Fourth Session – Forty-Second Legislature

of the

Legislative Assembly of Manitoba

Standing Committee on Justice

Chairperson
Mr. Len Isleifson
Constituency of Brandon East

Vol. LXXVI No. 1 - 6 p.m., Tuesday, November 30, 2021

ISSN 1708-6671

MANITOBA LEGISLATIVE ASSEMBLY
Forty-Second Legislature

Member	Constituency	Political Affiliation
ADAMS, Danielle	Thompson	NDP
ALTOMARE, Nello	Transcona	NDP
ASAGWARA, Uzoma	Union Station	NDP
BRAR, Diljeet	Burrows	NDP
BUSHIE, Ian	Keewatinook	NDP
CLARKE, Eileen	Agassiz	PC
COX, Cathy, Hon.	Kildonan-River East	PC
CULLEN, Cliff, Hon.	Spruce Woods	PC
DRIEDGER, Myrna, Hon.	Roblin	PC
EICHLER, Ralph, Hon.	Lakeside	PC
EWASKO, Wayne, Hon.	Lac du Bonnet	PC
FIELDING, Scott, Hon.	Kirkfield Park	PC
FONTAINE, Nahanni	St. Johns	NDP
FRIESEN, Cameron, Hon.	Morden-Winkler	PC
GERRARD, Jon, Hon.	River Heights	Lib.
GOERTZEN, Kelvin, Hon.	Steinbach	PC
GORDON, Audrey, Hon.	Southdale	PC
GUENTER, Josh	Borderland	PC
GUILLEMARD, Sarah, Hon.	Fort Richmond	PC
HELWER, Reg, Hon.	Brandon West	PC
ISLEIFSON, Len	Brandon East	PC
JOHNSON, Derek, Hon.	Interlake-Gimli	PC
JOHNSTON, Scott	Assiniboia	PC
KINEW, Wab	Fort Rouge	NDP
LAGASSÉ, Bob	Dawson Trail	PC
LAGIMODIERE, Alan, Hon.	Selkirk	PC
LAMONT, Dougald	St. Boniface	Lib.
LAMOUREUX, Cindy	Tyndall Park	Lib.
LATHLIN, Amanda	The Pas-Kameesak	NDP
LINDSEY, Tom	Flin Flon	NDP
MALOWAY, Jim	Elmwood	NDP
MARCELINO, Malaya	Notre Dame	NDP
MARTIN, Shannon	McPhillips	PC
MICHALESKI, Brad	Dauphin	PC
MICKLEFIELD, Andrew	Rossmere	PC
MORLEY-LECOMTE, Janice	Seine River	PC
MOSES, Jamie	St. Vital	NDP
NAYLOR, Lisa	Wolseley	NDP
NESBITT, Greg	Riding Mountain	PC
PEDERSEN, Blaine	Midland	PC
PIWNIUK, Doyle	Turtle Mountain	PC
REYES, Jon, Hon.	Waverley	PC
SALA, Adrien	St. James	NDP
SANDHU, Mintu	The Maples	NDP
SCHULER, Ron, Hon.	Springfield-Ritchot	PC
SMITH, Andrew	Lagimodière	PC
SMITH, Bernadette	Point Douglas	NDP
SMOOK, Dennis	La Vérendrye	PC
SQUIRES, Rochelle, Hon.	Riel	PC
STEFANSON, Heather, Hon.	Tuxedo	PC
TEITSMA, James	Radisson	PC
WASYLIW, Mark	Fort Garry	NDP
WHARTON, Jeff, Hon.	Red River North	PC
WIEBE, Matt	Concordia	NDP
WISHART, Ian	Portage la Prairie	PC
WOWCHUK, Rick	Swan River	PC
Vacant	Fort Whyte	

LEGISLATIVE ASSEMBLY OF MANITOBA

THE STANDING COMMITTEE ON JUSTICE

Tuesday, November 30, 2021

TIME – 6 p.m.

LOCATION – Winnipeg, Manitoba

CHAIRPERSON – Mr. Len Isleifson (Brandon East)

VICE-CHAIRPERSON – Mr. Greg Nesbitt (Riding Mountain)

ATTENDANCE – 6 QUORUM – 4

Members of the committee present:

Hon. Mrs. Cox, Hon. Mr. Friesen

MLA Asagwara, Ms. Fontaine, Messrs. Isleifson, Nesbitt

APPEARING:

Hon. Jon Gerrard, MLA for River Heights

PUBLIC PRESENTERS:

Ms. Jill Stockwell, private citizen
Ms. Robynne Kazina, private citizen
Mr. Paul Bruch-Wiens, private citizen
Ms. Reannah Hocken, Manitoba Bar Association
Ms. Allison Fenske, Public Interest Law Centre
Ms. Lisa McConnell, private citizen
Mr. Bradley Miller, private citizen
Ms. Lisa Davies McDonald, private citizen
Ms. Brianna Darbel, private citizen
Mr. Joel Lebois, private citizen
Mr. Matt Erhard, private citizen
Ms. Courtney Maddock, private citizen

MATTERS UNDER CONSIDERATION:

Bill 3–The Family Maintenance Amendment Act

*** * ***

Clerk Assistant (Ms. Katerina Tefft): Good evening. Will the Standing Committee on Justice please come to order.

Before the committee can proceed with the business before it, it must elect a new Chairperson. Are there any nominations for this position?

Mr. Greg Nesbitt (Riding Mountain): I nominate Mr. Isleifson.

Clerk Assistant: Mr. Isleifson has been nominated.

Are there any other nominations?

Hearing no other nominations, Mr. Isleifson, will you please take the Chair.

Mr. Chairperson: Thank you for that, and thank you and welcome, everybody, to this evening's meeting.

Our next item of business is the election of a Vice-Chairperson.

Are there any nominations?

Hon. Cathy Cox (Minister of Sport, Culture and Heritage): I nominate MLA Nesbitt.

Mr. Chairperson: Mr. Nesbitt has been nominated.

Are there any further nominations?

Hearing no other nominations, Mr. Nesbitt is hereby elected as Vice-Chairperson.

So, this meeting has been called to consider the following bill: Bill 3, The Family Maintenance Amendment Act.

I would like to inform all in attendance of the provisions in our rules regarding the hour of adjournment. A standing committee meeting to consider a bill must not sit past midnight to hear 'prublic' presentations or to consider clause by clause of a bill except by 'unonimous' consent of the committee.

Prior to proceeding with public presentations, I would like to advise members of the public regarding the process for speaking in committee. In accordance with our rules, a time limit of 10 minutes has been allotted for presentations with another five minutes allotted for questions from committee members.

If a presenter is not in attendance when their name is called, they will be dropped to the bottom of the list. If the presenter is not in attendance when their name is called a second time, they will be removed from the presenters' list.

Proceedings of our meetings are recorded in order to provide a verbatim transcript. Each time someone wishes to speak, whether it be an MLA or a presenter, I must first say the person's name. This is the signal for the Hansard recorder to turn the mics on and off.

Also, if a presenter has any written materials for distribution to the committee, please send the file by email to the moderator who will distribute it to all committee members.

Thank you for your patience.

Mr. Chairperson: We will now proceed with public presentations.

For the information of the committee, I have received two leave requests from presenters tonight. Firstly, Ms. Lisa McConnell and Mr. Bradley Miller have requested that they be allowed to present together.

Is there leave of the committee to allow this joint presentation? *[Agreed]*

And secondly, is Mr. Paul Bruch-Wiens, who is the 10th presenter on our list tonight–has requested that he be allowed to present third due to a prior engagement.

Is there leave of the committee to allow Mr. Bruch-Wiens to present third? Agreed? Mr. Bruch-Wiens. Mr. Paul Bruch-Wiens. Is there leave? *[Agreed]*

Bill 3–The Family Maintenance Amendment Act

Mr. Chairperson: So I will now call on Jill Stockwell and ask the moderator to invite them into the meeting.

Please unmute yourself and turn your video on.

Jill Stockwell, please proceed with your presentation.

Ms. Jill Stockwell (Private Citizen): Thank you for the opportunity to let me speak tonight on the importance of changing The Family Maintenance Act to not be discriminatory. I am proud to live in Manitoba where citizens are able to come and directly lend their voice to legislation being considered.

I hope in the true intent of the process that you will listen intently and make amendments required to make this legislation fully inclusive and do right by all the children and parents who'll be affected by it, including parents with a surrogate involved, and making it clear that donors are not parents.

My name is Jill Stockwell, and I've been on a long journey that has led me here tonight to be presenting to you. I'm here for many reasons, but the most important one is my daughter, Charlotte Jordan Ruth *[phonetic]* Maddock Stockwell, better known as C.J., who was born in August of 2018.

C.J.'s other mom, Courtney Maddock, and I knew that–knew from the beginning that our path to become parents was going to look different than most. We knew it was going to be a costly route using reproductive methods. From the beginning, there was no doubt that we were going to both be parents of the child we were conceiving, even though the law did not see it that way.

Knowing that the law would not officially recognize me as a parent was always present in my mind. A couple of months before C.J. was born, we went to see a lawyer to see if we could get the adoption in place before she was born. We learned that we could not even start that process until after we had received her birth certificate, which can sometimes be a months-long wait.

Not only was adopting my own child going to be an additional cost, it would involve a long delay for me as a parent waiting to legally be the parent to my own child. This also meant that I legally did not have any rights to my child while she was being born.

I'm not sure how many of you have children, but I'm guessing most of you did not even think twice about the parentage of your children. I had many worries. I worried about what would happen if Courtney was unable to make decisions on behalf of our child, I worried what if the staff did not recognize me as the other parent, along with many others.

The day C.J. was born, I went to the hospital full of hope and excitement, but that worry was still real in the back of my mind. I made sure I was ready and I had a number for my lawyer just in case I needed them to intervene on my behalf. I was relieved when the hospital staff were ahead of the law and actively included me as the other parent. This became more important as the delivery went on, and it became apparent that C.J. was in distress and needed to be born by an emergency C-section. I find it incredible that I had more legal rights over the embryo in the freezer than I did the day my daughter was born.

I also had to relive this fear when I had an unexpected medical situation that resulted in an emergency eight-hour surgery that they were not sure I would survive. I can remember thinking that we had not gone to court yet, and I was worried that C.J. would be challenged on survivor benefits. These are worries that no parent should ever have to face.

For most of you, November 9th is probably just another day, but for me, it is a day to be celebrated. It was on that day in 2020 that I was legally announced

as C.J.'s mom by the Chief Justice Joyal. So, yes, good things did happen in 2020. I have not been able to put into words the emotion I felt that day. I had not prepared myself for how moving I would find it. This is something I had always known, something all my family and friends had known. It was something C.J. never questioned. And here it was, finally being proclaimed, for the law to recognize it, too. I was C.J.'s mom and always had been, and even though nothing was going to change in my day-to-day life, no one could ever dispute again that I was C.J.'s parent. Most parents get to take this for granted, but for parents like me, that was not the case.

***** (18:10)

Since that day, I've had many parents and soon-to-be parents reach out. I've listened to their excitement about expecting children and their worries that it had not been fixed for them that day too. To all of them, I said, by November 9th, 2021, you, too, will have the same rights as me to be a legal parent. But, boy, was I wrong.

I thought that when the court ordered something, you would have to do it within that timeframe. I thought this isn't–was so important to so many families, how could this not be a priority to address? I'm not sure why the court-ordered date was ignored, and I'm not sure why the requested extension came so very late. It felt as though this was totally forgotten and remembered when it was a little too late.

Seven sets of 2SLGBTQ+ parents brought the constitutional court challenge, and yet there was no mention of 2SLGBTQ+ parents in any of the government releases. I am curious why that would be.

It also seems as though the legislation is moving extremely fast now, presenting–sorry–preventing some important conversations on the content, like ensuring that it is stated that a donor is just a donor and is not a parent. We've introduced on Thursday, second reading on Friday and now here we are tonight, Tuesday, at committee. So, clearly, it can move quickly, so why miss the November 9th, 2021, court-set deadline?

I hope that you will listen to the lawyers presenting tonight and take away their insight on what's–what would enhance this legislation and show us that you want to get this right for all families in Manitoba.

I'd like to take a bit of my time to express gratitude to Lisa Naylor, her family, who built the foundation that we were able to build upon. They fought and won the right to have same-sex parent adoption. They had the courage to do this at a time when 2SLGBTQ+ rights were not considered to be human rights and faced many fierce attacks for fighting for the rights of me and others. Their groundwork is what allowed us to come before you tonight. So I thank them for that.

What can I even say about our amazing legal team: Robynne and Rhoni from Taylor McCaffrey; Allison and Byron from the Public Interest Law Centre. I always knew that they were just a call away and would talk me through anything we needed to. I will think often of you in the years ahead, and especially on November 9th, because you're the ones that helped make this happen for my family.

I might even celebrate every year with rainbow donuts. That's still to be determined, but I know where C.J.'s vote will go on that one.

To the other seven sets of parents who joined us: I am forever grateful and will share a very special bond with you all. To all the parents who are still waiting for this to be fixed for you, I will celebrate with you on the day the legislation is passed and enacted.

