other crises occurring at the same time with several other families, and time must be allocated sparingly.

In rural areas, there are these considerations and more. For example, where there is less access to the court system, the already underresourced child welfare system would be expected to spend more of its dollars in increased legal fees.

In addition, recommendation No. 2.4, regarding the development of a judicial process that will help eliminate the adversarial system would be a welcome change for many workers, again providing the proper and appropriate resources are allocated to put these changes into place. The suggestion that courts require parents to contribute to the cost of care of children will require instituting yet another layer of bureaucracy and is a measure that is unnecessarily punitive. Parents already pay through the redirection of child tax credit and the removal of other tax deductions. Many parents lose their subsidized housing when children come into care and must start all over again in order to rebuild their family. Testing parents by taking away further income will only serve to increase adversarial relationships.

I urge this committee to not follow the mistake recently made by British Columbia by putting into place legislated changes without the appropriate resources that would enable workers to follow them through. To do so would be to overload an already

taxed system and to demand that workers within that system do the impossible.

Regarding the proposed changes to the sections dealing with the Child Abuse Registry, it cannot be stated strongly enough that under no circumstance is family conferencing, mediation or other alternative dispute legislation an appropriate measure to deal with child abuse allegations. It is never appropriate for a child to have to face her or his abuser. Further, there is considerable concern that the Child Abuse Registry committees, which are made up of community-based volunteers, will quickly be unable to function if residents are expected to have to face the abuser or the alleged abuser at committee.

A great deal of information was presented to the committee and the recommended changes fall far short of expectations. Where the government is truly interested in putting families first, they would have considered changes to the act that, for example, limit caseloads for workers in the system. They may have considered reinstating adequate funding for foster parents and foster parent support so that children do not have to spend time in hotel rooms, or they may have considered enhancement of true community-based, prevention-oriented services that allow child welfare to help families before they get to crisis situations. The current proposed changes are, unfortunately, too little. It is not too late, however, to introduce adequate changes. Thank you, and I will answer any questions now.

Mr. Chairperson: Thank you very much for your presentation.

Mr. Martindale: Thank you, Mallory, for a very good presentation. There do seem to be some themes emerging whereby a number of presenters have shared the same concerns. It was suggested to me that one of the advantages of subsections 29, 30, and 32 is that it is better for parents if they know as soon as possible what the agency's plans are for a child. However, you have indicated that these changes are unrealistic for workers. I am wondering if we can make some sort of separation between the legislative changes and what I see as a workload issue. For example, if the government were to provide more resources, namely, more front-line staff so that you could write the kind of detailed placement plans that are required, you could live with this amendment. What would your response be to that suggestion?

Ms. Neuman: Certainly, I think, like I said, the amendment in itself would help expedite the whole process, and I think there are a few workers that would argue with that being a good thing. However, the nightmare, the concept of having to deal with the paperwork and just all of the work involved in actually getting to court that early would mean that the rest of the caseload would have to suffer. As things stand now, there are just not enough resources in the system to allow workers to respond that quickly, particularly, as Mr. Waters said, when often there are five cases at a time that are happening like that where you have to be responding in such a way, plus dealing with the rest of your caseload as well.

Mr. Martindale: How many cases does an average protection worker have currently?

Ms. Neuman: I am not sure what the numbers are now. I think they are probably somewhere between 30 and 50.

Mr. Martindale: Is it possible that because a worker might be tied up doing paperwork, another child or children might be left at risk?

Ms. Neuman: I cannot begin to speculate on that.

Mr. Martindale: It strikes me as rather odd that this government would be requiring a new requirement in this act, namely that parents contribute towards the cost of the children, which, as you say, adds a layer of bureaucracy. Does it not strike you as rather strange that in this amendment we have an increased administrative cost, which staff are now telling us is unworkable and they will not be able to collect the money anyway?

Ms. Neuman: Well, yes, I think it is a little odd as well, but–

Mr. Martindale: We, too, have concerns about the family conferencing mediation or other alternative dispute legislation. Certainly, we will have a chance to

ask the minister detailed questions about that, but do you have any idea of why that is even being considered at the child abuse committee stage?

Ms. Neuman: At the child abuse committee stage, no, I do not. I think that the family conferencing is certainly a good intervention at appropriate times; I am not sure that this is an appropriate time.

Ms. Cerilli: I would also like to ask a few questions–and thanks for your presentation–with respect to the new requirements for quicker reports and turnover in terms of cases.

I am wondering two things. You are representing CUPE, so I am wondering if you have had a chance to look at what increase in resources will be necessary so that workers can comply with these recommendations, and the second thing is, if you do not because you simply cannot because you have such a high caseload, then what happens? What are the consequences? What is going to happen?

* (2250)

Ms. Neuman: Well, frankly, we have not had much of a chance to figure out or to try to cost out what that would look like in terms of the extra resources that would be needed because we have not had much time to respond to this. However, I think that the consequences of trying to put into place something like this without adding the proper resources, without looking at some of the workload issues as well, will probably mean that the system will get backed up even more than it tends to be now, and I am afraid that more children will end up falling through the cracks.

Mr. Gary Kowalski (The Maples): Just one brief question. You mention a cautionary note about not to allow what happened in British Columbia when legislation was passed without the necessary resources. I am sorry, I am not familiar. What happened in B.C.? What was the result when legislation was put forward without the needed resources being in place?

Ms. Neuman: Essentially, legislation was put in place that turned over a lot more responsibilities to workers within the system, and while some of the resources were increased, they were not increased to the point where the workers were still able to deal with all of the added responsibilities. Essentially what happened is that there are more kids falling through the cracks. There are more families who are in serious trouble, the caseloads have just skyrocketed, workers are essentially burning out, and they are saying they cannot handle it anymore.

Mrs. Mitchelson: I want to thank Ms. Neuman for her presentation.

Specifically, I want to make mention of the bold type on page 2 that says: "It is never appropriate for a child to have to face her or his abuser." I think I want to clarify, as I tried to do in the Legislature today when questions were asked, that it is certainly not this government's intention to have the abused face an abuser at any level in the process that is being changed under the legislation. At the local committee level, there is not an intention by this government to place the abuser and the abused face to face. That is not the intent, and that will not happen under this legislation.

I also want to indicate that, through the court process, the change from the Child Abuse Registry Review Committee to the court process, there is no intention to have the child be subjected to any form of additional pain or hurt as a result of that process.

I want to agree wholeheartedly with the comment in bold that is in your presentation and indicate that the family conferencing and the family mediation that we are talking about at the local level is a tool for that abuse committee to use in the case of custody disputes, as an example, where you have two parents who are using a child in allegations of abuse of a child to further their own individual purposes through divorce or separation. That is not in the best interest of the child, and if, in fact, the local abuse committee was to make a recommendation that that family go for some counselling, for some mediation, to try to ensure that they understand that the child's interests come first and that they are not furthering the interests of that child by creating those allegations of abuse that might be unfounded and if the local committee determines that that kind of process is needed for a family, that tool would be used in the best interests of the child.

So I just wanted to clarify that because there seems to be some misunderstanding of what the new process will mean. Thanks.

Mr. Chairperson: Thank you very much for your presentation, Ms. Neuman.

I call next Tamsin Collings. Again, welcome. You may proceed with your presentation.

Ms. Tamsin Collings (Private Citizen): Thank you for the opportunity to present to this committee and express my views on the proposed legislation, Bill 48. As a social worker with Winnipeg Child and Family Services, Central area, I am deeply concerned about the impact of several of the proposals in my day-to-day struggle to meet the needs of children and families in crisis. Specific areas I wish to address are the proposed changes to the child abuse committee; the issue of payment by parents for children in the care of the agency; proposed reporting of the investigation results, whether or not there is a finding of abuse, to the school of a child and the employer of the alleged offender; the issue of access to children in care by extended family; and proposed change to require that an application by the agency is returnable with full particulars in seven juridical days of being filed.

Bill 48 would require a specific number of changes of the child abuse committee. It states that all alleged offenders should be advised of their case being discussed at committee and be given the opportunity to provide further information. This proposal does not take into account that this committee reviews all allegations, whether substantiated or not, and would thereby require that alleged offenders are invited to present to the child abuse committee even if the allegation is being determined as either unsubstantiated or unfounded in an investigation. The legislation seems to also be unaware that alleged offenders have already been interviewed by either the agency or the police in the process of an investigation. Allowing them an additional opportunity to express their side of an investigation when we are not providing the same to victims seems like an unfair power imbalance in favour of the alleged offender. It should also be noted that referring cases for abuse for mediation is entirely inappropriate and further victimizes children. You cannot negotiate with a child regarding how much they were abused nor expect to have a fair process between a small child and an alleged offender who is said to have harmed that child.

I am extremely concerned about the proposal to repeal Section 19.4(c) which allows for the registration of an alleged offender where the child abuse committee is of the opinion that the person has abused a child and resorting to merely the registration of those who have been found guilty of this in court. Let me give two case examples where this would present problems in moving the standard of registration from the balance of probabilities to that of beyond a reasonable doubt.

The first example is a child who presents at the office having been severely beaten, bleeding from an assault. The child clearly states the assault was by their parent. The parent was interviewed and acknowledged having assaulted the child, claiming the child had deserved it. Unfortunately, by the time police were able to interview the child, the child was now worried their parent would not love them if they got them into trouble with the police and would not make a statement to the police. Because of this, the parent was never charged; however, there is no doubt that this child was assaulted by this parent and that this parent presented a risk to children. Under the proposed changes, this parent would not be able to be placed on the registry and would be able to apply to work in a daycare, in a school, or in any other setting that provided them unsupervised access to children.

A further case example is a common one for our agency. A young child without language is found to have injuries that a medical examination has determined were nonaccidental. The child is not able to make a disclosure because of their age, and the parent denies having harmed the child or having left the child in the care of someone else. In this case, should medical information warrant, I strongly feel that this parent should be put on the Child Abuse Registry. Not to do so would be to allow other children to be at risk; however, because of the age of the child and the likely lack of a witness, criminal charges are extremely unlikely to be laid against the parent. The proposed changes to the act would not allow for this parent to be registered. Bill 48 would instead end up protecting the offenders and placing further children at risk.

Included in Bill 48 is a proposal to have parents responsible for financial contributions to the cost of their children being in care, whether under a VPA or an order of guardianship. A lengthy process is outlined in the bill. I am curious as to who would pursue this process. Given the high caseload of workers, I hope this move is accompanied by an offer of additional staff to undertake these responsibilities. I also wish to note that this pursuit of parents for money will further antagonize what is already a confrontative system.

Section 18.4(2) of the proposed legislation states that the outcomes of an investigation, regardless of whether or not that investigation finds a person to have abused a child, be given to a number of people. Some of these people should indeed know the outcome, but advising the place of employment of an alleged defender of the investigation when the investigation has concluded that the allegations are unsubstantiated is a severe infringement on the privacy of people and could lead to a negative impact on those people's work life. This reporting would appear to be in contradiction to the direction implied by the proposed changes to the child abuse committee. I am also concerned about breaching the right to confidentiality of a child by advising their school of an allegation that was found to be unsubstantiated.

* (2300)

Section 78(1) expands the access of children in care to include members of their extended family. I wish to advise the committee that where the extended family member is seen as having a significant relationship with the child, this is already taking place in day-to-day practice. However, it is important that this committee seriously consider the practical implications of this change. Many children in care are already being transported to the agency office two or more times a week for access with birth parents. To transport them several more times for access to other extended family would mean a severe disruption to their school life, to their ability to attach to and feel comfortable with their placement and could negatively impact the child. It should also be noted that a great many of the parents we work with have strange relationships with their own family of origin. We do not as social workers within the child welfare system have the time nor resources to address this issue in depth in a thorough way. Families must be responsible for addressing their own interpersonal issues that do not involve child protection concerns outside of our agency. Until they have done so, it is not the place of our agency to determine which extended family have access to which children. There is also the issue of underresourcing for people to transport the children to the office for such visits and others to facilitate same that are in no way addressed in this legislation.

My final concern is regarding Section 29(1) which proposes making an agency application returnable to court with full particulars within seven juridical days of being filed. Despite the numerous attempts of workers within the agency to make this government aware of the severe issue of underresourcing, this has never been addressed. I, myself, have had caseloads of over 50, while I have had colleagues who have had caseloads in excess of 60. This while the recommended caseload by the Child Welfare League of America is 14 to 16. I would like to know who will meet the needs of the other 49 cases while the worker is preparing full particulars on a file and frantically attempting to find all parties that need to be served for court. I would like to know who will be set up to cover for emergencies and the needs of families in crisis when large numbers of agency workers are forced to appear at dockets any potential day of the week with no backup system for the other children in need.

Let me assure you that the vast majority of social workers would be happy to be present in court to justify an apprehension before the current 30 days. However, to expect this to be able to happen with full particulars and a case plan within seven days is unrealistic. Many times I have been unable to locate parents for over a week because they are either so dysfunctional they are not maintaining a residence or are so depressed that they are hiding from our agency. It is important to remember that when children are apprehended, it is because their families are in crisis. It is also important to remember that the apprehension of children, while sometimes necessary, can push parents further into crisis. In light of this, parents rarely present at their most capable immediately after their children have come into care. Should we be forced to make a case plan during this period of time while the parent is still in crisis, the assessment and prognosis would often appear worse than it may after the parents could have

been able to seek other supports. Assessments would be based on very limited information and could unfairly negatively impact families. It would make much more sense to establish a system like that in other countries such as Scotland where there is an immediate show-cause hearing to review the circumstances of the apprehension, and if the apprehension is ruled as warranted, to set another court date in three to four weeks for a full assessment and case plan to be developed.

As I have detailed above, I have a number of concerns about several sections of the proposed legislation and their negative impact on the service given to children in need of protection and their families. The specific concerns I have expressed relate to the proposed changes to the child abuse committee, the move to a process requiring financial contributions of parents when their children are in agency care, the reporting of investigation outcomes to the employer of an alleged offender and to the school of an alleged victim where the allegation was found to be unsubstantiated, the increasing of access to extended family to children in care and making the agency application to courts returnable with full particulars within seven juridical days of being filed.

I am very worried that most of these changes seem to have been made without considering the realities of the day-to-day work that occurs within the agency or the needs of the children and families with whom we work. I very much hope that this committee will consider the points I have raised and consider amending this legislation. Should these sections not be changed, I am very worried about their impact on the service our clients are entitled to receive.

Thank you.

Mr. Chairperson: Thank you very much for your presentation, Ms. Collings.

Mr. Martindale: Thank you very much, Tamsin, for an excellent presentation. I think it is very helpful to the committee to hear presentations from front-line workers, as it is to hear presentations from parents and agencies and other people who are interested in children.

I share many of your concerns. The first one I would like to comment on is the change in the process basically getting rid of the Child Abuse Registry committee. It was explained to me that one of the advantages of the existing process is that the people who are appointed by the minister to the Child Abuse Registry committee have either experience or training or understanding in child development and that when we go to court–well, let me rephrase that. Because this bill removes the Child Abuse Registry committee and puts in place a new process, which I think means that many more alleged abusers are going to go immediately to court, what I fear will result is that we will have lawyers arguing against lawyers in front of a judge who is also a former lawyer and that is going to change the whole nature of the whole process. I wondering if you share that concern.

Ms. Collings: I guess one of my main concerns would be again related to when I was talking about the shift from the "balance of probabilities" to the "beyond a reasonable doubt" which is certainly the feeling I have from taking out Section (c), that putting it within a court process certainly would again place further emphasis on that.

Mr. Martindale: So even though the legislation says "balance of probabilities," you are concerned that once it gets into the Court of Queen's Bench and we have lawyers fighting with lawyers, that it will end up being "beyond a reasonable doubt." Is that correct?

Ms. Collings: Yes. I am concerned about that but also that it is set up in that way by repealing Section 19.4(c) from the original act, which allowed for registration when the child abuse committee was of the opinion that the person had abused a child, and making that it was only based then on whether it had been proved in some kind of court process, either through family court or through criminal charges, that those are the only two ways that are left that would justify registration.

Ms. Cerilli: Thank you for your presentation. You have done a good job of clearly demonstrating the problems with a number of different parts of the bill.

This government has had a real problem with the high number of children in the province in care and the large number that are currently being housed in hotels.

I am wondering if you think that any of the provisions in this legislation are going to reduce the number of kids in hotels or reduce the number of kids being brought into care, particularly if they are kids that should be brought into care.

Ms. Collings: I would fear that it does not. There is certainly nothing that I have seen in it that would address the need for foster homes to have more supports, for there to be more work in developing more placements. I guess it would not necessarily come under this act, but I certainly have not heard of an intention to be providing greater funding to foster homes. We have an increasing number of children in care with very specialized needs, and there is a real lack of resources to meet those needs. That makes it very hard for foster families to take on those extra duties in their life.

Mr. Martindale: Since we have had a number of presenters tonight, it means that we are getting more information, and I would say more shocking information. I believe that you are involved in child protection, is that right?

Ms. Collings: Yes.

Mr. Martindale: You say you have a caseload of over 50 and some of your colleagues have a caseload of over 60. Do you believe that because of the requirements in the new legislation, you may end up working on a detailed placement plan, and as a result, some of your other numerous families and their children will be left at risk?

Ms. Collings: I guess I see sort of two ways that it may happen. It may either happen that way or that not enough time is put into the assessment that families deserve when we are going through a court process because I will be struggling to meet the needs of the other families that I am working with.

* (2310)

Mr. Martindale: Are you concerned that because of a lack of time and ability to keep in touch with families that a child may die and a front-line worker may get blamed for it?

Ms. Collings: I think that is a fear that every worker I know who works protection faces every day they go into work, and that is one of the main reasons I think that people burn out, is that you do have that responsibility and not enough resources to feel that you can adequately meet the needs of all those children at risk.

Mr. Chairperson: Thank you very much for your presentation, Ms. Collings.

Ms. Collings: Thank you.

Mr. Chairperson: I call next Eileen Britton. Would you come forward, please. Have you a presentation for distribution?

Ms. Eileen Britton (President, GRAND Society): Yes, I do.

Mr. Chairperson: Thank you. You may proceed.

Ms. Britton: Mr. Chairman, the Honourable Bonnie Mitchelson and members of the committee, my name is Eileen Britton and I am the president of the GRAND Society. GRAND is an acronym for grandparents requesting access and dignity. We are a national nonprofit organization that offers support and help to grandparents who have been denied access to their grandchildren. I speak on behalf of the rights of the grandchild, those silent voices, the rights of all our grandchildren to see, to visit, to talk to their grandparents. We realize that not all grandparents' relationships with their grandchildren would be beneficial to the child, but in an overwhelming proportion, this relationship would be beneficial to the child and should not be disturbed without good cause.

Section 78(1) of Bill 48, The Child and Family Services Amendment and Consequential Amendments Act, deals with children in care. It does not adequately address the issue of grandchildren's rights or grandparent access for children who are not in care. For years we have been subjected to the present law governing access under Section 78(1) of The Child and Family Services Act. Now that this act is being amended, this is the time to include all provisions for access protecting the rights of all the children.

If vague and inefficient legislation is passed, it could be another 10 years before further amendments are made regarding specific recognition of grandparental rights. Quebec's legislation is unique among the provinces. Grandparents there have a right of access to their grandchildren because the law presumes that grandchildren benefit from the contact with their grandparents. A grandparent's access to his or her grandchild may be prohibited only for good cause.

