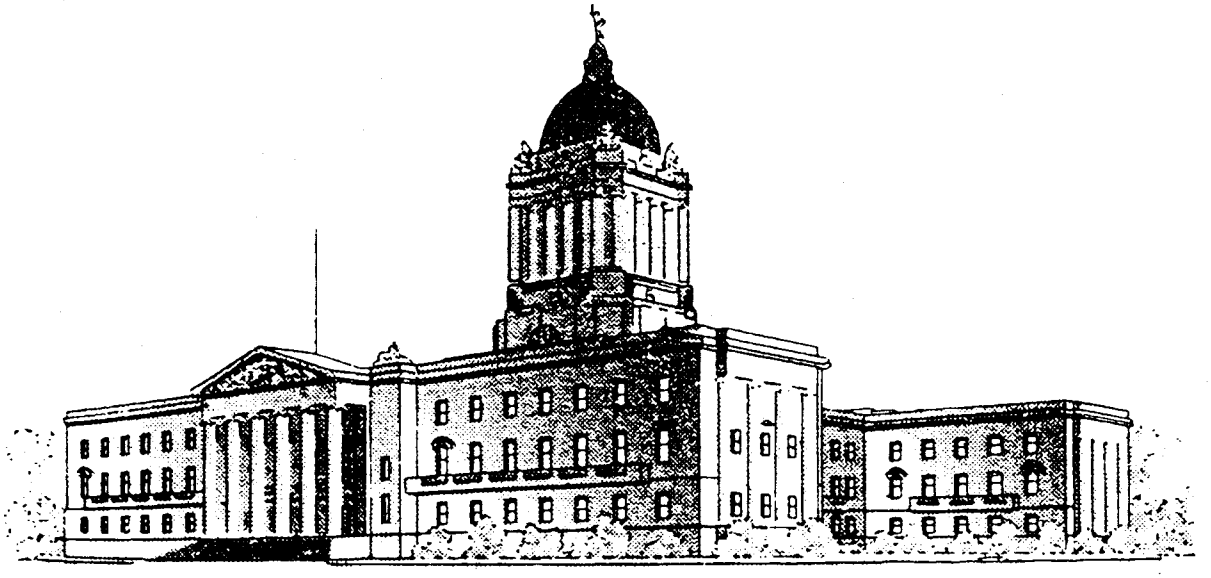
Second Session - Thirty-Seventh Legislature

of the

Legislative Assembly of Manitoba

Standing Committee on Law Amendments

Chairperson
Mr. Doug Martindale
Constituency of Burrows



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Thirty-Seventh Legislature

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LEGISLATIVE ASSEMBLY OF MANITOBA

THE STANDING COMMITTEE ON LAW AMENDMENTS

Thursday, June 21, 2001

TIME – 6:30 p.m.

LOCATION – Winnipeg, Manitoba

CHAIRPERSON – Mr. Doug Martindale (Burrows)

VICE-CHAIRPERSON – Ms. Bonnie Korzeniowski (St. James)

ATTENDANCE – 11 - QUORUM – 6

Members of the Committee present:

Hon. Ms. Barrett, Hon. Messrs. Caldwell, Mackintosh, Hon. Ms. Mihychuk

Ms. Korzeniowski, Messrs. Laurendeau, Loewen, Martindale, Reimer, Santos, Mrs. Stefanson

WITNESSES:

Bill 41–An Act to Comply with the Supreme Court of Canada Decision in *M. v. H.*

Ms. Sally Naumko, Private Citizen
Ms. Kate Tate, Private Citizen
Mr. Asher Webb, Private Citizen
Mr. Michael Law, The Gay and Lesbian Issues Sub-Section of the Manitoba Bar Association
Mr. Krishna Lalbiharie, Canadian Federation of Students
Ms. Penny Piper, Manitoba Association of Women and the Law
Ms. Anne Gregory, Private Citizen
Ms. Margaret McKenty, Private Citizen
Mr. John Krowina, Private Citizen
Mr. David Schesnuk, Private Citizen
Ms. Marianne Crittenden, Private Citizen
Ms. Lorraine Waldner, Private Citizen
Ms. Fae Simon, Winnipeg Child and Family Services
Ms. Karen Delaney, Private Citizen
Mr. Mark Golden, Private Citizen
Mr. Rory Grewar, Private Citizen
Mr. Henry Makow, Private Citizen
Ms. Adele Perry, Private Citizen
Mr. David Joycey, Private Citizen
Ms. Joann Gorham, Private Citizen
Ms. Elsy Gagné, Private Citizen

WRITTEN SUBMISSIONS:

Bill 41–An Act to Comply with the Supreme Court of Canada Decision in *M. v. H.*

Ms. Nancy Riche, Canadian Labour Congress
Mr. Donald Teel, Private Citizen
Mr. John McKenzie, Private Citizen
Ms. Sarah Inness, Private Citizen

MATTERS UNDER DISCUSSION:

Bill 8–The Mines and Minerals Amendment Act
Bill 10–The Safer Communities and Neighbourhoods and Consequential Amendments Act
Bill 41–An Act to Comply with the Supreme Court of Canada Decision in *M. v H.*

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Mr. Chairperson: Good evening. Will the Committee on Law Amendments please come to order. This evening the committee will be resuming consideration of the following bills: Bill 8, The Mines and Minerals Amendment Act; Bill 10, The Safer Communities and Neighbourhoods and Consequential Amendments Act; and Bill 41, An Act to Comply with the Supreme Court of Canada Decision in *M. v. H.*

At the meeting of this committee held on Monday, June 18, the following had been agreed to. One, length of presentations, 15 minutes with a five-minute question-and-answer period. Two, those presenters called at the Monday night meeting would be dropped to the bottom of the

list. Those not in attendance at the June 18 meeting would be called to present at a subsequent meeting; three, it was agreed to hear from out-of-town presenters first, persons with young children, and those requiring French translation. Please advise the Clerk of this committee if you fall into one of these categories.

As a courtesy to persons waiting to give a presentation, did the committee wish to indicate how late it is wishing to sit this evening?

Hon. MaryAnn Mihychuk (Minister of Industry, Trade and Mines): I would suggest that we leave that open and allow all presenters to be heard.

Mr. Chairperson: Is that agreed? *[Agreed]*

We do have presenters listed to speak to Bill 41. I will read the names of those persons registered to speak this evening: Herb Neufeld, Kate Tate, Asher Webb, Michael Law, Elizabeth Carlyle, Penny Piper, Anne Gregory, Sacha Paul, Sarah Inness, Manny Calisto, Margaret McKenty, Sara Malabar, Grant Fleming, John Krowina, David Schesnuk, Henry Makow, Joann Gorham, Lorraine Waldner, Fae Simon and Rosaline Dearing, Karen Delaney, Mark Golden, Rory Grewar, Kelly Jenkins, Marianne Crittenden, Sally Naumko, Adele Perry and David Joycey.

Everyone's name will be called in the order that I read. If they are not here their name will be called a second time. We will go through the list of names twice tonight. Numbers one to eighteen have already been called once the previous night. They will be called a second time tonight, and that will be their last chance to present. Numbers nineteen to the end will be called twice tonight.

Those are the persons and organizations that have registered so far. If there is anybody else in the audience that would like to register or has not yet registered and would like to make a presentation, would you please register at the back of the room.

Just a reminder that 20 copies of your presentation are required. If you require assistance with photocopying, please see the Clerk of this committee.

Sally Naumko, No. 25 on the list of presenters, had at the Monday, June 18, meeting submitted her brief, and it had been agreed to have it accepted as a written submission. Is there leave of the committee to allow Sally Naumko to make an oral presentation this evening? *[Agreed]*

Ms. Naumko has also requested that she be moved earlier in the speaking order due to health-related issues. Is there leave of the committee to allow Ms. Naumko to present following those persons who have advised of special circumstances? *[Agreed]*

Also, is there leave to allow Krishna Lalbiharie to present on behalf of Elizabeth Carlyle, listed as No. 5 on the presenters list. *[Agreed]*

A request has also been received from Joann Gorham, No. 17 on the list of presenters, to be moved to the bottom of the list of presenters. *[Agreed]*

Is there leave of the committee to switch the places of Henry Makow to No. 24, and Marianne Crittenden to No. 16? *[Agreed]*

* (18:40)

I would also like to inform the committee that written submissions have been received from Donald Teel, private citizen, and John Mckenzie, private citizen. Copies of these briefs have been made for the committee members and were distributed at the start of the meeting. Does the committee grant its consent to have these written submissions appear in the committee transcript for this meeting? *[Agreed]*

Prior to commencement of the presentations, is there anyone in the audience who will be speaking in French this evening? Could you please indicate if you wish to speak en français? Seeing none, does the committee agree that the translator be allowed to leave? *[Agreed]*

We will now continue with the public presentations. No one has advised us of special circumstances.

Bill 41–An Act to Comply with the Supreme Court of Canada Decision in *M. v. H.*

Mr. Chairperson: The first presenter will be Sally Naumko. Please come to the microphone. Please proceed.

Ms. Sally Naumko (Private Citizen): Before I read my presentation, I would like to address council and all those present on the matter of respect for opposing viewpoints. Last Monday, I sat through 22 presentations, 20 of which were on the pro side of the amendments. During these 20 presentations, those of us who are in opposition listened quietly, giving them the respect they deserve. However, when it came time to present our side of the issue, we were met with mockery and laughter. It also appeared to me that council showed a lack of interest in what we had to say, some members leaving, others talking amongst themselves. We are all human beings who deserve dignity. We just have a different point of view. Tonight I ask that those of us with opposing viewpoints be given this same respect.

I would like to open by saying that my being here is not motivated by hatred, nor even dislike of the gay community. In fact, my faith in God gives me a deep love of all people. What adults choose to do in their bedrooms is their own business. However, when these same people use these sexual preferences as an agenda to change laws, it becomes a concern to all of us. It is out of my duty to serve God and as a citizen of Winnipeg that I am here to speak.

In reference to any amendments to Bill 41, it is my personal belief and the belief of many that this will undermine the values of the traditional family. Yes, homosexuals do have the right to the same legal protection as all other citizens. However, it is something else entirely to grant them the same legal privileges as heterosexual couples. To base these amendments upon sexual behaviour and/or preference is unconstitutional.

In the case of common-law relationships consisting of male and female partners, there is the consideration of children born of the union. This is not possible within the homosexual combination. Passing of these amendments will give credence to the homosexual union and open the door to same-sex adoption of children. Children have the inalienable right to be raised the way God intended. If you are not a believer, you still have to acknowledge the fact that the very nature of procreation requires male and female, as does child nurturing. To raise a child in an environment of emotional confusion is tantamount to child abuse.

I am well aware of the fact that many children are raised by single parents, some having no contact at all with one or the other of the parents. However, in such circumstances these children are not forced to accept abhorrent sexual behaviour as normal. If we as a society are forced to accept homosexuality as the norm, then soon enough we will be railroaded into doing the same for other fringe groups such as pedophiles. This may sound absurd until one takes into account the court ruling allowing pedophiles to possess child pornography.

Already our children are having the gay agenda forced upon them in the school where they should be learning about reading, writing and arithmetic. I remind you of the horrendous incident of 14-year-old girls being shown pornographic lesbian material at our university right here in Winnipeg, without parental knowledge, much less permission, and under the unassuming label of "Women in Art." Children should be allowed to maintain their innocence as long as possible. Instead, under the guise of teaching tolerance, their innocence is torn away from them and they are left with confusion.

If same-sex couples are given the same rights as male-female couples, we are sending the message to the children of tomorrow that there is no moral code, that anything goes. When morals get tossed out the window, chaos ensues in the hearts and the minds of our children and in society as a whole. We should all be greatly concerned for the future of our children, because our children are the future. This is not about tolerance. This is about a small group of people

attempting to use the law to force their version of morality upon everyone else.

Mr. Chairperson: Are there any questions? Thank you for your presentation.

The next presenter is Herb Neufeld. Is Mr. Neufeld in the room? I should point out that after these names have been called a second time, they are dropped from the list. Is the next presenter present? Kate Tate.

Ms. Kate Tate (Private Citizen): Hello.

Mr. Chairperson: Go ahead.

Ms. Tate: I just came to talk a bit about my personal experience, and why I think it is important that adoptive rights for same-sex couples be included in Bill 41. A lot of it to just address a bit of what the previous speaker was talking about: emotional confusion for children. I think if families are accepted for the way they are being formed, I mean, children are being brought up by same-sex couples whether the law sanctions it or not, and if these families are brought under the umbrella of the law with the same protection and the same rights as other families, I think that would save a lot of emotional confusion in a lot of cases.

I will just tell you about my case. I was with another woman in a relationship, and we decided we wanted to have a baby. My partner is the one that gave birth to the baby. We were going to bring the child up as a family, and when the baby was about 18 months old or so, we went to a lawyer because we wanted to make myself a legal co-guardian of the baby so that we would both be able to make medical decisions and that kind of thing, if it became necessary; if the biological mother was unavailable, I would be the one. The lawyer said, well, you know, that has never been done in Manitoba. There is no law for it. It would be a big court challenge. Your names would be in the newspaper and so basically we were scared off, my partner being pretty homophobic, and so it was never done, so I ended up with no legal rights.

Then when the child was two and a half years old the relationship broke down, as some relationships do, whether they are heterosexual or not, and so we split, and for the next year and a half we maintained visitation and realized it was in the child's best right for both parents to maintain contact with the child, and, you know, it was without any law involved. Visitation was ongoing but then my ex-partner got involved with a Christian group that was very against homosexuality, and became ashamed of the fact she had ever had a relationship with me and decided to stop letting me see the child anymore. I was left with no rights at all, having raised this child as my own, fully as much as the other parent, as any other parent is, but with no recognition of that under the law.

I ended up actually going to court and winning visitation rights so at least the Manitoba court system was reasonable, and realized it was in the child's best interest to maintain a relationship. But I still lost all my parental rights in terms of being able to, you know, anything from going to parent-teacher meetings and just even being denied the right to call myself a parent. I think this all could have been avoided if the law had been just reasonable about accepting families the way they are, and a lot of emotional distress would have been avoided in that situation. Any questions?

* (18:50)

Hon. Gord Mackintosh (Minister of Justice and Attorney General): Thanks for your presentation. I just had a question. Feel free not to answer this. I do not want to interfere with your privacy interests. Is there an arrangement for support payments from you, or is the child seeking–

Ms. Tate: I offered to pay support payments when we originally split and signed an agreement of separation. I offered support payments and I offered them again when we went to court for visitation, but my ex-partner did not want to accept support payments, because she basically wants to pretend that I never existed and that she never had a relationship with me, even though we obviously did.

Mr. Mackintosh: So the issue of support payments is not a live one because the other parent is not pursuing that. Have you ever

received legal advice that you would be liable for support payments?

Ms. Tate: Yes, I did receive that advice and I was advised to set up a trust fund in the child's name and put payments into it. That is what I am doing and that is what I have done.

Mr. Mackintosh: When you went to court on the issue of access to the child, or visitation rights, I guess would be more accurate–I guess it is the same thing, is it not?–was it a barrier for you, because you did not have adoption rights, not to be recognized as an adoptive parent?

Ms. Tate: I was told by my lawyer, basically, that it just totally depended on which judge I got and what their views were on same-sex couples, because there is no law that says that, yes, I should be given the right of visitation and recognized for the parent that I was. It was totally up to the judge's discretion, because there was no law for them to follow that covered us.

So that was way more distressing than it would have been if I went in there knowing I have this legally protected right, that I am just going into court to get it recognized. It would have been much less stressful than going in there knowing that I do not have a legally protected right and it is totally up to the judge's whim and their personal beliefs, or whatever.

Mr. Mackintosh: I look forward to this panel we set up, their advice on these kinds of issues, in terms of what differences will follow from changes. It is all very interesting. I was wondering if you have also, as a result, had to make arrangements, and, again, protect your privacy interests as you see fit, in the event of your death, for property to go to the child? How does that work in your circumstance?

Ms. Tate: Right now, that trust fund would go to her in the event of my death, and I have a son myself now, a biological son that would probably inherit from me instead of her now.

Mr. Chairperson: Thank you for your presentation.

Ms. Tate: Okay, thanks.

Mr. Chairperson: The next presenter is Asher Webb. You may proceed.

Mr. Asher Webb (Private Citizen): Good evening, honourable minister, committee members, ladies and gentlemen. Thank you for the opportunity to appear this evening to address Bill 41. My name is Asher Webb.

Not unlike thousands of Manitobans, I have had the opportunity to work with many government and non-governmental agencies and committees, committee groups and social service agencies around the issues of human rights, public health, business development, community development and social issues, in both personal and professional capacities. In working with all these groups, I have done my best to participate fully in the process of working toward change that is in the best interests of our society as a whole. Recognizing that the process to create positive change often involves courage, vision and, most importantly, the ability to look at the big picture in understanding that creation of change must address the rights of all, but not to the detriment of any of society's participants.