On many occasions I have heard Minister Friesen say that the legislation–when it was written, I did not intend to be discriminatory, and with him I agree. It did not–I know that assisted reproduction would become an option. Minister Friesen, you have the opportunity to amend the legislation to be discrimination-free based on today's standards, and that would include parents who use a surrogate.

I hope that you'll do the right thing and take the advice of our lawyers presenting tonight. I encourage you to reach out to our legal team and talk to them about this bill–how this bill could be stronger. Ten minutes is not a lot of time for them to share their wealth and knowledge.

The world is changing and I am able to say that from personal experience.

The growth of 2SLGBTQ+ rights within my lifetime has been immense. My hope is that the next time discriminatory legislation is discovered, it should be dealt with as though it affects your family.

Thank you for allowing me the time to speak to Bill 3 and the important legislation for my family. Thank you.

Mr. Chairperson: Thank you for your presentation.

Do members of the committee have questions for the presenter?

Hon. Cameron Friesen (Minister of Justice and Attorney General): Thank you, Jill, for being here tonight to present *[inaudible]*

Ms. Stockwell: Thank you.

Ms. Nahanni Fontaine (St. Johns): Miigwech, Jill, for your presentation and for all of the courage to you and all of the other parents who came forward to make Manitoba a more equitable, inclusive, representative province with this legislation.

And I know that the–Minister Cameron Friesen wasn't listening to your whole presentation at the very beginning and isn't listening now either. So, you know, I want to apologize for the minister in the beginning of your presentation. He clearly wasn't listening and was having side conversations with his staff there. But I want you to know that those of us on this side of the room and, actually, his colleagues as well, here were listening very intently.

And, you know, what you did was beyond courageous. Beyond courageous and beyond proper and beyond right, and that the consequences of that will be transformative for years to come. And so, I'm really blessed to know you–for the purposes of our conversation here, Jill is actually a St. Johns constituent, and I feel really, really blessed to know you. And again, I just want to lift you up for the work that you did.

Just a quick question. I know that we're going to be hearing from your lawyer and how the legislation could be strengthened, but if you wanted to maybe take a little bit of time and say–maybe share with the committee how you would like to see the legislation strengthened. *[interjection]*

Mr. Chairperson: Ms. Stockwell.

Ms. Stockwell: My apologies, sorry. I should listen to the instructions at the beginning.

I think one of the most important pieces is to ensure that donors are just donors and that there–it's clearly reflected in the legislation that they're not parents. And I think that needs to be very well spelled out.

I also think the section on parents who use surrogacy needs to be strengthened quite a bit. I'm not going to try to explain it as well as other people can, so I'm going to leave that to them.

But I do believe that those are two sections that really need to be looked at. And we have an opportunity to get this right for all families in Manitoba.

Hon. Jon Gerrard (River Heights): Thank you so much, Jill, for all your efforts on behalf of yourself and on behalf of others to try and get this legislation really as equitable as it possibly can be.

I had one question for you. In the discussion in the clause 24.2(5), it says a surrogacy agreement is unenforceable in law, and what that sort of implies is that the agreement can be broken without impacting–without breaking the law. And it seems to me that the message needs to be clearer than that. That the–where you have a surrogacy agreement, that has major standing even though it may not be something that can be enforced in law in a normal way.

Ms. Stockwell: I definitely agree that the surrogacy section needs to be strengthened quite a bit to ensure that everybody is protected in it, and I'm going to leave that discussion more to people who know a little bit more about that.

My process didn't involve a surrogate at all, so I'm not as familiar as that path. I am more familiar with the donor path because we did use a sperm bank for ours, and I want to ensure that the legislation clearly reflects that a donor is never–is not a parent.

Hon. Cathy Cox (Minister of Sport, Culture and Heritage): Well, Jill, I wanted to say thank you so much for sharing your story. I know it's not easy and you've been through some challenging times, but so–so very happy to hear that that little child in the back, we can hear all the little noises in the back, so it's wonderful and God bless you in the future. Thank you.

Ms. Stockwell: Thank you very much. I think C.J. was trying to bust in to meet all of you as well.

Mr. Chairperson: Are there any further questions?

Okay, hearing none, thank you very much for your presentation.

I will now call on Robynne Kazina and ask the moderator to invite them into the meeting. I would ask that you would please unmute yourself and turn on your video.

An Honourable Member: Chair, I have a leave request.

Mr. Chairperson: Ms. Fontaine.

Ms. Fontaine: I have a leave request to allow the distribution–no–to allow the brief that's about to be

distributed to the committee from our next presenter to be included in Hansard.

Mr. Chairperson: It has been requested by Ms. Fontaine that the submission that we have in front of us on the next presentation be included in Hansard. All agreed? *[Agreed]*

Submissions to Standing Committee on Justice: Bill 3

1. Ensuring Expedited, Certain, Streamlined Process for Intended Parents and Surrogates from 2 days post birth to Court Order

Amendment(s) Proposed

A. s. 24.1(3) of Bill 3 be amended to state:

"The court must make the declaratory order sought under this section, on an expedited basis, if it is satisfied that…"

B. An additional provision be added easing burden on Surrogate confirming constitutes notice and/or add the following clause:

24 (1)(6) An application pursuant s. 24.1(1) may be made without notice and must include:

(a) a consent signed by the surrogate; and,

(b) an affidavit executed by the intended parents, with a copy of the surrogacy agreement attached as an exhibit"

Issue/Concern

- *ON, SK and BC all recognize intended parents as legal parents and surrogate not as a parent immediately after surrogate signs consent without the need for a Court Order.*

- *Given this is not the case with Bill 3, it is extremely important that the time between surrogate signing consent (Day 2) and the Court Order is very timely and expedited. Parents need certainty and predictability, and the Court should have legislative direction given the intent of the Bill.*

- *As an application seeking a declaration of parentage is defined as an originating process, if this legislative clarity is not provided then the surrogate will need to be served with a process server, leading to additional delay, expenses for intended parents, and burden. Then she will have to sign an additional form confirming consent to abridge time for the Order to be signed as well as be noted in default. This is not reflective of an easy and streamlined court process.*

- *In the meantime, also due to the way Vital Statistics was amended, which was limited, the surrogate and only one parent will be on a birth registration. This leaves parents having to pick which of the two of them goes on and also leaving one parent always with no legal connection to the baby or even proof that is their baby until they get their Court Order. This can have real and practical implications for children given the importance of legal parentage in medical decisions, if intended parents were to separate or pass away unexpectedly.*

- *In addition, to clarify the court process and ease the burden of surrogates, it would also be helpful to confirm that surrogates do not have to provide an affidavit for an application made pursuant to s. 24.1, and also that they do not need to be part of the court process if they have signed consent. This can be achieved in two ways, one in adding clarity to the legislation that notice is not required, or confirming that the surrogate signing consent will be deemed notice.*

Examples from Other Provinces and Other Provisions

- *The Family Maintenance Act contains similar provisions in s. 20(2) already for applications regarding declarations of paternity:*

Director of Child and Family Services may move for hearing

20(2) Where the Director of Child and Family Services certifies to the court that the mother of the child in question in the application has sought the aid of an agency under The Child and Family Services Act or The Adoption Act and is considering adoption for the child, the Director may make the application returnable before a court by serving seven days' notice on the applicant and the court shall take all reasonable steps to expedite the hearing of the application.

- *The Adoption Act also contains specific provisions on when birth parents do not need to be served. This should be legislated and the Courts should have legislative direction on this.*

- *Other provinces do not need the "expedited language" because in those provinces parents are automatically recognized as parents after birth.*

- *SK's Regulations set out that orders may be made without notice and what materials are to be filed, as well as establishes a prescribed form of consent for the surrogate to sign. See s. 9(1) of the Regs which has the following language:*

Parentage under surrogacy agreement – declaratory order on application without notice

9(1) An application pursuant to subsection 62(7) of the Act may be made without notice.

(2) The application pursuant to subsection 62(7) of the Act must include:

(a) a Consent to Relinquish Entitlement to Parentage in Form B, signed by the surrogate; and

(b) an affidavit executed by the intended parents, with a copy of the surrogacy agreement attached as an exhibit.

2. Vital Statistics Needs to Amend Birth Registration as Per Court Order and on an Expedited Basis

Amendment(s) Proposed

A. That s. 3(14) of The Vital Statistics Act of be amended as follows to clarify that the amendment to the birth registration should be expedited in cases of Orders made in pursuant to the surrogacy sections (24.1 and 24.2):

s. 3(14) On receipt of a statement under section 24 and 29 of The Family Maintenance Act, the director shall amend the registration of birth accordingly, and for Orders made pursuant to s. 24.1 and 24.2 such amendment shall be done on an expedited basis, and every birth certificate issued after the making of the amendment under this subsection shall be issued as if the original registration had been made as amended.

B. Alternatively, s. 24(5) of the current FMA be added back to Bill 3 and it be clarified that the amendment to the Order should be expedited in cases of Orders made in surrogacy (s. 24.1 and 24.2). This would likely make most sense to form part of 24.8(1) as follows:

s.24.8(1) …and on receipt of an Order the director shall amend the register of births accordingly, and for Orders made pursuant to s. 24.1 and s. 24.2 shall be done on an expedited basis.

Issue/Concern

- *The current FMA, s. 24(5) (see below) obligated Vital Statistics to amend the birth registration and certificate upon receipt of an Order made under the Part. This section is removed from the FMA under Bill 3.*

o Wording of 24(5) in FMA before Bill 3:

Director shall amend

24(5) Subject to subsection 10(12) of The Vital Statistics Act, on receipt of a statement under subsection (1) or where there is no conflicting presumption on receipt of an acknowledgement under clause 23(d) in relation to a declaratory order made under section 19 or 20, the director shall amend the register of births accordingly.

- *Pursuant to Bill 3, consequential amendments are also being made to The Vital Statistics Act, including that s. 3(14) is amended to remove reference to sections 24 and 29 and substituting "subsection 24.7(1) or section 29". Section 24.7(1) is regarding void marriages.*

- *Unless s. 3(14) includes reference to sections 24.1 and 24.2 specifically, Vital Statistics will no longer be obligated to amend the registrations at all, let alone on an expedited basis.*

- *They have s. 24.8(1) which only states that the registrar or clerk must file in the Office of Vital Statistics the Order, but there is no clause saying Vital Statistics must amend the Order.*

- *It is one thing to have the Court Order, but parties require the amended birth certificate as quickly as possible following the pronouncement of the Court Order to actually show they are parents for medical decision making etc.*

3. Protection to Intended Parents that Order declaring them as Parents cannot be easily set aside

Amendment(s) Proposed

A. Add a s. 24.3(3) which states:

Where an Order is made pursuant to section 24.1 and 24.2, a person may not bring an application under this section without leave of from the Court.

Issue/Concern

- *Because there is no recognition or presumption of intended parents (by surrogacy) being legal parents in Bill 3 until after they obtain a Court Order, it is extremely important that they be provided the protection that these Orders cannot easily be set aside (for instance, it is never possible to set aside an adoption).*

- *We should follow AB that also has a court order model in that leave is required for these applications. This would protect frivolous applications and provide intended parents and children more protection.*

• *This is similar to wording of the Divorce Act that requires leave for "others" and non-parents to make an application for contact.*

Examples from Other Provinces and Other Provisions

• *S. 10(2) of Alberta legislation states:*

(2) A person may not bring an application under this section without the permission of the court.

• *The Divorce Act requires leave by non-parents who bring an application for contact with a child (s.16.1(3)).*

4. Presumption of Parentage in cases of surrogacy from 2 days to Court Order AND clarification of decision making after surrogate signs consent

Amendment(s) Proposed

A. Include a presumption of parentage in favour of the intended parent or parents after the 2 day period and after the surrogate has signed the consent. This should go somewhere after s. 24(6).

Presumption of Parentage

Upon the surrogate providing consent, unless the contrary is proved, the intended parents are presumed to be a child's parent, and the surrogate is presumed not to be a parent.

B. In addition, a mirror clause to s. 24 (6) should be added for parental responsibility from 2 day period to Court Order.

Parental Responsibility after Child 2 days Old

Unless the surrogacy agreement provides otherwise, the intended parents after the child is 2 days old, and the surrogate has signed consent, the intended parent or parents have or share the powers and responsibilities of a parent with respect to the child.

Issue/Concern

• *In ON, SK, and BC intended parents automatically become legal parents after surrogate signs consent. For example see s. 62(3) of SK legislation and s. 11(3) of ON legislation which Bill 3 does not have (see below).*

• *There is nothing currently in Bill 3 which clarifies who is a parent of a child born by way of surrogacy after the two day period and surrogate signs consent.*

• *If we do not have this legal recognition, at minimum there should be a provision on decision making from Day 2 to Court Order.*

• *Especially Important because only one parent is registered on a birth certificate which does not provide enough protection to the intended parents, AND it is only the surrogate that is defined as a legal parent under the FMA until a Court Order. In addition, being on birth certificate for the one intended parents is not the same as being a legal parent under the FMA and it also leaves the second intended parent with absolutely no recognition.*

Examples from Other Provinces and Other Provisions

• *ON, SK, and BC do not need presumptions because they recognize intended parents as parents automatically after surrogate provides consent*

• *With respect to decision making SK does include a provision which states intended parents have power and responsibilities after 3 days, see s. 62(6):*

62(6) After the child is 3 days old, the intended parents share the powers and responsibilities of a parent with respect to the child, and any provision in a surrogacy agreement that provides otherwise is of no effect.