Since 1980 the Quebec Civil Code has stated that in no case may the father or the mother without serious cause place obstacles to personal relationships between child and grandparents. Failing agreement between the parties, the legalities of the relations are settled by the court. This recognizes that the personal ties between the grandparents and the grandchild must not be interpreted as an intrusion in the life of a custodial parent but as an opportunity for the child to maintain a link with his or her ancestry and cultural heritage, as well as an opportunity to maintain that unique relationship with his or her grandparents.

On May 27, 1997, the Province of Alberta passed Bill 204. This bill grants grandparents access rights to their grandchildren. It extends access rights to grandparents in cases where parent or parents without just and serious cause prevent reasonable visitation between a child and the child's grandparents. The objective of this bill is to support and protect the grandparent-grandchild relationship providing it is in the best interests of the child. This bill ensures the best interests of the child are paramount when an order for access is being considered. This will be determined by reference to the needs and other circumstances of the child, including the nature and extent of the child's past association with the grandparent and the child's views and wishes if they can be reasonably ascertained.

The Alberta government has recognized the importance of the grandparent-grandchild bond and has provided a vehicle in passing this bill to ensure that grandparents maintain this bond. It ensures that grandchildren will have the opportunity to develop healthy relationships with their grandparents, and this is an excellent piece of legislation.

Why cannot this Legislature take a long, hard look at the Alberta bill and look again at what you have not done as far as making changes in the present Section 78(1) of The Child and Family Services Act plus your amendment of this act set out in Bill 48, Section 78(1) and see that this is just not acceptable. A n amendment to this act should be developed where a clear and concise piece of legislation would support and protect the viability of the grandchild-grandparent relationship. Legislation creating a presumption in favour of maintaining the grandchild-grandparent relationship would likely alter the behaviour of custodial parents who might otherwise withhold access without good cause.

(Mr. Vice-Chairperson in the Chair)

The Province of New Brunswick amended their family services act in the spring of '96 to recognize grandparents. Bill 16, An Act to Amend The Family Services Act, is amended in paragraph (d) of the definition Best Interests of the Child to read: the love, affection and ties that exist between the child and each person to whom the child's custody is entrusted, each person to whom access to the child is granted and where appropriate each grandparent or sibling of the child.

On Wednesday, October 25, 1995, a private member's bill, C-274, was passed in the House of Commons officially proclaiming the second Sunday of September Grandparents' Day in Canada. Does this not once again emphasize the importance of grandparents and recognize the contribution of grandparents and the critical role they play in strengthening the family? Grandparents have always been important to the vitality of the extended family but never more than in today's society. With the increase in family breakdowns, the relationship between grandparents and grandchildren has taken on an even greater importance.

I respectfully ask you, please do not be hasty in passing Section 78 of Bill 48 that excludes all other children who are not in care. I ask this on behalf of hundreds, yes, hundreds of grandparents here in Manitoba who are placed in the position of not seeing their grandchildren, access having been denied to them due to death, divorce, separation, children out of wedlock, drugs, alcohol, and situations due to personality conflict.

I ask you on behalf of our grandchildren, victims of this denial, please acknowledge the importance of the grandchild-grandparent relationship. You have the power to make changes. Make these changes with our grandchildren in mind. Our grandchildren, who many of our members in the GRAND Society have not seen for years due to the present laws, laws that do not give us standing in court, laws that do not recognize the importance of the grandchild-grandparent relationship, a relationship that should not be denied without just cause.

Article 5 of the Convention on the Rights of the Child, which was adopted by the General Assembly of the United Nations on November 20, 1989, requires state parties to respect the responsibility, the rights and the duties not only of parents but also of members of the extended family. Article 16 of that said convention provides that no child shall be subjected to arbitrary or unlawful interference with family preventing a child from seeing his or her grandparents without just cause, as unlawful interference of family.

As long as there continue to be breakdown in marriages and/or relationships where children of these breakdowns are involved, grandparents are going to be involved and the problem of access denial will continue. That is why a bill protecting the children who are the innocent victims of these breakdowns do not lose the relationship they have had with their grandparents.

On behalf of the GRAND Society, I implore you to take more time and consider the needs of our grandchildren. Mr. Gaudry's Bill 202 would appear to be the desired legislation for assisting grandchildren and grandparent access. Mr. Gaudry recognizes the importance of this relationship, and we applaud his proposed amendment.

In conclusion, the relationship that exists between grandparents and grandchildren is unique. During these times of rapid social change, this bond provides a sense of continuity and hope in the lives of our young people. When obstacles are placed in the way of the relationship, the results can be devastating for both grandchildren and grandparents. I cannot emphasize enough the importance of a bill, whether it be Bill 202 or another bill. Please make it a definite bill.

I would like to conclude with saying, there is no greater joy than to be able to love and spoil a grandchild. I thank you.

* (2320)

Mr. Vice-Chairperson: Thank you, Ms. Britton, for your presentation. The honourable minister has a question.

Mrs. Mitchelson: Thank you, Ms. Britton, for your very thoughtful presentation, and I know it was from the heart. It makes one feel good to recognize and realize that there are many out there who really do care about our children and our families and want to be a part of a family when there are some difficult times and circumstances.

I also, at the outset, want to give some credit to one of our colleagues in the Legislature, Mr. Gaudry, who brought forward Bill 202, which did provide for access for grandparents, and I do want to indicate that in our legislation that is included. I will just read to you from 78(1) that does indicate that it is not only children in the child welfare system, but it is children right across any other system and any other legislation, where there is a desire by grandparents to apply for access, that they do have that right in the legislation. Maybe I could just read that part.

It says: Application for access by family–and it is 78(1)–"Subject to subsection (6), a member of the family of a child who does not have a right to apply for access to the child under any other provision of this Act or under a provision of any other Act may apply to court for access to the child." So it does include all children right across every system. And in that access by family, in the definition of family in the legislation, it–and I guess this clause goes a little further than just grandparents, because we do believe that in many instances there are others in the extended family unit who might want to be a part of that child's life and might want to apply for access, too.

So in the definition of family, it includes the child's parent, step-parent, siblings, grandparent, aunt, uncle, cousin, guardian, person in loco parentis to a child, and a spouse of any of those persons. So it is very much inclusive of grandparents and all other extended family

who might have an interest in wanting to obtain access to children. Where there is a belief that it is in the best interest of the child, that access will be granted.

So I do want to say to my colleague Mr. Gaudry, thank you for the private member's bill that was brought forward to the House. I believe that our legislation certainly reflects the legislation that he brought forward, and it does extend the provisions to other extended family members, as well as grandparents.

(Mr. Chairperson in the Chair)

Mr. Martindale: Thank you, Ms. Britton, for an excellent presentation. I was privileged to be able to attend one of your meetings over a year ago, and it was certainly an educational experience, although sad to listen to the stories of your members who have been denied access to their grandchildren.

I would like to congratulate you on the excellent job that you and your organization have done in lobbying opposition members and I presume in lobbying the government as well. I had lots of my colleagues in the NDP caucus approaching me saying they got letters and phone calls from members of your organization, and what should they tell them, and I encouraged you and others to make presentations at the committee stage.

As to whether this amendment actually does what you want it to do, I, too, will have to rely on the word of the minister. The minister has lots of staff, as you can see, and legal counsel at her disposal, and I do not, so I can only trust that what the minister is saying is accurate and will accomplish what you have been lobbying to accomplish. I guess time will tell.

Mr. Chairperson: Thank you very much for your presentation, Ms. Britton.

Ms. Britton: Thank you very much.

Mr. Chairperson: I call next Donna Ekerholm. Have you a presentation for distribution?

Ms. Donna Ekerholm (Private Citizen): Yes, I do.

Mr. Chairperson: Thank you. You may proceed.

Ms. Ekerholm: Mr. Chairman, the Honourable Bonnie Mitchelson and members of the committee, my name is Donna Ekerholm, and I am the vice-president of the GRAND Society, which Eileen has just told you about, the grandparents requesting access and dignity.

Since I have been a member of the GRAND Society support group, I have learned that there are many causes of denied access affecting the well-being of hundreds of children. Some of the most common causes, and I will repeat, are divorce, death in the family, relationship breakdowns, out-of-wedlock situations, false accusation, religious differences, and some defy any reason at all.

I am here today, though, as a grandparent who has been denied access to my grandchildren. I would like to begin by telling my story and then relate a couple of other stories. In the spring of 1994, my daughter Andrea broke off relations with me and my entire family, which includes the children's great-grandmother. I have been turned away from her home. All letters and cards have been ignored, and she refuses to come to the phone. No reasons have ever been given for this breakdown.

I have three grandchildren, Jordan, now 12 years old, Miranda, aged ten and a half, and Alex, aged two and a half. I have never seen or held my grandson Alex. I had a very close relationship with Jordan and Miranda. In fact, they used to live just down the street. Their father still does, and when they visit him, sometimes I see them from a distance. When they see me, they react by putting their heads down and running away. They are too young to know how to handle these strong emotions. Their little minds have been poisoned, and I shudder to think what the long-term effects are going to be.

Not only has Andrea denied access, but also their father is afraid to allow me any time with them for fear of losing visitation rights. At one time I was allowed to give Jordy and Miranda Christmas and birthday gifts at their father's home, but he has since asked me not to come over as he is tired of the hassle from Andrea. Andrea has threatened him with the loss of visitation if he goes against her wishes. I can hardly bear to think of the hurt and anguish Jordy and Miranda experienced when their mother so cruelly tore us apart.

This is now Vivian's story. Vivian's daughter and son-in-law had a baby girl, Michelle, who was diagnosed at any early age as having diabetes. Michele was difficult to handle and would not take her medication. By the time Michelle was seven years old her parents felt they could not handle her and gave her away to some good friends who lived in B.C. There is no legal agreement and the friends have considered themselves foster parents. The child was given away with the intent that she would be returned when she was ready.

In this presentation, I am not discussing the parents questionable behaviour. Soon after the foster parents had custody they advised the biological parents and grandparents that they were not to have any contact with Michelle. The mother has not seen the daughter since and the father has seen her only a couple of times. Michelle is now 13 years old.

* (2330)

In the past six years, Vivian, the biological grandmother, has gone to Penticton, B.C. once, sometimes twice a year, knowing full well she will have limited contact, if any at all. Sometimes it has been as little as a 20-minute visit. Vivian just wanted Michelle to know she was loved and had a grandmother and family in Winnipeg.

This year, Vivian went to Penticton to hear Michelle sing a solo at church. It was the minister of the church that called Vivian to let her know of Michelle's solo. Vivian told me tears ran down her face as she watched Michelle sing. She spoke with Michelle and the foster parents after the service and that was the extent of this year's visit.

How can strangers be given someone's child and yet the biological grandmother is denied access? Where are her legal rights?

This is my last story and this is Lillian's story. Lillian's daughter, Sylvia, had four children with a common law husband. Lillian and her husband started caring for their first grandchild to allow Sylvia to return to work, and they also provided her with extensive assistance in terms of household duties and grocery shopping. This pattern continued from 1985 to late 1991, when the fourth child was born. These children dearly loved their grandparents who became almost like second parents. Sylvia received little if any help from her husband, who was usually unemployed and wiled away his time dong nothing. Sylvia's last child was born in February of 1991, and three months later she was diagnosed with terminal cancer.

It was at this time that Sylvia specifically stated in her last will and testament that it was her desire that her family have liberal visiting rights and access to the children, and that her husband co-operate to ensure that such access was granted.

On August 8, 1991, Sylvia and her common law husband were married in the hospital chapel. On August 22, 1991, Sylvia died.

Since Sylvia's death, the husband has refused to allow Lillian or her husband or any member of Sylvia's family to have any contact with the children. This caused tremendous grief, as they not only lost a daughter but they have lost their grandchildren. Lillian's husband has since died, never seeing the grandchildren again.

I will close now by stating that Bill 48, subsection 78(1) leaves a lot of unanswered questions for me. I recommend to this committee to not pass this bill as it stands today but develop a clear concise piece of legislation that supports and protects the viability of grandparent-grandchild relationships. I miss my grandchildren and I am saddened to think how my daughter has turned them against me. I want to renew my relationship with my grandchildren to regain the joy we once shared. There is no greater joy than to love and spoil a grandchild. I respectfully submit this for your consideration.

Mr. Chairperson: Thank you very much, Ms. Ekerholm, for your presentation.

Mr. Martindale: Mr. Chairperson, I just wanted to thank Ms. Ekerholm for her presentation, not just any presentation but a presentation that was obviously moving and difficult, since you are talking about your own grandchildren as well as other grandchildren, so thank you.

Mr. Chairperson: I call next, Linda Dorge. Ms. Dorge have you a presentation for the committee?

Ms. Linda Dorge (Private Citizen): Not a written one, no.

Mr. Chairperson: Proceed, please.

Ms. Dorge: I have chosen to do an informal presentation this evening. I respectfully request that I be allowed to pursue in this fashion.

I was driving to work this morning. My place of employment is as an intake social worker in the core area of Winnipeg. I was trying to formulate in my mind what I would be saying to you this evening and what my concerns were pertaining to the bill that is presently being amended today. As I was driving to work, I passed Assiniboine Park and I seen the oxcart and the ox in front of the park there. It sort of struck me that this could be an analogy that I could be using this evening to sort of talk about some of the work that you do here as well as the work that I do in my daily work. What I seen is the oxcart representing the structure and the foundation of the things that it contains, very similar to the policy and legislation that is pursued here. The ox is basically an analogy I see towards the worker, the force behind the type of policy, the type of the two needing to work together.

The concerns I presently have pertaining to Bill 48 is that the balance will not be achieved, that there is some concern that the legislation before us here does not necessarily fit the confines or the workload of the workers or of this analogy that I have construed. The ox is not able to work in tandem with the oxcart. The two just do not fit together. The point that I would like to raise specifically is pertaining to Section 29(1), where the expectation is within seven days that a formulation for a plan, provision of service and everything be presented at court within that seven days. This basically precedes the notion that the workers would have the ability to formulate an adequate assessment, that workers would have the ability to provide service or have that service provided to the families that we are working with, and that this would be able to be done in a rational and complete fashion. That is the question that I would like to raise here tonight.

Presently, what I would like to do is present you with a picture of what is presently happening within the system today and provide you with a picture of what it would look like after this act or amendment would be pursued. At the present time in the core area of Winnipeg, there are 10 intake social workers, each with a caseload, let us say, varying between five and 25. That number is based on families in immediate crisis requiring immediate service. Of those families, typically, there would be one to five–let us say that one worker would be responsible for one to five families having apprehensions. These are general guidelines just based on personal experience, not formally documented.

Basically, with the present structure, the present system that is designed, each of these 10 workers are partnered up. There are phone schedules. Teams A to E are responsible for intakes through the phones. Other teams are responsible for responding to what we call emergencies or immediate need for child welfare service.

There needs to be 21 days for the court to proceed. These court dates are typically on Friday mornings. This allows workers, ideally, to meet with the client systems, with the families. Ideally, it should be four times to complete an appropriate assessment. Realistically, it is usually two times that we are meeting with families, compiling this information; sometimes, hopefully, more.

With the passing of the new legislation, the concern is with that date shrunk down to seven days, workers will not have the opportunity to meet with clients more than once. Therefore an appropriate and complete assessment is lacking. That is a definite concern to workers.

The other concern is pertaining to the front-line concerns. It would be possible that workers would be required to be at court each and every day. It would be possible that a large number, 80 percent of the workers, eight out of 10 or possibly 10 out of 10, would have to be at court on the same day representing their apprehension cases. The question is, does that leave a lack of service back at the front lines when there are

emergencies, when there are immediate child welfare concerns? That is the question that I am posing and that I would like to raise at this point.

The other problem that we foresee is the orders that would be coming down. At this point, if you do have the opportunity of working with families or meeting with them a number of times, you can get a sense of what level of functioning they are at, what the family is needing, and what type of order is absolutely necessary. With the impingement of the seven-day limitation, the concern is that there will be a knee-jerk reaction to provide yourself with ample time to be able to come together with that assessment. Let us say one-month orders would be automatically pursued with the plan being to facilitate a complete assessment.

The other concern is that rather than recognizing the needs of the client and reducing days in care, that it would potentially increase days in care. The concern is that workers may choose to go for, let us say, a six-month order rather than a three-month order if they have not had the proper time to do a proper assessment and ascertain exactly what level of functioning is happening pertaining to the family.

Our goal is not to increase days in care for children. We would like to see children home to their parents as soon as possible, and we are very concerned with any kind of lack of ability that we have in formulating these assessments. Again, the analogy is that the ox and the cart will not work together. The structure is there, but the workers will not be able to pull this. The workers will not be able to pull it off due to the limitations.

Those are my comments. Thank you.

Mr. Chairperson: Thank you very much, Ms. Dorge.

* (2340)

Mr. Martindale: Thank you, Ms. Dorge, for your presentation. I find it very helpful to hear presentations from front-line staff, as I have said before. I am wondering if the minister or the assistant deputy minister or anybody in the directorate consulted you or consulted the union before these amendments were brought in.

Ms. Dorge: I cannot speak specifically to that process. I understand the union was consulted and that workers did share some concerns, and that is the reason for us being here today as well.

Ms. Cerilli: Thanks for your presentation. I just want to make sure I am understanding you correctly, and, by the way, I loved your analogy. Good image; good image. Are you saying that because there is going to be difficulty in doing an accurate assessment and you are only going to have one day with the family instead of the ideal of four visits for an assessment, that workers are likely to err on the side of caution and apply for custody that is going to be a longer duration and it is going to increase the time in care? Am I understanding that correctly?

Ms. Dorge: I think that there is a possibility for that. I do not think that is an ideal practice, and I do not think that anyone would like to go into court in seven days knowing that they would have liked to have more information, and I think that is what is lacking with this present piece, this present limitation. Even if the dates were extended by one week, that would make a big difference from 30 days to 14 days. That would allow ample time to meet with the client's system and to formulate a plan. No one wants to go to court knowing that they do not have enough information to do this. So I am saying that it is possible, that that is the knee-jerk reaction to that lack of information. It is possible.

Mr. Martindale: If, as you said, it is possible that 10 out of 10 workers were in court, who would staff the phones for intake and who would respond to emergencies?

Ms. Dorge: That is a dilemma that we have presented to our supervisors at the front line, and there have been no answers that have been presented to us.

Mr. Martindale: You will be pleased to know that I can pose the same question to the minister when we do clause by clause, and we will see if there is an appropriate response or not.

One of the previous presenters, Tamsin Collings, suggested that we adopt the system like that in Scotland where there would be an immediate show-cause hearing to review the circumstances of the

apprehension, and that if the apprehension is ruled as warranted to set another court date in three to four weeks for a full assessment and case plan to be developed. Do you think this recommendation is a good alternative to the amendment in this bill or a preferable system?

Ms. Dorge: I think it is absolutely preferable to be given–maintain the rights of the client, certainly, and the families that we are working with, to hold the agency accountable, to hold the workers accountable in their decision to apprehend, absolutely, immediately as soon as possible but also recognize the fact that there is time needed for that assessment piece to be completed. There is time needed to formulate a plan that best meets the needs of the client, absolutely.