Gay, lesbian and bisexual Manitobans make significant contributions to society as your peers, bosses, parents, siblings, children and friends. Whether as a business professional, athlete, politician, parent, student, employer or employee, I would hope that these accomplishments would not be diminished because of a contributor's sexual orientation. I would ask that the members of this committee stop for a moment and reflect on the fact that, at different points in our history, almost all of you or your ancestors could easily be in the situation I find myself in today, appearing before a legislative committee advocating equality of rights for a community to which they belong: women, Aboriginal Canadians, immigrants and people with disabilities, to name but a few. While recognizing that this process is important to the creation and evolution of legislation, I would not hesitate to bet that, in hindsight, most if not all of you would agree that the changes to legislation to create equality for all such communities were both necessary and just.

With regard to adoption rights for children of same-sex couples, I, like many of the

presenters you have heard from, see this as both a rights issue for the couples, family and especially for the children involved. With regard to the children, by not recognizing both adults as parents, this Government is, in fact, denying them total access to medical, financial and social support. Perhaps on some levels even more detrimental to Manitoba children's emotional development, self-esteem and well-being, the denial of recognition of both parents and therefore the complete family unit, only works to reinforce the Orwellian *Animal Farm* notion that some families have more value and are more appropriate than others.

The creation of a committee to review legislation, as it pertains to the inclusion or exclusion of citizens, is important, and I applaud Minister Mackintosh in importing Ms. Cooper and Mr. Hamilton to take on this task. I hope that this is an educational process not only for the committee and the Government, but also for all Manitobans. It is important to recognize that affording gay, lesbian, bisexual Manitobans all the same rights as their heterosexual counterparts is not a gift, nor is it special. It is, in fact, the right thing to do.

I truly hope that the report of this committee will help this Government find the vision and courage to take the steps necessary to create a society here that is equitable to all Manitobans, and thereby ensuring the possibility of optimum participation of all of its citizenry. Respectfully submitted, Asher Webb.

Mr. Chairperson: Are there any questions?

Mr. Mackintosh: Thanks very much, Asher. It is a pleasure working with you, like graffiti for example, which we are working on. Well, thank you for recognizing the potential of the panel and your recognition that the educational process is also very important. I just wanted to shadow that with this, maybe trite observation, that the bigger picture is reducing prejudice as a challenge, and it is my firm belief, for one, that changing laws can help, and sometimes help in a big way. But it is also at least equally important that changing attitudes by way of education is also absolutely critical to deal with prejudice; which, of course, can mean both behaviour and attitude challenges. So thank you very much for your observations in that regard.

Mr. Chairperson: Thank you for your presentation. The next presenter is Michael Law. Please proceed.

* (19:00)

Mr. Michael Law (The Gay and Lesbian Issues Sub-Section of the Manitoba Bar Association): Good evening, Mr. Chairman, Mr. Minister, members of the committee.

Before I launch into my own submission, with leave of the committee, Ms. Tate, the previous presenter by two, has asked me to respond to one of the legal questions the honourable Minister has raised. Mr. Minister, you had asked the question about how Ms. Tate was able to apply for access under the old regime, and I can advise that I was her lawyer, and the Child and Family Services Act before it was conglomerated with The Adoption Act had provisions in it whereby if a person did not have the right under some other statute like The Divorce Act or The Family Maintenance Act to apply for access to a child, they could do so if they fall into one of three categories. One was if they were a mother or father; two was if they were another blood relative, and it listed a number of relatives such as grandparents, aunts, uncles and a person in loco parentis; and the third category was in extraordinary circumstances, some other individual could apply. The motion was brought under alternatively part B or part C, the extraordinary provisions or, as in loco parentis, and the court found in that case that Ms. Tate qualified under the extraordinary circumstances provision and did not have to make a finding on stepparent.

I am making a submission on behalf of the Manitoba Bar Association. My position within the Bar Association is as a voting council member. I am the immediate past chair of the Gay and Lesbian Issues Sub-Section, and I am the vice-chair of the national Canadian Bar Association branch of SOGIC, which is Sexual Orientation and Gender Identity Conference. For those of you who do not know, I am sure you all do, but the Manitoba Bar Association is a branch of the Canadian Bar Association. It represents

over 36 000 lawyers, judges, law teachers and law students across Canada and it is dedicated to enhancing the administration of justice.

The resolution is the written part of my submission. To read it into the record, it simply says: The Manitoba Bar Association urges the Government to amend Bill 41 with the goal of making it as comprehensive as possible in eliminating distinctions between same-sex couples and opposite-sex common-law couples.

I can advise this committee it was a virtually unanimous resolution. There was one abstention, and the Bar Association feels very strongly about this. Generally speaking, the belief of the bar is that this act that has been brought forward to comply with *M. v. H.* does not, in fact, do that. The Bar Association, of course, did not have an opportunity in the limited time period to go through each and every statute and assess which statutes should be and should not be included, but the general consensus is that it goes far less than it ought to go, if it is actually going to be complying with what *M. v. H.* says.

The Adoption Act is something that this committee has heard brought up over and over again. I will raise that specifically, because it was one of the acts that was specifically raised when this resolution was debated. It was the opinion of the bar that The Adoption Act should have been included now in Bill 41, and not some time later.

Just so you can understand why I am saying that the act does not comply with *M. v. H.*, *M. v. H.*, as I am sure everyone knows, was not made in a vacuum. It is a culmination of many other section 15 Charter cases that have gone through the courts, including some Supreme Court of Canada cases.

Just to read a very few quotes from a couple of the cases that emphasize what I am talking about, the first one that hit the Supreme Court of Canada of major importance was *Egan v. Canada*, and that is where an application by a same-sex partner to have old age security benefits, a spousal allowance, was applied for. Ultimately, the court did deny the application, but Justice Cory and his reasons–I will just read one line: These studies serve to confirm overwhelmingly that homosexuals, whether as individuals or couples, form an identifiable minority who have suffered and continue to suffer serious social, political and economic disadvantage.

This was the case, of course, that added sexual orientation to the equality provisions of the Charter of Rights. We have had *Vriend v. Alberta* where the court was being told that the Alberta Human Rights Act equivalent was unconstitutional and violated the equality provisions of the Charter because it deliberately did not have sexual orientation in it. These cases are referred to in *M. v. H.* You have heard the quote, I think, before from other people who have submitted it to this committee from Justice Iacobucci, and the point of this quote is that when the Supreme Court of Canada made the decision on the narrow question of The Family Relations Act of Ontario, it made it clear that it was not just talking about that act, and it was not just talking about support acts, it was talking about all acts which have discriminatory definitions of spouse.

I will read it again. Section 29, this is Justice Iacobucci saying: I note that declaring section 29 of The Family Law Act to be of no force or effect may well affect numerous other statutes that rely on a similar definition of the term "spouse." The Legislature may wish to address the validity of these statutes in light of the unconstitutionality of section 29 of The Family Law Act. On this point, I agree with the majority of the courts. These issues could only be resolved on a case-by-case basis at great cost to private litigants in order to address these issues in a more comprehensive fashion.

Now, I query the Government, why is it that when Ontario–this is a Government who is, do not forget, openly hostile to giving any rights to gay and lesbian couples and fought the whole thing all the way to the Supreme Court of Canada–why, when they interpreted what *M. v. H.* meant and what they had to do in response to it, they amended at least 40 statutes? I do not have the exact number in front of me, but it was many times more than Manitoba has chosen to amend, including The Adoption Act. Québec amended 39 laws. Well, this Government has only seen fit to change 10 laws. That is in large

part why the Bar Association feels that Bill 41 does not go anywhere near far enough as it should in addressing *M. v. H.*, Mr. Chairperson.

Turning briefly back to the issue of adoption, there is a little known case that came out of Alberta in 1999 that was a situation where a partner in a same-sex partnership, a non-biological partner, applied to adopt their partner's child as a step-parent adoption. This was a case where equality rights were argued. *M. v. H.* was argued. A section 15 violation was argued. Before the court's decision, however, the Alberta government conceded, in part, and amended the act to permit step-parents adoption for same-sex couples. I do not know if this committee has heard that in fact in Alberta–this is Alberta we are talking about–the government has allowed step-parent adoptions to occur in same-sex relationships. That case is not well-known because it is not important on Charter issues, but it is important to know that that situation exists.

Again, the point that I am making is that with *M. v. H.*, you cannot look at it in the narrowest of senses, which is what I am suggesting respectfully is what this Government has done. You must take into account all the other equality cases which have come before the courts. The Bar Association feels that the fact that there are only 10 statutes that are being changed is a gross misinterpretation of what the Charter tells us and what the Supreme Court of Canada is telling us.

I noted, Mr. Minister, in particular that in the proposed legislation to amend to comply with the *M. v. H.* decision, section 4(24) amends section 36(3) of The Family Maintenance Act. Section 36(3), if it is amended as it is proposed to be amended, will obligate the same-sex partner to support the child of his or her partner. But without including things such as The Adoption Act in it, you are giving the obligation to pay support, but you are not giving the parental rights that should flow with having to pay support. It is wrong, in my respectful submission, to do only a half measure. You should do them all together at once so we do not have a series of rights and obligations coming into effect at different points and times.

In conclusion, Bill 41 is a start, and we commend the Government. You are ahead of at least four other provinces which have done absolutely nothing to address the Supreme Court of Canada's ruling. We submit that it falls far short of what the Government ought to be doing. This Government, this Province should be leading. We should not be following. We should not grudgingly do what is the minimum possible. This Province and this Government should make a bold statement for equality rights. I commend the minister for establishing this committee. I can certainly say that Ms. Cooper and Mr. Justice Hamilton are excellent choices. Ms. Cooper has already begun reaching out to the Bar by inviting comments and submissions. But what the Government, I think, will have to explain to Manitobans, including those who are in gay and lesbian relationships, is in the past year that they have been studying all these laws that should be changing and addressing *M. v. H.*, why have they not studied all these laws that will now be addressed at some later point, maybe a year later, in this committee?

* (19:10)

The Bar Association advocates on behalf of the administration of justice, or takes positions on behalf of the administration of justice, and we believe that failure to respond now to the laws in a comprehensive manner is bad. It is bad because it will force litigation which is bad for the public–the stress and the cost of litigation–and bad for taxpayers, who will have to pay the Government to fight what will be losing battles.

Subject to any questions from the committee, those are my comments.

Mr. Mackintosh: First, the laws that have been studied by the department, that study will be important in terms of what goes before the Legislature next year. That is important work that will remain very critical in proceeding in a fully comprehensive way. The panel is looking at particular issues with regard to adoptions, conflict of interest statutes and property interests. So the 40-some statutes that the department has looked at is work well done and will be valuable. But, as well, we now have to look, I think, at the list that was compiled by the Manitoba Association of Women and the Law

and look to reconcile the different lists and so on. So I just wanted to assure you of that, that this is not a study of something that has already been studied.

Second of all, just to remind you, at no time have we said that represents the Government's sole response to the issues or the challenges that have to be addressed with regard to same-sex, common-law partners. There is other legislation that has gone in the last session, and more provisions that are being amended this session.

Just to respond on another couple of issues. There may well be a legal analysis from certain quarters, or, indeed, some consensus that *M. v. H.* means something more than financial obligations. That is the case I heard from you; that our view was that in the eyes of an ordinary Manitoban, of a lay observer, of the ordinary person, *M. v. H.* was essentially about financial obligations. That is really what the section 1 analysis, I think, was about. I think to say the section 1 analysis in *M. v. H.* could be transferred to an analysis of adoption, child-rearing or parenting would be a stretch to the ordinary Manitoban. But I do recognize there can be different views on that one.

But finally, I just have a question for you, Michael, and I have heard this from other people as well, comparing Ontario's response to Manitoba's response. Is it your view that the Ontario response is compliant with *M. v. H.*?

Mr. Law: The criticism about Ontario's legislation is not in regards to the scope of the legislation. I believe that the scope of the legislation is fairly broad and is satisfactory in the eyes of most. The criticism comes from the fact that Ontario creates this third class of citizens, rather than equating with same-sex, common-law couples. It establishes a third tier, which many in the gay and lesbian community feel a sort of legal ghettoization, and that is what I understand the major criticism of Ontario's legislation to be.

Mr. Mackintosh: I know that EGALE, for example, in Ontario, said that the Ontario government's response to *M. v. H.* was not in compliance with *M. v. H.* and, indeed, with regard to The Adoption Act itself, there could be additional difficulties, I am told by some observers, and I have not formed my own view on that one and I will wait for the panel's advice on it. In conclusion, is it the view of the subsection that the acts that are included in Bill 41 comply with *M. v. H.*?

Mr. Law: We have addressed the issue of the scope of the act itself. So are you asking me whether or not the manner in which that you have addressed the 10 statutes are in compliance? To be frank, we have not looked at that issue carefully. I do not personally see anything that does not comply with it. There have been concerns expressed by members of the Family Law Branch that there has been a not-asked-for expansion or change to the rights of common-law, opposite-sex spouses that sort of are snuck into this, but from the perspective of the gay and lesbian issue section in dealing with that narrow issue. To that question you are asking, I do not have any concerns on that point.

Mr. Chairperson: The Attorney General, there is time for one quick question and one quick reply.

Mr. Mackintosh: The panel will be looking at heterosexual common-law relationships, particularly insofar as property interest is concerned, because of course as you recognize you cannot divorce that from. That is probably not the right word. You cannot separate that from the issue of same-sex common-law relationships and many of these issues. So I suspect we will hear more about that. So thank you very much, Michael, and I want to commend the association for coming and presenting and taking part in this.

Mr. Law: Thank you.

Mr. Chairperson: Thank you for your presentation. We are out of time for questions.

An Honourable Member: May I ask leave of the committee for one quick question?

Mr. Chairperson: Is there leave for a question? *[Agreed]*

Mr. John Loewen (Fort Whyte): Thank you, Mr. Chairman, and I thank the committee. Thank

you for your presentation. I just wonder, for my own notes, could you give me the case in Alberta?

Mr. Law: I can give you the citation but I have to pull it out of my file. It is called "re C." Just the initial "C." It is a decision from November 26 of 1999, Alberta Court of Queen's Bench, and I do not have the citation written in my notes but I can get it for you later, if you like.

Mr. Loewen: Okay. Thank you.

Mr. Chairperson: The next presenter is Krishna Lalbiharie, representing the Canadian Federation of Students. Do you have a written copy of your presentation?

Mr. Krishna Lalbiharie (Canadian Federation of Students): Yes.

Mr. Chairperson: Please proceed.

Mr. Lalbiharie: My name is Krishna Lalbiharie. I am the national executive representative of the Canadian Federation of Students for the Manitoba component.

The Canadian Federation of Students welcomes the opportunity to make its findings known to you concerning the contents of Bill 41, An Act to Comply with the Supreme Court of Canada's Decision in *M. v. H.* La Fédération canadienne des étudiants et étudiantes. Canada's national grass-roots student activist and lobbying organization represents over 400 000 post-secondary education students at over 60 universities, colleges and technical institutions across Canada. In Manitoba alone, the Canadian Federation of Students represents constituents at the University of Winnipeg, Brandon University, Collège universitaire de Saint-Boniface and graduate students at the University of Manitoba.

The federation was established in 1981 to advocate on behalf of its members in support of eliminating systemic barriers to post-secondary education of which provincial and federal funding cuts, rising tuition fees and burgeoning levels of student indebtedness are symptomatic. Notwithstanding its focus on issues directly related to post-secondary education, the federation recognizes and advocates on behalf of its constituents beyond these concerns and may act on any given issue that impacts upon its membership and that is reflected in its constitution. As such, the federation addresses issues from advocating for rights for marginalized, under-represented groups, through defending the right to free association, to the interests of students to be unencumbered from systemic discrimination.

Among its declaration of student rights: lesbian, gay, bi-sexual, two-spirited and trans-gendered students, the federation declares that all lesbian, gay, bi-sexual, two-spirited and transgendered students have the right to: "Recognition, including but not limited to legal recognition of same-sex relationships including marriage and its associated benefits in the eyes of the law and society, including custody or adoption of children on an equal basis with heterosexual people."

In light of this, the Canadian Federation of Students regards Bill 41 as a significant piece of legislation. On the whole, it represents a commitment on the part of this Government to human rights legislation by extending the claims and interests of same-sex couples. The federation is pleased that Bill 41 brings into being a new category of relationships defined as common-law partner, which includes both opposite-sex and same-sex couples.

* (19:20)

Clearly, the Manitoba government has taken an integral, initial step toward full equality for gay and lesbian Manitobans by amending 10 legislative acts. However, the current legislation's failure to include adoption rights for same-sex partners of gays and lesbians with children is indeed troubling.