5. Stronger more Comprehensive Wording that a Donor is not a Parent

Amendment(s) Proposed

A. Add to s. 18(2)

s. 18(2)…must be read to include a person who comes within the description by reason of the relationship of parent and child as determined pursuant to this Part and with respect to a child conceived by way of assisted reproduction, does not include:

(i) a person who donated reproductive material or an embryo for use in the conception if that person had no intention at the time of the child's conception to be a parent of the child; or

(ii) a person related to a person mentioned in sub clause (i).

Issue/Concern

• *While s. 20 of Bill 3 sets out that a donor is not automatically a parent by reason only of their donation, Bill 3 does not specifically state that donors are not parents.*

• *As such, like with SK, ON, BC and AB, it would help to clarify that for all the purposes of law in Manitoba, a donor is not to be considered a parent. All of the provinces for the most part have this additional protection*

• *This is very important to parents who use a donor, and also to donors who do not want to be parents.*

Examples from Other Provinces and Other Provisions

• *As stated these provinces all have the additional language we are proposing above:*

o BC s. 24(2):

(2) For the purposes of an instrument or enactment that refers to a person, described in terms of his or her relationship to another person by birth, blood or marriage, the reference must not be read as a reference to, nor read to include, a person who is a donor unless the person comes within the description because of the relationship of parent and child as determined under this Part.

o ON s. 2(1):

Rules of construction

Relationship by blood or marriage

2 (1) For the purposes of construing any Act, regulation or, subject to subsection (3), instrument, unless a contrary intention appears, a reference to a person or group or class of persons described in terms of relationship by blood or marriage to another person,

(a) includes a person who comes within that description by reason of the relationship of parent and child set out in this Part; and

(b) in respect of a child conceived through assisted reproduction or through insemination by a sperm donor, does not include,

(i) a person who provided reproductive material or an embryo for use in the conception if that person is not a parent of the child, or

(ii) a person related to a person referred to in sub clause (i). 2016, c. 23, s. 1 (1).

o SK s. 57(1)(b):

Rules of construction 57(1) For the purpose of construing any Act, regulation or other statutory instrument, a reference to a person or group or category of persons described in terms of relationship to another person by blood or marriage:

(a) includes a person who comes within the description by reason of the relationship of parent and child as determined pursuant to section 56; and

(b) with respect to a child conceived through assisted reproduction or through insemination by a sperm donor, does not include:

(i) a person who donated reproductive material or an embryo for use in the conception if that person had no intention at the time of the child's conception to be a parent of the child; or

(ii) a person related to a person mentioned in sub clause (i).

6. Should Not Just Be Intended Parents able to Apply under s. 24.1 but also any person party to a surrogacy agreement

Amendment(s) Proposed

A. We would suggest that s. 24.1 be revised to state that:

24.1 If, after the child is born, the surrogate consents to relinquish entitlement to parentage of the child to the intended parent or parents, any party to a surrogacy agreement or personal representative of a party to a surrogacy agreement…

Issue/Concern

• *There may be circumstances in which someone other than the intended parents, like the surrogate or the intended parents' estate, wants or needs to make an application and s. 24.1 limits such applications to only intended parents, and further, the general declaration section does not allow applications in cases of surrogacy, so they are left with no recourse.*

• *For example, what if the intended parents pass away and surrogate is left needing to apply.*

• *Why should the surrogate have the burden of needing to apply under the general section if she provides consent?*

• *BC accounts for this in their legislation at s. 29(5) in that if the surrogate provides consent then she is not a parent and she can provide baby to personal representative or person standing the place of the deceased intended parents.*

Examples from Other Provinces and Other Provisions

• *ON "any party to surrogacy agreement" s. 10(6):*

Failure to give consent

(6) Any party to a surrogacy agreement may apply to the court for a declaration of parentage with respect to the child if the consent referred to in subsection (3) is not provided by the surrogate because,

(a) the surrogate is deceased or otherwise incapable of providing the consent;

(b) the surrogate cannot be located after reasonable efforts have been made to do so; or

(c) the surrogate refuses to provide the consent. 2016, c. 23, s. 1 (1).

7. Ability for Intended Parents/Surrogate to Apply for a Declaratory General Section S. 23 and Surrogacy Births

Amendment(s) Proposed

A. We would suggest removing the words "Subject to sections 24.1 and 24.2" from s. 23(1).

Issue/Concern

- *There are cases coming out of BC and Ontario after their new legislation was enacted which have acknowledged that there are cases, even if rare, which may fall outside of the conditions set out in the surrogacy provisions and those provinces do not preclude parties in such cases from making an application under the general declaration provisions.*

- *If they were not able to apply for a declaration under the general declaration section, then the only recourse is an adoption, if that is even possible (in some cases they may not be able to even apply for an adoption), and the case law clearly reflects that an adoption is not the appropriate relief where children are born by assisted reproduction with intention.*

- *See cases:*

o *Re Family Law Act, 2016 BCSC 598*

o *Re Family Law Act, 2016 BCSC 22*

o *Cabianca v British Columbia (Registrar General of Vital Statistics), 2019 BCSC 2010*

o *British Columbia Birth Registration No. 2018-XX-XX5819, 2021 BCSC 767*

o *MRR v JM, 2017 ONSC 2655*

o *ML v JC, 2017 ONSC 7179*

- *Bill 3 is tying the courts hands by not permitting declarations in cases which may not strictly comply with s. 24.1 or 24.2 even where there is consent of all parties and their agreement and circumstances are otherwise consistent with the purpose of the legislation.*

8. Parentage when Order is made should be to moment of child's birth

Amendment(s) Proposed

A. Add a provision to Bill 3 which states:

"A person who is declared to be a parent of the child under this Part and any person who, as a result of that declaration, is a parent of the child under this Part are deemed to be the parents at and from the time of the birth of the child."

Issue/Concern

- *Orders should be effective from the moment of the child's birth rather than from the date the order is pronounced as parents may need to rely on these orders for applications for benefits and other matters.*

Examples from Other Provinces and Other Provisions

- *s. 8.2(7) in AB Act:*

(7) A person who is declared to be a parent of the child under subsection (6) and any person who, as a result of that declaration, is a parent of the child under section 8.1 are deemed to be the parents at and from the time of the birth of the child.

- *s. 15(1) and 15(2) of ON Act:*

Effect of declaration

15 (1) A declaration made under this Part shall be recognized for all purposes. 2016, c. 23, s. 1 (1).

Deemed effective from birth

(2) A declaration made under this Part is deemed to have been effective from the child's birth. 2016, c. 23, s. 1 (1).

Mr. Chairperson: Ms. Kazina, thank you for being so patient. The floor is open for your presentation.

Ms. Robynne Kazina (Private Citizen): It truly is an honour to be here and speak to the honourable committee about this bill, and thank you for this opportunity.

***** (18:20)

I'm Robynne Kazina. I'm a lawyer. I'm a partner at Taylor McCaffrey. I'm a lawyer in Manitoba that has a substantial practice in fertility law and I've had the privilege of working with a number of intended parents, surrogates and donors throughout the years. And I can say through my work with those clients and with Manitobans, it became clear to me that we could do better to strengthen the law in Manitoba for children and families.

We've been left applying laws on who is a parent and who is not a parent that had not been updated

since 1986. So, myself, along with Rhoni Mackenzie and the Public Interest Law Centre, Allison Fenske and Byron Williams, partnered on bringing the constitutional challenge, J.A.S. v. Attorney General of Manitoba, that was heard last year.

And, firstly, I want to say that there's many positive aspects to the bill and it has gone a long way in changing the law for Manitoba, and I want to commend that. And I want to express my support for the bill overall. However, I do think that there is very–amendments that are necessary that would strengthen the bill and actually put into practice what the intent of the bill is.

I've provided a handout with my summary of eight points that really highlight 10 suggested amendments. And my intent today, due to time, I will only focus on the ones with respecting surrogacy, but I do want to clarify that none of the amendments that I am proposing is–changes, substantially, the bill. It makes–all it does is provide more certainty to the process, given that the government chose to implement a court-order model for intended parents in surrogacy to be legal parents.

So, high level: the essential amendments, in my view, are contained on–are the items No. 1 and No. 2, and what those amendments would do is confirm that court orders from when surrogate signs a consent, from day 2, would need to be signed on an expedited manner. It would make sure parents get that birth certificate that they need to show that they're parents within an expedited and timely manner, and it would ensure that there is a streamlined process for these court orders to be made, which is the intent and provide security to children.

There–so I'm just going to provide a little bit of a roadmap on an explanation of surrogacy for those who don't have a lot of experience. We have an altruistic system in Canada. It's–all of the surrogates are acting altruistically. We have a federal act called the Assisted Human Reproduction Act, which makes surrogacy–surrogates cannot be paid like the States. Surrogates in 90–I would say–8 per cent of cases do not have a genetic connection to the child that they're carrying.

And there's many reasons why people need surrogates and varied clients I have. Many women cannot carry a child because they're a cancer survivor. Many women cannot carry a child because they have a health issue. And, of course, that this also affects gay men who also cannot have a child other than the use of a surrogate.

So how surrogacy would fit under Bill 3 is that the people who are actually this baby's parents would not be their parents until they get a court order. That's unlike other provinces. So BC, Ontario and Saskatchewan all ensure that the parents of the baby are recognized at–as the legal parents upon the surrogate providing the requisite consent.

That is not the situation under Bill 3. Intended parents will need to get a court order and then they will net–need that court order to fix their birth certificate. What will be happening under the bill, if it is passed as proposed, is that surrogates will be going as–on the birth certificate as a mother and only one parent can go on as the other parent.

So parents will have to choose which one of them is going to go on. And in that meantime between that birth of the baby and day 2 with the surrogate signing consent and the order being made, one parent does not have any connection or recognition to their child. And not only that, the child has somebody on their birth certificate who's not caring for them, who's not genetically related to them.

And this can have real implications on what that means for people practically. People need to make health decisions for their child. People need to get a medical card. People need to apply for parental rights. This can have implications if intended parents were ever to separate in that interim period, if one of them were to die. So what are–we're trying to do is provide certainty to Manitobans that these orders recognizing them as parents will be done in an expedited and timely way for all of those very, very important reasons.

I mean, my submissions of the government has a clear interest in ensuring and providing clarity on these matters, and avoiding future court applications and future constitutional challenges. And it also–ensuring an expedited and streamlined process also 'ensurves'–ensures that we don't use up the court's resources unnecessarily and we achieve proportionality.

So now I just want to turn to my–the two areas of amendments on my handout on–that are numbered No. 1 and No. 2. All I am suggesting is that there be a clause in 24.1(3), that it be added that these orders are made expeditiously. This is similar language that already is in the FMA for other types of orders. This is not something novel or new. And also ensuring that the process is such that the surrogate isn't overly burdened by having to participate in a court process after birth, when I can tell you–and I know you'll hear

from some surrogates today–they do not want to be legal parents to these children. They–in their interest, they want to ensure that they are not legal parents as fast as possible and in a timely manner after birth.

The second, No. 2 amendment–that's labelled No. 2, that I would suggest to make this legislation stronger and actually achieve what is intending is to ensure that once parents get that court order, that they get that birth certificate reflecting them as parents. Remember, they're only going to be having a birth certificate with a woman who is not caring for that child and one parent. So it's essential that there be direction, in my view, that there's to be some legislative direction that Vital Statistics amend the birth certificate in these–only in these types of applications expeditiously.

Now, I know I'm running out of time, but I will just highlight my other suggested changes to make this law stronger and really to protect children. There's basically No. 3 to 6, which I've highlighted. One is ensuring that it's not easy to set aside these orders because these orders are only declaratory orders, and I'm advocating that there should be leave of people who are trying to set aside these orders, this is similar to the Divorce Act, where nonparents have to get leave. There should be some presumptions of parentage in decision-making from day 2 to court order. There should be stronger language that a donor is not a parent, and a surrogate should also be able to apply for an order. If she wants to be the one to apply that she's not a parent, she should also be able to apply under section 24.1.

So, essentially, in in my view none of these changes are changing anything significantly. We had been operating in a vacuum without legislation until date and we need this certainty for families. It needs to be–and children deserve it and it's the way to protect children, who are the most vulnerable in these circumstances.

Thank you.

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

And just before we open it up to questions, I just want to just bring us back. When the first presenter was on, I erred in not following-up on a comment that was made. At committee, we must refer to members of the committee as Ms., Mrs., Mr. or Minister, okay? Not their first names, okay?

So, thank you very for–much for that, and the floor is now open for questions.

Mr. Friesen: Thank you, Mr. Chair, and thank you, Robynne, for being at committee this evening.

I just wanted to make *[inaudible]* I think it's unfortunate that the member for St. Johns (Ms. Fontaine) *[inaudible]* opportunity to *[inaudible]* to somehow spread *[inaudible]*–

Mr. Chairperson: Minister, just sorry to interrupt, I'm wondering if you have a headset or something.