Mr. Chairperson: Thank you very much for your presentation. I call next Colleen Suche, Colleen Suche. Now you will have to tell me which is the correct pronunciation.

Ms. Colleen Suche (Law Society of Manitoba): Suche.

Mr. Chairperson: Suche. Thank you. Have you a presentation for distribution?

Ms. Suche: No, I do not have a written presentation.

Mr. Chairperson: You may proceed.

Ms. Suche: Mr. Chairman, Madam Chairman, members of the committee, I appear here before you this evening as president of the Law Society of Manitoba. The Law Society has one specific concern with respect to the bill that you are currently considering, and that relates to Section 19(3) and in particular 19(3.6) of the legislation. This area deals with the process, as you are aware, when the committee has reported to an agency that a person is believed to have abused a child and that that person's name should be contained on the registry. Under the procedures set forth in the proposed legislation, the person is to be given notice and has the right to object to his or her name being placed on the registry by making an application to the Court of Queen's Bench. Section 19(3.6) is the specific section in question. It sets the rules for the hearing. It reads: At a hearing, the agency has the burden of proof on the balance of probabilities and all parties may be represented by counsel or agent and shall be given full opportunity to present evidence and to examine and cross-examine witnesses. The concern that we have is that the section allows that an agent may appear on behalf of any party in addition to counsel. Appearance before the courts in this jurisdiction in this province, as elsewhere in Canada, is the practice of law. Appearance before the courts is a matter which is governed by The Law Society Act and requires some considerable skill and training to perform that function in an appropriate and capable manner. This is particularly so in a situation involving a matter which is both of such significance to the individuals, not only the person whose name may ultimately appear on the registry, but the child who may have been abused and, also, of course, the public and other children.

These types of hearings obviously will have to be conducted in a manner appropriate and with consideration to the issues, and it is for that reason, in particular, that the necessary skill, training and licence to practise law should be required. It is the society's position, as well, that the fact this procedure allows for no appeal, which is a very unusual process, adds to the concerns that people who appear before the courts must be appropriately and professionally represented. The position of the Law Society is that reference to representation by an agent should be removed from this bill, and that is our concern.

Mr. Chairperson: Thank you very much, Ms. Suche.

Mr. Martindale: Thank you, Ms. Suche, for appearing before us on behalf of the Law Society. I am not a lawyer, but I once went to the Court of Queen's Bench representing someone else and we won, and I have decided that I should never go back in order to preserve my perfect record.

However, in a more serious vein, I am wondering if you think that the bill should be amended, since many other pieces of legislation do allow for appeals, sometimes on matters of fact but frequently only in matters of jurisdiction or constitutionality. What is the word I am looking for? Jurisdiction. Would you recommend that appeals be allowed for certain reasons or for all reasons?

Ms. Suche: I thank the member for his question but, you know, I think that that is a matter which you are going to find divided opinion about. Given the representative capacity that I appear in this evening, I am not going to offer you a point of view on that issue.

* (2350)

Mr. Martindale: Thank you. That was a very tactful answer, as one might expect from a lawyer. I have been arguing things this evening as a layperson, but since I have a legal counsel in front of me, perhaps this is a good opportunity to test some of the ideas that I have been putting forward.

People have expressed concern to me and my colleagues that there has been a fundamental change with these amendments by abolishing the Child Abuse Review Committee process and that what the government is getting rid of is people on that review committee whose expertise is mostly, I understand, in the area of child development and their experiences with children.

We have been alleging that one of the deficits of this bill is that we are going to end up with many more cases in the Court of Queen's Bench where lawyers are going to be going at lawyers with the exception that you pointed out, that the bill allows for an agent, and that this is going to change the whole nature of the process. Some people are alleging that the emphasis will not be on the balance of probabilities but more likely on beyond reasonable doubt, even though the bill says balance of probabilities. What is your view as a lawyer on these contentions?

Ms. Suche: Well, Mr. Martindale, I may have a number of personal opinions about that issue and others that you have raised. The only thing I think I can fairly say to you, given the nature of my appearance this evening, is that if the legislation requires that the standard of proof be proof on the balance of probabilities, I think that you can rest reasonably assured that the judges of the Court of Queen's Bench will be able to apply that requirement without any difficulty. That is the standard that is required in all civil matters and also a number of administrative matters. In my experience the courts have not had difficulty in distinguishing the appropriate balance of proof and applying the applicable balance of proof.

With respect to the other issues that you have raised, I do not think that, given my representative capacity, it would be appropriate for me to comment.

Ms. Cerilli: Thanks for your presentation. One of the questions I want to ask is related to an issue that has been raised a few times, and that is a concern that provisions in this legislation to take decisions regarding the registry away from the committee and put it into the court is going to bring the abuser and the child face to face, and the minister has used the phrase that there is no intention for the child to face the abuser. I am wondering–especially given the section that you have just recommended we amend, which also has there that there can be cross-examination of witnesses–if you do not think that the child could end up in the court and that in fact there will be a face-to-face confrontation between the child and the abuser.

Ms. Suche: In my work as a lawyer, I am not usually the one that is put on the hot seat in having to answer the questions, I have to tell you. I kind of feel like a witness right now. Again, I think that all of you, some of you probably have good legal counsel that can give you good legal opinions, probably better than mine. My reaction to it is, it certainly raises some question if you are in the Court of Queen's Bench and you are requiring proof on the balance of probabilities. There are standards that the court expects as to what it is that you are proving, but I think you would probably want to retain counsel and get some proper and thorough legal opinions on that. It is very difficult for me to say much more.

Mr. Chairperson: Thank you very much for your presentation, Ms. Suche. I am going to let you off the hook.

I call next Dr. Charles Ferguson. Have you a presentation for distribution to the committee?

Dr. Charles Ferguson (Winnipeg Child and Family Services Abuse Committees): I do, Mr. Chairman, a single and a four-page presentation.

Mr. Chairperson: You may proceed.

Mr. Ferguson: Mr. Chairperson, Madam and Mr. Minister, honoured members and colleagues, of whom I have three here tonight, staunch members of committees on child abuse, Mr. Clark Brownlee, Mr. Ian Nairn, and Mr. Don Smith, who have been with me all evening and helping in my efforts to rationalize the letter which I have sent, and which you are gaining a copy of, to Minister Bonnie Mitchelson, which I am sure she has seen. First, though, the reasons for the registry, just a short précis which I have put together today and which I would just like to read.

Claims made by minor children as regards sexual assault are only very rarely heard in criminal court. When the youngster is under eight years of age, approximately 90 percent of the disclosures do not proceed beyond Crown opinion, which is that they are too young to witness or to appear as an accuser.

For this reason, some qualified body, it is generally agreed, should sit on behalf of children for whom the scales of criminal justice are so woefully imbalanced. I think that is a statement that we can all agree to, and I compliment this government and the Legislature in maintaining the concept that other than a sanctioned judicial body in the order of provincial or Court of Queen's Bench should sit to attempt to deal with the 90 percent of individuals who walk after having had it claimed by a young child that they had been molested by such personalities.

Now the letter basically makes two points. I will try to wax as eloquent and as brief as I can. First, in the preliminary we describe the various services that constitute the operational portions of the child abuse committees, which is important when I get to the second point on page 2, where the legislation we feel impacts on these committees, perhaps adversely.

First of all, in attempting to describe the erosion of rights of children, we do not see it in terms of any diminishing of the rights focusing on the few, very few adults, who manage to escape incompletely and are seen by the various committees as eligible for a listing on the registry. There is very little focusing on how to get children's evidence into court. The Court of Appeal of Manitoba, as you all know, tried to quash the video-taping scenario and were reversed by the Supreme Court nine to nothing in 1993, which is pretty much the story of the attempts to validate children's evidence in the criminal court, virtually none of which is given.

If these offenders are to be heard or information gathered by whatever body is designated by government, there is concern that the child victims, of course, and those who represent them will not be heard. In other words, they will not make a personal appearance. The people that are their best friends, usually their mothers, will not have a voice, and the original group that were decided upon in the government's wisdom, and I think appropriately in the beginning, to direct names to the registry will now be in the curious position of deciding relevant to appeals made by alleged offenders when no other voice has not only been heard by the committee but has not been heard in any court in the land.

So that then in essence is our presentation relevant to the concept of offenders being heard.

Now let me say at the same time that if an offender has reached the stage of being directed towards the registry without ever having been interviewed, then we would be hard put as any group to deny that person a voice.

However, I would submit that if people are getting as far as being submitted as names to the registry as alleged offenders, someone in the earlier parts of the system, as in operational investigators, should have been speaking to that individual, but of course those of you who know law know that many of those individuals are prohibited from making statements to either the police or child welfare authorities by their legal representatives, and thus they get all the way to the committee and get up as candidates never having been interviewed by any part of the system.

So that is the basic presentation relevant to the concept of us not functionally attempting to get children's evidence into court at any level and certainly at this level not to hear them, but to hear in fact an alleged offender, at the same time balancing the rights of that person and making every effort for justice on his or her behalf as well.

* (0000)

Now the second portion, which I will briefly mention, is the impact on these specific committees composed in the main of volunteers and individuals who are already stacked to their necks with work relevant to situations where there is no offender named as a candidate for the registry. Whether this committee, original mandate one of providing advice, consultation and direction, can now be functionally converted with all of its operational members in place to deliver verdicts by virtue of information that may be gained or by prescription by some means the offender appearing, and this, I think in the legislation if you will read, is yet to be prescribed, and we honour that, that the prescription may make it more compatible for these committees to hear either submissions from these offenders or these offenders themselves.

The question, panel, is whether these committees can sustain the volume of work that will be required of them, already having been overtaxed in the regular meeting session which we now carry on. I have devoted approximately 25 hours a month to sitting on individual committees, and I am a mandated person because I am employed by the Minister Mitchelson, and I do function gratefully and willingly in that role. Whether my colleagues are more of a volunteer basis can do that or whether I can continue with my day job under these circumstances not disputing the philosophy that perhaps this committee is the proper basis for this role, whether it is operationally possible for the reasons of volume but also because many of the operational people who investigated the very offender or suspected offender are on that particular committee.

So I present you then with these thoughts. Some of them are enigmas. You will notice that at no time–and several people who work in the Legislature have commented to me since I came earlier–that this document does not oppose the concept that these offenders should have a hearing. It simply brings to light the sadly lacking effort that is being made by all of us to further advance the rights of children in evidence; and, secondly, whether these committees are in any position to operationalize this additional burden whether or not they are philosophically for it.

I think that basically concludes my presentation, one which you can see is not totally opposed to the idea but rather is approving of the idea that a surviving body should and must exist where people are leaving the court or never getting into the court system, and in 90 percent of the hundreds of children we see on an annual basis, 300 children under the age of eight–roughly, perhaps 250–and only a handful of those would ever have their evidence presented. I think under these circumstances, the public and this body must understand our concern at the time and effort being placed to look after a small, straggling group of potential offenders, some of whom I grant you may not deserve to be in that position. Thank you.

Mr. Chairperson: Thank you very much, Dr. Ferguson, for your presentation.

Hon. Vic Toews (Minister of Justice and Attorney General): Thank you very much, Dr. Ferguson. I certainly recognize your authority in this field. You have been present in many, many cases in this province in respect of these types of issues. You are a leader in the field. I know from many years past, you even came to court when I required your attendance there, and I certainly appreciate it. I know that many people here in the province of Manitoba recognize and appreciate your services.

The issues, of course, that you have identified in respect of the criminal courts are not something that we can deal with here today or in the context of this particular bill. But I want to make sure that we have your points clear in respect of these proceedings which are essentially civil proceedings; proceedings that are established on a balance of probabilities rather than the more onerous proof beyond a reasonable doubt which is required in the criminal context.

There are essentially two questions that I would like to ask you, Doctor, and if I am summarizing your evidence here today correctly, you can affirm or add what you need to. The first question is this: You have expressed a concern, and this I take it relates to 19(3) of the act, that a hearing at the committee level, which may be an oral hearing, would add undue strain on the members of the committee who are in fact volunteers in many cases and that you would prefer perhaps an alternative mechanism be prescribed, perhaps a written hearing, and that essentially this would not do an injustice to the person who has alleged to have done

this given that there is a full, oral hearing at the Court of Queen's Bench. Do I have your evidence correct in that?

Mr. Ferguson: Yes, I think that is fair. If a lawyer, early on in a case, refuses to have his client speak to anyone, and I have it on good authority and on legal advice that this regularly happens, and I know it to happen, I am sure all of you do, then it is questionable whether this individual then can come to the committee and make an oral presentation when none of the other side gets to make any presentation to such a committee. In effect, I personally and those of my colleagues, two of whom here are therapists, have no issue whatsoever with either orally or otherwise contending with an offender at any form of hearing. Other members who are more on a voluntary basis see the potential for time and volume here outside their possible commitments, so I think that is what you have said. It is not so much a philosophical difference, it is just that the committees are not designed, are currently overloaded with the nonadversarial situations they are involved in and whether this could be tagged on or whether another body–remember too that these are operational people. The nonvolunteers, in particular, are operational people who may have investigated these individuals who are candidates or hopefully noncandidates from their side. There is that matter as well. Whether or not there could be a group struck that was knowledgeable in this field but who were experienced but not operationally involved in individual situations involving these alleged accused is open to some question. It has been brought up in at least one or two of our forums.

Mr. Toews: My second question relates to 19(3.6). That is, essentially, if I am not misinterpreting what you are saying, you are concerned about having the child actually appearing as a witness in either the committee level or the court level, and also you are concerned about whether this court process, if we adopt a strict, formal court process, that much relevant evidence, even though it may not comply with the strict rules of evidence, would be excluded. So what I hear you saying is that you would prefer to see the child competent to testify but not compellable and, secondly, that there should be informality at the hearing level so that the judge can look at all of the evidence, whether it complies with the formal legalistic rules of evidence, and make a determination on the totality of the evidence rather than simply rejecting evidence on legal basis and therefore hear it whether it complies with hearsay or not.

Mr. Ferguson: Well, it is true. What you have said also designs a situation where that judge may be the first individual ever to have heard that evidence if the accused has never been allowed to talk to anyone by his lawyer. So you touch on a crucial part of it. Children should not and cannot be compelled to testify, but our contention is that there are eight-year-olds who are absolute wizards. There has even been a case go right through to acquittal in a five-year-old, in the spring of 1994, so that we know that children's evidence should be getting into court either by videotape, by virtue of one-way screens, by virtue of the first and spontaneous recipient of a disclosure, as was the case in the Khan matter, which is an Ontario case. There is just not enough effort being made to get such a judge as you describe to hear across the board without the child having to face the accuser necessarily, or the accused. So that is competent but not compellable.

* (0010)

Mr. Toews: If I can just make a comment which I think supports what you are saying, I remember many years ago when I was a prosecutor and I put a seven-year-old child on the witness stand who a judge would not swear. Yet the child gave evidence, and at the end of the day there was a conviction by a jury, because, whether the child was sworn or not, there was an element of believability that I think the jury found compelling. What you are saying is do not throw out good evidence just because it does not meet with the legal rules that have been developed over hundreds of years.

Mr. Ferguson: Nor is it getting to bodies that should be hearing it by virtue of people winding up as candidates for their registry, their case never having been heard. In those situations, often by virtue of the design of the lawyers representing the client, in their view and certainly perhaps in yours, there may be good legal reasons for that. I am not disputing that, but it tends to keep the facts away on behalf of the child.

Mr. Martindale: Thank you, Dr. Ferguson, for appearing here tonight and for your letter to the

minister and the additional information that you provided tonight.

Do you anticipate that, because of the changes in this bill, particularly affecting child abuse committees, there will be resignations of child abuse committee members? It has also been suggested to me that in rural areas this will be particularly difficult for people. Therefore, it may be even harder to keep child abuse committee members in rural Manitoba.

Mr. Ferguson: Yes, I think there will be resignations. It will be unfortunate because we will almost certainly lose all those who are currently rare but so valuable, the therapists. The therapist group will not be able to attend to this volume, and they would, of course, be the most qualified to deal with any individual appearing as a potential accused or potential registrant.

The rural thing, certainly, I can see that in those regions the purpose for this committee was never to enter into this type of quasi-judicial scenario. Some would think that perhaps it would be by virtue of the fear that individual might have that their qualification was not up to handling a potential registrant and their lawyer, but I would submit that it is more, again, one of a commitment in terms of time and volume and perhaps in the qualifications as well.

Yes, I do think there will be. There are some who feel that the legislation–and I am not one of them–is perhaps designed to, in effect, eliminate the (c) clause group of committees from making any decisions, and that the defence bar would just love to see that. I repeat, I am not really one who holds to that view, knowing and dealing with many defence lawyers and understanding their role in society, which very few people do, I find. But I do honestly believe that it is a complex area, as you all are aware. Some people are nervous about the idea of having a question-answer session with someone who was a potential–that does not include the gentleman here behind me nor myself, who would literally tackle anything.

Mr. Chairperson: Mr. Martindale, with a final question.

Mr. Martindale: Thank you, Mr. Chairperson. Although I must say I am having difficulty with the five-minute rule which the government majority has imposed here.

Mr. Chairperson: We are now at 10 minutes in questioning.

Mr. Martindale: We have the leading expert in child abuse in Manitoba before us. His letter to the minister was a subject of six questions in Question Period today, and because the constitutional lawyer in the committee used up so much time our rights are being extremely limited here. So I just want to put that on the record.

Mr. Chairperson: I am giving you equal time, Mr. Martindale.

Mr. Martindale: Thank you, Mr. Chairperson. I would like to ask Dr. Ferguson if he believes that more alleged abusers will go immediately to court and, if so, if he thinks that means that there will be fewer names on the registry and, thereby, more children left at risk.

Mr. Ferguson: I do not know the answer to that really. That would get into an area of speculation that would challenge even me. I am not sure what to say to that; I really am not.

As I was saying earlier, several of us have considered that we may be faced with trial by fire in this area, and the government may find that there is a lot of slippage and will have to come back and reopen this matter. We have had that happen before in many aspects of child protection, and we just have to adjust.

The problem is that children are being wasted in our system. Our judicial system is cruel to children. It sees them as perpetrators and authors of their own destruction, and somehow or other the mythology that children are inherently evil seems to be coming to the fore when, in fact, we have to take on the responsibility of protecting them at all ages, and this group of people that is in front of me here, you all share this, I know. I mean, it is not a question of my bringing things to the uninitiated.

But whether there would be an alteration in the number of offenders who would, you know, be prosecuted and whether there would be therefore fewer

candidates, I do not know. Have I interpreted what you have said to me? Yes.

Mr. Chairperson: Thank you very much for your presentation, Dr. Ferguson.

Mr. Ferguson: Thank you all, thank you.

Mr. Chairperson: I call next Helen Zuefle. Ms. Zuefle; have you a presentation for distribution?

Ms. Helen Zuefle (Private Citizen): No, I do not, Mr. Chairman.

Mr. Chairperson: Thank you, you may proceed.

Ms. Zuefle: Good morning, Mr. Chairman, Madam Minister. My name is Helen Zuefle, and I am a practising family law lawyer and was recently the chair of The Child and Family Services Act review committee. This evening, I am only here to take the opportunity to make a few comments relating specifically to the proposed changes in the Child Abuse Registry system.