Specifically, the federation submits that Bill 41's omission of these rights will have particular, detrimental repercussions for post-secondary education students. For example, biological gay and lesbian parents who are registered students are eligible for larger disbursements of student loans, bursaries and scholarships if they are, indeed, recognized as single parents. However, if the student partners of these parents should become the sole income-earners in their

respective relationships, they may face a number of potential problems if they are not recognized as adoptive parents of any dependants. They will not be eligible for additional student loan amounts for dependants. They will not be eligible for bursaries or scholarships for single parents, and they may not be eligible to maintain a child care spot at a campus day care or similar facility.

In another scenario, if a partner, who is not the biological mother or father of a child, decides to pursue a post-secondary education and avails herself or himself of the student loans program to help finance his and her education, then such a parent would not be eligible to claim a child as a dependant in order to receive additional student loan funds. Without the right to adoption, the biological parent will be in the position of bearing primary financial responsibility for child-rearing costs, even if both parents wish to share the responsibility.

The efforts of this Government in re of post-secondary education have been prodigious, including the first tuition fee reduction in Canada in over 30 years, a subsequent tuition fee freeze, the proposed Student Aid Act, the introduction of additional needs-based student aid, as well as initiatives in the area of college and university expansion. However, the exclusion of The Adoption Act in your series of amendments appears retrograde, relative to your previous efforts in the area of post-secondary education. Verily, gay and lesbian student parents will continue to shoulder a greater burden of expense in the financing of their education should Bill 41 remain in its current form.

Now as our first presenter indicated this evening, I believe her name was Sally Naumko, "we are all human beings who deserve dignity." In closing, the federation urges this Government to do what is right, indeed, what is dignified, to recognize that homophobia and heterosexism in all their forms, whether personal, cultural, institutional or legislative creates an environment on university and college campuses which presents a barrier to access. Thank you.

Mr. Chairperson: Are there any questions? Thank you for your presentation. The next presenter is Penny Piper, representing the Manitoba Association of Women and the Law. Please proceed.

Ms. Penny Piper (Manitoba Association of Women and the Law): Good evening. Dear committee members, on behalf of Manitoba Association of Women and the Law, as a law student going into my third year, I am going to make a presentation.

Mr. Chairperson: Excuse me. Could you speak right into your mike? We are having trouble hearing. Just get closer to the mike, please. Thanks.

Ms. Piper: Is that a little bit better? Okay.

During the summer of 2000, the Manitoba Association of Women and the Law commenced an audit of Manitoba legislation to identify the specific areas where Manitoba statutes were not in compliance with the 1999 Supreme Court of Canada decision of *M. v. H.* The audit's goal was to examine each statute individually and ascertain how substantive rather than formal equality could be achieved.

In order to ascertain how substantive equality could be achieved, one must consider whether changes to the existing legislation will ultimately result in increased access to equality to those in same-sex relationships. The decision to amend current legislation must be balanced with the potential risk that gays and lesbians will be subject to further discrimination if, or when, they publicly represent themselves in order to take advantage of the proposed benefits. Although careful consideration must be undertaken to determine the context and the ultimate consequence of any proposed change to legislation, amendments must be implemented without further delay, as continual delay and further debate is an affront to human dignity. We should not be considering whether or not gay and lesbians should be afforded these basic human rights. We should be asking: Why has it taken this Government so long to implement these changes, and why so few?

The audit identified 73 acts as having a potential impact on those in the gay and lesbian community; 62 acts detrimentally excluded

same-sex relationships. The findings of the audit confirm that Manitoba legislation requires extensive amendments to ensure compliance with the decision of *M. v. H.*

The acts were divided into five categories which are listed under Appendix A to D of the audit which each of you, I believe, has a copy of. Appendix A identified 17 acts which specifically exclude same-sex couples from the rights, benefits and responsibilities that are available to cohabiting opposite-sex couples. Only 9 of these 17 listed in the audit are included in Bill 41, An Act to Comply with the Supreme Court of Canada Decision in *M. v. H.* Eight of the 17 acts listed in this category remain unchanged and must be examined, as non-compliance does not lend itself to the true spirit and intent of the decision in *M. v. H.*

Appendix B listed 16 acts, which specifically exclude cohabiting same-sex and opposite-sex couples from rights, benefits and responsibilities that are available to married persons. At first blush, this may seem logical. However, substantive equality cannot truly exist until same-sex relationships are legally recognized. Legal recognition could be achieved by inclusion of same-sex couples in The Marriage Act, or the introduction of a civil union system, which is an alternative to marriage. Civil union could also be an alternative for those in opposite-sex relationships as well.

The audit identified 15 acts in Appendix C, which do not define the term spouse. Therefore, an extension of the definition of spouse is strongly recommended. In addition, Appendix D states that 13 acts do not require amendments, except, perhaps, to specify that same-sex couples are included in the legislation. Amendments to acts listed under these two categories require careful consideration to ensure that inclusion will not create a new category and possibly lead to a different form of discrimination for same-sex couples.

Furthermore, the 12 acts listed in Appendix E do not include sexual orientation as a prohibited ground of discrimination. Therefore, amendments should also include sexual orientation as a listed prohibited form of discrimination.

Although the Manitoba Association of Women and the Law is pleased to see that the Manitoba government has taken positive steps to comply with the Supreme Court of Canada decision, we are disappointed to see that our Government has not complied with the true spirit and intent of *M. v. H.* By amending only 10 Manitoba statutes, this Government has failed to take into consideration the financial, emotional and political costs that will ensue by not including all Manitoba legislation that affect those in same-sex relationships.

The decision held in *M. v. H.* represents the culmination of incremental steps the Supreme Court of Canada has taken to expand the legal rights, benefits and protections that have been historically afforded only to married persons. The shift began in 1995 with the Supreme Court of Canada Decision in *Miron v. Trudel*, which held that "marital status" was an analogous ground of discrimination for the purposes of section 15(1) of the Canadian Charter of Rights and Freedoms, and cohabiting couples should not be excluded from the rights and benefits afforded to married persons.

This was further expanded in *Egan v. Canada* to include "sexual orientation" as an analogous ground of discrimination. *M. v. H.* and subsequent decisions affirm that unconstitutionality of exclusion of same-sex couples have ensured that change is inevitable. Whether this change takes place voluntarily through legislative amendments or through successive court challenges is a decision that all levels of government in Canada must make. Pre-emptive changes through legislative reform are the most prudent and compassionate course of action.

Beyond these practical considerations for changing the law, the Government of Manitoba also has an ethical duty to uphold the Charter. As previously discussed, the Supreme Court of Canada has held that laws excluding same-sex couples offend the Charter. Therefore, the Government of Manitoba is bound by the Charter and has an obligation to eliminate discrimination from its laws. It is unacceptable to force individuals to proceed to court on a case-by-case basis in order to secure rights they already possess. The only way to ensure equality for same-sex couples before and under the law

while providing equal benefit and protection of the law is to make all necessary amendments to the law as quickly as possible. Anything less will not fulfil the guarantee of equality found in section 15 of the Charter.

These are the list of recommendations of the Manitoba Association of Women and the Law:

* (19:30)

1) The Manitoba Association of Women and the Law advocates that amendments to include same-sex couples should be implemented on an act-by-act basis and not in the form of blanket legislation similar to Ontario, which created a separate category for same-sex couples. This does not mean that amendments could not be addressed in the form of omnibus legislation similar to Bill 41. In our opinion Bill 41 is drafted in a manner consistent to our recommendations, as each amended act is listed and only the offending portions of the acts are repealed and amended. However, without further delay, we strongly suggest that this Government implement omnibus legislation which is sufficient to address all the inadequacies of Manitoba legislation. Anything less does not comply with the spirit and intent of the decision held in *M. v. H.* and is an affront to human dignity.

2) Where a particular act confers a benefit or right upon a spouse, it should be amended to include married, cohabiting and same-sex spouses. Therefore, this committee should recommend that Bill 41 be extended to include additional acts which would provide legal recognition to those in same-sex relationships and their families such as The Marriage Act or The Adoption Act. Legal recognition could be achieved by inclusion of same-sex couples in The Marriage Act, or, as previously mentioned, the introduction of a civil union system.

As I have listed in the report, the brief that you have, what I am basically suggesting is that although it is beneficial for people to be included in The Family Maintenance Act under spousal support, what happens is that same-sex couples have the burden of bearing the financial cost. However, they are not gaining any benefits. They are having to bear the cost of being a family unit such as The Income Tax Act or child support or spousal support, but they are not getting any of the benefits such as being recognized as a family unit, which could have been easily included in Bill 41.

Proposed changes in The Family Maintenance Act recognize that a dependent relationship may evolve where one party is more financially dependent on the other. In addition, the law recognizes that one party may stand in the role of loco parentis of a child and as such has an obligation to support that child. But minor changes as proposed in Bill 41 fail to recognize individuals within same-sex relationships create a family unit. A family unit may be only two persons of the same sex or maybe two persons of the same sex and an adopted child of one or the biological child or children of another partner.

Denial of the right and benefit to be legally recognized in Canadian society is an affront to human dignity. This places burdens upon those in same-sex relationships without providing the benefits afforded to those who can legally represent themselves as a family unit or marry as a symbol of their love and respect for one another.

3) Where an act confers a responsibility that may be privately or confidentially met, married, cohabiting and same-sex couples should be included.

4) Where an act confers a responsibility that must be publicly and openly fulfilled, same-sex couples should be included. In the alternative, acts which have public disclosure requirements should be amended in such a way that only same-sex couples who publicly represent themselves as couples should be included.

Although this appears to be creating a different category for same-sex couples, we must be mindful that we are still living in a homophobic society. Until gay men and lesbians can live in a world free of discrimination an exception may be necessary. One could compare this exception to Aboriginal sentencing practices which take historical, cultural and economic factors into consideration when sentencing Aboriginal offenders.

In regard to issues arising out of conflict of interest for public officials, individuals in such a position could refrain from decisions where there may be a conflict, but in order to maintain their right to privacy they should have the option of non-disclosure without negative consequences.

These recommendations reflect the need to recognize that gays and lesbians are a marginalized group in society. The reluctance of the Government to amend all the laws which discriminate against same-sex couples means that same-sex couples continue to live legally invisible. This invisibility can lead to the impoverishment and destruction of families.

In closing, the Manitoba Association of Women and the Law urges the Legislature to adopt these recommendations so that the Province of Manitoba can continue its tradition of inclusiveness, respect for human dignity and equality.

Subject to any questions, that is it.

Mr. Mackintosh: Thank you, Penny, and good luck in your studies. I got the report of MAWL in the last week or 10 days, so there could not have been a better time to have received it, obviously. What it did do was certainly raise a lot of issues that I had not really thought of before.

We talked earlier about how we have to look at the different lists of statutes that our department has prepared, and as well that MAWL has prepared, but I just want to get to the key issue in my mind that comes from your report. That was the recommendation that where there is a municipal councillor or school trustee, for example, who is gay or lesbian and they face a conflict of interest, that that person not be required to disclose the conflict created by the partner, right.

I just go to the bottom of page 4 and recommendation 4. It says here: "Where an act confers a responsibility that must be publicly and openly fulfilled, same-sex couples should be included."

Is that the right wording?

Ms. Piper: Yes.

Mr. Mackintosh: This is an important issue for the panel to consider. It goes beyond a legal issue. It becomes a public policy issue, I think, to a certain extent. I see what you are saying here, that until society has the legal protections and certainly has rid society of discriminatory statutes, why should persons be outed by law? We heard the other night the other view that if public interest was overwhelming or that if a gay or lesbian person was in public office, their public duties would be paramount to their privacy interests. I suppose that is another way of characterizing that particular view.

I am just wondering if MAWL had done any consultations on this, No. 1; and No. 2, given that Ontario has included the conflict of interest statutes, I believe, in their legislation, whether you might be aware of what the Ontario experience has been with the conflict of interest statutes and the legislated outing.

Ms. Piper: In reference to your first question regarding the consultation, the report was done by another student last year. She was unable to present this evening because she is actually employed by the Government of Manitoba. So we did not actually consult with anybody in public office. However, the person, I think, that you are referring to that you asked the question on Monday, I spoke to him earlier today and we discussed the matter. He really did not have a response at the time but we did discuss it further, and he did agree with my suggestion that, although it seems like you are creating a different category, until we are living in a homophobic-free society we may have to have that exception. Although they may be public officials, I think it is something, I am sorry, this may be a little bit critical of the committee or the drafters of this legislation, but *M. v. H.* was released in 1999 and the Government has had a substantial amount of time to look at all the acts. The fact that the Manitoba Association of Women and the Law did it last summer, and one student did it, I question why this Government has not done it sooner and why they have only included 10 acts.

Second, to your reference to Ontario legislation, actually, the report, the audit that

MAWL did, actually does make a response to Ontario legislation saying that it was not necessarily positive because it was a blanket legislation and situations such as the conflict of interest were not addressed. I hope that answers your questions.

Mr. Chairperson: Time for one more question.

* (19:40)

Mr. Mackintosh: Well, I have to respond, of course, to your critique. The departmental analysis was completed actually last spring, and this is the first session since that report was received. We have been in office now for 19 months, and the report was completed in June, which provided a basis for us to analyze where we go with legislation this year. But I might point out, as well, that in the MAWL report, for example, there was criticism about The Income Tax Act having discriminatory provisions. In the last session, we fixed all that and The Income Tax Act was redone so that all common-law partners were treated the same, and, as well, The Victims' Bill of Rights which will replace The Victims' Rights Act referred to in the MAWL report, has been amended. So things keep continuing to be addressed, and we have changes to The Highway Traffic Act before the Legislature this year as well, with regard to three areas that were of concern. Just to respond, and I will leave you with the last word.

Ms. Piper: Just in response to reference of The Income Tax Act, actually the inclusion of The Income Tax Act is not necessarily beneficial to those in same-sex relationships.

Mr. Mackintosh: It works both ways.

Ms. Piper: But at the current time, it is more burdensome for those individuals in same-sex relationships. When they have to indicate that they are cohabiting after one year of living together, and they could have GST rebates that are reduced, they could have child tax benefits that are reduced as a cause of that. Yet they are not going to be legally recognized as a family unit, and the schools do not recognize that and they have no rights as far as when they take a child to the doctor. So I think, at the current time, the burdens outweigh any benefits that same-sex couples are receiving.

Mr. Chairperson: Thank you for your presentation. The next presenter is Anne Gregory.

Ms. Anne Gregory (Private Citizen): Good evening, Mr. Chair, members of the committee. As you have just heard, my name is Anne Gregory and I am appearing this evening as a private citizen. I will just be making an oral presentation this evening.

First of all, on the record, my thanks to Minister Barrett for her motion on Monday evening, which has made it possible for me to appear this evening. I had an early start Tuesday morning, and I was not able to stick around, and I left some time after nine and there were about 30 speakers ahead of me. But I did know when I left that I would have the opportunity to address you at some time in the future. And I did not have to stay until 5 a.m. to make sure I got to speak my piece as I have had to do in the past.

Like the majority of the speakers, at least the ones that I have heard, I am before you speaking in favour of the bill as far as it goes, but against the fact that in my view it does not go far enough. You might be wondering why I am here given the announcement earlier this week of the appointment of Mr. Justice Hamilton and Ms. Cooper to your panel, and I thought about that. I thought about that yesterday. I thought about that today. I thought about it when I got back to my office late in the afternoon, and what I have done is I have set aside my original brief which I had prepared and killed some trees, because that involved an analysis of several individual, existing statutes with language, in my view, needed to be amended but had not been pulled under the omnibus legislation.

But I am here because I have decided that I still have some comments that I hope will assist this committee, and by putting them on the record, will go forward to the panel. With the greatest of respect, Mr. Minister, and I am speaking to the Attorney General, I do not read *M. v. H.* the way you do. I do not believe that the case only stands for the narrow proposition on the support issue and at this point I accept that

we are going to have to agree to disagree on that. But I want to illustrate my thinking for you. You were talking earlier this evening about the reasoning behind your approach and being able to communicate effectively to laypeople and so that they understand. So I want to illustrate my thinking here tonight.

In *M. v. H.*, the question that the courts in Ontario, and ultimately the Supreme Court, had to wrestle with was, yes, a support issue. That was the question and, as courts do, whether you like it or not, they answer the questions that you put in front of them. But when a court, the Supreme Court or, in some cases, a lower court, issues their decision with reasons, that decision has two sections. One is the actual decision. Here is the answer to the question that the parties put before us, and here are the reasons how the court got to the decision that it made. That is where we get jurisprudence, our common law, our body of common laws as opposed to what is known, in some circles, as our black letter law which is the legislation that you as legislators bring forward out of the House.

So my view, and, of course, you are free to disagree with me, but my view which I want to share with you this evening is that, when one reads a court decision, one is entitled to take the reasons that are articulated in the decision of the court on how the court got to where it got at the end of the day and apply them in the broader context, subject to, of course, should that court be binding on the jurisdiction where the question has to be answered, et cetera.