We can hardly hear what you're saying and I understand a headset was delivered to your office. So that would be great if you could put that on, and that way we could have better clarity in the meeting room here.

An Honourable Member: How about now, Mr. Chair?

Mr. Chairperson: No, it's not very good at all. A headset would be great if you could, please.

***** (18:30)

So, while we're waiting for the minister to get a microphone or some–any other questions while we wait?

Ms. Fontaine: Miigwech, Ms. Kazanza *[phonetic]*? Kazinza *[phonetic]*? Sorry, I apologize; I just butchered your name. I'm fully aware of that. I apologize.

While the minister is figuring himself out, I would like to give you a little bit more time to–because I know that we don't have a lot of time, and there are other amendments, and so I would like to hear about some of the latter amendments that you are–that you do refer to in your briefing here. If you could just maybe go through those a little bit more, in a little bit more detail, if you don't mind?

Ms. Kazina: Yes, the other amendments other than the two that I focused on and kind of brushed over at the end, I'm assuming.

So the two really important ones are ensuring the expedited streamline process for everybody involved. The other amendments, on three to No. 6 in my handout, is–so 'declatory' orders can be set aside, and because there's nothing in this bill that confirms that intended parents are legal parents after surrogate signs consent, is it extremely important to make sure that nobody is trying to set aside these orders on a frivolous basis.

That is unlike other legislation. Ontario, Saskatchewan, BC all confirm that the intended parents are the legal parents. In here, in our–this

proposed bill, they are not the legal parents until a court order, and then secondly, that court order can be set aside. So I'm suggesting that in these circumstances where people are obtaining orders in surrogacy, standard cases where all the checks and balances are met, where they have legal agreements, where they have independent legal advice, if someone were to come back and try to challenge that order, they should be–they should not be able to do that without leave of the court.

And my analogy to that is in The Divorce Act amendments: a non-parent cannot just make an application for contact with the child. They are obligated to get leave. It's the same philosophy that intended parents should not have–it should be a very high onus for these types of applications.

Ms. Fontaine: Miigwech for that additional information.

I am curious–and I know that a lot of the recommendations that you are focused on this evening are in respect of an expedited process, and so I'm wondering if you can share maybe a little bit about–particularly for Vital Statistics, which we know are taking a long time for folks to get the paperwork that they need or the statistics that they need.

Do you want to maybe share a little bit about how that kind of plays out in situations like this? *[interjection]*

Mr. Chairperson: Ms. Kazina.

Ms. Kazina: Sorry. I can explain how things have been handled without legislation–is that Vital Statistics has been accommodating, and so has the court, really, in trying to really make this work in a legislative vacuum, but it doesn't provide the certainty. So they do rush requests for birth certificates when it's a surrogacy birth, and the court does try to deal with it on–you know, on an expedited basis, but there is no certainty.

It's–sometimes it's really quick, sometimes it takes weeks; it depends on the person working. And that's not, in my submission, a proper and predictable system for Manitobans. It needs to be predictable and consistent, and it shouldn't depend on the empathy or willingness or co-operation of a certain staff member.

But people have been wonderful. I've experienced wonderful people at Vital Statistics, but again, it's a kind of a one-off, and it shouldn't–there should be better certainty for people when–parents are going to ask, after the birth of my baby, when am I going to get my birth certificate? When am I going to be declared a legal parent? When am I going to have that birth certificate with the surrogate off, who's not caring for the child, and have both of us, who are that baby's parents? And they need an answer to that.

Mr. Friesen: How are we now on your audio?

Mr. Chairperson: Much better, thank you. Go ahead.

Mr. Friesen: Thank you, Ms. Kazina, for being here and presenting this evening.

I just wanted to briefly indicate, Mr. Chair, thank you for calling that point you did–yes, the member for St. Johns (Ms. Fontaine). And I think it's unfortunate the evening begins with a false allegation that somehow, in the minister's office on a remote channel, we're not listening.

I can assure all participants of this committee that in the minister's office, we have an excellent audio and video link to the proceedings. I have department officials across from me. If members of the committee or presenters see me glancing to the right it's because that's where my officials are seated, and we have in front of us the materials provided by Ms. Kazina, and that–those deliberations at the table assist our presenters and they assist these proceedings.

So I feel like I should not have to clarify that for the member of St. Johns, but I will do so because I don't super like the idea of false allegations on the record.

Ms. Kazina, thank you for being at committee. We've written notes as we have listened and we will–I'll be responding more when I make my comments on the bill later this evening.

Once again, thank you.

Ms. Kazina: Thank you.

Mr. Chairperson: Thank you for that, and we have run out of time for this presentation.

Just before we call on the next presenter, I just want to reiterate the fact that the presentation from Ms. Kazina will be presented in Hansard.

So, with that, we will move on to our next presenter, Mr. Paul Brusche-Wiens *[phonetic]*, and ask the moderator to invite them into the meeting, and I'd ask that you please unmute yourself and turn on your video.

Floor Comment: Thank you, and sorry for the video here.

Mr. Chairperson: I first need to recognize you. So, thank you for joining us this evening, Mr. Brusche-Wiens *[phonetic]*. Proceed with your presentation.

Mr. Paul Bruch-Wiens (Private Citizen): Bruch-Wiens. Yes.

Thank you. My name is Paul Bruch-Wiens. I am a resident of Winnipeg, Manitoba.

My spouse and I were married in 2004 and, for a while, we did not believe that we would be having children. And when we decided that we would like to have children, it became very evident that it would be difficult for us without help, so we ended up going to Heartland clinic for IVF treatments. For those who have been through IVF, it can be a daunting task and expensive. However, my spouse and I were lucky and we had two children out of our three tries.

Now, during this period of time, on our third try, we had three frozen embryos that we were able to save in case we decided to have another child. We decided not to have another child and, through a friend of ours, found out that their sister and brother-in-law were having difficulties having children and one of the only ways that they might be able to have a child was through the use of a donor embryo. And so we decided to move forward with donating our embryo to this couple–or, the three embryos. And fortunate to say that they ended up having a child on the third try. Third try was a charm for them.

What was interesting through the whole process was that we had rights to this embryo that we were donating to another couple. And it seemed wrong to us, through this whole process, that we should have any rights once we have decided that we no longer want to have another child. We had two already. We were not interested in having a third. We were interested in providing this as a donation, and yet we still had some form of right to this donated embryo that could turn into a baby. And we never had intentions of being parents to this child.

And so I want that specifically stated to this committee, that as an embryo donor, it was difficult enough for us to have children and to have to go to Heartland. For another couple that goes through probably a very similar situation, but they have to go to Heartland multiple times, sometimes eight to 10 times, to find out that they are unable to have their own biological child, and then for another couple to show up being able to donate an embryo.

But the receiving couple being essentially told, you're not out of the woods yet; this donated embryo isn't necessarily one hundred per cent yours, must be extraordinarily difficult for the receiving couple to go through because they might just have to cross their fingers and hope that a couple like us doesn't come back try to claim some right as a parent to that embryo.

***** (18:40)

That is my whole report.

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

The floor is now open for questions.

Mr. Friesen: Still hoping this audio link is working well, and I see a nod from the committee Chair, so I think that that means all systems go.

Paul, I just want to thank you for being at committee tonight, sharing your story. Appreciate this very much.

Mr. Bruch-Wiens: You're welcome.

Mr. Chairperson: Further questions?

Ms. Fontaine: As well, I want to say miigwech to Paul, for sharing your story, and I know that that's not always the most easiest thing to share pretty intimate details with random strangers, and certainly in a car. So I do want to just say miigwech for sharing that with us and educating us here this evening.

Miigwech.

Mr. Bruch-Wiens: Thank you very much to the committee.

Mr. Gerrard: Thank you so much, Mr. Bruch-Wiens.

I think what you're telling us is that you would like amendments to this legislation so that it's very clear that when an embryo is donated, that the parents of that embryo are giving up the rights if that–or when that embryo becomes a child.

Mr. Bruch-Wiens: That is correct. Beyond the donation, there should be no legal parental rights to–by the donors themselves.

Mr. Chairperson: Any further questions?

Hearing none, thank you very much for your presentation this evening.

I will now call on Reannah Hocken from the Manitoba Bar Association and ask the moderator to invite them into the meeting. Please unmute yourself and turn your video on.

Good evening, Ms. Hocken. Please proceed with your presentation.

Ms. Reannah Hocken (Manitoba Bar Association): Good evening. Thank you for including me this evening. I'm honoured to be here.

My name is Reannah Hocken. I am a family law lawyer practising with Deeley Fabbri Sellen, and I am appearing before you today as the chair of the family law section of the Manitoba Bar Association. I'll begin by stating it has been a tight timeline being given only a few days' notice prior to the hearing. In the past, the family law section of the Manitoba Bar Association has been consulted on changes to legislation, and, unfortunately, there has been no opportunity for dialogue or consultation on the bill. There may be important information and perspectives that are being overlooked as a result, and I would like the committee to be mindful of that as I make my submissions.

I also want to preface my comments by informing the committee that assisted reproduction law is a specialized area of law and not something that family law lawyers face on a regular basis. Personally, it is not an area of law in which I have experienced. Ms. Kazina has a vast wealth of knowledge relating to the subject matter, and I strongly support the comments that she has made, and I–as well as the suggested changes to the bill. I also wish to thank Ms. Kazina and Ms. Mackenzie of her office for the enormous amount of preparatory work that was performed in anticipation of this hearing.

As counsel practising almost exclusively in family law, I do wish to emphasize, too, the importance of this bill to Manitoba families and, in particular, the importance of having children's parents recognized in law from the moment of their birth. Legal parentage has a number of practical and legal ramifications to be considered, including but not limited to custody, parenting time, decision making on behalf of the children but also wills and intestate succession. So, for instance, in the event of a death of a parent.

In the case of surrogacies, the bill as presented only allows one of the intended parents to go on the birth registration, which is problematic for a number of reasons, and as a lawyer, these are the things that come to mind just generally, initially. For instance, what if the intended parents separate or if they disagree with respect to medical decisions before a court order is pronounced? Which parent is allocated rights to make these decisions? Which parent would have custody of the child? How would the rights of the parents be balanced, and would the listed parent have more rights than the other? What if the listed parent dies prior to the order being pronounced, and then where does the surrogate fit into that framework when they are listed on the birth certificate?

These are all scenarios that must be considered through the lens of the bill and, respectfully, it does fall short and leaves a gap there. And, of course, the result is that children are left vulnerable without clear parentage in these situations.

The structure and the intent of The Family Maintenance Act is to make paramount the best interests of children. The substance of The Family Maintenance Act and all other family law issues covered under The Family Maintenance Act are guided by these best interests, and this is really at the heart of the legislation.

So to properly prioritize these interests, children require certainty as to parentage. The reality is that children are being born from surrogacy or other non-traditional arrangements. These children have the right to have their birth registrations properly recognized and reflect who their parents are, regardless of their circumstances of birth.

This is the right of these children to clarity and certainty, and needs to happen as soon as possible following the birth. The courts have overwhelmingly recognized that legalizing–legally recognizing a child's relationship to their parents at the earliest opportunity possible is in their best interests.

Ultimately, the intent of The Family Maintenance Act is to protect children and serve their best interests. And while this bill will bring about significant positive changes for many families, there are still some concerns and improvements that could be made in the best interests of children, which is, of course, the guiding principle of The Family Maintenance Act.

So, subject to any questions, those are my brief submissions.

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

We will now open the floor up to questions.

Mr. Friesen: Thank you, Reannah, for being at committee this evening and for sharing your views, and I have made notes as you've spoken. I appreciate you very much in making the time to be here this evening.

Ms. Fontaine: Miigwech for your presentation this evening and we appreciate you spending time with us and sharing and providing your expertise. Miigwech.

Mr. Gerrard: Yes, thank you very much.

You've made the point that you think the parents should be recognized at the moment of birth, and this law, as it's designed, wouldn't recognize the parents until after there's consent, on day two for surrogacy, et cetera.

Are there other provinces or other jurisdictions where the birth is recognized at birth, instead of waiting for this delay?

Ms. Hocken: That's an excellent question.

I do believe that there are, and perhaps Ms. Kazina–I do appreciate that she is no longer speaking, but I did have some extra time and I'd be prepared to cede that to her, if necessary, to answer.

I do understand that, because this is going to be–especially in the case of surrogate–order-based rather than–but I do believe that that is the case in other provinces, but I don't know which ones specifically. I couldn't tell you, unfortunately.

Mr. Chairperson: Any further questions?

Hearing none, thank you very much for your presentation this evening.

Next, I would like to call on–and I apologize if I don't say the name correctly–Allison Fenske from the Public Interest Law Centre.

I would ask the moderator to invite them into the meeting, and ask that you please unmute yourself and turn your video on.

Good evening, and I hope I said that right, Ms. Fenske. Please proceed with your presentation.

Ms. Allison Fenske (Public Interest Law Centre): Good evening, honourable members. I am a lawyer with the Public Interest Law Centre of Legal Aid Manitoba and I am co-counsel to seven Manitoba families who successfully challenged the current Manitoba laws around parentage.