My attendance was prompted somewhat by a meeting I had with the CARC people earlier in the week, and I felt it was necessary to make my appearance here today in order to straighten out some things which I would almost consider to be fearmongering as the way the system is designed to proceed.

I think at this early stage in the morning I can go through and delete how we came to be where we were at. However, with respect to the suggestions and the recommendations under part 4 of the Child Abuse Registry, the first three recommendations, of course, have drawn little or no attention, that being the removal of the victims' names, the ability to remove one's name from the Child Abuse Registry and the expanded access which no one seems to have too much difficulty with. However, later in my presentation, you will note that there is some significance to the removal aspect in terms of dealing with this matter.

As you have already heard and realized, there are three ways that names get to the registry–when one is convicted of a criminal proceeding, found to be an abuser in a family court proceeding, or it is the opinion of the local child abuse committee that someone is an abuser. A and B obviously have no submissions here, and A and B are in the new legislation. The type C registration is, of course, up for hot debate.

The present system, the way it works, the local child care committee makes a report that it is their opinion that there is an abuser, and then the notice goes out, someone can object, and they end up at CARC. After the CARC hearing, there is a procedure right now to appeal to the Court of Queen's Bench. However, the appeal is there only on questions of law or jurisdiction, not on the facts.

Now I will review shortly some of the problems that we encountered and we heard about. Firstly, the Child Abuse Registry committee was an overwhelming and hot topic of the presenters who came before the committee. The overwhelming theme was that the system is not fair the way it is now. The presentations indicate that the act holds the power, the way it is now, to instantly ruin a person's life, a person's career, a person's reputation.

However, people were also cognizant that the best interests of children must be keep in mind, and you cannot lose the purpose and the initial intent for the registry's existence, which was, of course, to protect children. That being the case, however, these are the types of scenarios that we heard, initially a number of minor incidents that were forwarded that resulted in a body of case law, now molding CARC in its decisions, in the issue of whether or not something is of significant abuse, significant enough to find its way to this type of hearing. People were not confident in, in fact one would say angry at the unjust prospect of having their livelihoods, their futures determined by a quasi-judicial group when the issue and consequences were so grave and of such significant impact. Where it is believed that the committee made an unjust decision, appeals are only in the current legislation under law or jurisdiction, not on the facts, which if one reasonably looks at the situation is where the discrepancy is going to lie, on a question of the facts. So one would see that there would be a large portion of the cases that would have their rights significantly hampered under the current circumstances because they have no possibility of an appeal.

* (0020)

Even with this, with the current rate being only appeals on law or jurisdiction, the rates that we heard were that about 50 percent of the cases that CARC, that were appealed on law and jurisdiction, were overturned on appeal. So we were not even talking about the more difficult questions about questions about fact. We are talking about the questions of law and jurisdiction and, even on those, 50 percent of them came back and were overturned at appeal. Those are the figures that we heard.

We heard about costs, emotional, financial costs. The people who Dr. Ferguson indicated have gone through a trial have had to pay for preliminaries and trials, then appeals, child protection proceedings, because often their own children are involved in the situation. Then they have a CARC proceeding to go to, which we have heard are attended by lawyers and then, if it is a question of law and jurisdiction, also to the Court of Appeal level. They advise us that the process is unfair, again in smaller locations where discussions at the local child abuse committee agency and the forwarding of the notice already stigmatize local committees, local committee members and the people who are brought before them without having had the opportunity to say anything in one's own defence. Those were just some of the concerns that we heard about the system as it is.

Our recommendations, contrary to what Dr. Ferguson has to say, are not abandoning children. What the new system looks like is a system where the local child abuse committee gives the accused the opportunity to provide information to it. As far as I can read, and because of course this is going to be subject to some regulatory information, it does not say here that people are going to give information and have a judicial argument, a hearing, perhaps no cross-examination. Those are issues to be determined.

Where we sit is somebody giving the opportunity to provide information to a local committee. Perhaps the answer at the regulatory stage is that the information is in an affidavit form. So there will be no contact; there would not be a situation where the people would be there with lawyers and cross-examining each other. That would then allow the accused to get his information to the local committee and say, we know that this is what I have been accused of. This is my response to it. Then if they are not satisfied and the matter proceeds, they are allowed to proceed to the Court of Queen's Bench on all issues.

So if you have a discrepancy, a dispute about the question and the question is one of fact, then you are at the Court of Queen's Bench, and I think it is rather odd that someone would say that a court cannot determine the difference or would not know the difference between what beyond a reasonable doubt means and what balance of probability means. The courts have always had to determine that and they would know how to determine it. Based on that, we would have a judge, whose job it is to do this, able to determine on the balance of probability whether or not this person should be registered.

One footnote, and that is a part that has escaped, is the changes also make it much more difficult to come off the registry I would suggest with the changes. The initial legislation, the current legislation indicates that "10 years from the offence or the child turns 18." The recommendations of the committee were to change that to "until that person no longer is a threat or poses a risk to any children." Now that has been approved or is in the bill in terms of changing it and makes it much more onerous, because once you are on you are on, and then you have to show that you no longer pose a risk to any children, not the child you abused but any child, and you can only bring that application every two years when it comes on.

So the task of getting off the registry will be more onerous. That means to get on the registry one has to be in the government and everyone should be very careful about how they put somebody on the registry so that those things are taken care of, so that you know that these are people who should be on the registry. What we did hear is very many, just as you heard today, heart-wrenching stories from grandparents who did not have access, we heard many heart-wrenching stories about people's lives that were ruined and that were determined by people who did not know about–perhaps could have better known the rules about evidence and evidentiary issues, and they thought having the matter in front of a judge who deals with these matters is the

way that these things have to go, and they were heart-wrenching stories as well.

I would just hazard a guess that if you thought that it was your son who was sitting there and being accused and he was a teacher, you would want to ensure that the person making that decision is a person that is qualified to make that decision and makes it properly.

That is all I have.

Mr. Chairperson: Thank you very much for your presentation, Ms. Zuefle.

Mr. Martindale: Ms. Zuefle, I would like to thank you for your role in being on the panel, the review committee. Unfortunately, I was only able to attend four public hearings, but you were probably at the vast majority of the public hearings and your time and effort is appreciated.

I am sure that the minister has had a chance to thank you personally, but this is the first time that I have had a chance to thank you in public. I do think it is important that we listen to the public before legislative amendments are brought in. Sometimes the minister does that and sometimes she does not. This minister did it on a number of pieces of legislation but not on Bill 36, The Social Allowances Amendment Act.

Also, I would like to point out that in my speech on second reading, I did point out that I thought it was an improvement to the act to make it more difficult to get names off the Child Abuse Registry, as you have pointed out. I thought that was a positive improvement.

I would take it that you would disagree with a lot of the presentations tonight because, as you have said, you believe that the judges, just to use one example, are capable of hearing arguments and that they will make decisions based on the balance of probability. Do you have any concerns or were any concerns expressed to you about the existing Child Abuse Registry committee, about the changes that are being made particularly to the process at the review committee? We have heard that people may resign because the requirements will be onerous. We have heard that professional staff may resign because they do not have the time. Did the people that you met with express any of these concerns?

Ms. Zuefle: Well, to be honest, the answer to that is no, and the reason is because we did not go to people. When we were discussing these possibilities, we were not saying and, my God, you are going to be inundated with massive amounts of applications and that a lawyer is going to be sitting at the table pointing his finger at you going, here is the case, here is the case.

What we envisioned was a system that allows the local committee the ability to review it, the ability to obtain some evidence from the accused person. Now that, as far as we are concerned, does not necessarily means a viva voce or an oral presentation. That can mean the ability to provide information does not necessarily have to be confrontational; it can be in affidavit form. So no one there that we had discussed the matter with said, oh, my God, I will have to resign because now it is going to be too much work. All they saw was an opportunity when they are discussing these cases to say: This is what we are discussing. Can we have your point of view? Can we have your version of the story? And whatever it is, then we will proceed from there. We were not looking to making it an adversarial process whereby the people at the local committee are then inundated by lawyers hell bent on getting their client's story through to them.

* (0030)

Mr. Martindale: Was it a recommendation of your committee that mediation techniques be used where there are custody problems?

Ms. Zuefle: In the context of the Child and Family Services changes? No.

Mr. Chairperson: Thank you very much for your presentation, Ms. Zuefle.

Ms. Zuefle: You are very welcome.

Mr. Chairperson: I call next Linda Shapiro. Ms. Shapiro, have you a written presentation for distribution?

Ms. Linda Shapiro (Private Citizen): No, I do not.

Mr. Chairperson: Thank you. You may proceed.

Ms. Shapiro: I am here tonight again–and this is a little like dealing with an errant adolescent. It always starts late, and you never know quite what is going to happen. I am here to suggest that the best way to save money is to deal with parents and families before they get into the system. I would suggest that the best way to save money for the system is to provide some of the resources that are available once the child is in the system with a VPA, or something like that, and provide it to the families while the child is still able to be in the home. It would also cut down on the potential explosive situations where a parent in a moment of–it is not right–but in a moment of total exasperation lashes out. I am not condoning it, but I have lived it, and I know it can happen.

The other thing I would wonder is about the cost to the parents. There seems to be two categories of people here. People who are on social assistance and they have got no money anyway, and parents who are working. The parents who are working are losing huge amounts of money going to social services' meetings, going to every conceivable meeting by every conceivable system that has anything to do with their child. We have probably already lost more money than we would ever pay in maintenance anyway, so I would suggest that there is a huge cost as well as the cost of mental health to the parents and the rest of the family.

The final bit I would say on that is that your mortgage does not go down when your child leaves home. You may have increased costs because you are desperately trying to recreate a relationship with that child and that means more travel in the countries, potentially explosive phone bills, all the kinds of issues that you do not think about till you live it. I would briefly suggest that these need to be considered when dealing with this. It is my story once again, and it is a story that sadly is too common. Thank you very much for your time.

Mr. Chairperson: Thank you very much, Ms. Shapiro.

Mr. Martindale: Ms. Shapiro, several people have commented on the requirement to pay towards the cost of maintenance, most people referring to parents on social assistance. I think you are the first one that has commented on parents who are working. Would you agree that in addition to all of the factors that you mention such as the fact that they are paying in many different ways and have increased costs, that this also adds to the stress of a family who are already under stress because a child or children have been apprehended?

Ms. Shapiro: I fortunately have never had a child die, but I think having one apprehended is as close as you can come to it without having to deal with death. That is the level of stress we felt.

Mr. Chairperson: Thank you very much for your presentation, Ms. Shapiro.

I call Garth Smorang. Garth Smorang, have you a presentation for distribution?

Mr. Garth Smorang (President, Manitoba Bar Association): I do not.

Mr. Chairperson: Thank you. You may proceed.

Mr. Smorang: Thank you, Mr. Chairman, members of the committee. I will start by confessing that most of the arguments I make at this hour involve fighting for my half of the bed. I hope to do better tonight than I do on that argument. I will be brief because much of what I have to say will echo the comments of Colleen Suche, president of the Law Society. I appear as president of the Manitoba Bar Association. We represent approximately a thousand lawyers who practise in Manitoba. I am here to talk to you tonight on the issue of 19(3).

Specifically, 19(3), as you will already well know, deals with many of the formal legal aspects of the act and, in particular, involves such things as notices of application; filing true copies; serving copies on the agency; court hearings; burdens of proof; representation; presenting evidence; cross-examining and examining witnesses; and as Ms. Suche advised, in the particular legislation proposed, no right of appeal.

It is the view of the Bar Association that the words involving agency by someone other than a lawyer are potentially dangerous and ought to be very seriously reconsidered by this committee. Our concern is,

perhaps surprisingly to you, more of a perspective of public protection than protection of lawyers' turf. I do not think it could be said that this type of work is going to provide too many lawyers in this province with full-time work. It is however our concern that people who are not trained in the art of eliciting evidence, who are not regulated by a society, who are not obliged to comply with a code of professional conduct, who have no duties of confidentiality or solicitor-client privilege, who have no duties of integrity or presentation of proper evidence and have no conflict-of-interest regulations put upon them, might well be purporting to represent individuals in our courts.

I want to give you some examples of that, by way of example. One of the things that I do, in addition to being president of the bar, is I teach at the bar admission program. I teach lawyers who are becoming practising lawyers. We spend a fair bit of time teaching them how to examine and properly cross-examine child witnesses.

Child witnesses are particularly special people. First of all, they can be swayed, whereas an adult normally cannot be so easily swayed. They are much more prone to suggestion. They are much more prone to emotion. They are much more prone to stress than the average adult. A lawyer, although fighting for his or her client, has to have very close regard to the frailties of a child, and has to have that regard understanding that a judge also has that regard for those frailties.

My concern is that an agent, appearing on behalf of an individual, might not have that kind of sensitivity, might ask questions of a child witness that would throw that witness into a state of emotion or a state of concern that would virtually render the process either irreparably harmed or certainly seriously harmed. I think that it is a danger to allow agents to examine child witnesses. It is an art, and I do not say it in the sense of allowing the lawyer to dig too deep, but I do say it in the sense of allowing the truth to come out in the appropriate and proper way. I take the doctor's testimony earlier, as an expert in the area, that there are certain understandings that must be come to when you are trying to elicit truth from a child. Lawyers, whether you act for the agency or you act for the individual, must have regard to that. We are well trained and well experienced in that.

I also wish to point out to you the issue of privilege and confidentiality. An unregulated agent who can hang a shingle up and say, I am your person to hire to go to this particular type of proceeding, has no obligation to keep the information that they have confidential, has no obligation to have any regard to a conflict-of-interest situation where they might be acting against an individual in months or years to come, could take the information that they obtained from the individual and tell anyone else they wish. There would be no repercussions because those people are unregulated.

So my concern is that if you are going to choose to use the court–and I take the question by the member earlier to Colleen Suche as to whether the court is the appropriate forum or not, and I am not here to talk about that–if you choose the court as the appropriate forum, I think the time-tested method for eliciting the best truth that can come out is the process used through a judge with counsel on one side and counsel on the other side, and I would presume–maybe I presume wrongly–that the agencies in these cases will have counsel.

* (0040)

So if the individual or the individual's agent, nonlegally trained, are against that counsel, I think it flaws the process, and I think you stand less of a chance of getting to the real truth, because that is what we are about here, is the real truth. Whether the evidence is sworn or unsworn does not really matter. We are talking about a process that is designed to get us to the truth, and what I am here to tell you this evening is that I think, and my association believes, that properly trained and experienced people will get you to that truth quicker.

Thank you very much for your time.

Mr. Chairperson: Thank you very much for your presentation, Mr. Smorang. Any questions? Thank you again for your presentation.

I call next Norma McCormick. Welcome to the committee. Have you a presentation for distribution?

Ms. Norma McCormick (Private Citizen): No, it will be an oral presentation.

Mr. Chairperson: Thank you. Would you proceed, please.

Ms. McCormick: I come to speak to you tonight as the former chair of the Child Abuse Registry Review Committee. I chaired the first registry when it was formed and spent a complete five-year term and then a partial second term which I resigned following my election to the Legislature in 1993. During that time, I had the privilege of dealing with several ministers, Muriel Smith, Charlotte Oleson, Mr. Gilleshammer and Mrs. Mitchelson.

I want to tell you tonight that I looked forward to this bill with considerable interest because over those years–in fact, I brought a binder here which has a lot of correspondence to the various ministers and no fewer than five computer disks which dealt with our concerns over the years, trying to make the Child Abuse Registry Review Committee work as it was intended to. So my overall consideration in appearing tonight was to offer you an opinion about whether this bill further moves us toward the finding of these solutions or moves us away. Unfortunately, I have concluded that it is moving us further away from a solution.

I want to begin by saying the first problem is that the overall consideration is that this approach, putting the adjudication down into the agency, further reinforces the dual tension of the provisions of beneficial services to children and families and the coercive powers with which the agencies also have to interface with families.

Secondly, I really have to question the government's motivation for proceeding in this direction, in the direction implied in the bill. I expect that the government's motivation is purely financial, to rid itself of the cost of the Child Abuse Registry Review Committee and to download its function to the agency to be discharged by volunteers of the child abuse committee.

Dr. Ferguson pointed out, and I think it is a true fact, that you are unlikely to find volunteers who are fully employed in other occupations having the time to deal with the volumes that are going to be required. The group that Dr. Ferguson spoke of wishing to be struck sounds very much like the people who were intended to serve on the Child Abuse Registry Review Committee, those community people who have this kind of expertise. So I think that we have to examine why, in fact, the mechanism has not worked as intended.

All of the presumptions in The Child and Family Services Act are that activities will go on in the best interest of the child, so we have to question whether or not another mechanism for adjudicating the fate of alleged abusers and registration is going to be improved by getting rid of the review committee.

There may be an argument for taking it out of the committee format, but I do not think that the answer is putting it between the agencies and the Court of Appeal. First of all, the bill provides for the opportunity for the suspected person to provide information. It also calls for an informal proceeding. Now, I think we can presume correctly that this only deals with what were formerly the (c) registrations, that (a)s and (b)s will not be dealt with by the committee, so that is fine.

However, the minister has said that there is no possibility of requiring a child victim to place information before the committee. So the minister's statement points out the problem of ambiguity around how this information is going to come before the committee. One thing we know about child abuse and the pathology of child abuse is that people tend to have very strong denial mechanisms. It is not an easy thing to admit that you abused a child or to accept responsibility for that in your psychological makeup which would cause you to abuse a child.

The second thing we have to recognize is that these things generally do not happen with a gallery present, right? They happen in private between an adult and a child. Now, historically we have viewed children's evidence with high degrees of suspicion. I spent four years on a federal government commission appointed by the Departments of Justice and Health and Welfare looking at the Criminal Code offences and the way children had an obligation to tell upwards of nine and 10 times to have themselves taken seriously and that very few of these founded allegations ever proceeded

into court to find a conviction, because people simply refused to believe children.

So given that, I think that we can no longer or we can and we never could rely on solely those people who were subject of a finding in a family court or convicted in criminal court, so that was the purpose for having these people for whom an agency formed an opinion being recommended for inclusion on the review committee.

Secondly, I think that there is still some lingering confusion, from having listened to the submissions tonight. I think it is not clear what your intentions are. Now, I have been informed that there are going to be a battery of regulations which are going to govern these proceedings, but you are asking us to take a tremendous leap of faith by trying to figure out what your intention is and then presuming if this new scheme can work. So I think that is a considerable problem.

The other thing that really does trouble me is, over the six and a half or seven years that I have spent chairing the committee, we had two decisions made by the Child Abuse Registry Review Committee go to the Court of Appeal. One was overturned and one was maintained.

Now, for someone to stand here and tell you that the decisions are routinely overturned, I do not know where that is coming from, because it certainly does not come out of my experience. So the question then is: Is a judge sitting in the Court of Queen's Bench the more appropriate person to hear the evidence and to adjudicate? I think we have had a couple of experiences lately, one in the Court of Appeal and certainly one in family court, which has just recently been publicized, that we should not put ultimate faith in the judiciary to adjudicate these.

I think that we really do need, if we are going to rely on judges, to broaden the scope of experience and the learning of the judges in order to be able to make good decisions in these areas.