So, in *M. v. H.* or a case of a similar nature, if equity principles are discussed and that is the basis on which the court, in this case the Supreme Court, establishes the support obligation–that is what they were dealing with in *M. v. H.*–the same equity principles, the same reasoning out of that decision has application across the board on gay and lesbian issues. At this point, I would just say for the record that I am a rank and file member of the MBA and I would adopt the comments made by Mr. Law earlier in terms of what he read into the record from *M. v. H.* and the policy statements that were made by the court at that time rather than repeat them here.

To illustrate my point, let us take a step back from *M. v. H.* I will give you, the committee, and anyone who is listening an example of the sort of thing I am talking about. Let us step away from the issue of the day, gay and lesbian rights. I will use another set of facts. There is a case out of Manitoba which ultimately went to the Supreme Court, some of you will be familiar with it I am sure, known as *Brooks*.

If you are looking for a little extra reading, anyone around the table, I will give you the site. It is Brooks and Canada Safeway, 1989, volume 1, Supreme Court report 1219 as cc. The Chief Justice at the time, Chief Justice Dixon from Manitoba–we are all very proud–and the facts were that some women who worked for Canada Safeway, they were cashiers, wanted to collect sick leave. They had missed some work. They were sick and they could not get sick leave because they were pregnant.

The sick leave plan that Safeway had in those days–it was struck down–said that if you were pregnant, there was a 17-week blackout period where you, as a pregnant person, could not access the sick leave benefits. It did not matter whether you were sick because you were pregnant or you were sick for some other reason. This 17-week blackout period began 10 weeks before. what is ever so delicately referred to in those as, the date of confinement.

So for 10 weeks before what we would now refer to as the due date, if you got the flu and you were off work for three days, if you were pregnant, no sick leave. The women went to their union. The rest, as they say, is history. It went to the Supreme Court. Now the specific question that the court had before it was: Do these women get sick leave? Is the plan okay?

To do this, they had to decide, or they were asked to look at, is this discriminatory? Was it discrimination on the basis of pregnancy? Well, that was fairly easy. That did not take them very long. Maybe, a page or two. Was it discriminatory on the basis of pregnancy? If yes, was the discrimination on the basis of pregnancy discrimination on the basis of sex?

So do you see what I am saying? You have a question, but in order to answer the question,

you have to reason out a whole series of other thoughts. Ultimately, the Supreme Court answered the question about the sick leave in the *Brooks* case. Ten years later, the Supreme Court ultimately decided the support question in *M. v. H.* In both cases the court said, yes; yes to support, yes to the sick leave.

* (19:50)

Since *Brooks* was decided, it has become a landmark case. It is a case that stands for equity, principles for women, pregnant women. The reasoning in the case about the role that women play in society, the importance of the family, the exclusive role, so far, of women bearing the children in our society, was articulated. Then the court said, and since only women can get pregnant, if you treat them in a discriminatory fashion because they are pregnant, that is discrimination on the basis of sex, discrimination against women.

So that has become a cornerstone in our equity law. It is with that understanding, that is just one example, but that is the way I view Supreme Court jurisprudence. I accept, Mr. Attorney General, that we do not agree on this point, but that is why I feel that the reasoning in *M. v. H.* supports a broad view of the sort of legislation amendments that are required to bring Manitoba's statutes in line with *M. v. H.* It goes beyond the matters that are currently addressed in Bill 41, as it is drafted.

So I have brought my thoughts to you here this evening, and I ask you to pass them on to your panel because I feel really strongly. As I said at the outset, it is fine as far as it goes, but it needs to go farther because things need to be changed. I was here, as I said, for part of the proceedings on Monday night, and I listened to some incredibly powerful presentations from Keith Louise Fulton and Lloyd Fisher and others. But Keith Louise Fulton's and Lloyd Fisher's resonated for me especially. They deserve the protection of a legal framework.

I do not like to say it behind her back. I see that she has left, but the comments that you heard, and she has every right to make them, just as I have the right to make my comments now, but the nature of the comments you heard from our first speaker this evening is the reason that people need expressed legal rights to protect them from discrimination in this province. That is why we have the human rights code, and why, under section 9, discrimination on the basis of sexual orientation has been a prohibited ground in this province for over a decade.

I do not have to go far from my own village. People were telling some very compelling personal stories on Monday, and Kate Tate told one yet this evening. I do not have to go far in my circle of friends to see where the scenarios that they have talked about, in real terms or hypothetically, could happen. There is one story from my original brief that I want to share with you tonight, if I have time. Because it illustrates the point of why statutes have to be clear from ambiguity. You will see it is on yellow paper because it is from my original brief.

With the permission of the person who is most involved, I share this story with you. I have a 30-year-old friend. She was seven months pregnant at Easter time. She had something akin to a stroke. She is 30 years old. She was carrying her second child. She had an emergency C-section. For over 24 hours she was in critical condition. She had lost her vision. They did not know if she had brain damage. I was on standby to go to the hospital to possibly say goodbye, and, understandably, during this time she was unable to communicate and she had to have a health care proxy.

Her mother, God bless her, stepped up to the plate. She did not have anything but the best of intentions. She was going to advocate for her daughter because in her mind she was the only one who could advocate for her baby, her first-born, who, notwithstanding the fact that she was a mother of two, was still her mother's baby.

My friend needed a proxy, no question, and my friend was married, and her husband, if her mother had had her way, would have been completely shut out of the process, not because they were estranged, not because she does not love her son-in-law, not because they do not have a good relationship, but, because, in my friend's mother's mind, she was the only one who knew what was best for her daughter.

When the hospital staff started to go through their protocols, they said, okay, is there a husband? They went to the husband, and he was permitted to carry out his proper role. He was the primary proxy, and when he could not be at the hospital because he was tending to their five-year-old, then her mother, in consultation and co-operation with her husband, served as a secondary proxy.

Now, when she regained consciousness, my friend was very glad that her husband had been the primary proxy, because that was what her wishes were, although she had not been able to communicate them at the crucial time, but because the framework existed, that is the way it played out.

Before he was her husband, there was a period of time when they were persons of the opposite sex who lived in a conjugal relationship. Again, under the protocols, he would have been the first proxy. But if they had been a same-sex couple, my friend's mother would have occupied the field, and she would have been able to shut out the partner completely. When my friend regained consciousness, she would not have been in a position of knowing the person she wanted to be her primary proxy had been able to do so.

For those of you on the committee who have partners of your own, I ask you to put yourself in the position of my friend's husband, who is also my friend, but she comes first. How would you feel if your partner was in the situation my friend was? She had lost her sight, she might have brain damage. She had had a stroke, for all intents and purposes.

Mr. Chairperson: Excuse me, Ms. Gregory. You have about one minute to finish. Thank you.

Ms. Gregory: Thank you very much. So how you would feel if your in-laws occupied the field would be my point.

I feel the panel process is somewhat reversed, that you should not be looking at whether the laws discriminate and fix them. I think they should just be fixed. I do not think you run the risk of offending the Charter, which is something you have to be alive to by changing them. I think the choice of Mr. Justice Hamilton is a good one, given his experience. I am one of the Manitobans who has actually read the AJI. I am sure Ms. Cooper will bring her experience.

I leave with you my question that is in my mind, which is should not someone from the legal community, or even from the lay community, who is gay or lesbian be on that committee to bring their perspective? I ask you to think about that. I know the panel is struck, but they have not started their substantive work, and they might be able to help.

I just think it is the right thing to go farther. It makes our laws consistent with our Human Rights Code, as I have already said. It would bring us in line with the Charter.

Usually I am really smug about living in Manitoba–and, Mr. Chairman, I am on my last points. One of the reasons I choose to live here, one of the reasons I came back, is because it is a progressive place to live, and we are not as flat as Saskatchewan. I have lived in Ontario. I have lived in Nova Scotia. I like to lord over my friends that I come from a more progressive province. I am sincerely and truly troubled by the way this issue has unfolded here. So I have come tonight to kindly, gently, but firmly, tell you that this is not what I was looking for from my Government when they took this issue forward. I came to tell you that on this issue I was hoping you would lead the parade. With respect, those are my submissions.

Mr. Chairperson: Questions? Thank you for your presentation.

The next presenter is Sacha Paul. Is Sacha Paul here? Paul will be dropped from the list. The next presenter is Sarah Inness. Sarah Inness? Her name is dropped from the list. The next presenter is Manny Calisto. That name is dropped from the list. The next name is Margaret McKenty.

Ms. Margaret McKenty (Private Citizen): Good evening, Mr. Chairman, honourable minister and committee members, ladies and gentlemen. Thank you for the opportunity to address the committee on this issue this evening. I am addressing the committee as a private

citizen and I will be making an oral submission only.

* (20:00)

As I say, I am addressing the committee as a private citizen and I situate myself as a lesbian feminist before this committee, and I wish to situate our discourse, somewhat. I have no fear of professional censure for speaking to you tonight from my governing body, the Law Society of Manitoba. I have no fear of loss of job or housing; however, in choosing to appear before you tonight, I have chosen not to disclose my home address or my partner's identification because of possible harassment, which is unlawful, but no less real and unwanted for that.

I think it is important to remember in this province and in my lifetime, that to have disclosed the very little that I have told you so far about myself, was to risk one's livelihood, to risk one's housing, to risk police surveillance, to risk arrest and social ostracism, to risk incarceration and to risk, even, forced psychiatric treatment. There are far too many jurisdictions, even today in the world, where disclosing a lesbian identity or a lesbian relationship without some sort of diplomatic immunity means risking severe civil and penal consequences and possibly even death. Outside the civilized confines of this room, this chamber, where we can discuss as equals, it is, in fact, not a level playing field.

Ms. Linda Asper, Vice-Chairperson, in the Chair

So the deliberations that you are engaging in are about a long and honourable struggle to ensure and affirm equality and to bring that promise and constitutional guarantee into being, fully. The substance of what I would like to say to the committee tonight is quite simple. Like previous presenters, I applaud the introduction of Bill 41, as far as it goes, but I wish to express my concern over the inadequacy of the bill as it is currently drafted, and request that it be amended to be truly omnibus legislation.

Particularly in light of what the Supreme Court of Canada has ruled in *M. v. H.*, I believe that this is what the law demands and what members of the lesbian, gay, bisexual and transgender communities of Manitoba are entitled to expect. I am aware that Bill 41 represents a considered response to *M. v. H.*, but I believe some of the considerations that entered into the drafting of that bill are unworthy and inappropriate. The Government had an opportunity as well as an obligation, to introduce omnibus legislation to remove all vestiges of legal discrimination against same-sex couples in Manitoba. The Government has rejected this opportunity and, therefore, failed in its obligation to do so.

With all due respect, I submit that this legislation, if passed in its present state, is not omnibus legislation. It is back of the bus legislation. Ending 10 of 63 discriminatory or impermissibly vague statutes does not address the fundamental issue, which is posed by the evolution of our understanding of equality rights in Canada. I remind the committee, as if it needed reminding, that the highest court in the land has said, and I quote: Discrimination on the basis of sexual orientation is abhorrent and corrosive to the values of Canadian society. That is from the decision in *Vriend*. The same court has said: That under inclusive ameliorative legislation that excludes from its scope the members of an historically disadvantaged group will rarely escape the charge of discrimination. That again is from *Vriend*, that is cited in the *M. v. H.* decision. And lastly, the same court has also said that exclusion from the statutory scheme has moral and societal implications beyond economic ones, in the same decision.

Therefore, I submit to this committee that the issue is not how to make it easier for gays and lesbians to avoid going on social assistance; the issue for many years has been, when do we get to be equal citizens? When we will we know that it is finally safe to bring our love into the law and have our relationships, as we define them, recognized, respected and supported? There are benefits and burdens to having our relationships recognized in law, both when those relationships are viable and when those relationships break down. But for those benefits and burdens to be shared equally and fairly requires omnibus legislation, and I respectfully submit that Bill 41 does not do the job. Given the direction that has been provided by the Supreme Court of Canada in recent years, I ask

the committee can this Government truly believe at this point in time that there is any rational objection to including amendments to deal with, for example, intestate succession or to deal with the witnessing requirements for wills or powers of attorney or health care directives or to clarify once and for all the rights of victims who are claimants under The Victims' Rights Act, to name but a few of the statutes that have been left out?

I ask: Could this Government in good faith maintain and defend the constitutionality of every one of the 53 statutes it has left out of this bill? Does anyone doubt what the eventual outcome would be of subjecting any of those statutes to a fullfledged Charter challenge? Then I ask: Why the delay? Why subject lesbian, gay, bisexual or transgender citizens to undergo the expense, the waste of time and the spirit of needless litigation to prove painfully, point by point, the principle that has already been made clearer by the highest court in our land? I ask sincerely: Who is going to lose by being inclusive at this time?

Considering the opportunity that presented itself to this Government, I must express my disappointment that the Government has chosen once again to cast the burden upon the shoulders of lesbian, gay, bisexual, transgender members of the community and their allies to analyze, to organize, to publicize, to strategize and to agitate once again for human rights. These hearings, civilized as they are, are an expenditure of scarce time and human resources, as are the hearings of the panel that has recently been struck. They would not have been necessary if the Government had shown sufficient leadership and done the job that it was mandated to do.

With all due respect, I submit that Bill 41 is a specimen of a rather distasteful form of political calculus. Really it answers: How little can we do and not call attention to ourselves as taking a stand on this issue? Or, what can we do to pacify those who are equality seekers while not rocking the boat for a bigoted minority that is still convinced that lesbian and gay persons are and should remain second class citizens? I submit to the committee that legislative reform in the area of human rights should be a matter of principle, not a matter of political expediency. I, with all due respect, cannot say that I believe Bill 41 represents a principled approach to reforming the law where same-sex couples are concerned.

The members of the committee are familiar with this report, *Rights Denied,* which the representative of the Manitoba Association of Women and the Law recently referred to, and which was circulated to all the members of the Legislative Assembly. Like the previous representative, I find it hard to believe that a solitary law student from the Manitoba Association of Women and the Law with an internet access and a computer could, in less time and with less money at her disposal than the Department of Justice, have done a more thorough job of identifying legislation that needed reform than the Government's own internal legislative audit could have done.

I remind this committee that audit was promised in my hearing by the minister just about one year ago. In other words, I believe this Government and this minister knew at the time that this bill was tabled exactly how much had been left out of Bill 41, because the audit was complete. They knew that this bill was a piecemeal and incomplete reform, and I think they should have known better. I urge the committee to use the results of its own legislative audit to do the job completely and to do it now.

Again, as with the previous representative who spoke before you, the action of striking a committee to study further inclusion of amendments is not a wrong step, but I questioned why no qualified member of the lesbian, gay, bisexual or transgender community knowledgeable in those issues was appointed to the committee, or indeed a member of the academic community who might also be equally qualified.

Subject to any committee members' questions, that concludes my submission.

Madam Vice-Chairperson: Thank you, Ms. McKenty. Are there any questions? Thank you for your presentation.

Ms. McKenty: Thank you.

Madam Vice-Chairperson: Our next presenter is Sara Malabar. Sara Malabar? The name will be taken from the list. The next presenter is Grant Fleming. Is Grant Fleming here? The name will be struck from the list. The next presenter is John Krowina. Please proceed.

* (20:10)

Mr. John Krowina (Private Citizen): Good evening Mr. Chair, members of the committee. Like many other speakers who have appeared before you not only tonight, but Monday night, I was going to urge upon the committee a fairly major, fundamental widening of the scope of the bill. Specifically because, in my opinion, Bill C-41 laudably addresses the issue of support and widens the availability of support to same-sex, common-law couples. It does not go far enough in terms of addressing other issues, many of which have already been flagged numerous times, such as adoption. I was specifically prepared, prior to the announcement of the panel being appointed, to address some of the property issues.

Support is a fundamental issue that arises upon the breakdown of any permanent long-term relationship. Property is another issue, which is at the core of what needs to be dealt with when a relationship breaks down. I had planned to address property issues specifically in the context of The Homesteads Act, The Law of Property Act and The Marital Property Act, none of which, I can add, of course, are referred to in the bill.

The common thread, and I will simply flag these issues for the committee to keep in mind in future, when future legislation does come forward–behind each of these pieces of legislation is that they are restricted to married persons only. Married persons, of course, in provincial legislation means married men and women only. Married couples have the benefit of legal protection to keep a marital home from being sold out from under one spouse by the other spouse. They also have the benefit of a marital home not being encumbered, mortgaged, or, in some other way, encumbered with a caveat being registered on it, for example, without notice or the consent of the spouse.

Mr. Chairperson in the Chair

Married couples also have the benefit of legal protection to ensure an equitable division of property upon dissolution of the relationship. They have the advantage of having an entire legislative machinery in place to allow this to be enforced. This, of course, is presently denied to same-sex couples for the simple and very obvious reason that they are prevented from being married, at this point in time.

The amendments, in terms of the widening of the scope of the bill that I was going to propose, were that common-law couples, common-law relationship, be added to those three pieces of legislation. "Common law" would be defined in the same way that it is defined in Bill 41, or on the other hand, to consider a change to allow same-sex marriages. Clearly there are arguments, pro and con, in terms of whether there ought to be any kind of substantive distinction between married couples as opposed to common-law couples. Those issues need to be addressed and resolved. Either approach would do some substantial additional justice to same-sex couples, in my submission.