The bill which we're discussing this evening comes as a direct response to that legal challenge, and I am appearing on behalf of our clients this evening. You've already heard from one of our clients, Jill Stockwell, who has so powerfully shared her story, as well as one of my co-counsel, Robynne Kazina, and I'd like to build on those remarks.

I want to begin my remarks to this committee by stating that the proposed amendments to The Family Maintenance Act are an important step forward in modernizing Manitoba's laws around parentage and in recognizing the myriad ways to be, to make, or to add to a family.

These long-awaited modernization efforts are necessary, first to ensure that the laws in Manitoba around legal parentage comply with the Canadian Charter of Rights and Freedoms, and in particular, the equality rights of 2SLGBTQ+ families, who are overrepresented among the families using assisted reproduction. These efforts are also necessary to bring certainty to the legal relationships between children and their intended parents. And finally, modernization is also required to minimize the time and expense needed to have parental rights recognized in what is already a time-consuming, stressful and expensive process for families who are using assisted reproduction.

***** (18:50)

These were the goals of our clients when they started their legal action, and this bill goes a long way to achieving these goals, with one glaring exception, and that is in surrogacy arrangements. Other jurisdictions in Canada have chosen administrative models where the intended parents are recognized as legal parents and the surrogate is not a parent as soon as the surrogate signs a legal consent, without the need for either the intended parents or the surrogate to go to court and obtain an order.

If it is the will of the Legislature to go forward with a court model of recognition in cases where a surrogate carries and births the child, and if families are going to be forced to seek a declaratory order for one or both of the intended parents to be legally recognized, this process should bring as much immediate certainty to families as possible, and we believe there are two approaches to achieving this.

One: there should be a presumption of parentage benefiting the intended parents after the two-day waiting period has lapsed and once the surrogate has consented. Nothing in Bill 3 currently recognizes the rights and responsibilities of the intended parents once a surrogate relinquishes their rights as parents–as parent, pardon me–but before the court makes a declaration in favour of the intended parents. What happens in that interim time period? For example, if a child is born and has immediate medical needs, who is the decision maker on day three? Clarity is required, and these uncertainties can be resolved with a presumption of parentage.

For example, in Saskatchewan, section 62(6) of the Children's Law Act states: After the child is three

days old–their waiting period–the intended parents share the powers and responsibilities of a parent with respect to the child and any provision in a surrogacy agreement that provides otherwise is of no effect. That could be a kind of clause to meet the intention of both sets of the intended parents and the surrogate while they are awaiting that court order.

The second approach requires a process for seeking the necessary court order that is easy, cost effective and expedited. Parents and children need certainty in their family relationships, and they do not need to be jumping through the hoops of cumbersome legal processes in what should be some of the most joyful moments as a family welcoming a new baby.

Without a presumption of parentage in favour of the intended parents, there is significant uncertainty between the time parents apply for a court order and the time they receive a declaratory order recognizing their legal rights as parents. The court application process must proceed on an expedited basis, without notice or utilizing the consent of the surrogate as notice to them and without undue burden on the surrogate, who's already consented to relinquishing their rights at this point in time. Once an order is made, the intended parents should be recognized as parents from the time of their children's–child's birth, not simply from the date of the order.

The expectation of an expedited process and streamlined process that minimally impairs the rights of the intended parents can be legislated. Without ensuring that the court processes in place are as simple and as expeditious as possible, Manitoba risks continuing the very harms that led to our clients' constitutional challenge in the first place: the harms that were recognized as discriminatory and which were not reasonably justified in a free and democratic society. There are opportunities to ensure that any court processes used in surrogacy arrangements do not end up mirroring the onerous, expensive and harmful measures that were found to discriminate against 2SLGBTQ+ families and which caused harm to any family using surrogacy, not just 2SLGBTQ+ families.

I would like to conclude my remarks by recognizing the tenacity and courage of our clients. With their advocacy efforts, these seven families are working to ensure that all families who use assisted reproduction have their rights recognized.

I thank the honourable members of this committee for their time this evening and their attention to these matters.

Mr. Chairperson: Thank you very much, and the floor is now open for questions.

Mr. Friesen: Thank you, Allison, for being here at committee this evening. My staff and I have made notes as you've spoken. I'll address specific issues that you raised in my remarks later this evening. Thank you again for coming.

Mr. Chairperson: Further questions?

Oh, sure, yes, Ms. Hocken, would you like to respond to the minister?

My apologies. Ms. Fenske?

Ms. Fenske: Oh, thank you, minister.

Ms. Fontaine: Miigwech, Ms. Fenske, for your presentation.

I'm curious about a couple of things: (1) Were you or your clients or your office in any way consulted with in the development of Bill 3? And then if you can share a little bit more–I know you talked a bit about a different model in a different jurisdiction, and I believe–I was trying to write it down–I think you had said an administrative order versus a court order.

Can you explain that just a little bit more?

Ms. Fenske: Yes, first, to your first question of whether or not counsel or our clients were consulted in–with respect to the development of Bill 3: no, we were not.

With respect to your question about my reference to administrative models, yes, there is–there are two dueling ways of doing this in Canada right now: the court model, which is proposed in Bill 3, and administrative model which exists in jurisdictions like BC and Ontario and Saskatchewan.

In those jurisdictions, the recognition of parentage comes through the use of consents and the birth registration process, and in that administrative process of registering the birth is when the recognition happens because recognition–legal recognition is built into the laws that created that process. There is not a necessity of having a declaratory order in order to be recognized as parents. It's already embedded within the legislation, that recognition.

Ms. Fontaine: So I would imagine that that administrative model would be significantly easier for new parents in, you know, assigning percentage–or, becoming parents. I imagine that that would be the easiest model for folks.

Ms. Fenske: Yes, it is far more streamlined. It does not require the preparation of legal documents and the consultations with legal counsel in preparation for that application. Legal counsel would likely be involved at the outset, in terms of the arrangements being made through the surrogacy agreement.

So folks who are using surrogates are–there's–you're–they're not without checks and balances in terms of agreements that are in place, the requirements for those agreements, the relinquishments of rights and the independent legal advice that happens in order to protect both parties. But yes, they would not be having to go to court after the birth of their child in order to be recognized.

Ms. Fontaine: Sorry, just one more question.

So, if you had been consulted–you or your clients–do you think that you would have, you know, recommended an administrative model or a court-ordered model?

Ms. Fenske: Through our clients' litigation, our clients were intending to have the harms that are caused by having to have the state recognize your relationship and your relationship to your child through declaratory orders after birth–have those harms eliminated and to have an administrative model. That would have been the hopes of our clients, certainly.

The–our clients recognize the need for modernization to this act, and this is an important step forward but, yes, had we–had our clients been consulted, they would have been recommending an administrative model of proceedings.

***** (19:00)

Mr. Gerrard: Just briefly, I think you were aware of the amendments proposed by Ms. Kazina, and in one of them she wants comprehensive wording that a donor is not a parent.

A donor could be a donor of an embryo. Is a surrogate mother also a donor by being–donating reproductive material, in her case the uterus?

Mr. Chairperson: Just before I call on that, we are out of time, but is there leave to allow Ms. Fenske to answer the question? *[Agreed]*

Ms. Fenske, please go ahead.

Ms. Fenske: I should clarify. There are some cases, while Ms. Kazina speak to–I believe she gave the statistic of 98 per cent being gestational surrogacy, where the surrogate is not related to the intended–or to the child in any way. But there are surrogacy arrangements where the surrogate's own genetic material is used, so it is possible for a surrogate to also be a genetic donor, in terms of their ovum.

I don't believe that a surrogate is considered to be a donor simply by their participation in surrogacy. I believe surrogacy is a separate kind of act. But I would appreciate the opportunity to clarify that, if I could have a moment.

Mr. Chairperson: Thank you very much for your presentation this evening and thank you for joining us.

We will move on now and I will call on Lisa McConnell and Bradley Miller and ask that–the moderator to invite them into the meeting. I would ask that you please unmute yourself and turn your video on.

Good evening and thank you for joining us, Ms. McConnell and Mr. Miller. Please go ahead with your presentation.

Ms. Lisa McConnell (Private Citizen): My name is Lisa McConnell. Joining me is my husband, Bradley Miller. We are much honoured to be addressing this committee today, and we want to thank you for providing us with the opportunity to speak to Bill 3.

Bradley and I are a married couple, and between us we have five children and six grandchildren, and we have experienced first-hand the feeling of being a parent and the love and bond that you share with your child. In February of 2019, I began to think about surrogacy and if this was something I could do to be able to help others begin a family. I wanted to help individuals have families who might otherwise not be able to do so.

I watched many of my own family and friends struggle with fertility issues and I believe that everyone, no matter their sexuality or relationship status, should be able to be a parent, if desired.

I brought up this thought with my then-fiancé, now husband, and he was incredibly supportive. I then began to discuss the exciting opportunity with the intended fathers and we began to grow closer than I ever thought possible.

My husband and I began the medical screening process, and I was medically cleared to be their surrogate in the spring of 2019. Bradley and my wedding was planned for June 29th of 2019 and we had all agreed to wait until after the wedding to begin the preparations for transfer.

Leading up to this, we had to ensure all legal requirements–more specifically the surrogacy agreement–was in place so that there were no delays after the wedding, as we wanted to begin the journey soon after. While going through the surrogacy agreement with our lawyer, we were informed that not only I would have to be on the birth certificate of the child but, because we were going to be married at the time of birth, Bradley would also have to be on the birth certificate.

This caused much stress and worry at a time when we should have all been celebrating. We discussed at length with the intended fathers and, because we had built such trust between all of us, we decided to continue to go ahead. We entered into the surrogacy agreement before undergoing any embryo transfers and, in August of 2019, we transferred one embryo consisting of one of the intended parent's sperm and the ovum of an anonymous donor, which resulted in pregnancy.

We continue to keep in regular and frequent communication with the intended fathers, and we communicated often throughout the pregnancy and, in general, spoke almost daily. They always made themselves available to speak with me following any pregnancy-related appointments so that they were up to date on their baby's development and progress.

Immediately following the baby's birth, he was placed in the custody of the intended fathers so that they could bond and I could heal. Having to be registered as the mother and the father–or other parent–on the registration felt like a complete lie and I really did not want to sign something that suggested we were parents to a child who is not ours and we never intended to be parents of.

I wanted to cross out mother and put surrogate before signing, but was advised that Vital Statistics would not allow that and it would only delay the legal proceedings in recognizing the true parents and removing me. I was so uncomfortable with it that I handwrote birth in front of mother.

We provided a supporting affidavit for the constitutional challenge that brought about this bill. In our affidavit we stated, we hated the idea that for any period of time, even if it was a short period of time, we might be considered the child's parents and might be given the obligations and responsibilities that go along with that. We do not want to have any more children, we each have children who are adults now. At a time when I simply wanted to rest and recover physically from the birth, we had to sign significant legal work and, in our case, it took several weeks for the birth to even be registered by Vital Statistics, and the fathers were not even able to apply for a court order for some time and all the while we remained on the birth certificate.

We are very happy that this bill addresses that the surrogate's spouse no longer needs to be named on the birth certificate, and I also understand that safeguards are needed for surrogates, but I do not feel that this level is needed. I had a surrogacy agreement in place and though I know it's not recognized by law, I felt very comfortable throughout the process.

In any event, I just want certainty that in–sorry, certainty in the legislation that applications will be dealt with very quickly and that will–it will not require significant paperwork and other time from surrogates immediately after birth, as we really just want to rest.

I chose to become a surrogate not because I wanted to become a mother or a parent again; I've already experienced that joy. I became a surrogate to give others the opportunity to experience that same joy. I don't feel that not being on the birth certificate is leaving me out of anything, but it is giving the true parents the peace of mind and rights they deserve. In any event, I just want certainty in the legislation that applications will be dealt with very quickly and that it will not require significant paperwork and other time from surrogates immediately after birth.

Floor Comment: If you don't mind, Mr. Chairman, I'd like to say a few things.

Mr. Chairperson: Please, go ahead.

Mr. Bradley Miller (Private Citizen): As we've mentioned and that was mentioned in the past, with respect to the birth registration and birth certificate and also an order for non-patronage, not only due to the fact that neither of us at any time were biologically connected to the baby, but it also brings awareness to the fact that it violates, I feel and we feel, our rights and the baby's rights to confidentiality and privacy. Because it's an order that's registered within the court, it is accessible to the public and anybody else that would like to recover that information through whatever process the courts or the government has in place.

So basically anybody can–if they're going to do research or anything to that level, or journalistically, they can find out that information that myself and my wife who have really no biological connection to a child went through this process.

In reviewing Bill 3, we have not seen anything which would address the potential of privacy or confidentiality issues for all vested persons involved.

***** (19:10)

That's really all I wanted to say. And also, I wanted to comment and expand on the fact that for a period of time, with myself supporting my wife through her journey of surrogacy, I was literally the legal father of a child that I had no biological connection to at all.

That's all I have to say, Mr. Chairman.

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

The floor is now open to questions.

Mr. Friesen: Lisa and Bradley, thank you for being here this evening to share your personal story and your connection with this policy.

We've listened. We've made notes. Thank you very much for attending. We'll be responding generally when I make my comments later.

Ms. Fontaine: Well, miigwech for your presentation. And again, like so many folks that have gotten up here and shared their personal journeys, it is quite extraordinary.