The other thing that has become apparent tonight from at least three lawyers I have heard speak about who can represent the alleged abuser at the Court of Queen's Bench, again, the regulation allows for an agent.

Now, historically it has been a real interest to me to see the suspicion with which the legal community viewed the administrative tribunal which was the Child Abuse Registry Review Committee. We used to have lawyers come before us or sometimes they would spend a lot of time keeping their clients away from us until the courts would adjudicate the matter that we had the right to seize jurisdiction. So I really want to put that into context, that you have now got the lawyers who are finally getting it back into the judicial system still unhappy, because it is not going to be just lawyers who get to advocate on behalf of the alleged abuser.

Now, if in fact they hold the day and only lawyers are allowed to file the notices and to represent at Court of Queen's Bench, then you have to ask yourself who is going to be able to afford to appeal? Right? It is going to be a matter of only those people who can afford or who qualify for Legal Aid to get their names off the registry. So, the other question that has been asked is, are the QB judges capable of operating under the lessened evidentiary standard and to make adjudications based on the balance of probabilities as opposed to beyond a reasonable doubt?

This is something that I really take great exception to because we had a lot of effort put into developing evidentiary guidelines. We informed ourselves as a committee. We went right through charter arguments. We familiarized ourselves on what the charter required, and to simply say that if you are not legally trained, you cannot understand evidentiary concepts, is a crock. If that is the case, why do we allow people to get elected to the Legislature unless they are lawyers, and what gives ordinary mortals the right to make laws, right? So, again, I do think that we have a problem here if we are going to bow down to this idea that only lawyers can understand the truth.

* (0050)

Now another problem that I have–and I think I am running fast out of time–but another problem that is going to remain with your bill that is going to be the case regardless of whether it is adjudicated at the court or by the Child Abuse Registry Review Committee is

the question of young offenders. Right now in the bill, it leaves the provision for people who were convicted in court of an offence to have their name automatically go on the registry. Now, here is the problem. If you have a young person who chooses alternative measures, they have to accept responsibility for their actions or for what has been done. They may not proceed through the court process, there may not be a finding, but they are still acknowledging that they were, that they did what they have been accused of doing. Now, what are you going to do with those people, those young people who are going to have to either go on the registry, because the alternative measure is an acknowledgment of responsibility for the act that they were accused of. Are you going to, then, put them back into the child abuse committee and have it dealt with at the point?

Sorry, okay, I realize I am rapidly running out of time. So, you know, there are several things that are going to remain problematic that have been noted over the space of time. The other thing is the question of whether or not names will stay on longer, the access by people to have their names removed. We have heard here that there are those who believe that names will be harder to get off, but I really do not think this is necessarily the case because I read into those sections, 19.4(3), that the person can go every two years and make the case to have their name removed. If, in fact, a judge says that the person satisfied that they do not pose a risk to children, they can order the person's name and all related information to be removed.

Now, does this mean that the agency has to come back and have an opportunity to have a say before the court at that point?

Mr. Chairperson: You are now at almost 12 minutes.

Ms. McCormick: Sorry, you gave permission for one other person to forego their question period. Could I do that?

Mr. Chairperson: Wrap it up quickly.

Ms. McCormick: Quickly. So this is a problem. It is rather frightening to think that a person can appear before a judge, allege that or contend that they are no longer a risk to children, and have their name removed unless there is some other exploration of the person's contention.

Anyway, the bottom line is, I think, the big problem that you have got that is going to continue is you are going to have an incomplete registry. So long as this continues, so long as there is wide discretion about who the agencies have to register and so long as certain agencies choose never to register, and if you look around not every agency does register names, then you have got the danger of an incomplete registry. Those people, who go looking for a confirmation that the person that they are considering hiring or putting in care of children is not a risk, are going to have a false illusion, in my opinion, that the registry is complete when, in fact, it stands in my opinion a less chance of being complete. So I do not think that you are finding the answers in this proposal. I think that if you want a common ground consensus you might consider putting a master in the court as opposed to the Court of Queen's Bench. Other jurisdictions have used a master, and that appropriate person may be better than using a Court of Queen's Bench. Thank you.

Mr. Chairperson: Thank you very much for your presentation, Ms. McCormick. Are there any questions?

Mr. Kowalski: I just want to say that it is a tribute to this presenter that even though she has been a member of this Legislature, she still has enough faith in the process to stay here until late at night to come forward on something she feels very strongly about. I think it is a credit to the presenter. I will just ask a very general question. You heard the presentation from Helen Zeufle who reported back during the public presentations about the heart-rendering stories of people who have been falsely accused. Do you see this bill as a result of her recommendations and her report moving the emphasis away from protection of children to protection of the rights of the accused?

Ms. McCormick: I think that her statement that this can ruin a person's life, livelihood and reputation is in fact putting the onus in the wrong place. I mean it is the people's act themselves that has caused this if in fact they have abused children. We need to keep two things in mind. One is that children are powerless, as Dr. Ferguson pointed out; and secondly, that if we are

going to have an inherent suspicion of children's evidence, then we have to have some mechanism of ensuring that the big tragedy of the child, whose life is going to be ruined by having the abuser walk, is considered as well.

Mr. Toews: If I could just ask you a question and perhaps just a comment to see if I have got your position. Your concern then would be if we broaden the basis upon the evidence which a decision maker could make this determination, that is to ensure that it does not become too formalistic a process, you would not have any objection to still maintaining a right to a fair hearing for a person who has been accused of something like this?

Ms. McCormick: Of course I would not object to a person having a fair hearing, but the problem that I see is putting that onus for both the investigation, which now rests with Child and Family Services agency, and the adjudication of an appeal in the same agency is a problem. It goes back to my opening statement that this further aggrevates the dual role of the beneficial service provider and the coercive power. That, to me, is really difficult.

Mr. Toews: The issue of the agency performing a dual role is not a new one in view of the child protection role that an agency plays generally in the power to apprehend as well as its power to assist families in dealing with children.

Ms. McCormick: Certainly, but are you going to then say that we do not need the Court of Queen's Bench? That if an agency decides to apprehend a kid, then tough bananas; we do not need to go to the court and get any kind of an order on the child. You would not say that? You are not going to get rid of the family court for purposes of those adjudications.

Mr. Toews: I am asking you the question. You are the witness here, and I am going to take your opinion and consider your opinion. I am sure that only half of this committee would consider my opinion of any value.

Floor Comment: And maybe not.

Mr. Chairperson: Order, order. Ms. McCormick, did you want to respond?

Ms. McCormick: Well, I think I have just said what I need to hear the minister say and that is that we still have external bodies making sure that the agencies are doing the right thing, and that is what the Child Abuse Registry Review Committee served.

Ms. Cerilli: Thanks for your presentation. I am glad that you had the chance to rebut or counter some of the other comments that were made, but I want to back up and clarify your comments regarding the provision in the court to use balance of probability.

This is one of the things that has been discussed quite a bit here tonight, and if you feel that the provisions in the legislation, from your experience of being on these committees, is going to mean that there is going to be a shift to a more adversarial approach, and it is going to mean that there will be more of a tendency to go to findings based on beyond a reasonable doubt.

* (0100)

Ms. McCormick: I think that is going to be the net outcome. I do think that over the years we saw a litany of lawyers who would stand before us and berate us that we were not in a position to convict anybody of anything and that we were not even using an appropriate standard in terms of assessing responsibility, and so the legal community, historically, does not like the diminished standard of evidence.

Now, taking into consideration the suspicion with which we view children's evidence, then you have the two things stacked up against coming to what might well be the best decision to protect kids.

Mr. Chairperson: Mr. Martindale, with a final question.

Mr. Martindale: Once again, our rights to ask questions have been limited by the rule imposed earlier this evening by the government.

Thank you, Norma, for appearing tonight. I guess there are some advantages to being last. You get to sum up and rebut previous presenters.

You are alleging that perhaps the motivation for these amendments by the government regarding the Child

Abuse Registry process is that it would save the government money. I am wondering if you could tell us what the annual budget is or the expenditure is, or was, for the Child Abuse Registry committee.

Ms. McCormick: I cannot tell you what the budget would be now, but, certainly, there was an administrative officer. There was time assigned by Civil Legal Services from a lawyer who counselled the committee. There were costs associated with the hearings in the sense that the people who served on the panels were given I think the princely sum of a hundred bucks a day or a hundred and fifty if you chaired it.

So there were costs. There were also costs associated with travel because we tried to move into the communities where the appeal hearings were to be heard and, of course, costs associated with the agencies which had to come before us.

Now, I think that, as a line item, it probably did add up to I would speculate, maybe the minister can correct me, but perhaps $500,000 or $600,000 a year, but that may be high. Anyway, the costs are not going to go away. They are just going to be offloaded down onto the agencies and into the costs of either the Legal Aid system or to the private individual who has to have a lawyer.

Mr. Chairperson: Thank you very much, Ms. McCormick, for your presentation.

Are there any other persons in the room who have registered and would like to make a presentation? Seeing none, I will ask then whether it is the committee's wish to proceed to clause-by-clause consideration.

Some Honourable Members: Yes.

Some Honourable Members: No.

Mr. Martindale: Mr. Chairperson, we are dealing with two very important bills here, Bill 47, The Adoption and Consequential Amendments Act, and Bill 48, The Child and Family Services Amendment and Consequential Amendments Act.

One piece of legislation, Bill 47, is 70 pages long, and we have had numerous presentations. We had 12 presentations on Bill 47; well, maybe less. A couple of people were absent who had registered. We had 16 people register on Bill 48. We are not talking about some minor, two-page amendment bill here. We are talking about two pieces of legislation that incorporate some major changes.

I think to do it at this late hour, at five after one in the morning, is unfair to the committee and to the process and to the importance of these pieces of legislation. I would recommend that we come back and do it again at a time appointed by the government House leader.

Voice Vote

Mr. Chairperson: All those in favour of going clause by clause in the committee, would you indicate by saying yea.

Some Honourable Members: Yea.

Mr. Chairperson: All those opposed.

Some Honourable Members: Nay.

Mr. Chairperson: I declare the Yeas have it.

We will then move to clause by clause consideration of Bill 47. As is normal procedure we will set aside the title and the preamble until the rest of the clauses have been considered and the table of contents.

Clause 1. Shall the item pass?

Mr. Martindale: Mr. Chairperson, we have numerous questions. I am not sure that we are even going to get into clause by clause tonight. It is too bad that the government cannot compromise here and come back and consider this in the light of day. We have lots of questions about these bills and we would like to ask some of our questions now before we get into clause by clause.

The presenters tonight had lots of concerns, and I am wondering if we can ask the minister some questions for clarification. We will begin with the presentations about the adoption registry by Post-Adoption LINKS

and other groups. What is the minister's view of the likelihood of court cases and whether or not they would be successful?

Mrs. Mitchelson: We had the bill reviewed by constitutional law, and it is our best advice that it would withstand the challenge.

Mr. Martindale: Could the minister tell us how much the fees are going to be for adoption services?

Mrs. Mitchelson: Certainly not as high as British Columbia's that were instituted under the New Democratic government there. I think their fees are around $1,500 for a home study, and I can guarantee my honourable friend and members of this Legislature that they will not be that high.

Mr. Martindale: Will the fees be set out in the regulations?

Mrs. Mitchelson: Yes.

Mr. Martindale: What range of fees will private adoption agencies be allowed to charge?

Mrs. Mitchelson: I am sorry, Mr. Chairperson, I would like to ask my honourable friend to repeat that question.

Mr. Martindale: Could the minister tell us what kind of fees private adoption agencies will be allowed to charge?

Mrs. Mitchelson: I cannot give you an exact amount at this point in time, but I would like to indicate that in British Columbia the fees are established by regulation and domestic adoptions are $1,500 and international adoptions are $2,250. In Alberta the fees range from $800 to $1,500, the average being $1,200 for a home study. Saskatchewan, average fees are around $600, so they do have a fee in place for home studies. Ontario, the average is $700. In Quebec it is somewhere between $650 to $800. Nova Scotia is about $2,000 per home study. Prince Edward Island does not have any at this time but they are looking at fees. New Brunswick has legislative amendments planned for implementation in December of 1997 and are proposing fees for services. We do not have an amount there. Newfoundland has nothing in place.

So that gives you sort of a quick glance right across the country and you will look at most provinces charging a fee. I would imagine that we will try to determine something that is reasonable for Manitobans.

Mr. Martindale: Are there fees for services besides a home study?

Mrs. Mitchelson: Mr. Chairperson, there are legal fees which are charged now with a private adoption in Manitoba, as they are right across the country.

Mr. Martindale: It is my understanding that people are paying up to $4,000 now. Does the minister envision that because of The Adoption Act and the regulation of fees that people will be paying less in the future, or will those kinds of fees continue?

Mrs. Mitchelson: Mr. Chairperson, I am not sure where my honourable friend is coming from. Is he talking about fees in Manitoba or fees across the country?

Mr. Martindale: In Manitoba.

* (0110)

Mrs. Mitchelson: My assistant deputy minister does indicate that he used to charge $500 when he was doing this kind of service in the private sector, which is considerably less when I see what is happening in other provinces. Can I indicate that I am not sure what the range is for legal fees, but they would be comparable to what legal fees are right across the country for adoption services.

Mr. Martindale: So in addition to paying for a home study, individuals would be looking at legal fees over and above that.

Mrs. Mitchelson: Mr. Chairperson, yes, as they are in every other province.

Mr. Martindale: So the minister does not envision any change because of this bill in terms of the cost to individuals for adoption.

Mrs. Mitchelson: As I indicated, there will be a fee for a home study which will be an additional cost over and above the legal fees, but as I indicated in my earlier answers that is not unlike what is happening across the country in most provinces that I listed before.

Mr. Martindale: Some of the presenters expressed concern about people shopping around to find maybe a private practitioner or an agency that would approve a home study. Will people be limited in terms of their opportunities to have a home study?

Mrs. Mitchelson: Absolutely, Mr. Chairperson. It is spelled out, I think, in the legislation where it indicates that those that do home studies, there will be regulations and standards surrounding those who do home studies in our province. They will have to be affiliated with a mandated agency or a not-for-profit agency that will be spelled out in regulation, and there will have to be the checks and balances in place, so that there will not be anyone able to be shopping around. There will be certain standards and criteria that are set in place.

I want to indicate to my honourable friend that the legislation will not be proclaimed until these processes are in place and we have every assurance that there will not be any shopping around, and that a family that is studied through one system will be studied–or that information will be shared, so that in fact you will not be able to shop to try to find a friend that will give you a favourable report, if you are unsuccessful in one area.

Mr. Martindale: The minister says that there will be standards in the regulations. What sort of standards for private practitioners and nonprofit agencies is she referring to?

Mrs. Mitchelson: The same standards that presently exist for those that are qualified to do home studies through the agencies.

Mr. Martindale: In a brief presented tonight by LINKS, Post-Legal Adoption Support Group, they alleged that there was not a need for confidentiality because the adopting parents did not have a written contract. Does the minister have a view on whether or not this statement is accurate?

Mrs. Mitchelson: I think that the only comment I would like to make around the post-adoption registry and the confidentiality that will be maintained with past records is it is something that, at this point in time, I am very much supportive of.

I think sometimes that retroactive legislation is not necessarily the best legislation. I have had an opportunity to speak to many individuals, and some at great length, around a process that maybe has taken place in the province of British Columbia where they have provided identifying information without working with the individual that is requesting that information to ensure that the sensitivity around approaching, whether it be an adult adoptee or a birth parent–it is a very sensitive issue. I think that we still want to maintain some ability to counsel and to work with individuals as we go through the search process with them.

We have opened up the registry to active searches on behalf of birth parents and siblings, along with adult adoptees, which were the only group that could have active searches done in the past. I believe that we have taken a major step in the right direction, and I think you heard LINKS say that we have moved considerably.

We may not have gone as far as they would like us to go, but I still think–and I know my honourable friend made comments on second reading, which I listened to very carefully, and even asked a question tonight in committee and indicated that we would be hearing from one side of the issue. We did not hear from individuals who placed their children for adoption when things were, circumstances were considerably different at the time that they made that decision.

We have indicated that we will actively search and we will approach those people to see whether there is a willingness on their part to be united, but we are still not prepared to just provide the name without trying to ensure that there is sensitivity around the issue of contact.

So I think we have made a major step in the right direction. It does not mean to say that after a few years of experience with the legislation there might not need to be amendments made. I guess that is one of the reasons we have moved to separate adoption acts so that in fact if there are changes that need to be made

and as the world evolves and as we see experiences in other provinces and we see experiences with our own legislation around what the results will be, that there might not need to be amendments or changes made down the road. You know, we certainly, as long as we are in government, are prepared to listen to what Manitobans have to say, to look at the experience of the changes, very significant changes, that we are making on the adoption side and, if there is a need to go further, we will never rule that out.

Mr. Martindale: Does the minister anticipate that because of a fully active registry that there will be hundreds or thousands of more requests and, if so, will there be additional staff or automation to take care of the increased workload?

Mrs. Mitchelson: As we speak, the issue of backlog on the Child Abuse Registry is an issue that we are addressing. Not long ago there was only one person working on the searches. We have identified additional resources that are available now. We will have to determine–I guess the issue for me is if we are going to have an active search, we have to be up to date and up to speed. I have made that commitment and the department is working very aggressively to ensure that the resources are in place so we get the lists up to date or get the searches up to date.

Mr. Martindale: A number of presenters expressed concern that birth mothers need support and also to have their rights protected. Does the minister see that having nonprofit agencies like Adoption Options work with both expectant mothers and parents who want to adopt as a conflict of interest?

* (0120)

Mrs. Mitchelson: No, I do not. I do not know if my honourable friend has had the opportunity, but I have had the opportunity to meet with members of the adoption triad. I have been involved in some of the conferences that have been held, Gift of Hope conferences that have been held on a yearly basis with the adoption triad and that is the adoptive parent, the birth parent; LINKS is a part of that also. They attempt to work very closely together. I think the whole issue around support for a birth parent is critical. I have no hesitation in believing that there are many, many people out there, and we heard from adoptive parents tonight who really believe that birth parents are a very integral part and have a lot of needs and a lot of issues that need to be dealt with.

I think from the discussions I have had, and they have not only been with adoptive parents, but they have been with birth parents who have determined that the best option for their child is placement with another family. I think the whole issue, if you look at the sensitivity around the issues today on adoption versus the way they were many years ago, maybe not that many years ago, I think there is a great sensitivity to wanting to ensure that when a birth parent makes the decision to place that child for adoption that there is not the guilt surrounding it, that they understand all of the implications and that they can be part of the planning process, is a much, much better way to deal with the issue of adoption than the secrecy that was surrounding adoption not that many years ago. If in fact a birth parent is supported and has some control and some ability to develop a contract that is mutually acceptable to both her as the birth parent and the prospective adoptive family that ensures there is a free and open contractual arrangement, I think it is in the best interests of all parties. I certainly support the work that is done by Adoption Options and the group of people–South Winnipeg Family Information Centre is another organization that works very closely with the adoption process and the adoption triad. I really believe it is the right way to go, and I think that birth parents need as much support as adoptive parents through the process.

Mr. Martindale: Who advocates or who will advocate for birth parents and their wishes and rights to see that they will be protected?