It is true that the *M. v. H.* decision does not speak to the issue of property directly. But I agree with Ms. Gregory and several other speakers who have indicated that the reasoning behind the decision, and the fundamental logic of not permitting discrimination based on sexual orientation, would also apply to the issue of property, as it does to support, clearly.

To conclude, I want to say that I am glad that a panel has been appointed to look into precisely this type of issue. I would hope that follow-up companion successor legislation be enacted in the very near future. I also echo the preceding speaker who thought it may be appropriate that somebody from the gay or lesbian community be added to the panel. Those are my submissions.

Mr. Chairperson: Are there any questions? Thank you for your presentation. The next presenter is David Schesnuk. Please proceed.

Mr. David Schesnuk (Private Citizen): I thank you for this opportunity to address you.

As a student, professional engineer, husband and father, I make my living using what faculties I have to evaluate, analyze and recommend. My hope is that, in this capacity, in between all these passionate and heartfelt opinions that have been presented before this committee, I hope to humbly serve, not from years of exhaustive legal study, or by the winds of emotion, but by reason and sound judgment from my own experiences, to clarify and expose what is solid and most beneficial to the long-term success and prosperity of the province in which I live and love.

It is here in Manitoba that all my life's opportunities, penalties and experiences have given me a fulfilling and rich life. At times, even when I get paid for my technical opinion, I find that I have very little personal power, even as the professional consultant, to direct happenings the way I understand they need to go for the benefit of all. Others, for their own reasons and agendas, demand and force change to the harm of all. It is because of our forefathers' realizing this that society must have order, and out of such order today's proceedings have been born. This is also true of how as a society we have chosen to live democratically. Each of us has to bow to the will of the majority. This committee is, in itself, empowered by the vote of the majority of the people.

I do not serve here tonight to impress you with statistics nor to state the delicacies of the law backed by years of study, but to simply speak here tonight from my own life's experience, as many others have. I appreciate the passion and dedication in which the previous presenters have expressed themselves. I truly respect their efforts.

But the issues have become clouded and mired in unclear thought. I, too, when I was younger and a rebellious teenager, fell into a period of my life of unclear thought where I did not feel normal. I felt low self-esteem, unappreciated and alienated. I had a very poor image of myself and looked to acceptance anywhere I could find it.

I entered into a homosexual relationship with a neighbour. The hurt feelings only intensified in this relationship. At that time, I knew what I was doing was wrong. The people at the gay socials I attended at a local union hall told me things to make me feel better for the moment, but deep inside, I knew I was broken and wrong. My natural sexuality I had started out with became confused and frustrated. I became treacherous to myself and continued to struggle in that relationship and other relationships of either sex. But just like any other behaviour that endangers my wholeness and my well-being, I did not find peace. The homosexual acts I committed, like other self-damaging acts, caused me pain and penalty just like any other acts of the will that are self-deluding. I simply convinced myself that what I wanted to do was right, even though it was self-damaging.

In not finding any peace, I turned to heterosexual relationships, but since my hurt had not been healed, the same broken relationships happened. Predictably, my first marriage ended in divorce. Today I have happily remarried and continue to restore and make restitution to the best of my ability for the wrongs I have committed.

It is from my personal experience I speak to the instability and turmoil found in the homosexual lifestyle and community. It is in the traditional time-tested values of forgiveness, true respect, tolerance and obedience that I have found the true freedom. Disciplining myself to a solid giving natural love, rather than its opposite of selfish apathy, the degree of personal restraint which I now enjoy brings truthful confidence, control and not the chaos I experienced before.

* (20:20)

As a child, I depended upon the protection of my parents, completely helpless before those who would use me for their own ends. All children need to be raised and nurtured in a giving, loving environment, which encourages self-discipline, control and restraint in a caring and dependable atmosphere.

The best possible example, parenting model, I have found is with a caring man and woman in a monogamous relationship. These qualities, in my experience, were not found in the gay relationships I have had. The relationships I experienced were not the solid foundation in

which to provide children with the best possible advantage. Placing a child into a relationship which by its nature is based on alienation and feelings of inadequacy is to possibly place that child at risk. Children, like I was, will simply model what we teach them.

My hope is that you consider all these weighty issues before you. You will see the true nature of love, which at times must bring discipline and correction, not promiscuity. In our great democracy, if someone steals repeatedly causing harm, his or her privilege of freedom is removed. As well, if someone speeds, endangering life and property, his or her privilege to drive is removed. If someone commits a crime against themselves, as in substance abuse, they have already received in themselves the corrective punishment and deserve all the help, compassion and kindness that can be offered to assist them to see their way out, their way of escape. All of us know how bad we could have been and what we have not been punished for in our lives.

Revising these words in Bill 41, as is proposed, without also at the same time encouraging the best traditional values will only rob people of the opportunity I have experienced, finding fullness of freedom and a richness of lasting, satisfying life.

So I am opposed to Bill 41 in its present form because it only seeks to appease those who will never be satisfied and it does not strengthen and protect that which promotes goodness, kindness, peace and patience. The act of governance is not easy, and by the very nature of democracy there will always be a few left out.

I leave you with these closing words: If a person I am near is to harm themselves, knowingly or unknowingly, the true opposite of love for them would be not to warn them of the impending danger but to simply let them alone. I thank you for your time.

Mr. Chairperson: Thank you for your presentation.

The next presenter is Marianne Crittenden. Please proceed.

Ms. Marianne Crittenden (Private Citizen): Just like you have the right to say what you believe, I have the right to say what I believe. On that point, I would like to say that we are all relevant because we are all human. I have my beliefs and I am here to speak up for them.

I am a mother of two boys. I am a heterosexual female, married to a heterosexual male. I believe that the family unit should remain defined as a husband, father, who is male, and a wife, mother, who is female.

On the issue of adoption, I am the birth parent of a child I placed for adoption 10 years ago. I placed her in an environment that I believed was the very best, with a mother who is a female and a father who is a male. As a single mom, I raised my daughter for two years and came to the realization that she needed a father figure just as much as a mother figure and one or the other was not enough. I feel the right to adopt should only be granted to a stable, heterosexual, married couple who, I believe, would provide the very best environment for any child to grow up in.

I do not want to make any enemies by saying what I am saying. I know many of the people here are representing the homosexual community and, therefore, may feel that I am coming against them as people. I want to make it clear that I am not doing that. I am only stating that I believe differently and I have the right to speak up about it.

In regard to same-sex marriage, I believe that marriage should only be defined as a union between a male and a female.

In regard to changing the wording in Bill 41 to say spouse and/or common-law, I disagree because of the covenant of marriage. I believe that marriage is a sacred thing and should not be changed to suit someone who cannot commit.

I believe that I am here on behalf of the majority of Manitobans who are not here tonight because they have not been informed that this is even happening. With that in mind, I would especially like to say that I am opposed to Bill 41 and the amendments it is recommending. Thank you.

Mr. Chairperson: Thank you for your presentation. The next presenter is Lorraine Waldner.

Ms. Lorraine Waldner (Private Citizen): Good evening, ladies and gentlemen. I would like to first of all thank you for the opportunity to be here and thank you for the opportunity to speak out on behalf of an issue that is of such great importance to me. I am not a public speaker, so please forgive me if I am nervous and if the words do not come out just quite right.

It has recently come to my attention that my opinion in regard to the amending of Bill 41 is not the most popular one in this room. But that is alright, because I am not here to impress anyone, nor am I here to offend anyone. The only reason that I am here tonight is because I feel very passionately about this issue.

I realize that so far in these proceedings you have heard many stories of hardships that have sincerely touched your hearts. I know this because as a wife and a mother of two young children myself, I certainly could empathize with what many of the speakers have shared here so far. I do, however, still believe that we need to take a step back and realize that this is not about empathizing, sympathizing, or whatever other emotions we may feel.

This issue is about morality and true family values. It is about doing what is in the absolute best interests of the children that it is your duty to protect. It is a fact, ladies and gentlemen, that 70 percent of all inmates in the United States' prisons across America have not, nor have had, a father figure in their lives. This proves to me that when we remove the father figure from the home, the children do suffer as a result.

I know that there is no such thing as the perfect family. I do, however, believe that having both a mother and a father committed to each other in marriage, supporting each other, loving each other, and thereby providing a safe and well-balanced environment for their children, will certainly increase the probability of those children growing up to lead productive and well-balanced lives.

I believe that it is our responsibility as citizens of this great province, to ensure that whether we are creating or amending laws that in any way affect or pertain to the welfare of children, our first and foremost concern needs to be based on what is in the best interests of the children, and not based on the wishes of small minority groups with their own agendas.

I urge you please, ladies and gentlemen, not to base this decision on what 2 percent of the population of Manitoba thinks is best for themselves, but instead take into consideration what is the optimal environment for children, which is, again, not mom and mom, or dad and dad, but dad and mom. They are our responsibility and they are worth it. Thank you.

Mr. Chairperson: Thank you for your presentation. The next presenters are Fae Simon and Rosaline Dearing.

Ms. Fae Simon (Winnipeg Child and Family Services): Good evening. My name is Fae Simon, and my colleague is Rosaline Dearing. We are social workers with the adoption program of Winnipeg Child and Family Services and have a brief statement to read on behalf of Winnipeg Child and Family Services.

We have, for a number of years, received inquiries from same-sex couples about adopting a child. Our practice has been to circumvent current legislation by accepting an application from one member of the couple while the other member is denied the right to apply. If adoption occurs, the couple is forced to choose which of the two will be the legal parent. This effectively denies legal rights to the other parent. We believe this is both unjust and a violation of human rights. It also results in a situation of potential risk for the child, if the legal parent, for any reason, becomes incapacitated.

We would urge the Manitoba government to move with haste to pass legislation allowing same-sex couples the right to adopt. That is our statement.

Mr. Chairperson: Thank you for your presentation. The next presenter is Karen Delaney.

* (20:30)

Ms. Karen Delaney (Private Citizen): Ladies and gentlemen of this committee, first, I would like to say how honoured as a Canadian I am to stand up in front of a government that, despite what has happened today, I am very proud of, and that makes me feel safe in this country.

Second of all, I would like to say my name is Karen Delaney. I am a bisexual lesbian. My Irish last name means "black defiance." I stand here today in defiance of oppression and tyranny, which I feel not only affects the gay community and harms the gay community, but, in the end, will harm you as well if you give into it. I do not want to see that happen.

I also wanted to say, before I started reading what I have here, that I was watching a movie called *Saving Private Ryan* about the day at Normandy when the young soldiers fought as well against Hitler, against oppression and against tyranny. They were young men, my age some, and most of them were 18-, 17-year-old boys screaming out in pain on the beach, far away from home, who would never grow up to be men. They paid that price so we could all be here today to protect you, your children and our children as well. They did not go there saying we will only protect the straight heterosexual right-wing viewpoint. They fought to protect everyone, their own children as well.

I ask you to fight to amend this bill to give gays and lesbians full human rights protection and also stiffer penalties against those who would violate those laws, to help protect not only us now but to protect the grandchildren and great grandchildren and future generations of those young men who fought for you so that you could have the rights you have now.

I am here to talk to you about, as I passed out the little pamphlets, the U.N. Rights of the Child. I hope that will help you. I am here to talk on discrimination, as is in my brief.

Discrimination exists in all societies, dominating the lives of millions of people. While it may take differing forms, it invariably involves those with power, treating those with less power unjustly because of who or what they are. Children, in general, lack power and are, therefore, particularly vulnerable to discrimination.

The CRC highlights the unique discrimination faced by all children. However, it also recognizes that many children face further discrimination as a result of their particular status or circumstances and calls on governments to take steps to prevent this. Article 2 of the CRC, in particular, states that governments must take measures to ensure that all the rights apply, without discrimination, to all children. If this most fundamental of principles cannot be assured, the full vision of the convention simply cannot be realized.

While the international community has devoted considerable attention to the problem of racial discrimination in recent years, the extent to which children around the world are affected by discriminatory practices continues to be overlooked at an international level.

This is from a Web site called "Save the Children Alliance," www.savethechildrenalliance.com, if you are interested. *Children's Rights: Equal Rights?* documents the ways in which discrimination in all its forms prevents children from realizing the full range of their rights as enshrined in the convention. It demonstrates that there are four key routes through which discrimination against children is perpetuated.

In many societies, legislation directly discriminates not only against children as a group, but also against particular children. Some discrimination is direct. Disabled children, for example, are frequently excluded from the right to education. Less directly, laws that require children to wear school uniforms and attend at specific times, for example, may discriminate against poorer children.

Governments regularly fail to protect the rights of particular groups. In many cases, equal treatment legislation exists but is not effectively implemented. Many countries have now legislated against female genital mutilation, for example, but cultural traditions outweigh the law. The practice continues unabated, and each year millions of girls are subjected to this brutal assault.

Discrimination often takes place because of prejudices which are institutionalized or even unrecognized throughout society. Unchallenged, these attitudes rob children of their identity and have a devastating impact on their lives. The media can and often does promote discrimination. It can reinforce traditional hostilities towards some groups of children and foster contempt of others. Very often negative reinforcement occurs by rendering certain groups invisible. Disabled children, or those from minority groups like children who have same-sex families, are simply absent from the media, leaving them without role models and depriving the wider population of positive images of these groups.

Most children grow up aware that as children they have inferior status, but it is a status they will leave behind when they become adults. However, for millions of children the discrimination perpetrated against them because they are young is compounded by additional prejudice, which endures throughout their lives. To be born a girl, disabled, into a minority community family or homeless condemns children in all probability to a life of disadvantage. This discrimination has a profound impact, being linked to lower school enrolment, higher drop-out rates, poorer health and greater exposure to violence. Perhaps even more corrosive is the impact on children's self-esteem, which diminishes their capacity to recognize and challenge the abuse they experience.

Any strategy to challenge discrimination must not focus on changing the children who are discriminated against but rather on changing the legal framework, power structures, the attitudes of those who discriminate, the physical environment and the balance of resources which perpetuate injustices.

The next page I have is on addressing strategies that you can use for addressing discrimination. In *Children's Rights: Equal Rights?* the international Save the Children Alliance recommends that governments, like you, adopt the following measures as a matter of urgency in order to tackle discrimination against children.

Introduce new legislation. Governments should introduce legislation establishing the general principle of nondiscrimination in all areas, including education, employment, housing, social security, social welfare, youth justice systems, play services and access to public places.

Strengthen existing legislation. They should review existing legislation to identify ways in which children are currently discriminated against. It may then be necessary to amend the legislation. Such legal reform will send a formal message that customs or practices contrary to the rights of all children are unacceptable.

Challenge attitudes. Legislation alone is not sufficient. It is only a deterrent if there are effective enforcement mechanisms. Governments must work to change attitudes and all forms of discrimination. As a starting point, they should scrutinize their policies and services to ensure that they do not directly or indirectly discriminate against any group of children. They should further work with community leaders to influence attitudes and establish independent ombudsmen to monitor the effectiveness of their programs.

A commitment to equal rights for all children requires political will on the part of decision makers in order to bring about real change. This will often necessitate additional resources. There is little point in introducing new laws to protect the rights of children if the means to translate them into action are not available.

One of the main difficulties faced by governments in this area is lack of data. Many countries do not systematically collect information on the way in which children are treated. The U.N. Committee on the Rights of the Child routinely presses governments to collect better statistical data in order to identify how legislation and policy affect children's lives.

Tackle discrimination through education. Children begin to learn negative attitudes toward other groups of children from a very early age. The school therefore is a vital place to begin introducing better understanding and respect for others.

* (20:40)

For many children, school is a place where they are actively discriminated against and where their human rights are blatantly disregarded. Girls too often experience school as a place where teachers are mostly male, the culture is aggressive and male-dominated, and lessons in textbooks are filled with messages about the superiority of boys. Many children from minority communities are denied the right to learn or even speak in their own language. These experiences encourage children to disregard the rights of their peers.

Schools need to identify ways in which they directly or indirectly discriminate against certain groups of children, for example, by failing to tackle the bullying of girls, by imposing the use of the majority language, or by humiliating less able pupils.

Efforts need to be made to promote multicultural education in which segregation is ended and the cultural identity and sexual orientation of all children in the school is respected and given equal worth.

Human rights education needs to permeate the curriculum, backed by resources for teachers. For example, Geography provides the opportunity to explore the issue of unequal access to resources. Biology can consider issues related to genetic testing and the rights of disabled babies.

Education resources need to be reviewed and amended, both to remove the images that perpetuate negative stereotypes and to promote the concept of equality and respect for difference.

Children themselves need to be involved in the decision-making process of the school. Providing children with opportunities to practise democracy and experience themselves as subjects of rights is an effective means of challenging prejudice and discriminatory practices.