So first off, I have to tell you that in the almost six years that I've been elected, I think that this is the first time that I've seen two people presenting and sharing that time and supporting one another to share what are, again, very intimate details and a journey that you took–a very selfless journey.

And so I just want to lift you both up, but particularly Lisa for making such a–like I said–a selfless decision to help folks become parents which is you know many, many people's dreams–to become a parent. And you helped make that happen, and so I really just want to lift you up for that.

And then to share, really, the lived experience of what this actually looks like, right? We heard from lawyers this evening that talked about, you know, surrogates being tired and then having to deal with all of the legalities and signing paperwork and what that looks like, and then really to kind of map out for the committee that here are two individuals who are the legal parents and have no genetic connection to the baby at all.

So I just want to say miigwech so much and just lift each and every one of you up. Miigwech for that.

Ms. McConnell: Thank you.

Mr. Miller: Thank you for your comments.

Mr. Gerrard: Yes, thank you for an excellent presentation to give us all an understanding of what you've been through.

My question is this: in–if it were possible to sign legal documents ahead of the birth which would transfer parentage right at the time of birth to the real parents, the biological parents, would you think that would be desirable?

Ms. McConnell: Absolutely. It would take away, really, a lot of the fears of the intended parents and give them the rights–you never want to think of worst-case scenarios, but when there's a child involved, you have to.

And you–us as parents, we never had to go through that: who's going to make those medical decisions, who's going to go on the birth certificate. And I feel like if that decision can be made before birth, it would just give everybody else that–everybody that peace of mind and allow them to be the true parents, which they are, but it would just be recognized.

Mr. Miller: And if I may add, we went through this journey and the birth of the child during COVID when it first hit, so that was other obstacles–that it was important that we–we could have been called upon, because we were 'bastely'–basically legally the parents of the child, and with quarantine happening with the intended parents, because they were from another province, it added into additional concerns. Mr. Chairman.

Mr. Chairperson: Thank you.

Any further questions?

Well, thank you again for joining us, and thank you for sharing your story to–this evening.

Next, I would like to call on Lisa Davies McDonald and ask the moderator to please invite them to the meeting. And I would ask that you please unmute yourself and turn your video on.

Welcome, Ms. McDonald. The floor is yours. Please proceed with your presentation.

Ms. Lisa Davies McDonald (Private Citizen): Okay. Sorry, I'm very emotional. Hello, my name is Lisa Davies McDonald and I'm speaking on behalf of myself and my husband, Rory McDonald. I'm a nurse and Rory is a plumber.

In 2018, I was suspected to have uterine cancer. Within two weeks of hearing this news, my uterus was removed at the age of 28. This was devastating and traumatizing for so many reasons, one major one being that Rory and I had not had the opportunity to start a family yet.

Thankfully, the doctors were able to keep my ovaries intact. For those of you who don't know, the uterus is the organ that a baby is grown in, and your ovaries produce eggs, when mixed with sperm, make an embryo. The embryo implants into the uterus and a baby is grown.

After sharing my health news with family, Rory's cousin Sarah offered to be our surrogate, without us even asking. She felt it was important for us to have a chance at having a family, and felt this was something she could do for us. Sarah is not married but has a child of her own who, at the time, was nine years old.

Once I healed from my surgeries, we attended Heartland clinic, which is the only fertility clinic in Manitoba.

I'm shortening the story and fast-forwarding through a lot of timeline since I only have 10 minutes to speak. I cannot stress enough how long all these processes and steps actually took.

At Heartland, we did IVF, which is in vitro fertilization, where they removed some of my eggs from my ovaries and inseminated them with Rory's sperm. They were then able to make three embryos that were 100 per cent Rory and my genetics. We then had lawyers involved with Sarah, our surrogate, to draw up a legal document in order for her to be our surrogate.

After one failed attempt, the second embryo was implanted into Sarah's uterus, and it worked. We found out we were pregnant with our daughter, Robin *[phonetic]*. Again, Robin *[phonetic]* is 100 per cent genetically my and Rory's baby. None of our surrogate's genetics are involved.

Robin *[phonetic]* is now six months old. Words do not describe how thankful we are for Sarah offering to be our surrogate, and how lucky we are that the IVF and implantation actually worked. This has been an extremely traumatizing experience for us and still causes a lot of distress, as you can see. We had so many challenges with starting a family that most people will never experience or understand.

This law, once passed, will make it a little easier for families, like ourselves, going through surrogacy. It is, yes, still horrible that my name is not on the birth certificate immediately at birth, but our surrogate's is. With this law, my name would be on the birth certificate of my own daughter in a timely manner, and hopefully with less stress and confusion involved.

We relied heavily on our lawyers to do a lot of the work for us, as it was a very confusing process. It took about five months for us to finally get the birth certificate with our names on it. I don't think I need to explain how distressing it is to have someone else recognized as the mother of your own daughter.

In a perfect world, my name would be on the birth certificate from the start, but this bill at least is a step in the right direction. By not having our names on the birth certificate, I was unable to apply for the Child Tax Benefit, to have her name on my Manitoba Health card and any documents like social insurance number or passport.

This whole process of IVF and lawyers to write up the surrogacy agreement and then, after birth, request us to be on the birth certificate, cost around $30,000 or more, which, thankfully, we were able to afford, but many people can't. Anything to make this process easier and more streamlined is much appreciated.

***** (19:20)

I am my daughter's mother and I was the second that embryo was implanted into our surrogate. She is genetically mine, not my surrogate's, and to not be recognized as her mother for that period of time still causes me a lot of distress. I hope one day women who are unable to carry their own children are no longer discriminated against as I have been.

I don't think people realize the disadvantage women have when you can't birth your own children. I did not qualify for maternity leave, as maternity leave is for people who physically give birth. I only qualified for parental leave, which is significantly less time at home with your newborn baby.

Because I didn't qualify for maternity leave, my workplace, the WRHA, did not provide me with maternity leave top-up. They would usually provide someone who births a child a 90 per cent top-up of their EI benefit, which is, obviously, financially great, and I explained that I am caring for a newborn baby, and had I birthed her myself I would qualify for this financial compensation. But they said they do not top-up parental leave. So, again, I'm at a financial disadvantage just because she did not come out of my body.

In the hospital, at our daughter's birth, we were considered guests, and we didn't even get a tray of food despite being in the hospital for three days with our daughter, 24-7. And Sarah was considered the birth mother, but she was at home because she wasn't actually the mother of our child.

Every time someone was speaking about our surrogate being the birth mother, it would make me fall apart. So, again, if this bill will alleviate some of the stress that comes with this challenging journey, then that is a positive and I support it.

Thank you.

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

Do members of the committee have questions?

Mr. Friesen: Lisa, thank you for being at committee this evening, for sharing your personal story, yours and your husband's. Congratulations on the birth of your daughter. We took notes as you spoke. We conferred at the table. This is very meaningful. Thank you.

Ms. Fontaine: Miigwech, Lisa, for, again, like other folks who have spoken before you, for sharing such personal details and as you shared as well, like, still very hurtful details, you know, again, to complete strangers and you know I just want to congratulate you on the birth of your daughter, Robin *[phonetic]*. That's really good news. I know that we're all so, so happy here to hear that as well.

And, again, you know, I really do think it is an act of courage to come and speak to complete strangers and share very trying, hurtful but also joyous experiences with folks who are in charge of legislation, who have the ability to effect change, and I hope that folks around the table are listening to some of the concerns that you've brought forward, including that it took five months for you to get the–your birth certificate and to have your names on the birth certificate of your daughter.

And so I know that lots of folks have talked about wanting to ensure that the process is expeditious, and so I hope that that's well understood here tonight. And again I just want to say miigwech for everything that you've shared.

Ms. McDonald: Thank you. I know I was crying the entire time, so I don't know if I need to–if you guys got all that, but I have it written out if that's easier.

MLA Uzoma Asagwara (Union Station): Lisa, yes. Thank you so much for your courage. You have shown a tremendous amount of courage while be–for speaking to committee tonight. You're just an outstanding person. You are so, so strong–you're so strong, and I cannot thank you enough for using whatever platform you have available to you to educate people, to share your story and your family's story to inspire hope in people who are navigating similar or the same challenges that you all have. And I just want you to know how grateful we are that you took the time to be here tonight, and I wish you well and send you tons of love and care as you move forward and as you heal yourself and as a family. It's good to see you and thank you so much for making the time.

Ms. McDonald: Thank you.

Mr. Gerrard: Thank you. I think it's an amazing presentation, an amazing story and it's wonderful that you could share it.

I have two quick comments maybe you can react to. One is that I sense that you would much prefer that right at the time of birth the transfer would be there so that you would then be the–and your husband–the parents right at the time of birth and surely an effort should be made to do that.

But the other question is, will the changes in this bill be sufficient that you would get the credit, the maternity leave and the top-ups, or would that still be a problem and still need to be addressed in this bill somehow?

Ms. McDonald: I believe that–no, I agree with you that right at birth, if that was possible to have us as the birth parents that would be–alleviate a ton of stress.

As far as maternity leave, I don't believe so because that's a federal government issue. They–their, I guess, their terminology is birthing an actual child. So our surrogate qualifies for maternity leave to heal after a birth, and the parental leave is to care for the child. It's just, I guess, how they have set it out but I–so I don't believe this bill would change that. But I mostly gave that as an example just to show how stressful this whole process, so.

Mr. Chairperson: Thank you very much for joining us this evening.

We are going to take a bit of a pause. Just simply, we have lost the feed. So we're going to take a short recess while they work on that and then we'll come back in and, again, thank you to our presenter.

So we'll enter into recess.

The committee recessed at 7:27 p.m.

The committee resumed at 7:28 p.m.

Mr. Chairperson: Okay, it looks like we've got everything back up and running and in order here.

So, we will continue here, and we will call on our next presenter, which is Brianna Darbel, and ask that the moderator invite them into the meeting, and I would ask that you unmute yourself and turn your video on.

You ready to go, Ms. Darbel? Thank you very much for joining us this evening. Please proceed with your presentation.

Ms. Brianna Darbel (Private Citizen): So, I'm Brianna Darbel. Unfortunately, I don't have a lovely prepared statement like the other speakers.

I am a courier for FedEx and this is our very, very busy time, so I'm awake at 4 and I work until 6 o'clock at night. So I just have a couple of notes that I wrote down and hopefully I can be somewhat coherent.

***** (19:30)

So I was a surrogate. Baby Quinn was born in June of 2019. I am the mother to three children who are now five, seven and nine.

I was first introduced to surrogacy when I was just a teenager. My sister, my older sister, went through ovarian cancer at a very young age. She was 18 years old. And by the time she was 19, she had been through two major abdominal surgeries. They had removed both of her ovaries and she had gone through several rounds of chemotherapy. She did end up beating cancer and is now, I think, 14 years cancer free.

They had mentioned that she was going to need an egg donor if she wanted to have her own children, and they weren't sure if she would be able to carry them because they thought her uterus might have been damaged in the surgeries and with the chemotherapy. And even at 17 years old, hearing that, I knew right away, well, I'll grow the baby for her, then. That just automatically popped into my mind: that's something I can do for my sister.

Fast-forward a decade or so and I had completed my family. I had had my three children, and my sister had been anxiously waiting for me to be done having babies so that she could maybe have a chance at my uterus. Throughout the initial process, the initial medical screening process, it turned out that her uterus was actually fine and healthy, and I now have a niece and nephew. She calls it her catcher mitt of a uterus. So she doesn't have ovaries, but she was able to catch those babies just fine.

I was still really attached to the idea–I'm sorry, hold on just a moment. I need to go close that door. Sorry, we took a recess, and I tried to do bedtime, but there wasn't enough time.

So I was still really attached to the idea of being a surrogate, and I just knew–my sister had a family friend who donated her eggs. It's an amazing, selfless donation, and it's the reason that my niece and nephew exist. And between that and having this idea of surrogacy, I just knew that I wanted to give something to another family. And I was drawn towards a male gay couple because they are faced with some unique challenges in that they have no ovaries and they have no uteruses, and they will have to have–they will have to use a surrogate or have a baby with the help of a surrogate if they want to have their own biological children.

And so I kind of put out my feelers to a couple of my friends, and a really good friend of mine reached out and said she had two friends who had actually started looking for a surrogate, and would I like to speak with them. And so I said, you can give them my email and we will chat. And we talked a little bit, and we FaceTimed, my husband and I, and Brandon and Austin FaceTimed. And it was just an instant connection, and I knew right upon meeting them that I wanted to help them grow their family.

And so we have–we have a really great relationship. Unfortunately, they live in BC, and with the pandemic, we haven't been able to see Baby Quinn as much as we'd want to. But I knew right from the beginning of being a surrogate that I had no ownership to that baby. When I tell people that I was a surrogate, one of the first things that women often–women who are–who have children say to me is, oh, I could never; I could never. And, you know, my response to that is always, well, that's why you're not a surrogate. It's the people like me who know that we can take care of that baby. I called Quinn my little belly buddy. I can have a belly buddy and I can grow this baby and I can keep her safe until she's ready to meet her parents. And I just knew right from the beginning that I would have no issue with that. I had no parental aspects, no maternal feelings, I had no ownership. Through the entire pregnancy, there was always that separation there.