Mrs. Mitchelson: I think there are many vehicles for that to take place, and I think whether it be someone in the community that is informed in the issues surrounding adoption that can counsel and work with birth parents, whether it be members of Adoption Options who are working right now, and quite successfully I might admit, with the issues surrounding the feelings that birth parents go through when they make that critical decision, whether it be a worker in the Child and Family Service agency that is working with a young women that is under the age of 18, I

mean, I think there are all kinds of options and opportunities.

I think what we want to do is try to ensure first and foremost that every child has an opportunity to a permanent, loving, nurturing home. If it happens to be the decision of the birth parent that placement for adoption with some caveats, some ability for that birth mother to have some part in the planning process for who the adoptive family might be and there is a mutual understanding that both sides believe it is in the best interests of the child and their future for this to happen, I think that it is a very positive process. I would want to see that happen, keeping in mind that we all believe and I believe that all of us sitting in this room believe, that every child deserves a permanent plan. If in fact it is by mutual agreement between an adoptive and a birth family or parent that obviously it would serve the children best to have that kind of process take place.

Mr. Martindale: Why did the minister decide to license private practitioners and nonprofit agencies? What is not working now, or what is the motivation or the rationale for making this major change?

Mrs. Mitchelson: I guess, I heard many presentations too from members of the Child and Family Services system, those that are working in the system, indicating that they are overworked, they have high caseloads, that they are stretched to the limit, they are not going to have time to do the proper assessments to deal with the reduced court time. In fact, if there is the ability for those outside of the Child and Family Services Agencies with the same standards and qualifications to do the home studies, would that not stand to reason that maybe some of the time could be freed up by those workers in the system to focus on some of the protection issues that they have some concern about not being able to achieve satisfactory results on?

So I think that if in fact there is the ability to charge for a home study and that we have the ability then to ensure that those with the proper qualifications that are not necessarily working in the Child and Family Services system can do those, it would free up time within the Child and Family Services system to do the kinds of things that many of the presenters on Bill 48 made representation about this evening.

Mr. Martindale: At the same time, are you not offloading the cost of adoption to adoptive parents?

Mrs. Mitchelson: Mr. Chairperson, you know, my honourable friend comes back to this again, and I look at him sitting in opposition trying to have it both ways. When we see NDP governments in power in other provinces, we see them doing exactly the kind of thing, long before us, that we are doing with this legislation today.

My honourable friend continues to try to indicate or insinuate that we are placing an onerous burden on an adoptive family. I will tell you that if an adoptive family cannot pay $600 to $800 to $1,000 for a home study, how can we realistically expect them to pay the full cost for that child for 18 years of their life? It is certainly going to cost a lot more than an up-front investment of an additional thousand dollars when they are already paying legal fees.

So I question where my honourable friend is coming from when governments of all political stripes right across the country have imposed these kinds of fees and have changed their legislation, and we are doing nothing but mirroring many of the things that other provinces have put in place and trying to modernize our adoption system and trying to put children first and ensure that children have the opportunity for a permanent, nurturing and caring home. If we can facilitate that process when we have families that are wanting children and we have birth parents that are wanting to be a part of that process of placing their children for adoption, I cannot understand why my honourable friend would have any problems.

* (0130)

Mr. Martindale: I would like to reply, but it is going to be a late enough night as it is. I know of one organization–

Floor Comment: It is going to be early morning.

Mr. Martindale: It will be early morning. I know of one organization that is involved in cross-cultural experience and cross-cultural education. That is Project Opikihiwawin. There may be other organizations, but that is one I am familiar with, and we do know that

many nonaboriginal parents are still adopting aboriginal children.

I am wondering if there is going to be any requirement in the regulations that private practitioners or nonprofit agencies be required to have some sort of education or training or experience in cross-cultural education or cross-cultural experience.

Mrs. Mitchelson: I have had several meetings with Project O and the people who are involved–I have actually been out to a community meeting with people who are involved as volunteers with Project O, and I have to indicate that everything points to–[interjection] Mr. Chairperson, I was just indicating that I have had meetings with Project O.

I certainly understand the value of an organization and the volunteer commitment of many of those who are involved. I have been out to meetings in the community, and I know that there is great benefit to ensuring that children of aboriginal descent have some connection to their culture, to their background, and if, in fact, nonaboriginal people are adopting aboriginal children, I think the model that Project O has in place and the people who are there and supporting the issues of cross-cultural connection are moving in the right direction.

I fully support that concept, and we are and will continue to work with Project O to ensure that culture appropriateness is taught, is learned and is shared with families that adopt aboriginal children.

Mr. Martindale: I did not hear the minister say that there would be anything in the regulations requiring cross-cultural education. I do not like to refer to Adoption Options, but my understanding is it is the only nonprofit organization now–in the future, there could be more organizations, but to use it as an example, my understanding is that about 30 percent of the children adopted through Adoption Options are aboriginal.

Well, now that I have the minister's full attention, maybe I will just repeat what I was saying. I did not hear the minister say that this concern of mine will be dealt with in the regulations. It is my understanding that about 30 percent of the children adopted through Adoption Options are aboriginal. Can the minister tell me if they are providing any kind of cross-cultural education to their nonaboriginal adopting parents?

Mrs. Mitchelson: I have no information to confirm or deny my honourable friend's statement. I will certainly ask the appropriate question of Adoption Options and get that information, but I have no way of knowing that. All I can say is that all indications are that when there is education and cross-cultural connection, it does benefit both the adoptive parent and the child.

Mr. Martindale: Well, I would certainly agree with that, but I am wondering if there will be any requirement in the regulations for cross-cultural education.

Mrs. Mitchelson: I think one of the recommendations from the Zuefle committee report was that we look at, you know, when we are licensing not-for-profit agencies that the cross-cultural component be a consideration. We certainly will look at that as we move forward with licensing of not-for-profit agencies, and it could be a requirement of a licence.

Mr. Martindale: Well, I would encourage the minister to do more than just look at it, and I am pleased that she said it could be a requirement of the licence because we know that, particularly with aboriginal adoptees, many times in adolescence they have questions about their identity and go through a lot of turmoil in their adolescence or teenaged years, and that some of these children end up in the care of agencies or on the street or in illegal activities, which has a great cost to Child and Family Services Agencies and to society. Anything that we can do to encourage the parents to help them discover their identity or to keep them connected with the aboriginal community or, in a positive way, to help them to appreciate their aboriginal ancestry is going to be beneficial to those individuals and to society. So I hope that the minister will follow up on her commitment to perhaps make it a requirement of the licensing.

Mr. Chairperson, we heard concerns about the need to have more children adopted because there are so many that do not get adopted, and people suggested that there were reasons for this, and one was the cost. We

had a very interesting suggestion made by one presenter that there be per diems. Well, I think the room and board allowance for social assistance was suggested for adoptions in order to encourage people who might not otherwise be able to afford to adopt children. A comparison was provided for the committee on the cost of continuing to pay foster care payments and the cost of this new system that was recommended, and it was pointed out that there is a considerable saving. I am wondering if the minister would consider the suggestion that was made since it seems to be a good one and which would save the government money. It was a recommendation that financial assistance be provided for a person adopting a child.

Mrs. Mitchelson: Mr. Chairperson, any recommendation that comes forward that looks at a permanency plan that might save some resources so we could focus them on other areas of children in need merits consideration. I do not think it is a legislative amendment that needs to be made, but I think that if, in fact, we review–and as we will–all of the presentations that were made and see whether it has some merit–and also, I mean, this is a recommendation that has come forward from someone working in the system.

I suppose I should have asked the question, or maybe we should have asked, whether it was a recommendation that was discussed with many foster parents. Whether the amount that was put forward in the presentation would be an amount that would satisfy foster parents in order to have them look seriously at the issue of adoption for those foster children is something that I certainly would want to have some significant discussion with foster parents around. So it is a recommendation that merits some consideration, but it does not need legislative change. If in fact it seemed like the right thing to do and there were enough individuals out there interested in this, I think we might look at it seriously. I think it is premature until some of the discussions with foster parents take place around whether this would be adequate support in order for them to consider or contemplate a permanency plan through adoption.

Mr. Martindale: If the minister is saying that it is not necessary to do it through a legislative change, then it could be done either through a regulation change or even a policy change?

Mrs. Mitchelson: Right.

* (0140)

Mr. Chairperson: Clause 1. Shall the item pass?

An Honourable Member: No, wait.

Ms. Cerilli: Mr. Chairperson, I want to ask the minister, currently are funds from the provincial government given to agencies like Pregnancy Distress or Adoption Options that are doing adoptions for these type of programs?

Mrs. Mitchelson: Mr. Chairperson, Adoption Options gets nothing from government. Pregnancy Distress is funded for the Young Parents Community Centre for parenting courses, family support, but not for adoption-related activity.

Ms. Cerilli: Are you anticipating that with the new responsibilities that they have that they will have any funding, or will they have to recover their costs on a fee-for-service basis and that is what the fees for the adoptions will go towards is covering their cost?

Mrs. Mitchelson: Mr. Chairperson, we are not anticipating any funding for Adoption Options. I think if there is a need for community support for community organizations–you know, one of the issues is post-adoption supports if in fact families, and that seems to be an issue that comes up from time to time as an issue where maybe there needs to be a little more focus on ensuring that once the adoptive process takes place that there are supports to ensure that that adoption does not break down.

One of the issues, quite frankly, in the past when everything has happened through a Child and Family Services agency, and I can relate to this personally even, that because of, and we have heard it from presenters, that sometimes there is an adversarial role between families and agencies and mandated Child and Family Services agencies. I have heard from workers in the field who have told me on occasion that they are probably the most hated people in the community. They are hated even more than the police because they are the people who come in and snatch and take your kids away from you. So they really feel that it is a very

adversarial system from time to time, and they feel like the bad guy in the community.

I have heard from adoptive families that have adopted through Child and Family Services agencies that if they were having difficulty dealing with any issues around any family issues or any family crisis that the last place they would want to go would be to the Child and Family Services agencies to admit that their adoption process is breaking down because they would be afraid that the agency would come in and apprehend those children and indicate that they were not fit parents and that from time to time they wished they had somewhere else they could go for support or for help.

If in fact there were community agencies that–and I am not saying Adoption Options, because they are an agency that matches and places–but if there were other community organizations that wanted to enhance that kind of service to adoptive families, I think we would have to look at some sort of support. Just like Wayne Helgason said in his presentations, when you get the support for families, whether they be–no matter what the problem in the family might be, if it is at the grassroots, as close to home as possible and community people, neighbourhood people have some of the solutions and some of the answers, those are the kinds of people we should be supporting as government to provide those kinds of services. I would look very favourably upon organizations out there in the community at the grassroots level that came forward and said, we want to work with families in a more proactive way.

Ms. Cerilli: Of course I think many of us believe that Child and Family Services agencies can be very much community-based and quite grassroots and do a lot of the same things that other agencies in the community are doing if they have the resources and a broad enough mandate.

I want to ask the minister: Currently then, how much resources, time, staff time does Child and Family Services spend on dealing with adoptions?

Mrs. Mitchelson: Mr. Chairperson, that is a question that would have to be asked of individual mandated agencies. They are the ones that do that kind of work. I am not sure how much would be identified through Winnipeg Child and Family that they would spend on adoption services. I know that we have placed a focus on adoption and asked them to look more aggressively at permanency planning for children who are permanent wards. They ran a program last year as a result of our trying to place a little more focus–that was "Thursday's Child." I do not know if you recall seeing it on TV. There was a program where they profiled one child every Thursday for a period of time to reach out to the community to see whether there were prospective adoptive parents for that child. As a result of some of the activity that the Winnipeg agency has undertaken–or maybe not just the Winnipeg agency. Throughout the province, we have seen more adoptions of permanent wards–I should get the numbers–somewhere between 30 and 35 more children, permanent wards adopted as a result of the additional focus that the agencies have placed on adoption as being a positive planning option or alternative, still a long way to go. We heard presenters tonight say that still there are too many permanent wards who do not have any permanent attachment. We have to try to deal with that, but I know we have provided additional resources, four additional workers in the Winnipeg agency to focus on trying to develop permanency plans for their permanent wards. So that has been an initiative that we have undertaken. I guess, as a result of some of that, there have been the additional adoption placements, and we are hoping that number will increase year by year.

Ms. Cerilli: Well, when this legislation is enacted and the new system is in place, those four new workers will no longer have work to do related to adoption. Is that correct, or will they still have a responsibility for that?

The other thing I am getting at is if there are resources freed up, if staff time is freed up, if that is going to then remain with the CFS and be reinvested into other duties, that this is going to be seen as a chance for CFS then to pay attention to the high caseloads that they have, and we are not going to see further reductions there after this job requirement is removed from them.

Mrs. Mitchelson: I would not want to leave any false sort of hope on the record. I want to indicate clearly that the mandated agencies will still have the

responsibility for finding the permanent homes for their permanent wards, okay.

So it is not going to see–the whole focus around permanency planning and adoption through the private sector or private not-for-profit adoption agencies will be more on the infant side where there is an agreement between a birth parent and a prospective adoptive family. But what I have heard very often from those who are working to try to ensure that there are more placements of harder-to-place children that are permanent wards is that maybe some of the people that have been on the waiting list for 10 years as prospective adoptive parents need to be asked whether they can sort of stretch their minds a little bit and look to an older child or a child with special needs, that kind of thing, and see whether that might be an option for them to expand or start their family.

There are a lot of issues that surround adoption of an older child, adoption of a sibling group or a child with special needs, but I think we have to open that dialogue, and we have to really pursue that kind of activity for those who think that maybe an infant is their only option; it is informational sessions, and also ensuring then that the supports are there, post-adoption, for those families so that they do not have an adoption breakdown.

So those are all things that we need to work towards. It is not an overnight quick fix; it is a long, hopefully slow but uphill process.

Mr. Chairperson: Clause 1. Shall the item pass?

Some Honourable Members: No.

* (0150)

Ms. Cerilli: What agencies are going to be licensed? So far do you have a short list, any list?

Mrs. Mitchelson: Mr. Chairperson, no, we do not have a short list. I think that what we have to do is wait till agencies come forward. Adoption Options right now is the only agency in Manitoba that does private adoptions, but there may be other agencies that come forward.

Pregnancy Distress does give some support and counselling to birth mothers, but they are not a formal process. I mean, I suppose they might look at expanding their role or their mandate or changing the kinds of things they do, but Adoption Options is the only organization that right now through–and I hope I have this straight. Pregnancy Distress works with birth parents. They may have, on occasion, helped a birth parent find a family, but they do not work with adoptive parents.

Mr. Chairperson: I am going to interrupt here for a wee bit. Our master tape is broken. We will need about a five-minute recess to fix the tape. Agreed? [agreed]

The committee recessed at 1:53 a.m.

After Recess

The committee resumed at 2:01 a.m.

Mr. Chairperson: Shall the committee come back to order.

Mr. Martindale: Mr. Chairperson, can the minister tell me if she anticipates that because of the changes in The Adoption Act that more aboriginal children will be adopted?

Mrs. Mitchelson: I have no way of determining what the background of any child who will be adopted will be.

I guess the message that I would like Manitobans to hear is that adoption can be a very positive option and process as a parenting choice for individuals. If aboriginal women choose adoption and choose to develop a contract with a nonaboriginal adoptive family, I think we want to ensure that the supports are in place, and I think that aboriginal women would want to assure that a culturally appropriate connection is available.

If that seems to be a positive way of dealing with that issue for the birth parent, no matter what her background, I think that is something that should

happen, but I think that the more open process whereby birth parents have a greater say in the choice of the adoptive parents is very positive for all involved.

Mr. Martindale: Is there not a large backlog of aboriginal children awaiting adoption?

Mrs. Mitchelson: Mr. Chairperson, that might be in the Child and Family Services system, where there are a lot of permanent wards who are aboriginal, and they will be dealt with through the Child and Family Services agency process.

What we are looking at facilitating is the ability for a birth parent who chooses adoption as the parenting option for her child to be matched with a family that she has a role in choosing to parent her children.

So it will deal probably to a great degree with infants, and those who are permanent wards of the Child and Family Services system will still have to go through the Child and Family Services agency process.

Mr. Martindale: But if there is a large backlog of aboriginal children awaiting adoption, is there anything in this bill that will address that problem?

Mrs. Mitchelson: I think to a greater degree what will address the issue of aboriginal children as permanent wards having been apprehended will be the issues that Wayne Helgason discussed and the issues that I hear when I meet with members of the aboriginal community, where, in fact, they want to see the up-front intervention. They want to see parents have a greater role in understanding what parenting is all about, and if they need some support to make that happen, we need to work at that up front, so that, in fact, aboriginal children will not be apprehended and not become permanent wards of the agency but that we will deal with the issues surrounding family and family support up front.

A lot of the programs that are ongoing at Andrews Street Family Centre, programs that are ongoing with the Aboriginal Head Start programs will go a long way, I think, to deal with the issues around trying to ensure that aboriginal parents have the tools and the support at their disposal to ensure that their children will not end up in the child welfare system as permanent wards and statistics in that respect.

So I think a lot of the intervention, a lot of the working with the aboriginal community, the whole issue around–and one of the questions I asked of one of the presenters tonight was how many aboriginal workers are working in the Winnipeg agency dealing with the high number of aboriginal children who are permanent wards, and there is no one, virtually.

One of the issues that the Winnipeg agency raises is that they seem to have difficulty retaining aboriginal workers. To me, that is an issue that has to be resolved. If, in fact, it involves some sort of a process with the aboriginal community that looks at setting up a different mechanism to deal with aboriginal children in the city of Winnipeg through our child welfare system, whether it be a native agency or what that might look like I am not sure yet, but I think we have to work with the aboriginal community to try to ensure that they have great input and that we do not have what they have sometimes said, a white agency in the city of Winnipeg trying to determine what is best for their children. They want to be a part of that process. Ma Mawi wants to play a greater role as a nonmandated agency, and the aboriginal community wants to take ownership and responsibility and wants to work with us to help to solve the problems.

So I think a lot of those issues should be addressed through the urban aboriginal strategy that we are looking at right now, and Child and Family Services will be an integral part of what that strategy might look like. So there are discussions ongoing. We as a government have reached out to the aboriginal community and said, how can we work together to try to help resolve some of the issues that the Winnipeg agency is facing? When they indicate to us that 70 percent of their caseload is of aboriginal background, we certainly need some aboriginal people helping us determine what the solutions are.

Mr. Martindale: I have similar concerns about special needs children. We know that they are difficult to adopt as well. Is there anything in this bill that is going to address the large number of special needs children that could be adopted?

Mrs. Mitchelson: I guess, one of the issues that I talked about earlier was the issue of trying to reach out to families out there that are looking for a healthy infant to see whether they would be willing to look at an older special needs child. As a result of that, I guess, we need to aggressively determine what kinds of supports would be needed to ensure that an adoption might work in those circumstances.

Can I say to you that I honestly believe that whether you are a special needs child in a natural family, in an adoptive family or a foster family, the same services should be available for all children. All children deserve the same kinds of services, and we see–and it is an issue we are struggling with in the department right now, as trying to determine that, because I know that children that are in foster care receive their special needs services through the mandated agencies. Adoptive children or children in their natural families receive services from the department through children's special services.