I will jump ahead to the end. In conclusion, I would like to say *Children's Rights: Equal Rights?* presents a global overview of the far-reaching consequences of discrimination. Discrimination blights the lives of millions of children, denying them fulfilment of their fundamental rights. However, there is some progress in tackling the problem. The near universal ratification of the Convention on the Rights of the Child has highlighted the sheer scale of discrimination against children, raising awareness of its impact and helping in the development of strategies for tackling it.

But this is yet not enough. Save the Children is aware of many instances where children around the world continue to suffer the effects of discrimination. The challenge we all face in relation to this issue and to children's rights in general is the transition from acceptance of the CRC to its universal observance. To this end, governments, international institutions and wider civil society are once again called upon to accept their collective responsibility. Save the Children challenges each to enforce the principle of nondiscrimination to promote diversity and difference and ensure that all children are afforded equal rights and equal opportunities in life.

In the end, I would like to also say that there have been people coming up who have very strong–although I respect their right to speak because it was also granted to them by those soldiers–very strong views against homosexuality. I would like to say that I ask God to forgive them, for they know not what they do, and to hope the crimes that were enacted on them that caused them to have these feelings will not be allowed to continue, for they are not evil, but they are victims of someone else's hatred that has been perpetuated for far too long.

I ask you not to allow this crime to continue on innocent children who look to you as grownups to protect them, as you once looked to others to protect you. I ask, as I know how hard this probably is, I ask God to be with all of you. I know you believe in Him and He believes strongly that you will make the right decision to help protect His children. He loves you. He loves me. He loves all of us. His son died for all of us. I ask Him to help you, to be with you and I say God bless, and that is it.

Mr. Chairperson: Thank you for your presentation. The next presenter is Mark Golden.

Mr. Mark Golden (Private Citizen): I am not gay. I am not even a lawyer. Before tonight I thought M and H was a rap star. I do not know what God wants or believes.

I am an adoptive parent. About 15 years ago, my wife and I had a little baby in Toronto. She had a birth defect and died at six weeks. Over the next two or three years, Monica had four or five miscarriages. Then, at the end of this period, we were very fortunate and we were able to adopt a little boy. You can imagine with what joy I became a parent at that time. It is a joy that I would find very difficult to forbid to any other Manitoban who wanted that responsibility and that pleasure for himself or herself.

Some years after that, my wife and I separated. That was also no picnic. We were both parents. We both sat down, and we worked out a care and custody regime for Max, which, I think, was very satisfactory. Last night, we both went with him to a Roman feast at his school and to a piano recital where he played just like a Roman. I do not know how either of us would be able to bear being deprived of him as our son, nor do I know–excuse me, this is very emotional for me–nor do I know how he would be able to deal with being deprived of either of us as his parents.

One of the things that Max and I like to do is to canvass during election time. Since I made this decision, we canvassed for the NDP. When I am at the door, some of my neighbours ask me what the NDP will do about something. I have yet to answer that they will ask Judge Hamilton to sit down and make a decision on their behalf. It is not because I have any opposition to Judge Hamilton, a very fine judge who was taught by my father, as a matter of fact. I have a good deal of respect for him, but this is an area where I think this Government ought to show more courage and more leadership than it has done and make us all truly proud of being Manitobans. Thank you.

Mr. Chairperson: Thank you for your presentation. The next presenter is Rory Grewar.

Mr. Rory Grewar (Private Citizen): Can I sit? Is that an option?

Mr. Chairperson: Yes.

Mr. Grewar: Oh, okay. It is just that I am not very comfortable standing here. I feel like I am preaching to you, and that was not the intent, at least not my intent.

Mr. Chairperson: Is there leave of the committee for the presenter to use a microphone other than at the podium? *[Agreed]* Please proceed.

Mr. Grewar: Good evening. Thank you very much for the opportunity to address you this evening. I have actually just recently come from a meeting. It was a citizen's meeting in which I heard some very agitated, anxious, and afraid citizens express concerns on another matter. I was thinking how wonderful it is that we have these opportunities in this country where we can express and be heard and possibly change things to make a difference.

Much has been said by others over the course of the past two evenings of committee session and, I suspect, over the past number of weeks from many of your constituents. I believe probably every MLA in the House has probably heard something about this piece of legislation. The legal, ethical and moral grounds upon which changes to this piece of legislation should be made have been made well known to you all, has been well presented, I believe.

I believe that this committee and the Government are well aware of the discriminatory nature of this legislation and are also now very well-informed as to how it can be changed to make it more just, more fair, more inclusive.

I believe, with all due respect, that the decision to establish a committee to study the matter is an unnecessary delay which shows the Government's willingness to compromise, perhaps, its own principles when, if I might be permitted to say, issues surrounding possible re-election might be at hand.

Four jurisdictions in Canada, three of them considerably larger and with, perhaps, more legally complex statutes than Manitoba, have extended rights and benefits, including full adoption rights, in their responses to the

Supreme Court's decision. I daresay the Manitoba government is perfectly capable now of introducing similar, if not improved articles in its legislation, without yet another consultation exercise. I believe that every member of this committee knows that and knows that very little, if anything new, will come out of another round of public consultations and discussions and meetings, no matter how well intended.

* (20:50)

I want to discuss, however, this evening, impressions because, as I have said in my first few lines, I think the committee has the information it needs now. I think the Government has the information it needs now. Rather, I would like to discuss impressions and messages and images. I would ask the committee to consider what sort of message this embarrassingly weak, divisive, stagnant legislation sends to young Manitobans, young Canadians, gay and straight.

Impressions are the basis for most of our decisions. It is rarely that we can claim that we have full information with which to make decisions. Very often, we make profound decisions about where to live and where to work based on impressions of other communities, other provinces, and our own community and our own province.

What sort of message does it send to our young Manitobans when its Government sponsors legislation that is less inclusive and more discriminatory than that introduced in Ontario, B.C., Québec and Saskatchewan? What sort of message does it send about the kind of people that lead and govern our community? What does it say about the people who live in Manitoba? What does it say when Mike Harris is more progressive, more tolerant, more respectful of human rights and equality than Gary Doer? Perhaps that warrants repeating. What does it say that one could suggest Mike Harris to be more progressive, more tolerant and, dare I say, more enlightened, perhaps, than the Government of Gary Doer and the Manitoba NDP?

So how does this act affect the decisions that young gay or lesbian Manitobans make about where they should live and work? At a time when they are young, when the possibilities and options are limitless and opening up before them, young people, both gay and straight, will consider how progressive, how innovative or inclusive a population or a province is when making decisions as to where they will live and work.

What, I ask, would inspire a young gay Manitoban to stay here over, let us say, Ontario or B.C. or Québec or even Saskatchewan? How will a young gay Manitoban, or, in fact, any young Canadian, see Manitoba–conservative, intolerant, discriminatory, homophobic, stagnant, possibly even redneck? Are these the sorts of images that will come to mind when young Manitobans and young Canadians consider where to live and where to work? Will they see Manitoba as progressive and innovative, perhaps cutting-edge, tolerant, inclusive, with a government that demonstrates leadership and upholds the principles of fairness and equity? With this legislation, I suspect not.

The question, of course, is: Can Manitoba afford to lose anyone? Can Manitoba afford to discourage any young Canadian? It does not have to be one who is currently living there, from choosing to live here. Can Manitoba survive on the dated, old-fashioned or ill-informed attitude of an aging population?

Statistics show that younger Canadians are far more likely to demand and accept the extension of rights to minorities, and, in particular, to gays and lesbians. I am not sure whether your polling results show you that or not.

I do not know if any of you were at Pride this year, if you had an opportunity to attend. If you had, I think you might have been struck by the fact, as I was, that the near majority of those in attendance were young, both gay and straight. Young people today are coming to terms with their sexual identities far sooner and with much great comfort and confidence than a generation ago, and certainly with far more confidence and more security, perhaps, than I was able to. They are not willing to accept anything less than full and equal rights. They are not going to wait around while Manitoba grinds through its process of rationing out rights and privileges

usually, and unfortunately and sadly, when it is compelled to do so by the courts. Young people will not tolerate your indecisiveness. Manitoba is not in the position, I would suggest, to discourage these young people from choosing this province to be their home.

So what of me? Does it matter to you? In the past six months, two opportunities for me to leave the province have presented themselves, one to B.C. and one to Ontario. I considered them briefly and then remembered no, this is my home, this is my province. When this legislation was introduced, I was shaking my head and saying: What is it with Manitoba? Why can we not be at the forefront of anything anymore? Why are we not progressive any longer? Why do we not develop legislation that other provinces will follow and other provinces will inquire about? Instead, Manitoba timidly follows.

I start thinking about maybe I need to live in a more progressive province, one that is, perhaps, more in tune, quite frankly, with a changing time. I would say, with all due respect and all humility, although perhaps it will not come across that way, that Manitoba cannot afford to lose me or my partner. Manitoba cannot afford to discourage anyone who wants to live here.

This legislation sends a very clear message to a lot of people. The young computer engineer in Burlington, Ontario, who hears that his company has an office in Winnipeg, or might be expanding there, will decide whether or not to accept transfer or consider a relocation largely based on his impressions. I doubt very much that people make that many decisions about where to live in Canada based on the tax structure, or tax competitiveness of the province. They base it on impressions. This legislation sends the wrong impression and the wrong message.

I believe, and I humbly submit, that this committee knows that. This Government knows that. I can only speculate as to why the decisions are being made that they are to restudy and reconsult and, perhaps, even to consult on issues that, really, are quite frankly beyond the consultation stage. I think the Charter of Rights and the Supreme Court have made some decisions already. I do not know that Manitoba needs to be trying, a futile attempt, to rewrite what cannot be rewritten.

I encourage you, although I do not have a great deal of optimism, that you will reconsider, you will show some spirit and some innovation and amend this legislation.

I thank you for listening.

Mr. Chairperson: Thank you for your presentation. The next presenter is Kelly Jenkins. Her name is now dropped to the bottom of the list. The next presenter is Henry Makow. Please proceed.

Mr. Henry Makow (Private Citizen): I was here briefly on, I think it was Monday night, the first night of the consultation, and I am here again tonight.

I want to say right off the bat that I am extremely impressed with the dedication of my MLAs, Tory and NDP, who are willing to spend long hours consulting the people of Manitoba. I do not think you deserve to be harangued by one segment of the population that seems to think that the rest of the population does not need to be consulted and that your efforts at consulting them are a waste of time. So I just want to try to undo that ungrateful arrogance and say I and I think all Manitobans appreciate the incredible effort that you are putting in on our behalf. I think you all deserve raises. I certainly will not protest if you want to legislate some.

I want to begin by saying that I support the freedom of all people to pursue happiness and fulfilment in their own way. Anything else is tyranny. Many of my neighbours are gays and lesbians. I wish them the very best of happiness in their lives.

* (21:00)

The only restriction to our freedom should be that we do not hurt others. We have to ask if the demand of gay, lesbian couples for the right of legal adoption will possibly hurt the child or will have a negative effect on society.

I personally would feel more comfortable supporting this bill if the gay and lesbian

community showed the same respect for others as they demand for themselves. A look at what their leading spokespeople say about heterosexuality suggests that their attitude is not one of tolerance and respect. Rather they have a revulsion against heterosexuality and quite frankly think it should disappear.

I am going to read some quotes from lesbians who are among the leading thinkers and spokesmen of the feminist movement. These quotes may strike you as outrageous. I assure you I did not invent them and I do not embrace them.

Andrea Dworkin: Heterosexual sex is rape. Rape embodies sexuality as our culture defines it.

Ti-Grace Atkinson: The institution of sexual intercourse is anti-feminist.

Marilyn French: All men are rapists and that is all they are.

These lesbians go on to deny that heterosexuality has any basis in nature. They believe it is a social invention.

Marilyn Frye: Female heterosexuality is not a biological drive, nor an erotic attraction. It is a set of social institution practices and definitions about the oppression and exploitation of women.

Essentially they believe that heterosexuality involves an inherent imbalance of power in favour of the male. Equality can only be achieved in homosexual relations.

Sheila Jeffyrs: When a women reaches orgasm with a man she is only collaborating with the patriarchal system, eroticizing her own oppression. The opposite of heterosexual desire is the eroticizing of sameness, a sameness of power, equality and mutuality. It is homosexual desire.

In order to be free, they believe heterosexual women must become lesbians.

Cheryl Clarke: Lesbianism is more than a sexual orientation or even a preference. It is an ideological, political and philosophical means of liberation of all women from heterosexual tyranny.

Women must also turn their back on the nuclear family.

Alison Jagger: The nuclear family is a cornerstone of women's oppression; it enforces women's dependence on men, it enforces heterosexuality and it imposes the prevailing masculine and feminine character structures on the next generation.

They believe that society and western civilization, which they call the patriarchy, was created by men to enshrine their privilege. This must be torn down and rebuilt from the homosexual or feminist point of view.

Bell Hooks: We cannot hope to transform rape culture without committing ourselves fully to resisting and eradicating patriarchy.

Make no mistake. These writers are not radical feminists. They are the intellectual leaders of the feminist movement, praised and taught in women's studies courses in Winnipeg and around the world. They reveal that feminism no longer represents the vast majority of women. From a movement dedicated to equal opportunity, feminism has morphed into a virulent, lesbian, Marxist cult dedicated to dissolving the heterosexual fabric of society. In this context, the demand for legal adoption for same-sex couples takes on a different complexion. It is part of a messianic crusade to undermine male and female identity and the heterosexual family.

It is hard to describe fanatics without sounding like one yourself. Do not take my word. Study what feminists are saying. We must not be naïve about this phenomenon.

I do not believe that all gays and lesbians hold these views, but I would venture that the activists do. Let me read something that one of the presenters to this hearing wrote, and she is present here tonight. Keith Fulton is an educator, the chair of the English department at the University of Winnipeg and the former co-ordinator of a woman's studies there. She is an educator, but she does not believe in knowledge,

reality or truth. She writes that feminists do not play along with the pretence that knowledge is objective, knowledge is power and, more specifically, the organization and production of knowledge within a society reflects and maintains political power.

This is a standard Marxist perspective on knowledge. In other words, our knowledge of the world, science, sexuality, ethics, everything, is an invention designed to perpetuate the power of men and oppress women and others. In their quest for power, many feminists do not hesitate to embrace these principles. They are like the Cambodian Khmer Rouge, but without the guns, thankfully. They want to "change the world" by burning everything that men have created to the ground.

I came face-to-face with these fanatics while teaching at the University of Winnipeg. I tried to explore the meaning of heterosexuality in the context of various novelists. I was trying to inspire a debate. I gave A's to feminists. I was not interested in indoctrination. I was interested in discussion. I was slandered as a pervert by some feminist zealots and told by the president of the University of Winnipeg, Constance Rooke, that I was "anti-woman." The University of Winnipeg is liberated, feminist territory. Sexual harassment policies are used to persecute heterosexuals like myself.

Just two weeks ago, the same Constance Rooke did not apologize for showing 14-year-old girls at a University of Winnipeg meeting at the university videos that celebrate lesbianism. The girls were told that men are unnecessary and vegetables could substitute. In a written statement, this is one she had time to consider, Constance Rooke demonstrated an utter contempt for the heterosexuality of these children. She allowed that perhaps these girls were too young and should have been approached in another manner.

If feminists or homosexuals think heterosexuality has no basis in nature, then I suggest they would not make good parents for heterosexual children who need heterosexual role models.

It is easy to imagine what it would be like to be raised by homosexuals. Increasingly, our society is that heterosexual child. Our homosexual parents are the Government, the justice system, the education system and the media, all of which have gullibly accepted lesbian, feminist values.

As heterosexuals, we have been deprived of our role models. Masculinity, femininity, wife, motherhood and families are stigmatized. Sex differences are denied. Assertion of these differences is sexism. Policies dealing with child custody, sexual harassment and zero tolerance undermine heterosexuality and the family.

Women learn there is no need for men. Sex is rape and men are rapists. Sex and marriage are not a sacrament but rather a lifestyle option. I was raised in this increasingly homosexual society, and, as a result, my personal development, I believe, was retarded 25 years. My culture did not teach me about masculinity. It confused me about how to relate to women. It denied the crucial importance of heterosexual roles to me–son, husband, father–in the formation of my identity. It confused and embittered the women I met. Heterosexual men and women cannot mature and thrive without love. Their relationships have been poisoned in this homosexual atmosphere. The birth rate in Canada is at the lowest point in history, down 60 percent since 1960. The implications of this are staggering, but it is not politically correct to address them.

My life was almost ruined, and I am the product of a traditional marriage. Imagine if I had been actually raised by homosexuals. They say that, if you want to boil a frog, convince the frog that he is in a bath and raise the heat slowly. Otherwise, the frog will jump out. This is what is happening to society. Heterosexuals are now an oppressed majority. While we may tolerate homosexuals, many of them do not tolerate us.