And so when we're going through surrogacy, there is a lot of legal documentation that has to get done. We have to have independent legal representation before we even start with the embryo transfers. And so it definitely kind of prepares you for the process. As some–the other surrogate was saying who was speaking earlier, it was a little bit disconcerting to hear that I was going to be put on the birth certificate and that my husband was going to be named as the father, because I wasn't doing this to become a parent; I was doing this to help other people become parents. I don't–I have three children of my own. They are a lot of responsibility, and it costs a lot of money. And I did not want the responsibility or the ownership of being placed on the birth certificate. Unfortunately, at the time, those were the rules and that was the law, and so that's what we had to do.

So, Quinn was born in June of 2019, and we actually opted to do a home birth specifically to avoid the complications that are involved in having a baby in hospital with intended parents. As a person before me was saying, you know, they couldn't even get a tray of food because they weren't recognized as parents. And so, having the baby at my home meant that she was born directly into Brandon's hands, which was the single greatest moment of my life, is seeing this person meet this baby. It was incredible. And I got to go upstairs to bed and they got to bond right away. And there was none of the legal complications involved.

And I understand that that's not everybody's comfort place, but that was something that we were able to do to make the process a little bit easier on Brandon and Austin. They could just take that baby, and they were able to go right home from my house with their baby. They didn't have to talk to anybody, they didn't have to deal with any sort of complications.

Unfortunately, before they were able to go home to BC, they had to do a legal adoption of their own child from me and my husband. And so in the week post-birth, where I am supposed to be recuperating and recovering and Brandon and Austin are supposed to be bonding with their baby, instead they were having, you know, legal meetings and they had to come to my house and I had to sign a whole whack of legal documentation. And it was definitely upsetting. And I felt so bad for Brandon and Austin that this was a hoop that they had to jump through. It was their baby, I grew that baby for them, and they still weren't being recognized as their parents.

And so I'm happy to see in the introduction of this bill that the partners of surrogates are being left off of the birth certificate. As other people have spoken to, I am hoping that there will be some certainty on the expedition of removing the surrogate from the birth certificate as soon as possible and with as little complication as necessary.

You know, the less court documents that I have to sign after having a baby the better it is for me. And the less work that the intended parents have to do post-baby when–or, post-birth when they are supposed to be bonding with their baby, the better it is for them.

And so, I think that's about everything that I wanted to say. So thank you very much for your time, Mr. Chairman.

Mr. Chairperson: Thank you for your presentation.

The floor is now open for questions.

Mr. Friesen: Thank you, Brianna, for joining us after a long and busy day for yourself. Thank you for speaking about your personal experience. An amazing story of your relationship to surrogacy. You are in many ways the expert, and I just wanted to say we appreciate your comments.

We discussed a few things, what you spoke about, here at the table. We have made some notes. I will be responding later on in some comments that I make. Thank you again for joining us.

Ms. Fontaine: Well, miigwech, Brianna, for your presentation. Just so you know, I think we all just love you over here, like your presentation was really good. We just got some joy listening to you share your experience and what is a gift. Again, it is a selfless gift to want to help folks become parents. And so miigwech for sharing your journey and for your recommendations and again, of course, your experiences. Miigwech.

Mrs. Cox: Well, Brianna, I just want to say thank you so much for sharing your story. You are a remarkable, remarkable woman, and you've made a life changing difference in the life of that–those two new parents. So thank you for what you've done, and thank you for sharing your story, and thank you for being such a wonderful person. We really appreciated hearing from you this evening. Thank you.

Ms. Darbel: Thank you for all the comments, and thank you for having me speak today. I appreciate it.

Mr. Gerrard: Thank you so much for sharing that story and your emotions through the whole process and making it real to us, in terms of what happened.

***** (19:40)

My sense is that you would prefer, if it were possible, to handle the legal work before the birth so that right at the time of birth, that would become–the baby would become the baby of the parents and not the–there would be no longer any involvement, at least on paper, with the baby.

Ms. Darbel: Yes, ideally that would be the best circumstance I think, is to have the parentage recognized upon birth. I am very envious of the BC and the Ontario laws that have it just built into their legislation; when they register the birth, the parentage is recognized.

I understand that, you know, rewriting the bill is complicated and so, you know, if there's a way to just guarantee that that process is streamlined and expedited, then that is wonderful. But yes, if we could avoid having to do a court order and avoid having my name on the birth certificate at all, that would be the ideal outcome.

Mr. Chairperson: Good. Thank you very much.

Seeing no more questions, thank you very much for joining us this evening and sharing, and presenting to our committee.

So, at this time, I will now call on Joel Lebois and ask that–the moderator to please invite them into the meeting. Please unmute yourself and turn on your video.

Good evening, and I hope I mentioned your name right. Is it Mr. Dubois *[phonetic]*? Floor is yours.

Floor Comment: Lebois.

Mr. Chairperson: Dubois *[phonetic]*? Thank you. Please, the floor is yours, go ahead with your presentation.

Mr. Joel Lebois (Private Citizen): Good evening. My name is Joel Lebois, I'm a lawyer who specializes in humans-right-related issues. I'm appearing before you today as the chair of the sexual orientation and gender identity section of the Manitoba Bar Association.

I would echo my learned friend, Ms. Hocken, in highlighting that the Bar Association would normally be consulted in processes such as these, and I am chagrined that that has unfortunately not been given time in this matter; but here we are.

Mr. Vice-Chairperson in the Chair

I should also begin by stating that I am not an expert on the law that surrounds parenthood in Manitoba, and will instead be focusing on the potential impacts that this legislation may have on members of the two-spirit, lesbian, gay, bisexual, trans and queer plus community. My focus will be on same-sex parents.

Male same-sex parents form an important percentage of all surrogacy users in Manitoba. However, the treatment of surrogacy in this bill is problematic, but can be corrected before this bill becomes law. The requirement for a court order, in essence, a requirement that male same-sex parents have to jump through more hoops and different hoops than other families, will, in my opinion, be at risk of not surviving another constitutional challenge.

There are currently three jurisdictions in Canada that recognize parentage immediately upon birth; those would be British Columbia, Ontario and Saskatchewan. BC's legislation was put in place in 2014, Ontario's in 2017 and Saskatchewan in 2020.

There is only one province that addresses assisted reproduction using the court-order model currently proposed under this bill, and that's Alberta. And that legislation has been in place for quite some time and is now dated. All recently set out legislation in Canada sets out the administrative process with an immediate-recognition model, as opposed to the model requiring a court order.

The question to ask yourselves therefore is fairly simple: Shouldn't male same-sex parents have the same rights as others when it comes to being recognized as parents? I would hope that this body determines that the answer is yes.

Currently under this bill, there is a different treatment of same-sex mothers versus same-sex fathers. For same-sex mothers, including lesbian couples, both parents get to be registered on their child's birth certificate immediately, and both are recognized as parents automatically under the law, with no court order required.

Though I understand that surrogacy may need some checks and balances, that should be looked at through the lens of differential treatment based on protected constitutional characteristics. Simply put, if the process proposed by this legislation is not easy and

straightforward for same-sex dads, it will lead to another constitutional question as to whether the legislation is minimally impairing. If the legislation is not minimally impairing, it will not be constitutionally compliant, and I foresee another challenge coming if the parental registration process and parental recognition is not easy and expedited for same-sex dads.

It is therefore important to ensure that this legislation sets out fewer barriers. The court order model is out of date, and it is my hope that an administrative model will be favoured by this committee. In the event that court orders are the result of this process, what would still be needed by same-sex dads would be that all orders be made with certainty, with ease and on an expedited basis.

Currently, the bill requires male same-sex couples to choose which of them goes on the child's birth certificate at first instance, and I would like to really pause here for a second and encourage you to imagine how difficult that would be for those couples and how difficult that decision would be to make. There's a ranking that happens in parenthood. There will be a first parent and a second parent. And the exclusion of one parent, even if it's only temporarily, will not meet the minimally impairing test.

Consider all of the ramifications that may come along with that for the dad that is not initially recognized as a parent until a court order is pronounced. You've already heard submissions about this earlier this evening, and those ramifications would be serious and would have a significant impact on the life of that dad. Truly, this legislation should be all about intention to parent, so biology or gestation are not really what matters.

Mr. Chairperson in the Chair

Same-sex dads need a clear path to legal recognition after birth as soon as possible and as early as possible. Otherwise, this bill will not have addressed the order that was made as a result of the previous constitutional challenge.

As to the details of how this can be achieved, I defer to my learned friend Robynne Kazina and to Rhoni Mackenzie from her office, whose submissions align with outcomes that would properly consider the interests of the 2SLGBTQ+ community. I believe Ms. Kazina's submissions to be comprehensive on these and other questions, and on behalf of the SOGIC section of the Manitoba Bar Association, I recommend that you implement her proposed amendments to the bill.

Subject to any questions that you may have, this concludes my submission.

Thank you.

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

The floor is now open for questions.

Mr. Friesen: Thank you, Joel, for being with us this evening. Thank you for your presentation on this bill.

We've made notes. I will be making comments later on that address some of the points you've made. Once again, thank you, tonight, for being with us.

Ms. Fontaine: Miigwech, Joel, for your presentation and for your analysis.

Can you explain a little bit more, in respect of, potentially, a challenge further down the line in respect of same-sex male couples–parents versus same-sex female parents? Can you just please explain that a little bit more in detail?

Mr. Lebois: Yes, thank you. My focus here would be on male same-sex parents because they would face the most barriers under the currently proposed model.

So, under this model, they would have differential treatment based on the protected characteristic of being male same-sex partners who are seeking to parent a new child, and because that differential treatment would be significantly different from what other families would encounter and the barriers would therefore be more and the cost would be increased, the time spent would be more, that differential treatment would have to be justified under our current constitutional model, and what I'm proposing to you is that that would not be justifiable under our current constitutional model, as was seen under the previous challenge.

And because the test itself is to look at whether or not the legislation is minimally impairing–so did the legislator make decisions that minimally impacted people based on their protected characteristics–in this instance there are other avenues that are available to the legislator that would allow them to make better decisions and to have fewer impacts on same-sex male partners.

Mr. Gerrard: Yes, thank you for your presentation.

You've made it very clear that British Columbia, Alberta–no, British Columbia, Ontario and Saskatchewan all have models in which the parents become parents immediately on the birth of the child,

and would it be possible to change this legislation to achieve that so you can get around many of the problems that you've presented?

***** (19:50)

Mr. Lebois: In my opinion, it certainly would be. There is absolutely room to follow a model as per what BC, Saskatchewan and Ontario have adopted to make sure that an administrative model would be favoured over one that adopts court orders as the necessary option that's available for especially same-sex parents who have used surrogacy, and that would certainly be the preferred model because it has the fewer–the lowest amount of barriers, the least amount of cost and would have the quickest and most sure result.

Mr. Chairperson: Any further questions? Hearing none, I want to thank the presenter very much for joining us this evening and sharing your time with us.

I will now call on Matt Erhard and ask that the moderator–to invite them into the meeting. I would ask that you please unmute yourself and turn your video on.

Mr. Erhard, welcome. The floor is open for your presentation.

Mr. Matt Erhard (Private Citizen): Right. Thank you very much and thank you, everyone, for your time tonight. I appreciate all the panelists who have spoken tonight and their stories, and I don't have anything too formal to prepare today. I wanted to share that we–we're a same-sex couple here in Winnipeg, and we have a three-week old baby at home. So my attention has been a little bit elsewhere instead of being able to have time to prepare for this presentation. But I really felt it was important to be part of this process as well.

Just to share a little bit about, you know, our background. My name is Matt Erhard; my husband is Aaron Royal. We've been together for 10 years, married for five–maybe six years, and I'm in the field of professional and executive recruiting in Winnipeg. My husband is a real estate agent. And so we–currently we have a two-year-old daughter and, as I mentioned, we have a new–brand-new three-week-old daughter at home as well. That's how we, you know, both conceived through surrogacy.

And so, obviously, we–you know, we needed a surrogate in our process. We think we always knew we wanted to have children ever since we first, you know, got together a number of years ago, and we really, you know, evaluated all the different options that were available to us, whether it was adoption, surrogacy, and we actually, at one point, chose adoption. We really felt strongly about adoption, and through that process, you know, it's a challenging process to go through as well, and there are very few adoptions that happen privately in Manitoba.

And so we decided, you know, it was really important for us to create a family and have children, and so we decided to look into surrogacy and went down that path, and it's been a really positive experience.

When we first got into looking into surrogacy, it was a whole new world for us. We didn't really know what to expect or where to go, and we connected with a surrogate in Ontario, and we really matched with the surrogate really well. We had a great relationship.

Throughout the process we always thought it would have been really nice to, you know, connect with a surrogate in Manitoba to be close and be really part of the process, you know, getting to attend appointments and all those kind of things. But, in the end, you know, we connected with a great surrogate in Ontario, and, you know, we felt really fortunate to connect with her, and she was really giving, and we had a really great relationship.