We are trying to look at how we can bring that whole piece together so that in fact all children are receiving the same kinds of services and the quality services that they deserve no matter whether they are foster children or adoptive children. So that is an issue we are grappling with right now. I believe that we need to be looking at some sort of a central intake or referral process to ensure that foster children–and I have heard and I am sure my honourable friend has heard from time to time comments made by parents that have sort of thrown their hands up and said, well, I am going to relinquish my child to the Child and Family Services agency through a voluntary placement agreement so that they can get the kinds of services they need to get. I have heard that comment and I am sure my honourable friend has heard that comment, too.

That should not be the case. You should not have to, in a natural family circumstance, voluntarily place your child in a foster home so that they get services that they are not getting in their natural family. I do not have the answer today to that, but it is a system that has been in place for many, many years even when my honourable friend's party was in government, and I think it is an issue we have to address.

Mr. Martindale: The answer is that there is nothing in Bill 47 to address the need for more special needs children to be adopted.

* (0210)

Mrs. Mitchelson: There is provision in the legislation as it exists today to provide support for special needs, and that will not change. I guess, what we have to do is make sure that it is fair for all children right across our province and across systems.

Ms. Cerilli: I think before the tape broke and we had our break, you were going to talk to me about Pregnancy Distress and answer the question.

Mrs. Mitchelson: I will try to remember. I will see nods yes or no from staff if I get it wrong. Pregnancy Distress does now deal with some support and counselling and possibly helps with placement of children in adoptive families, but they do not work with adoptive families. They work with the birth parent and the child. So that is their main focus.

Adoption Options works with birth parent, child and adoptive family. There is nothing to say that under the new process or legislation that Pregnancy Distress might want to become a very active partner with all three in the triad and that would certainly be something that we would look at. They may become licensed as a result. I do not know if they have approached us as yet, but it might be something that they might explore as a result of this legislation.

Ms. Cerilli: I know the member for Burrows (Mr. Martindale) has asked some questions about the fees that are going to be charged but I wanted to go into a little bit more detail about that. I know that Pregnancy Distress does get into services where they would keep on file a list of potential adoptive parents or they would have access to that list and they would review that list with a woman who wants to have her child be given up for adoption. I am wondering if that is one of the services that will have a fee attached to it, if agencies then will also be able to charge a fee for that type of service besides just the service that the minister has already talked about will have a fee, which is the home assessment or home study.

Mrs. Mitchelson: The fees will be based on the adoption services, period. They will not be fees for what agencies are presently doing. But can I indicate to my honourable friend, I just want to sensitize her to an

issue, because I think it is so very important, and I hear from birth parents, from adoptive parents and certainly from children who have been adopted that the whole issue and the language that we use surrounding adoption is extremely important. I heard my honourable friend say that a birth parent was giving up her child for adoption. I think it is very critical when we look at wanting to look at success, the guilt feelings that birth parents have from time to time and the whole open adoption process now that talks about choosing a parenting option, whether you choose to parent yourself or you choose to place your child with another set of parents, so it is placing your child for adoption, not giving up. I think that is something that is so very important to those who are working with the whole adoption process today. I just wanted to add that comment.

Ms. Cerilli: I will take the minister's comment at face value and remind her that you never know who you are talking to when you are talking about adoption. You always may be talking to someone who has been involved in this process.

I wanted to also ask you, with respect to having open access and the way that that may affect negotiations or agreements that are being made with the birth parent and the adoptive parents, that if you see that there is going to be any effect on the agreements of how much access the birth parent is going to want to have with the adoptee, the child, if there is going to be any change in the balance of power or the way that those agreements are made, if you have thought about that or you have had any recommendations given to you about that whole part of the process.

Mrs. Mitchelson: The process of private adoptions has been in place in Manitoba, and it has been working for 10 years now, as it has been in other provinces. One of the beauties of an open adoption process–and it is becoming more popular; ten years ago it was not that popular–but one of the beauties is that both the adoptive parent and the birth parent have the ability to have as open an agreement as they choose to have, and if in fact a birth parent was not liking the approach that the adoptive parent was taking, it would not be a process that would work. That birth parent would have the ability to say I do not want my child placed with that family because they are asking something that I cannot commit to, or vice versa. The beauty of an open adoption is that both sides come to an agreement that they mutually understand is what they want, and if that is not accomplishable, it would not be a match.

Ms. Cerilli: Mr. Chairperson, to use the words of people I know who have gone through this recently, they said it could become like buying a house, where you throw in the fridge and the stove and you come to an agreement. They were concerned that this process of negotiating the details of the agreement was going to be influenced by having this open access.

Mrs. Mitchelson: As I indicated just a few minutes ago, it is a process that has been ongoing in Manitoba for 10 years, certainly more common today than it has been in the past. It is a process that is ongoing in many other provinces. We have seen other provinces like British Columbia and Alberta modernize their adoption legislation, and this is the focus they have taken, so it seems to be the direction that everyone is heading. I think it certainly seems to be a process that we heard during our public consultations, that was the right kind of process to be embarking upon.

Ms. Cerilli: I just want to clarify for the minister, if I am understanding the way the process and the time is changing, and that is that there are still going to be three steps. There will be an intent to place, and that will be followed by a 10-day interim care agreement, and then there will be temporary guardianship which will last six months, and now that is changing. Maybe rather than completing of my going through the scenario, you can just explain to me. I understand that it is going to then be reduced to 48 hours and then to only 21 days from six months; that is correct

I am interested in just the rationale. I mean, that is quite a difference to go from six months to 21 days, so I am interested in the minister telling the committee what the rationale is for that fairly large change.

* (0220)

Mrs. Mitchelson: If I can explain the changes, I guess when the act was first put in place several years ago, the 10-day period for placement or decision to place was in place because at that time women stayed in the hospital for 10 days after the birth of their baby. Now,

given that women are only in the hospital for 48 hours, sometimes even less, I guess what we are wanting to do is reflect that hospital stay because, under the present legislation, the way it exists today, that infant, if the mom made the decision to leave the hospital and place the child for adoption, it would have to go into a neutral foster placement until the 10-day period was up. All of the information and research today tells us that those first days and weeks of a child's life are very important regarding bonding and forming an attachment, and so to reflect the hospital stay today, we have decreased the time to 48 hours, so that a child would not have to go from hospital to foster home to adoptive family eight days later. I think that is consistent with what is happening right across the country.

The issue around reducing the period where a birth mother can withdraw her consent from six months to 21 days, and we heard some presentations around that tonight, I think is the right direction to go, and that is the way all provinces have moved too.

In the Zuefle report that came forward, it recommended five days. I think we looked to other jurisdictions, and they were somewhere between 14 days and 30 days, and those other jurisdictions have moved from the six-month period of uncertainty where a birth mother could, six months later, determine that she wanted her child back was unrealistic and not in the best interests of the child very often when they had bonded for six months with an adoptive family. So I guess we chose somewhere in between the 14 and the 30 days that other provinces have adopted and chose 21 days as the period of time. Whether 14 days or 21 days or 30 days is the right number, I am not sure, but that was the reason, so in the best interests of the child, that process could not happen. So those are the changes.

We shortened the time period from six months to 30 days for application for the order of adoption so there can be sooner permanency planning. That is not inconsistent with what other jurisdictions have done in their changes and modernization of their adoption act based on research that tells us that permanency and bonding is very important in the early years of a child's life.

Ms. Cerilli: One final question on this. Even though it is now such a compressed amount of time compared to the six months, there is going to then have to be even less time to arrange for the court date, but the official adoption, the parentage will be official after that 21-day period, even though there will not, perhaps, be a court date to finalize everything for quite a few days or weeks or months even perhaps. I just wanted to clarify if that has been anticipated.

Mrs. Mitchelson: I am not sure where my honourable friend is coming from on this question, so if I am not answering properly, maybe she can ask her–

Ms. Cerilli: Do you want it clarified?

Mrs. Mitchelson: Yes, if you would, please.

Ms. Cerilli: Well, the temporary guardianship will be completed now in 21 days, and then there is up to 30 days for the adoptive parents to make their final decision. Am I understanding that correctly? My concern is that the court date to actually have everything filed and finished through court could be quite a period of time after that. I am just wanting to confirm that once that 21-day period is passed, that that is when it is final in terms of ensuring that the child is going to stay with the adoptive parents.

Mrs. Mitchelson: Because these are arrangements between the adoptive parent and the birth parent, the day the child is placed the adoptive parents become the parents, but the birth mother has up to 21 days to change her mind. After that period of time, yes, we cannot determine when the court date is set, but we cannot determine that today. You cannot even apply for six months, so that it is sometimes a year or more down the road of what will happen in this process.

It is uncontested. It is an agreement between two parties. After 21 days, it is a binding decision. That decision is final once the birth mother has been through that period of 21 days and has not withdrawn on her side of the contract.

Mr. Martindale: In the media backgrounder that the minister gave us, it says on page 2: Adoptive parents will be required to pay a fee-for-services on a sliding scale based on their income level for adoption assessments conducted by existing agencies and not-for-profit adoption agencies.

I wonder if the minister can indicate what she means by a sliding scale and if you have any idea what it is going to look like, or is that going to be in a schedule in the regulations.

Mrs. Mitchelson: It will be a sliding scale based on ability to pay, and we will set out in regulation that anyone earning below a certain income will not have to pay anything, and it will be on a sliding scale from there up. That determination has not been made, but if there is a circumstance where there is not the ability to pay, we will not require any fee.

Mr. Martindale: I do not have the minister's speech in front of me from second reading, but from the notes that I made the minister said that this bill would make the system more friendly and adoptions easier. That is a paraphrase of what the minister said. I wonder if the minister could say for whom adoptions are going to be easier.

Mrs. Mitchelson: I would venture to guess it would be for the birth parent, for the adoptive parent and ultimately in the best interests of the child.

* (0230)

Mr. Martindale: Well, I would contend that it is going to be easier for people who have the ability to pay. I have with me a very interesting article on adoption called Adoption in Canada by Kerry J. Daly and Michael P. Sobol from Canadian Social Trends, Spring 1994, and it talks about the cost of adoption.

It says: Private-agency facilitated adoptions cost an average of $3,610 compared with $3,460 for independent practitioners. Then it itemizes what some of these costs are, including legal fees, investigation of the birth parents' history, home studies and precounselling of the birth parent.

Then it suggests that the fees are even higher with other services added. For example, additional services may be provided such as pre- and post-adoption counselling and home study updates.

These and any extra administration fees or other birth parent expenses can increase the average cost of adoption to $5,780 for private agencies and to $4,530 for independent practitioners. Costs for privately administered international adoptions would be even higher because of additional transportation, lodging and administration fees. Can the minister indicate if those figures which are now three years old are in the range for what you anticipate that not-for profit agencies and private practitioners are going to be charging in Manitoba?

Mrs. Mitchelson: As I indicated, our fees would not be as high as British Columbia, but they would be somewhere in the range of what other provinces are charging.

Mr. Martindale: Well, I would like to ask the minister if she believes that the costs could be at least as much or more than what is quoted in this article from Canadian Social Trends. We are talking about $5,800, $4,500. Is that what people are going to be looking at when they go to a not-for-profit agency or a private practitioner?

Mrs. Mitchelson: I think when we look at legal fees and home studies and that kind of thing, we are probably in the ball park at that figure. But can I indicate to my honourable friend that presently there are people today that are paying anywhere from $15,000 to $50,000 U.S. to do an intercountry adoption. So people by choice are choosing because it is maybe not as accessible here in Canada to get a baby. They are choosing to go out of country to adopt children and that happens today under our present system and people have that choice and they have that ability. I want to indicate that not a penny of that stays in Manitoba. It is the other country where the fees are being charged for the process that is the beneficiary of all of that money that families are paying because they are so desperate to start a family or have a family.

Mr. Martindale: But surely the minister would admit that intercountry adoptions are quite rare. In fact, I have with me Order-in-Council 484/1995 which approved an out-of-country adoption of a Winnipeg-born child who was being adopted by parents in Brighton, Colorado, United States of America. It is my understanding that cabinet approves about one a year of these. Maybe the minister can verify the number of out-of-country adoptions.

Mrs. Mitchelson: Mr. Chairperson, that is not the circumstance I was describing. What happened in that circumstances was it was a Manitoba child, where an arrangement was made with a family outside of Manitoba by mutual consent for that adoption to take place, and that has to be done by Order-in-Council, so that is not the circumstance where people in Manitoba are choosing to adopt children from other countries. It is my understanding that there are about 65 families per year in Manitoba that choose the intercountry adoption route.

Mr. Chairperson: Items 2 and 3–pass.

Floor Comment: Clause 1?

Mr. Chairperson: We passed Clause 1 before.

Floor Comment: No, we did not.

Mr. Chairperson: Items 1, 2 and 3–pass; items 4 and 5(1)–pass; items 5(2) and 5(3)–pass; items 5(4), 6, 7(1) and 7(2)–pass. Item 8(1).

Mr. Martindale: Could the minister tell me if the main change on this page would be 9(1) licence required for adoption agency that the changes that we have been talking about at great length about licensing private practitioners and nonprofit agencies is identified in this section? Is that correct?

Mrs. Mitchelson: Yes.

Mr. Martindale: I would like to indicate that we are going to vote against Clause 9(1) when we get to it.

Mr. Chairperson: Items 8(1), 8(2)–pass; Clause 9(1), shall the item pass?

An Honourable Member: No.

Voice Vote

Mr. Chairperson: No. All those in favour of Clause 9(1) passing, would you indicate by saying yea.

Some Honourable Members: Yea.

Mr. Chairperson: All those opposed, would you indicate by saying nay.

Some Honourable Members: Nay.

Mr. Chairperson: I declare the Yeas have it.

Item 9(1) is accordingly passed. Item 9(2)–pass; 9(3) and (4)–pass; Clauses 10, 11, 12 and 13–pass; Clauses 14, 15, 16, 17 and 18–pass; Clauses 19, 20, 21 and 22(1)–pass; 22(2) through 23 to 25–pass; 26(1), 26(2), 26(3), 26(4)–pass; 27, 28(1), 28(2) and 29–pass; Clause 30(1), 30(2), 30(3), 30(4)–pass; 31(1), 31(2) and 31(3)–pass; 31(4), 31(5), 31(6), 31(7), 32–pass; 33(1), 33(2)–pass; 33(3), 33(4), 33(5), 34–pass; 35 through 38–pass; 39 through 42–pass; 43(1), 43(2), 43(3), 44(1)–pass; 44(2), 44(3), 45, 46–pass; 47(1), 47(2), 48, 49(1), 49(2)–pass; Clause 50–pass; 51, 52(1), 52(2)–pass; 52(3), 53(1), 53(2), 54(1)–pass; 54(2), 55, 56, 57, 58 and 59–pass; 60, 61, 62(1), 62(2)–pass; 63, 64, 65(1), 65(2), 66–pass; 67–pass; 68, 69, 70(1), 70(2)–pass; 71(1), 71(2).

Mr. Martindale: I have a question about 71(1). Is this clause consistent with The Hague Convention amendments or bill that we passed in a previous session?

Mrs. Mitchelson: Yes, it is.

Mr. Chairperson: 71(1), 71(2), 72(1), 72(2)–pass; 73(1), 73(2), 74–pass; 75, 76–pass; 77, 78, 79, 80(1), 80(2)–pass; 80(3), 81, 82, 83–pass; 84, 85–pass; 86(1), 86(2), 87, 88–pass; 89, 90–pass; 90(1), 91(1), 91(2), 92(1), 92(2)–pass; 93, 94(1), 94(2), 95–pass; 96, 97–pass; 98, 99–pass; 100(1), 100(2)–pass; 100(3), 101, 102(1), 102(2)–pass; 103(1), 103(2), 104(1)–pass; 104(2) and 105(1)–pass; 105(2)–pass; 106, 107, 108, 109, 110, 111–pass; 112(1), 112(2), 112(3), 112(4), 112(5), 112(6)–pass; 112(7), 113(1), 113(2), 113(3)–pass; 113(4), 113(5), 113(6), 114–pass; 115 and 116–pass; 117, 118, 119(1)–pass; 119(2)–pass; 120(1), 120(2)–pass; 121, 122, 123, 124, 125(1), 125(2)–pass; 126(1), 126(2), 126(3), 126(4)–pass; 127(1)–pass; 127(2), 127(3), 127(4)–pass; 128, 129(1), 129(2), 129(3) and 130–pass; 131(1), 131(2), 131(3), 131(4), 131(5), 131(6), 131(7), 131(8), 131(9), 131(10), 131(11), 131(12), 131(13)–pass; 131(14), 131(15), 131(16), 131(17), 131(18), 131(19), 131(20), 131(21), 131(22), 131(23), 131(24), 132(1), 132(2)–pass; 132(3), 133, 134–pass; 135, 136–pass.

* (0240)

Mr. Martindale: I have a question for the minister. Does she have any idea how many years it might take to proclaim?

Mrs. Mitchelson: Mr. Chairperson, I think a pretty valid question by my honourable friend, and I am not sure it will be proclaimed on Royal Assent. I can guarantee you it will not. I think that it is progressive and forward-moving legislation. It brings us into line with many other provinces across the country, and as soon as we can have all the checks and balances in place and the regulations written so that everyone is comfortable with them and that our standards can be maintained and we have an accountable process, we will proclaim it. So there is a lot of work to be done, not a simple undertaking, but certainly a challenge we are up to.

Mr. Chairperson: Shall the preamble pass–pass; table of contents–pass; title–pass. Shall the bill be reported?

Some Honourable Members: No.

Voice Vote

Mr. Chairperson: All those in favour of reporting the bill, would you say yea.

Some Honourable Members: Yea.

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

Some Honourable Members: Nay.

Mr. Chairperson: I declare the Yeas have it. The bill will be reported.

Mr. Martindale: Mr. Chairperson, I move that the Standing Committee on Law Amendments do now adjourn and recommend that this committee reconvene to consider clause by clause of Bill 48 at a time to be announced by the government House leader.

Mr. Chairperson: It has been moved, all–Madam Minister.

Mrs. Mitchelson: I want to thank the committee for their diligence in moving ahead with the adoption legislation. I think that it was probably the less controversial of the two pieces of legislation. Maybe I could just defer to my colleague the member for St. Norbert, and then I will make another comment.

Mr. Marcel Laurendeau (St. Norbert): I just want to make sure, Mr. Chairman, that we have closed the books on Bill 48 and representation has been concluded.

Mr. Chairperson: Representation has been concluded on Bill 48.

Mrs. Mitchelson: I listened intently to the presentations that were made, and I also want to indicate that there will be a few amendments that I will be bringing forward on this bill that I think might be important for me just to share with members of the committee tonight before we adjourn, and we will adjourn and do clause by clause at a time set by the House leader.

Some of them are very minor, sort of housekeeping amendments. But I think the one issue that was of great concern, and I mean, I have indicated my commitment and the intent of this legislation to be that children would not be subjected to a court process or called before the courts or before a local committee. I want to ensure that it is spelled out very clearly in the legislation that a child will not be compelled. I do not think we want to exclude a child from presenting evidence, if they choose to do that, but they will not be compelled to make representation either at the committee level or at the court level. So I want to ensure an amendment will be forthcoming to ensure that that is clear and spelled out clearly, because it has always been the intent of our government to ensure that children were not put through an undue process or an additional process that might harm more than help them. I can discuss in more detail with my honourable friend the amendment that will be put in place to ensure all Manitobans that children come first and foremost in the changes in the process.