Heterosexuality is based on a different division of power. It is based on love, not Marxism. It is seen in the smallest gesture as when a man opens a door for a woman. But ponder how this gesture has become fraught with confusion. Men have not exploited women. Men have sacrificed to create the conditions by which

both men and women can fulfil their profoundest instincts, find personal fulfilment and perpetuate society. As heterosexual men and women, we demand our human rights, our right to love, marry and conduct our families as we wish without interference from the state. As politicians, you may be tempted to court the votes of a vociferous minority. But heterosexuals represent 95 percent of the population, and you will eventually reap a whirlwind.

In conclusion, the demand for same-sex-couple adoptions reveals an utter contempt for the heterosexuality of the adopted child and the child's need for full-time heterosexual role models. The demand is part of a clearly stated plan to redefine the nuclear family and rob it of its heterosexual character and meaning. As such, I urge you to reject it. Fellow frogs, turn off the stove before it is too late. Jump out of the pot. Thank you.

* (21:10)

Mr. Chairperson: The next presenter is Adele Perry.

Ms. Adele Perry (Private Citizen): I am here tonight as a parent, as someone who studies the history of the family and of gender, and as somebody who is lucky enough to live in a family that is recognized by the existing laws of Manitoba. My intention, really, is to briefly state what has by now, I think, become painfully obvious and that is that simple justice and equality demand that we not only pass Bill 41 but extend it to include adoption and full spousal rights.

The history of the family in the western world was full of prohibitions, some of them legal, others religious, and some merely informal but socially powerful, about who can form a family, with whom and what rights and configurations the families will have. Canada never passed the same laws legally preventing marriages across racial lines as did the United States, but we are heirs to a tradition which is full of different levels of legal discouragements, discouraging people of different racial identities of forming family or forming what would be considered a legitimate family by church and by law.

In 1961, Bishop Hills, for instance, the Anglican bishop of British Columbia, argued against what he called marriage between a professing Christian and a heathen woman, or marriage between a European man and an Aboriginal woman. Quoting from Biblical and legal sources, Hills argued that such relationships should be denied full recognition of the Christian church and best of civil society. Mixed-race marriages, he concluded, were unreasonable and fraught with danger and should be discouraged, and their children, moreover, should be denied important privileges, in particular baptism. Now, anyone in this room will probably admit that Hills' argument was rooted in prejudice about race and fictions about religion.

The arguments that are being made in opposition to Bill 41 and its logical extension are based on similar prejudices, although ones about gender and sexuality, rather than race. For the same reason that we oppose the sentiments of Hills and his ilk, we need to oppose the denial of equal rights to people in same-sex relationships. Arguments about the need for gender role models, about the need for public education, regrets about allegedly misspent youths, or about the importance of prudence, all mask the fact that our current laws are based on prejudice and thus demand an immediate and thorough-going revision. A year of study by the two-person panel recently announced, or by anyone else, will only reveal what four other jurisdictions have already found, namely that it is high time that all families and couples have equal rights and responsibilities under the laws of Manitoba. Thank you.

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

Mr. David Joycey (Private Citizen): Good evening, ladies and gentlemen. I have never appeared before a committee like this and now, at this stage in the evening, I think that maybe now I have an idea why I have not, but I am here tonight–*[interjection]* Really? Okay, I will believe you.

I am here as a private citizen. Fortunately, because I am near the end, or hopefully near the

end, much of what I had wanted to say has already been said. Much of what has been said, I would not have wanted to say, and I am hoping that from what I do say you can work out what I would have said and I am not going to simply repeat it.

I think that this Government has a great opportunity to use this Supreme Court case as a flagship to really go forward and take a lead. I do not believe that this party is a party of people who are afraid to stand up for principles and ideas and ideologies that have always been there. I do not believe that. I believe that there is some hesitation. It may be prudent hesitation, but I do believe that the door is open and that you guys, if you want to, can walk through it and there are a lot of us who are ready to follow you, a lot of us outside the gay community who are ready to follow you and would welcome that opportunity, and I think you need to hear that.

The only other thing that I have to say, and it has been said once by one other person, is this: I can claim to be a lot of things. I can claim to be a teacher, I can claim to be a United Church minister, I can claim a criminal defence lawyer, and I am all of those things. What I cannot claim to be with legitimacy, because I am not, is a member of the gay/lesbian community, and as such I am limited in the degree to which I can understand the issues that they are grappling with. One of the most powerful images for me watching the AJI committee was seeing, as he was then, Provincial Judge Murray Sinclair striding into those northern communities, understanding in a fundamental way the issues with which they were grappling. You need someone from the gay and lesbian community on this two-person panel. You need to bump it up to a three-person panel. You have got to do it, or else it is not going to have credibility where it counts most, and that is in the gay and lesbian community. I do not purport to speak for them tonight, but I am as an interested and caring outsider making an observation that I think is pretty plain. So I do urge you, please, to consider doing that, and that is all I have to say. Thank you.

Mr. Chairperson: Thank you for your presentation. The next presenter is Joann Gorham.

Ms. Joann Gorham (Private Citizen): Thank you for this opportunity to speak before the committee tonight. My name is Joann Gorham. My professional background includes a Juris Doctorate from the J. Reuben Clark Law School in the United States. I am currently the executive director of Youth Making a Difference, a group that focusses primarily on the concerns of youth as they relate to family issues.

We have participated at international events including the Millennium Forum, the Hague Appeal for Peace, the Beijing Plus Five, the Children's Summit Prep Com meetings, Habitat II; the World Congress of Families II, the World Family Policy Forum, the Millennium Youth Assembly, the Young General Assembly and various other international and national events.

In part one of my remarks tonight, I would first like to address why Bill 41 has not been occasioned by broader public and professional or expert debate before this committee, and why such debate is required. I would also like to propose that sufficient attention has not been paid by those presenting to the committee as to the potential impact of the expansion of same-sex rights and homosexual parenting on children.

First, it is not surprising that those who stand to gain the most by the proposed legal reforms would be the most active in attending the committee meetings. As such, advocates of the proposed expansion of same-sex rights and homosexual parenting are not specifically speaking or seeking to deny legal rights or interests of any public group. There is no group with a strongly vested interest in presenting another point of view tonight. As noted by a notable scholar in the United States, a high cost can be paid by scholars for opposing or criticizing the preferred intellectual position on such issues.

As noted by Professor Lynn Wardle in a separate but related context, the degree of imbalance, the total abstinence of substantial criticism of the legalization of homosexual parenting, is truly extraordinary. The problem thus goes beyond rational uniformity of belief and involves a rather strong intellectual taboo against criticizing or opposing the pro-legalization point of view. This same argument

can be compared as to why the public is not here to present tonight and why they are not speaking out. For reasons that I will expand on later in my paper, I will suggest why a broader debate is needed.

* (21:20)

On to my second comment, most of the presenters we have heard before this committee have been filled with adult-rights talk. Although this is certainly a legitimate perspective in this area of the law dealing with doctrines and policies protecting and promoting parent-child relations, it is probably not the most important focus. The focus on the welfare of children and the social interests in the parent-child relationship ought to be the central concern, and adult rights the secondary focus. Yet much of the discussion we have heard has been clearly adult advocacy, attempting to vindicate a particular rule or principle for the belief of a certain class of adults. The manipulation of child-oriented rules of law for the political purposes and benefits of adults is troubling.

Part two of my remarks. I recommend that there be great care and caution taken by this committee and the panel that has been established in relying upon social science studies regarding the effects of homosexual parenting on children, because serious methodological and analytical flaws compromise the reliability and the predictability of these studies. This comes from studies of these studies done by both advocates on both sides of this issue.

Part three of my remarks. I want to address the fact that there is substantial evidence to support the value to children of being raised by two parents, one male and one female, and that even in studies promoting homosexual parenting, there is some evidence of potential harm to children. For reference to that, you could see a recent address given in Kingston, Ontario, by Professor Wardle.

In part four of my remarks, I simply wish to note that careless attention to the issues before us at this time, may open the door to an expansion of family rights we do not now intend. Tonight, I want to offer one simple example, but the pitfalls are diverse and they will affect people on both sides of this issue. I want to show you, and I will pass this around in a moment, a postcard that was presented to the federal government by the gay and lesbian movement when they were asking the federal government to change their laws. On this postcard, you will note that there are two de facto families. There are two men and a child on one side, and three women and two children on the other side. We need to note that there is already a movement towards multiple partners and that we need to make sure that what we do does not create more than what we intend it to. I will pass this around.

My concluding remarks are as follows. While unanimous agreement between both sides of these issues is unlikely, it is hoped that these concluding remarks will accomplish two purposes. First, I wish to clarify why the panel established by Attorney General Gord Mackintosh must go beyond merely determining which laws in question violate the Canadian Charter of Rights and Freedoms and identifying legislative approaches that will bring such laws into compliance with the Charter. Simply stated, the potential impact of the expansion of same-sex rights on society generally and homosexual parenting on children specifically extends well beyond a constitutional issue. To simply go with the flow and the popular political trend of our day by justifying such a dramatic reform purely on constitutional grounds ignores the significance that the family has played in Manitoba.

Further, a purely constitutional justification denies the importance the Manitoba Legislature has placed on families and the high standards they have adhered to in the past in respecting the values of fathers, mothers, children and the traditional family. Such a justification also ignores the real challenges before the Manitoba Legislature at this time: what is truly best for children as a whole and what is truly best for society as a whole. The issues before us are not a casual matter. They are relatively recent, experimental and without substantial grounding in our social, political, legal or economic history. We need to engage good and wise people from both sides in this consultation process.

Decisions of this magnitude that impact on the very fabric of our society should be based on

compelling evidence of what really is best. To implement such revolutionary and extensive family law and general law reforms that will deconstruct family relations, as we currently understand them, by the significant expansion of the categories of persons who are protected as holders of family rights, including parentage, without due research and review, would be a relinquishment of the duty of legislators to the people of Manitoba. With the availability, affordability and access we have to information and experts, we need not jump before we have determined whether we will be swimming with dolphins or sharks. Time is on our side. Wisdom bids us to take it, giving all Manitobans, in the end, legislation that is not reactionary but exceptional, grounded and well reasoned in dealing with these important issues.

For the reasons I have just noted, the second purpose, my concluding remarks, is to request the Attorney General to expand the review panel on statutes, as well as its terms of reference and time limits, or the establishment to establish a commission or separate panel to broaden the review of the issues involved. I believe that this will result in a greater understanding of the complexities and importance of the issue before us, provide equal participation from the homosexual and lesbian activists, as well as from those in support of the traditional natural family viewpoint. It will foster significant participation of exports beyond the legal family law framework from both sides of the issue and, in the end, provide this committee and, in turn, the Manitoba Legislature with a report that will identify the legal approaches to legislation that will ensure putting the best interests of children first with respect to the parenting and adoption issues and putting the best interests of society as a whole first with respect to the expansion of additional homosexual rights.

It would be my recommendation that the expanded panel, or newly appointed commission, provide for the preparation of two reports, one from each of the following: first, the advocates favouring the homosexual and lesbian perspective, and second, advocates favouring the traditional natural family perspective.

My purpose for suggesting the preparation of two reports is threefold. First, the proposed restructuring of the family to legitimate homosexual family relations may be among the most heavily advocated family-law reforms to be discussed in recent years. The significance and impact of the debate warrant advocates of both camps having an opportunity to present the issues and debate from their perspective.

Second, to ensure balance in the perspectives presented and a well-rounded and grounding and engaging approach to the debate. As recently noted by one expert in the United States, the ratio of recent law review literature that favours same-sex marriage to that opposing it is roughly 67 articles to one–hardly a record of fair exchange or serious examination. Likewise, virtually all of the law review articles, to this point in time when this professional is doing the search, all literature addressing homosexual parenting advocated the politically popular progressive position favouring legalization or expansion of legal status benefits and privileges to homosexual parenting.

Professor Wardle, in this study, later continues: With some notable exceptions, the contemporary law review literature on the topic tends toward a propaganda style and away from a balanced and scholarly approach. The willingness to honestly state opposition positions to meet those arguments directly, and commitment to the fair and vigorous exchange of informed opinions, ideal of a legal scholarship, are generally absent from the current law review literature addressing same-sex and homosexual parenting.

* (21:30)

He also notes that the current literature fails to provide almost any serious criticism, scrutiny, or even a modest exchange of opposing opinions. In the law reviews, the broad dissemination of principles, ideals, and factual information and robust public debate that is needed to test and refine the proposal have not even begun. We need to be certain that the scrutiny here in Manitoba, the criticism and the exchange of opposing opinions required to test and refine our legislation are available.

My third reason: the substance of the proposed restructuring of family law and

parenting promoted by the proposed expansion of same-sex rights and homosexual parenting hardly reflects general public opinion. I was unable to locate Canadian stats at this time. But just for example purposes, United States public opinion polls indicate that the American people strongly disfavour adoption by same-sex couples. In addition, a recent worldwide survey indicates overwhelming worldwide support in favour of the traditional family and marriage. The stake that the general public has, and the issues at hand, and the responsibility of the Manitoba Legislature to the public that has elected it, warrant the voice of the general public being heard. This is no time for a one-sided debate. The public deserves much more than a disconcerting determined penchant for platitude, sweeping generalizations, and suspiciously politically correct conclusions.

I hope that this proposal will help in the debate as to what will help continue and prepare legislation for our province that will be exceptional and above and beyond what has yet been done in Canada.

That is the end of my remarks.

Mr. Chairperson: Thank you for your presentation. The next presenter is a walk-in who registered after we started. The name is Elsy Gagne.

Ms. Elsy Gagné (Private Citizen): Good evening. I think you probably meant Ms. Sarah Inness, but that is okay. She walked in and I was sitting down.

Mr. Chairperson: Are you Ms. Gagne?

Ms. Gagné: Yes, I am indeed. There is no correction. It is just that I was sitting down.

Mr. Chairperson: Please proceed.

Ms. Gagné: I do not have much to say indeed. I am here just on behalf of every citizen in Manitoba. I am not here as a lawyer, even though I am a lawyer. I am not here as a woman, because I am a woman. I am here because I am just for this change.

I also wanted you to know that I wanted to speak French tonight, because you can see I am kind of nervous, but as a lawyer I should be able to speak quietly. Without doubt, we have listened to interesting speakers tonight. Several of them were my friends, and they are still my friends. Very interesting comments.

I think that it is time to move on. It is time to gather the information that has been given to you, with all due respect, and to move on. I am very fine. I respect former Justice Hamilton. I also respect Ms. Cooper. I have no doubt in my mind that they can do a good job, but I am also in support of David Joycey's comment when he said someone else ought to be on the committee, that is a third person, in the event there is a dissident. It would have been interesting to have a third person. Who would have been that third person?

I am not a homosexual, I am not a lesbian and I do not fully understand what it is that we have to go through as being homosexual in our society. I am extremely lucky. I get up in the morning and I do not fight for my rights. I do not fight for the right of being a human being. It is given to me. It is a token, as opposed to being a homosexual or gay. It is extremely hard to fit in, in our society, when we do, indeed, sometimes promote too conservative and traditional of values. It is time to change and to move on. With all due respect to the Attorney General and the ladies and gentlemen here tonight, I have no doubt in my mind that you are capable of moving on and making a decision.

Last Monday night and tonight, you have heard tremendous interesting submissions. You also have heard comments coming from another side, a way of thinking that is a very moralistic approach. I sympathize with them; I understand where they are coming from, but it is time to give the right to those who need to have a voice, and law is a tool to a change.

I am a lawyer. My job is to help people in court, but that is not what it is all about. Now it is time to move on and to accommodate a group of people who need to be accommodated. I do not want to talk too much, because I do not have much to say indeed, but I truly believe that common sense has to be used here tonight and

today and in our society by the members of the Government. Since this is a democracy, I think that we all voted for those who have common sense.

The mayor is a homosexual, and it is something that one has to keep in mind. Is he wrong? Is he right? This is the way it is. He has the right, whatever he is. He is doing a wonderful job, but he has a right to be accommodated, like any other people, like my right is. I do not have to fight for my rights, as being a woman heterosexual, but this is not what it is all about. It is about fears. It is about not having the courage to stand up.

I am an old lady. I can say these things. I am French too. So I am one of those that people do not really like in this country. I know what a member of a minority is, because I fight. We fight, the French people, for our own rights in this province. For 90 years we did not hear, they did not hear any French people, because we had laws that were prohibiting people from speaking French. There was an injustice in history. History can be learned from by our mistakes, and it is time to move on.

Just stand up and people behind me are going to also support. As long as you are convinced in your heart, in your brain, in your psyche, that it is time to move on, Manitoba can do it. All the other provinces will do it, too. There are other countries who did have the courage to do it. So it is a matter of time, and the commission may have good results, may not have good results, but what is the need of going to this step. It is like another test that we have to fill. It is like a lawyer as always has to fill a test or to meet the test, to win the motion or to dismiss the motion, but this is not what it is all about. This is about values. This is about time to change the legislation which prohibits people from being heard.

It is beautiful to see people who are kissing each other, holding hands with each other. There is nothing wrong with this, absolutely nothing wrong with this. If they want to be living together, they want to share their life together, the law has to support that co-habitation.

I used to practise a bit of criminal law. I am a bit ashamed of saying it, because I have my friends here who are doing criminal law, but I had to represent people who were maybe dangerous people. They were coming from the heterosexual couple, family type. The children that I was seeing were extremely affected by the concept of violence, of other things that we have to deal with in our society in the criminal, in the Provincial Court system. It is time to move on, and on this, this is concluding my submission. Good evening.

Mr. Chairperson: Thank you, Ms. Gagne. I apologize that there was not a translator here. It is your right to speak *en français*. However, we canvassed the room at 6:30. At that time there was no one who needed it, and we sent the translator home. However, you express yourself very well in English.

The next presenter is Kelly Jenkins. Kelly Jenkins? She is dropped from the list. Is there anyone else who was not on the list who wishes to present? Last chance.

Sarah Inness has requested her submission be included as a written submission. Is it agreed to add it to the transcript? *[Agreed]*

* (21:40)

Is it the will of the committee to proceed with detailed clause-by-clause consideration of Bills 8, 10 and 41? If so, in what order do you wish to consider these bills? *[interjection]* Bill 8, then Bill 10, then Bill 41. *[Agreed]*

Bill 8–The Mines and Minerals Amendment Act

Mr. Chairperson: Bill 8, clause by clause. Does the minister responsible for Bill 8 have an opening statement? *[interjection]* Excuse me, I wonder if people could leave quietly so that we can proceed with our business. Thank you. Does the minister responsible for Bill 8 have an opening statement?

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

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

Mr. Jack Reimer (Southdale): No.

Mr. Chairperson: We thank the members for being brief.

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

Clause 1–pass; clause 2–pass; clause 3–pass; enactment clause–pass; title–pass. Bill be reported.

Bill 10–The Safer Communities and Neighbourhoods and Consequential Amendments Act

Mr. Chairperson: Does the minister responsible for Bill 10 have an opening statement?

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

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

Mr. Jack Reimer (Southdale): No.

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

Clause 1(1)–pass; clauses 1(2) to 3(1)–pass; clauses 3(2) to 5(2)–pass; clauses 5(3) to 6(2)–pass; clauses 6(3) to 7(1)–pass; clauses 7(2) to 8(2)–pass; clauses 8(3) to 11(1)–pass; clauses 11(2) to 12(2)–pass; clauses 12(3) to 12(6)–pass; clauses 12(7) to 12(8)–pass; clauses 12(9) to 13(4)–pass; clauses 13(5) to 15(2)–pass; clauses 16 to 19–pass; clauses 20(1) to clause 21–pass; clauses 22(1) to 22(5)–pass; clauses 23 to 25(2)–pass; clauses 25(3) to 26(1)–pass; clause 26(2)–pass; clause 26(3) to 30–pass; clauses 31(1) to 32(2)–pass; clauses 33 to 35(3)–pass; clause 35(4) to 38(2)–pass; clauses 38(3) to 43(1)–pass; clauses 43(2) to 44–pass; clause 45–pass; clauses 46 to 48–pass; preamble–pass.

Mr. Mackintosh: Just before completing this bill entirely, I thought it was important to put on the record that Mr. Fred Curry who presented some detailed suggestions on the bill, should be commended for his ideas. They have been considered carefully by the department, but at this time I think most of his concerns are addressed by the language in the bill. I will just put on the record that we will address our response directly to Mr. Curry as well.

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

Bill 41–An Act to Comply with the Supreme Court of Canada Decision in *M. v. H.*

Mr. Chairperson: Does the minister responsible for Bill 41 have an opening statement?

Hon. Gord Mackintosh (Minister of Justice and Attorney General): I suppose what is interesting through the hearing process was that the public presentations were largely on matters not in the bill. I thought the presentations were all very interesting, I think some very passionate.

Quite frankly, I think the debate is important in discerning the different views and approaches, and I think I just want to reiterate of course what we have said all along and that I do not think has been heard as loudly as I think I would like, and that is this bill does not in and of itself represent this Government's approach to the issue of discrimination in respect of same-sex relationships solely.

Having said that, we are embarking on a process in the province that I look forward to seeing the result of over the next few months. I know the panel will have the views of Manitobans, and as well I think will provide some insightful recommendations to the Province and its people. Thank you.

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

Mr. Jack Reimer (Southdale): No, not at this time.

* (21:50)

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

Clauses 1(1) and 1(2)–pass; clauses 1(3) and 1(4)–pass; clauses 1(5) through 1(8)–pass; clauses 1(9) through 1(12)–pass; clauses 1(13) through 1(18)–pass; clauses 1(19) through 1(23)–pass; clauses 1(24) through 2–pass; clauses 3(1) through 3(4)–pass; clauses 3(5) through 4(5)–pass; clauses 4(6) through 4(9)–pass; clauses 4(10) through 4(12)–pass; clauses 4(13) through 4(15)–pass; clauses 4(16) and 4(17)–pass; clauses 4(18) through 4(22)–pass; clauses 4(23) through 4(28)–pass; clauses 4(29) through 5(2)–pass; clauses 5(3) through 6(2)–pass; clauses 6(3) through 6(8)–pass; clauses 6(9) through 6(11)–pass; clauses 6(12) through 6(14)–pass; clauses 6(15) through 6(18)–pass; clauses 6(19) through 7(2)–pass; clauses 7(3) through 7(7)–pass; clauses 7(8) through 7(11)–pass; clauses 7(12) through 7(16)–pass; clauses 7(17) through 8(1)–pass; clauses 8(2) through 8(6)–pass; clauses 8(7) through 8(12)–pass; clauses 8(13) through 9(2)–pass; clauses 9(3) through 9(5)–pass; clauses 9(6) through 9(10)–pass; clauses 9(11) through 9(15)–pass; clauses 9(16) through 10(2)–pass; clauses 10(3) through 10(8)–pass; clauses 10(9) through 10(12)–pass; clauses 10(13) through 10(15)–pass; clauses 10(16) through 10(21)–pass; clauses 10(22) through 11(2)–pass; enacting clause–pass; table of contents–pass; title–pass. Bill be reported.

What is the will of the committee?

Some Honourable Members: Committee rise.

Mr. Chairperson: The hour being 9:55, committee rise.

COMMITTEE ROSE AT: 9:55 p.m.

WRITTEN SUBMISSIONS PRESENTED BUT NOT READ

Re: Bill 41

Dear Premier Doer,

On behalf of working people across Canada, the Canadian Labour Congress has repeatedly argued for the extension of human rights protections at the workplace and in the broader society.

Specifically, we have lobbied strenuously and repeatedly for human rights laws to protect gay and lesbian citizens. Last year, for example, the CLC participated in federal House of Commons and Senate hearings on Bill C-23, which was ultimately brought into law amending some 68 federal statutes.

We understand that your government is in the process of deliberating on needed amendments to a number of pieces of legislation to provide equal rights and responsibilities to gay and lesbian citizens in your province. Congratulations on this important initiative. We would also encourage you, however, to listen to the voices of progressive human rights advocates and ensure that your amendments provide full rights for lesbian and gay couples, including the right to adopt children. Failure to be fully inclusive or to recognize such a basic right as adoption will leave you open to legal challenges, not to mention to charges of discrimination. Gay and lesbian people are every bit as capable of being loving, caring parents; there is no reason to preclude them from legally adopting children. Same-sex couples in Manitoba deserve the same recognition now granted in a growing number of jurisdictions.

We are encouraged by the introduction of forward-looking legislation in Saskatchewan and now in Manitoba, which will bring both provinces into line with other provinces and the federal jurisdiction.

We would be very pleased indeed to see NDP governments take proactive steps to move the human rights agenda forward and follow the proud anti-discrimination tradition of our party.

If there is anything we can do to support you in this initiative, we would be happy to assist.

Nancy Riche
Secretary-Treasurer
Canadian Labour Congress

* * *

I am writing to express my concern about the narrow scope of proposed changes to Manitoba laws and regulations in light of the government's decision to comply with the Supreme Court of Canada's interpretation of the rights of same-sex couples. While the move is laudable, it is seriously compromised by the absence of provisions for both partners in a same-sex relationship to enjoy legal parental status.

As a teacher of some twenty years experience, I have observed that children can be happy and healthy in a variety of family groupings. The most important factor seems to be that the child feels wanted and loved by their parent or guardian. As an educator, I often have to deal with families where the parents are separated or divorced. Almost all parents I deal with are male-female couples. Obviously, there is no guarantee that a child is well served simply because they have a mother and a father. While I believe that all parents strive to do their best, some do better than others, but all are given the chance to succeed. Whether the family consists of a single parent, two parents, an aunt or a grandmother or grandfather as caregiver, it is the nature of the relationship between the adults and the children, rather than the sexual orientation or gender identity that make the difference. Families operate in a legal framework of rights and responsibilities to ensure the safety and nurturing of children. The same benefits and burdens that now apply to heterosexual couples ought to apply to same-sex couples. Our discussion should focus on the welfare of children rather than on objections based in religion or prejudice.

Given the above argument, I propose that you amend Bill 41 to include adoption rights for same-sex couples, as has been done in many other jurisdictions. Given the same chance to qualify for adoption as male-female couples, the same criteria for eligibility would apply to same-sex couples. I believe that most applicants would be partners of gay or lesbian Manitobans who wish to provide their child with the same legal protection the child would receive in a family with heterosexual parents. The government's refusal of the extension of equal rights in this particular area puzzles me. I see no benefit to children in further denying families this legal right, and urge you to reconsider. Manitoba was among the first jurisdictions in North America to protect gay and lesbian citizens from discrimination based on sexual orientation. That we now lag behind many provinces and states in this area is shameful. Let us correct the omissions in Bill 41 and remedy this injustice.

Donald Teel
Winnipeg

* * *

Presentation Re Bill 41
For Public Hearings

Thursday, June 21, 2001

Mr. Chairman and Committee Members of the Law Amendments Committee of the Manitoba Legislature:

My name is John McKenzie, presenting as a private citizen and also as the proud father of a lesbian daughter. While not allowed legal marriage in the jurisdiction where she now lives, she is in a stable registered domestic partnership and has become the adoptive mother of a daughter, our granddaughter, which her partner has been enabled to have by artificial insemination through a chosen donor. She is thus a legal parent of the planned child of the partnership and is able to make decisions with or in the absence of her partner. She and her daughter face few of the problems which gay or lesbian partnerships face in Manitoba over decisions for a child who is the biologic child of one parent. It is very unclear what would happen to her parental rights if the family returned to

Manitoba! We might also not be legal grandparents of our grandchild.

However, I am also a physician (nephrologist) and a clinical ethics teacher and consultant. This involves being called upon to help resolve ethical problems in the care of patients. Of the problems which have arisen in my knowledge and experience, some of the most painful have been in the area of lesbian and gay medical decision making and the limitations on freedom of access for gay partners to seriously ill partners or non-biological children.

In terms of serious partner illness with decision-making incapacity, fortunately, the partners can make health care directives nominating their partner as proxy No. 1, with full legal rights, under The Health Care Directives Act, to make decisions for their incapacitated partner. These are almost always in accord with their partner's previously expressed wishes because of their intimate and sharing relationship. However, the numbers of people who have health care directives of those being admitted to hospital is only 10 to 15 percent. This proportion is likely to be higher in lesbian and gay partnerships because of previous bad experience and the passing on of general experience in the gay/lesbian/bisexual/trans-gendered communities.

Even so, if over 50 percent of people in same-sex relationships have not made health care directives then the ill partner may be at the mercy of family who have been estranged for many years and do not wish to enable the well partner to make decisions which she/he will be much better able to make on the basis of recent knowledge. While many hospitals and care institutions in practice do not allow such interference with natural justice, there may well be no regulations in place which prevent families from "taking over" and excluding the gay partner because the partner is not a legal spouse nor has equivalent rights and powers. Institutions tend to follow the "nearest relative" list of The Mental Health Act, starting with spouse and ending with niece and nephew and the Public Trustee.

The committee has already heard stories of a lesbian or a gay partner being denied access to seriously ill children and being made to stay in the corridor because they are not legal parents and cannot adopt. Such circumstances also arise in making health care decisions for adult partners of homosexual patients who have lost capacity for making decisions through serious illness. Families have been known to make false allegations of attempted poisoning and obtain a court order to prevent not only decision making by the well partner but also deny access to the loved patient partner.

I should point our also that The Human Tissue Act can, by similar means, deny the well partner of a brain-dead partner the ability to consent on the dead patient's behalf to the donations of organs and tissue when medically possible. Once again a "nearest relative" list is included, starting with spouse and ending with son or daughter or legal guardian. A homosexual partner, not being a legal spouse, cannot consent to such donation and the family may veto a very dear wish of the dead partner. This is not only preventing the choice of the dead patient but denying the gift of life to several recipients who these days need all the transplantable organs they can obtain.

The final injustice may be that the prior wishes of the dead partner for burial, cremation, et cetera, may be ignored by family who may not know the wishes. The surviving partner, having no legal recourse, may be ignored and excluded from the funeral arrangements chosen by the partner when alive.

Ethically, these actions and powers which are not accorded as legally valid for the surviving partner deprive the seriously ill or dead partner of autonomous choices. To an ethicist, these actions contravene the powerful ethical principles of autonomy and distributive justice. A constitutional right of fairness and free choice has been denied. I am astonished that our NDP government, for so long a champion of fairness and democracy, is dragging its heels over these issues when present laws will certainly be struck down by appeals to the courts. To be forced to go this route inevitably will bring financial and emotional hardship to those seeking justice. Such hardship must surely not be an aim of the NDP.

The solution is to provide legal spousal status or strictly equivalent status which gives

the partnership the same status as marriage. Common-law relations are ones which heterosexual partners choose to have rather than formal marriage. But besides having to wait at least one year, gay or lesbian partners are unable to choose marriage and must have applied for common-law status to even receive survivor benefits on behalf of her or his dead partner (Section 3(2) of the amended Civil Service Superannuation Act). I hope that the Government will move quickly after receiving the report of the investigative committee.

I believe that government has made a start on correcting inequities and hope they will quickly continue.

Thank you for your attention.

Signed,

J. K. McKenzie MD, FRCP(C)
Winnipeg

* * *

I am a lesbian and a lawyer. I have lived in Manitoba for the past 23 years. I was called to the Bar in 1999 and have been practising law for the past couple of years.

I am greatly disappointed by this government's approach thus far in failing to fully recognize equality rights for gays and lesbians in this province. I begin my submission to you by making a comment on the title of the act, as it speaks volumes as to the position that this government has taken in legislating equality. The inclusion of the word "comply" in the title suggests, as do the contents of the act itself, that this government will do only what it views as necessary to comply with the Supreme Court of Canada's decision in *M. v. H.* In naming the act what it did, it suggests that this government is taking a regressive, not proactive approach to equality rights, which is simply unacceptable.

Notwithstanding my disappointment in the name chosen for this act it is, in my opinion, inaccurate. In *M. v. H.* the issue before the Supreme Court of Canada was whether the definition of "spouse" in Ontario's Family Law Act was unconstitutional because it was restricted to persons in opposite-sex married or common law relationships. The Supreme Court of Canada held that the definition of spouse in that act was unconstitutional because it violated the equality rights of gay and lesbian persons, which are guaranteed under section 15(1) of the Charter of Rights and Freedoms. The court determined that the purpose of the act was to ensure that persons who became financially dependent upon their spouse during the course of the relationship would have an ability to make a claim for spousal support upon the breakdown of the relationship. This purpose was not related in any way to heterosexuality or child-rearing. The Supreme Court of Canada recognized that since gay and lesbian couples are capable of intimate and interdependent relationships, and that financial dependence on one spouse may arise in the context of any intimate and interdependent relationship, there was no basis upon which this unconstitutional law could be justified.

The Supreme Court of Canada spoke broadly of equality rights for gays and lesbians in *M. v. H.* It affirmed that stereotypes will not justify upholding an unconstitutional law. The Supreme Court also made mention of the fact that many gay and lesbian couples are now choosing to raise children, either through adoption, artificial insemination or donor insemination. In doing so, the Supreme Court held that same-sex relationships are deserving of, and entitled to, the same protections and benefits under the law as heterosexual ones.

I urge this government to amend all of the acts in this province that exclude gay and lesbian relationships within the definitions of "spouse" or "common law". It is clear that these statutes would now be held to be unconstitutional in light of the Supreme Court's reasoning in *M. v. H.* Anything less is unacceptable from a government that takes pride in being socially conscious and working towards equalizing power imbalances in this society. The time for these changes is now. Not only will this save taxpayers the costs associated with future court challenges to unconstitutional pieces of legislation, but it will send a message to all of the people in Manitoba that this government is one which recognizes equality rights and is striving to ensure that discrimination based on sexual orientation will not be tolerated.

Yours Truly,

Sarah A. Inness