I do also want to indicate that at the local abuse committee level we heard representation about how it might be a very onerous task for the local abuse

committees. I want to indicate to my honourable friend that no one has indicated that the local abuse committees have to exist in the form that they presently exist in and that there are all kinds of options and opportunities to ensure that resources are in place at the local level to deal with the process and the changes in process, and that indeed it is not a cost-saving issue. We are going to have issues go before the Court of Queen's Bench that were dealt with before at the Child Abuse Registry Review Committee process. Any resources that might be needed at the local level to ensure that a fair process is followed will be available.

So I wanted to put those few comments on the record, and I know there may be some questions that come tomorrow, and I will be able to clarify even further our intent, but I wanted my honourable friend to know that we want to ensure that first and foremost children are protected through the change in the process, and we want to make it clear in the legislation, so there is no confusion and no misunderstanding.

With those comments, I certainly will support the motion my honourable friend put on the record.

* (0250)

Mr. Martindale: Just for clarification, the minister is indicating there will just be one amendment regarding children not going before local committees or the courts?

Mrs. Mitchelson: It will be a little broader than that, but the amendment, in essence, is ensuring that there is no undue process or extra burden placed on children. No, there are a few other minor–[interjection] Oh, actually 10 amendments.

I think that we could probably share the amendments with my honourable friends because it will speed up the process. It probably still will not convince my honourable friends that this is a piece of legislation that they want to wholeheartedly support, but, nonetheless, I think in fairness I would certainly be prepared to share these.

There are nine, not 10 amendments, and the others are really housekeeping, I think. The two presentations that were made by the legal community that talked about removing agent from the legislation is one that we have agreed to, and then there are other minor housekeeping amendments, the Suche amendment.

Mr. Chairperson: It has been moved by Mr. Martindale that the Standing Committee on Law Amendments do now adjourn and recommends that this committee reconvene to consider clause by clause Bill 48 at a time to be announced by the government House leader. [agreed]

Committee rise.

COMMITTEE ROSE AT: 2:51 a.m.

WRITTEN SUBMISSIONS PRESENTED BUT NOT READ

IN THE MATTER OF Bill 47, The Adoption and Consequential Amendments Act,

Submission to the Law Amendments Committee
June 23, 1997

Recommendations Re Changes Required to Achieve Compliance with The United Nations Convention On The Rights Of The Child and the Charter Of Rights And Freedoms Of Canada

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I. Summary

Parties to adoption are the only group of Canadians discriminated against by the refusal of access to information relating to their identity. This is contrary to the provisions of both the United Nations Convention on the Rights of the Child, and the Charter of Rights and Freedoms. Bill 47 should be amended to bring it into compliance with those documents. Specific amendments are proposed in this submission.

This submission is made by Parent Finders of Canada, through its national office. Parent Finders is a support group for adult adoptees, birth relatives and adopting parents with 31 chapters active across Canada and in the United States.

II. Legal Considerations

1. Bill 47 as currently drafted violates the provisions of the United Nations Convention on the Rights of The Child, and Parent Finders urges the committee necessary changes to bring Bill 47 into line with international obligations relating to the rights of children.

2. The UN Convention On The Right Of The Child was ratified by Canada on December 13, 1991, and states in part:

Article 2
Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

Article 7
The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

Article 8
Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

Where a child is illegally deprived of some or all of the elements of his or her identity, the parties shall provide appropriate assistance and protection, with a view to speedily re-establishing his or her identity.

[emphasis added]

3. Bill 47 also violates subsection 15(1) of the Canadian Charter of Rights and Freedoms, Constitution Act, 1982:

"15(1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability."

4. The charter rights in subsection 15(1) are not limited to discrimination on the enumerated grounds, but extend to discrimination on any "analogous grounds," being a characteristic which is not generally in the control of the individual in circumstances where a group of persons sharing that characteristic has historically suffered discrimination in some way, shape or form. Discrimination, according to the Supreme Court of Canada, means treatment of a person in an unequal fashion because that person possesses characteristics falling within subsection 15(1) or any analogous characteristic, and can be described as a distinction which has the effect of imposing burdens, obligations or disadvantages on such individual or groups not imposed on others; Andrews v. Law Society of British Columbia, (1989) 1 SCR 143, per McIntyre, J., writing for the majority at pages 174-5.

5. No other group of persons in Manitoba is denied access to their birth name and information relating to their birth circumstances. There is no objectively justifiable ground for so doing.

6. The prohibition against the release of such information in adoption situations has been part of the legislative history for some length of time. In the struggle over records, the excuse has changed. It used to be to protect the child from the stigma of illegitimacy. Then it was to protect the adoptive parents as the real family. Now it is to protect the birth parents and their privacy.

7. There is a temptation to view this as a balancing problem, and the rights and interests of all of the parties in the adoption triangle do indeed have to be considered at some level. However, if the object is to balance the rights of the various parties, Bill 47 has not balanced issues adequately. Historically, the privacy interest of birth parents has been afforded greater legal protection than the adoptees' interest in self-identification. This bill would perpetrate that status.

8. An adoptee's interest in self-identification is rooted in something profoundly a part of the human experience, and derives from a fundamental instinct for self-knowledge and justifiable interest in personal history. That interest may be entirely rooted in psychological forces, but the effect of not having the desired information can be critical to both psychological and physical well being. This is particularly so in cases that depend on genetic and hereditary information for medical reasons.

9. Weighing against the adoptee's interests are the desire of birth parents to put their past in the past and create a new life in privacy.

10. Generally, adoptees do not choose to be adopted. It is the nature of things that birth parents hold a monopoly of the power to determine that status for a child. If the law continues to value the birth parents' privacy interest more highly than the adoptees' identity interest, then the law reinforces that natural decision-making monopoly, so that the birth parent can not only determine the adoptees' status as an adoptee, but also determine that the child remain forever ignorant of her identity. This is unjust and unjustifiable.

11. As between the two competing interests, the adoptees' identity interest should enjoy greater legal protection because: a) the universal need for self knowledge, identity and hereditary information deserves stronger affirmative recognition than the desire of some parents to create a new life free of their past; and b) it is needed to counterbalance the natural decision-making monopoly of birth parents, compared to adoptees.

12. Because as a group "parties to adoption" have suffered social, legal and political discrimination, the status of being a "party to adoption" qualifies as a prohibited ground of discrimination under Section 15 of the Charter, applying the analogous grounds principle. In Schafer v. Canada (1996), 29 O.R. (3d) 496, a judge of the Federal Court who recently found that adult adoptees were discriminated against the class for the purposes of Section 15 of the Charter. The case is under appeal. Regardless of the result of the appeal, and Parent Finders is of the view that it remains incumbent on legislators as a matter of policy to move toward compliance with international conventions in this area.

13. In a case called Sleight Communications Inc. v. Davidson (1989) 1 S.C.R. 1038, 59 D.L.R. (4) 416, Dickson, C.J.C., in speaking for the majority of the Supreme Court of Canada, and quoting in part from his reasons for decision in an earlier case, stated:

"The content of Canada's international human rights obligation is, in my view, an important indicia of the meaning of the 'full benefit of the Charter's protection.' I believe that the Charter should generally be presumed to provide protection at least as great as that afforded by similar provisions in international human rights documentation which Canada has ratified ....Canada's international human rights obligations shouldn't form the interpretation of what can constitute pressing and substantial Section 1 [of the Charter] objectives which may justify restrictions upon those rights."

14. The detailed changes proposed in the subsequent section of this submission are intended to give effect to the legal principles and conclusions in this analysis.

Recommended Changes to Bill 47

Law Amendments Committee

June 23, 1997

Recommendations of Parent Finders of Canada re changes required to bring Bill 47, The Adoption and Consequential Amendments Act, into compliance with the United Nations Convention on The Rights of The Child and the Charter of Rights and Freedoms of Canada.

Best interests of the child

3 Add (i) to safeguard the child's rights as set forth in the United Nations Convention on the Rights of The Child. The UN Convention applies to all children, adopted and non adopted equally.

Adoption order in prescribed form.

30 (2) An order of adoption shall be in the prescribed form and shall show the name of the child prior to

adoption and shall also identify the child by the birth registration number of the birth record or other identification acceptable to the judge. The original birth registration shall then be amended to state the new name by adoption of the child and the names of the adopting parents.

Non adopted persons do not have their birth name hidden from them–adopted persons must have equal right of access to their birth name in full.

Distribution of order

30 (4) Add (f) Upon attaining the age of 18 years, the child shall have the right to apply for a copy of the original birth registration and Decree of Absolute Adoption documents from the Director of Vital Statistics or the Post-Adoption Registry.

The adopted adult must have equal right of access to their original registration of birth as enjoyed by a non adopted person.

Status of adopted child

31(1)(a) the adopted child becomes the lawful child of the adoptive parent and the adoptive parent becomes the lawful parent of the adopted child: and delete .As if the adopted child had been born to the adoptive parent..

The adoptive child is not born to the adoptive parent–this is not a true fact biologically and fantasy cannot be presented in this Adoption Act.

Director may review

47(2) The prospective adoptive parent may request the director or the Children's Advocate to review the agency's action under subsection (1). Strike out. And the director's decision is final..

This recommendation gives the aggrieved party greater access to another body to investigate the problem and removes the director's sole power to act in his own interests instead of the best interests of the child.

Application for adoption order

49(1) Add The order of adoption must contain the original name of the child at birth plus the new name of the child by adoption.

Non adopted persons always know their name at birth if they never experience adoption.

Documents filed in support of application

50(i) the family and developmental history of the child, identified by the birth name, registration number and adoptive name.

A non adopted person is always identified by the name given to them by the parents who gave birth to them, therefore, an adopted person must be fully identified by both their birth name, birth registration and adopted name.

Review by director

61 Where the agency does not approve the placement of the child with the prospective adoptive parent, he or she may request the director Add and the Children's Advocate to review the matter. Strike out .and the director's decision is final..

The ability of the Children's Advocate to investigate the matter primarily from the perspective of the child's best interest, will safeguard the child's needs more broadly. By both parties investigating a complaint, the director would be relieved of a need he or she might feel to back up his own staff out of loyalty.

Part 4 Confidentiality, Disclosure and The Post-Adoption Registry

98 Definitions (page 46)

'contact veto' –Strike out– .to the same effect made before the coming into force of this Act; (.refus de prise de contact;)

The applicant applying for identifying information must receive all identifying information in any government file which pertains to their adoption,

after filing a written request in the prescribed manner. Personal identification must be provided at the time of written request.

'disclosure veto' Strike this clause entirely.

Because it violates the United Nations Convention on the Rights of the Child, Article 2 (1), Article 7, and Article 8(1) and (2). This clause also violates Section 15(1) and (2) Equality Rights of the Canadian Charter of Rights and Freedoms, Constitution Act, 1982. A disclosure veto discriminates against adopted persons by denying them equality before and under the law. A non adoption family is not subjected to this type of intervention or meddling by the State in their family affairs.

Court Records

101 All records of the court relating to the granting of an order of adoption shall be confidential Add except to the child to be adopted or to the adopting parents of the child..

Court order required to search court records

102(1) Add Neither a contact veto or disclosure veto, placed with the Post-Adoption Registry prior to the coming into effect of this new Adoption Act, may be transferred. Any previously notated contact veto must be actively renewed after this new Adoption Act comes into effect by the party previously requesting no contact be made to them. All previous disclosure vetoes are null and void under the new Adoption Act. All contact vetoes notated under the old Adoption Act must be refiled by the party desiring no contact after the new Act comes into force.

The Province of Manitoba must not act on behalf of a party wishing no contact–that party must pursue their own initiative to file their wishes with the Post-Adoption Registry. Under the new Adoption Act, all parties must start on a level playing field.

102(2) Add (c) An adopted person or adopting parent of an adopted person shall have the right to request a copy of a court record to the granting of an order of adoption, by applying to the director.

A non adopted person may apply to the Director of Vital Statistics, pay the fee and receive a copy of their original birth record–adopted persons must have qual right to their birth registration and adoption document. To deny the adopted person or their adopted parent would be to discriminate against them. Section 15 of the Charter protects any person from being judged 'an analogous ground'. Adopted persons have historically experienced legal obstruction in their efforts to obtain their original birth registration and adoption order documents. They have been discriminated against in the same manner as the Supreme Court two years ago recognized that gays were analogous group.

Court may issue certified copy of order

102 (2) Delete . Despite subsection (1). and amend to read the court may, on written request, issue a certified copy of an order of adoption to (a) an adoptive parent to whom the order of adoption relates; or, (b) an adult adoptee to whom the order of adoption relates.

Then amend, but where the original surname of the child appears on the order of adoption, the original surname shall be shown in full on the certified copy, the birth registration number, and other identification of the child must be on the order of adoption in an uncensored format.

Non adopted persons are not delivered censored or tampered documents upon written request. The State does not have the right to hide the birth name of the child from the child; the child owns the name in full.

Records to be maintained separately

103(2) Following the granting of an order of adoption the records referred to in subsection (1) shall be maintained Delete . separately., in a secure manner in accordance with the regulations.

Exception re disclosure for research purposes

105(1) and 105(2) Delete this entire section of the Act

The director must not approve disclosure of an information in a record to a person for any research

or statistical project. The information contained on the birth registration, the order of adoption and in the adoption file belongs to the adopted person, the adopting parents and the birth parents and cannot be released without their consent in writing. The State does not have the right to give out any information for research purposes - to do so would violate the privacy rights of the parties named in the files. . Non adopted persons' files are not subject to search and adopted familial persons must not be singled out to be used as research subjects.

Contact by the director

107 Delete .disclosure veto. (but allow contact veto)

A disclosure veto is an unjust and punitive obstruction of the adopted person's rights as a human being.

Disclosure of information

110 All information in the Post-Adoption Registry is confidential and access to and disclosure of information in it may be given to an adopted person, adopted parent, or birth parent, upon written request.

Freedom of Information legislation gives non adopted persons the right to obtain, in identifying format, all information contained in any government file which is about them. Equal access must be applied to the right of adopted persons to ensure their Freedom of Information right of access to their government adoption files. The information in the adoption file belongs to the adopted person, not to the government.

Disclosure veto

112(1), 112(2), 112(3) and 112(4) This entire section must be deleted.

as no such restrictions are placed upon non adopted persons when they request information about themselves contained in any government file under a Freedom of Information or any other request.

112(5) and 112(6) must be deleted

as the same rationale as for 112(1), 112(2), 112(3), 112(4) applies equally to these clauses. Information about oneself is a basic human right and is required to make an information self-determination. Canadian Law forbids censorship under the Charter of Rights and Freedoms.

Effect of a disclosure veto

112(7)–this clause must be deleted.

because it violates the access rights of the adopted person or the person who seeks information relating to an adoption matter and who is named in the file.

Contact veto

131(1) Provisions of the contact veto may stand. Add (a) All identifying information contained in the file must be given to the applicant applying for information from an adoption file.

Information given where contact veto filed

113(4) Add (c) give the person requesting information all identifying information in the adoption file

This is the most important part of 113(4) and must be added. Non adopted persons do not have information withheld from them–no one else can block them from obtaining their medical history, hereditary history and true genealogical background. Adopted persons must be no longer be viewed as or treated as an .analogous group..

Registry services if adoption order under this Act

114 Add (with subsequent relettering) (a) The same rights of disclosure of identifying information about any other person who is entitled to register under Section 111 with respect to the same adoption under the new Adoption Act must apply equally to persons adopted under the old Adoption Act; and,

Retain present (a) as (b)

Amend (c) with the addition . that reasonable efforts must be made to locate other persons who are entitled

to register with respect to the same adoption and notify them of changes to the Adoption Act.

All adoption finalized prior to the new Adoption Act must be treated equally and benefit from the open records provisions of this new Adoption Act. Blatant discrimination by age would result from unequal application of the openness provisions of the new Act. The persons adopted under the old Adoption Act must receive equality in law with persons whose adoptions will be legalized after the new Adoption Act comes into effect. Equal treatment for all adopted persons, adopted in any year since adoption became a statute in the province of Manitoba and all future adoptions must receive equal access to identifying information in adoption files. This is a basic human right and need.

Information provided subject to disclosure veto

115 This clause to be deleted.

The disclosure veto contravenes the UN Convention on the Rights of the Child and the Charter of Rights Section 15–equal access to and treatment before the law.

Registry services if order under the predecessor act

116 (a) disclosure of identifying information about another person who is entitled to register with respect to the same adoption. Add . the director may, if requested by the party, facilitate the sharing of identifying information and personal contact between them. The director must disclose the identifying information to the applicant unconditionally..

Non adopted persons do not have unwanted interference in their affairs forced upon them in the lawful pursuits of their everyday activities. The director must not force himself or any services of the Post-Adoption Registry upon the applicant. The applicant must be entitled all the information they request in a free-flowing manner, and the director must not act in any obstruction or punitive manner towards an adopted person or a person named in an adoption file.

Non adopted persons have freedom of choice–persons involved in the adoption experience must have freedom of choice and freedom of information.

In closing, this new Adoption Act must benefit all adopted persons as equal, free citizens of Canada. The changes recommended herewith by Parent Finders of Canada will serve to enhance Bill 47 to make it serve the needs of the citizens of the province of Manitoba.

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Parent Finders began in Vancouver, B.C. in August 1974, to provide a support group for adult adoptees, birth relatives and adopting parents. Today, there are 31 Parent Finders chapters active across Canada plus New York and Michigan states. We also maintain strong ties with 14 activist groups throughout the United States, England, Australia and New Zealand.

The primary aim of Parent Finders is to promote a feeling of openness and understanding about the whole concept of adoption and open records. Our volunteer services include:

a) general counselling
b) direction on where to obtain background information
c) assistance in search
d) providing skilled intermediaries, where requested, to make a discreet first contact to the party being sought
e) maintaining the Canadian Adoption Reunion Register (CARR) wherein birth information can be confidentially filed.

The National Office co-ordinates the overall work of the 33 chapters through a newsletter and lobbies provincial social service departments. Each Parent Finders chapter operates autonomously through its own executive, serving the needs of its local members. Copies of each member's birth information are forwarded to CARR for entry in the Reunion Register. Registrations are entered by birth date, birth place, birth names and birth parents' names (where known). Computerized cross-referencing programs are used to identify possible matches. When a match is confirmed, the group leaders are advised, so that they can assist

their member to facilitate the most efficient reunion and provide support during this emotional experience.

As of September 1996, there are over 46,000 registrations in CARR, and approximately 11,000 reunions have been recorded. A reunion survey done in 1979 showed that 92 percent of all birth mothers contacted were grateful for the opportunity for a reunion. Eighty-eight percent of birth fathers were pleased to be contacted; 99 percent of birth sisters and 97 percent of birth brothers were pleased to participate in the reunion experience. These percentages have continued to apply over the 22 years that Parent Finders has been in operation.

Parent Finders has been actively involved in the implementation of the new B.C. Adoption Act--open records--which came into full force and effect November 4, 1996.

(Mrs.) Joan E. Vanstone
National Director

April 25, 1997