And so we were–for the first time we went through this process with our first-born, you know, it was before the pandemic, so we were able to travel quite a bit, and we got to attend a lot of the appointments in Ontario and, you know, this second time around, because of the pandemic, we unfortunately weren't part of that process. But both our children were born in Ontario.

And as we went through the process and matched our surrogate and learned some of the legal ramifications, we actually realized we were really fortunate to, at the time, to have connected with a surrogate in Ontario versus Manitoba. We were really completely shocked to, you know, hear some of the laws in Manitoba that it was–you know, we wouldn't be going on a birth certificate right away, that there's a declaration of parentage that has to happen, and, you know, in the end, a lot of people told us we were actually really fortunate to work in Ontario versus Manitoba because of some of those issues, despite the challenges of being, you know, far from home and having to travel during a very challenging time, you know, during the birth of our children.

And, you know, so it was tough the first time we–you know, it was all new to us the first time our daughter was born in Stratford, Ontario. We had a lot

of meetings with the hospital ahead of time in preparation for our arrival, and, you know, really–I don't really have too much of a story to tell because the process was so seamless. You know, we were treated just like any other couple having a child, you know, at the hospital. And not only that, you know, the process of us both going on the birth certificate was, you know, was extremely easy. You know, there was not even a thing. We were, you know, just the same as–treated like everyone else and we were both put on the birth certificate. Our surrogate wasn't involved in that process and, to be quite frank, you know, she was happy about that, as well, too, you know.

Throughout the process, you know, our surrogate has four of her own children and she's been a surrogate I think four times now, as well. And she told us, you know, she's in Ontario, we're in Manitoba, and that we better get to Ontario in time for the birth of our children because she said she's not a parent–she's not parenting these children. She's strictly the surrogate and she felt, you know, we needed to be there.

And so we really made sure we were there on time and to be there for the birth. And, you know, for our first-born, I got to be in the delivery room. I caught our daughter and I was the first to hold her, and it was a really special moment. And the hospital, you know, works with same-sex couples all the time. And it was–we were, again, we were treated like everyone else. And the legal process after, you know, we were put on the birth certificate right away and it was, you know, a really seamless process.

And so I think that, you know–just want to mention again that I felt, you know, in the beginning when we matched with a surrogate in Ontario, we were a little bit disappointed that it wasn't in Manitoba, but, you know, in the end, for us, we were thankful. And when we went through round two, you know, that was really important for us that, you know, our surrogate was also in Ontario because of this.

And despite the challenges of travelling and being in Ontario for the birth for, you know, three, four weeks, we knew that was something that was really important to us because we don't even know what that process would be like to have to select one of us to go on the birth certificate.

You know, we, being a same-sex couple already, we have a lot of challenges that we have to go through in terms of, you know, creating embryos and doing that entire process. There's, you know, a lot of complex steps. And, you know, after the–our child is born, to have to make, you know, decision of who's going on the birth certificate and, you know, having somebody else who's not even genetically linked or going to be involved in the parentage of our children on the birth certificate would, you know, I couldn't even imagine what that would feel like. And we were really fortunate we didn't have to go through that process.

And so, you know, I–again, I can't imagine what other Manitobans, you know, same-sex couples or other people using surrogates in Manitoba would have to go through and I think, you know, that it's fairly discriminatory to actually, you know, have somebody who's not involved in the parentage of the children or typically genetically linked to the child, as well, and then have to have one of the parents declare, you know, whether it go through an adoption or declare their parentage. I'm not sure, sort of, the legal ramifications.

And so that's really, you know, what I wanted to share tonight. You know, our experience in Ontario was unbelievably positive. It was seamless. You know, again, we were treated like anyone else. We weren't given any special treatment. We were treated just like any other couple having a child, and so I really feel that, you know, this should really be part of the changes in Manitoba.

And, you know, we would love to have had the opportunity to have our children in Manitoba as well and–but unfortunately, you know, that wasn't the case, and if we had known some of the legal ramifications when we started the process of looking for a surrogate, we probably would have excluded, you know, looking in Manitoba, as well, too, because that part, you know, was just so important to us.

And I don't think that would be something that, you know, we would be able to, you know, to go through. There's already challenges enough going through the processes we went through and, you know, I think that, you know, that's sort of what I feel is really important.

So that's really all I have, you know, all I have to share today, and would welcome any questions, you know, from anyone.

Thank you for your time.

Mr. Chairperson: Well, thank you very much for your presentation.

The floor is open for questions.

Mr. Friesen: Matt, thank you for appearing at committee this evening. It's been good to hear from you. Thank you for sharing your personal experience.

I've made some notes as you've spoken, and I said to others, I'll be responding shortly with some comments that reflect my responses to the things you've said, as well. So thanks for being here.

Ms. Fontaine: Miigwech, Matt, for sharing your journey with us here at the committee, and just congratulations on your new baby.

***** (20:00)

And I'm–I think I can probably speak on behalf of several folks around the table–like, you know, we're really happy for you, really happy that your experience was a positive one, was a caring one, was a loving one. You deserve to be able to go through the birth of your children seamlessly like you're saying and experience all the joys of having children. And so I just want to say I think we're, like, super happy for you that it was like that for you, your journey was like that.

And congratulations. Congratulations on your new baby.

MLA Asagwara: Thank you so much for sharing your story with us, and I would echo my colleague's sentiments: congratulations on your new baby and congratulations on both of your children.

You know, I think it's really important for everyone to be able to reflect on what you talked about in terms of making the decision to have your children, your second child, in a jurisdiction that made it seamless for you and that, you know, as a new parent, you face all kinds of challenges, and that shouldn't be one of them. You know, no parent should have to make the decision to, you know, have that kind of distance between that experience during that process and then have to make the choices that you made in terms of having to go to another jurisdiction in order to ensure that they can fully be a part of, you know, the transition that you folks went through without the additional stress or legalities that, unfortunately, folks here in Manitoba face.

So I just want to thank you for outlining that and articulating that so clearly. It is so fundamentally important that all parents have the least amount of stress in terms of, you know, meeting or taking that next step in their family's journey. And yes, I just can't thank you enough for really making that clear here today.

And hopefully, you know, the minister is listening and the department is listening and everybody here is taking it to heart and makes a decision to ensure that, you know, all parents and all families have just as seamless an experience as you folks did right here in Manitoba.

So, thank you.

Mr. Chairperson: Mr. Erhard, any comments?

Mr. Erhard: No, thank you very much for all your comments. I appreciate the time tonight.

Mr. Gerrard: Thank you so much. You know, I think it's, you know, exciting hearing what you've been able to accomplish and that it was so much easier in Ontario.

Can you tell us, was there a whole lot of legal paperwork that you did in advance, or how–what was the process? Tell us a little bit more about what the process was like so that we can learn and perhaps make changes to the law here to introduce what's similar in Ontario.

Mr. Erhard: So, I think, you know, in terms of process, we–you know, we did have a legal contract with our surrogate ahead of time that really outlined all the details. We also had communication directly with the hospital and we worked directly with a surrogacy lawyer during the process as well, too.

In terms of after the child was born, there was–there is, you know, same as sort of what I think is involved in this bill, which I think is a two-day time period for the final paperwork. In Ontario, it is still seven days for the final paperwork to sign with the surrogate. And so that was the only, you know, small piece that we had to do. So I think, you know, two days is definitely better than seven days in Ontario, and so we had to sign that on the seventh day with our surrogate.

And I think, you know, it really–aside from, you know, some of the legal paperwork and our contract with our surrogate ahead of time, you know, I think that was really about all the process that we went through.

Mr. Chairperson: Any further questions? None?

Thank you very much again to the presenter for joining us this evening and for sharing.

I will now call on Courtney Maddock and ask that the moderator please invite them into the meeting. Please unmute yourself and turn your video on.

Welcome, Ms. Maddock. The floor is yours for your presentation.

Ms. Courtney Maddock (Private Citizen): Thank you so much. Good evening, and thank you for the opportunity to let me speak tonight on the proposed changes to The Family Maintenance Act. It's an incredible privilege to have citizens be able to speak to legislation brought forward in front of the Legislative Assembly.

My family was one of the seven 2SLGBTQ families that brought forward the constitutional court challenge to reaffirm what we already knew: that the previous law was discriminatory. I would like to share a little bit about how the former Family Maintenance Act affected my family and my daughter.

After two years of referrals, tests, counselling, IUI and finally a successful IVF treatment, I was fortunate enough in November 2017 to become pregnant with our daughter, Charlotte Jordan Ruth *[phonetic]* Maddock Stockwell, or as we call her, C.J., for short. I'm sure most birthing parents will hate to hear this, but I had an incredibly easy pregnancy: no morning sickness, only minimal fatigue, minimal cravings–although some people don't agree with that one–but, most importantly, I had a healthy baby who was meeting all growth guidelines.

As I headed into my last week of pregnancy, I was feeling, as I'm sure most do, large and uncomfortable, but so ready to meet our daughter. My hospital bag was packed and ready, but there was one extra thing we needed to think about, and that was information for our lawyers in case Jill wasn't recognized as C.J.'s parent.

My contractions started at 39 weeks and six days, and I did what all parent–birthing parents would start to do: I started timing my contractions, monitoring our daughter's movements. And 24 hours later–yes, 24 hours later–I checked myself into a hospital, into the Women's Hospital, on the recommendations of my doctor. My labour progressed slowly, and, thankfully, due to modern medicine and the epidural, there wasn't much discomfort. But I would also like to just take a quick moment to thank the staff at the Women's Hospital who, through three rotations that I was there for, were always ahead of the law and completely accepting of our family.

On August 10th, at 8 p.m., my doctor came in and told us that C.J. was in distress, and at that point, that started a whirlwind of activity. We had less than 10 minutes to decide, but let's be honest: the health of our daughter was our first priority and the quickest decision that either of us have ever made. The decision was easy, but it didn't come without some serious concerns. What if I lost consciousness during the procedure? What if something went wrong and I couldn't decide? Would the hospital let Jill make medical decisions for C.J.? Or would they move to her next legal kin, which was my parents? This is something no one should have to worry about as they head in to an emergency C-section.

I am incredibly thankful and grateful that C.J. was born, and my health was never a concern. And we now have an opinionated, thriving and joyful child.

These last five years have been an incredible journey, and I hope this committee listens to the concerns from other parents who've spoken before me. I won't reiterate what they said but just add that they are also their child's parents and deserving the same rights as any other parent.

I would also like to take a moment to thank our legal team: Robynne and Rhoni from Taylor McCaffrey, Allison and Byron from the public law–Public Interest Law Centre. We couldn't have made these changes to the law without you. And, finally, to the seven other families and the families who will be granted full legal rights once this bill is passed and enacted: I cannot wait to celebrate with each and every one of you.

Thank you so much for giving me the time to present tonight.

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

The floor is now open to the committee for questions.

Mr. Friesen: Courtney, it's nice to see you. Thanks for being at committee tonight. Thanks for sharing your personal story, yours and your spouse. And I'll be making comments in just a moment where I respond more generally to the speakers who have presented this evening. So once again, thank you.

Ms. Fontaine: Miigwech, Courtney, for your presentation this evening and of course sharing your journey of you and your family.

Have–as one of the original seven families that were a part of the challenge, were you ever consulted in the construction of Bill 3 here by the minister or anybody in the department? So were you consulted on that?

And then maybe if you can just offer some commentary on whether or not you think that it is beneficial to maybe be looking at an administrative model here in Manitoba.

Ms. Maddock: Yes, definitely. So, no, we were not consulted in this process.

I definitely would be agreeing with an administrative model. When we were looking at what would be required for Jill to adopt C.J., or–I guess it's considered adoption, or get legal rights–it was going to be a long process. We were going to have to get her birth certificate and then apply and go to court. And, thankfully, we did not end up doing that process because of the court challenge, so Jill was able to become C.J.'s legal parent in November.

***** (20:10)

But that burden on families is definitely something there, and it's something we had to consider as we moved forward with our pregnancy.

Mr. Gerrard: Thank you so much for sharing your story.

The question I have–we've–from the presenters so far, clearly, there's a problem with how this bill is going to work in terms of situations of surrogacy, but you used intravenous–or intrauterine fertilization, or IVF, and does this bill fully satisfy and bring up to date the needs of parents in your situation or would there need to be some changes as well in this area?

Ms. Maddock: So, I believe so. I'm going to, obviously, refer to Robynne because she is the best person to speak on this, but from my understanding in our specific situation it does allow Jill to become–or any other parent who is going through IVF–to become a parent automatically.

Mr. Chairperson: Any further questions from the committee members?

Hearing none, thank you very much for joining us this evening and for sharing your story and your presentation.

*** * ***

So this concludes the list of presenters that I have before us this evening, and we will now proceed with clause-by-clause of Bill 3.

Does the minister responsible for Bill 3 have an opening statement?

Mr. Friesen: I do, Mr. Chair.

Mr. Chairperson: Minister Friesen, go ahead.

Mr. Friesen: I want to first start out by thanking all of the presenters at this evening's committee. It was a long evening but a good one and a chance for all of you who are present to talk about your experience, to talk about your relationship to this bill, whether that is professional or whether it's personal.

We heard many personal stories: emotional, moving. And there's a lot of learning that all of us at the committee table have done tonight as we've further understood how our legislation really has an impact on people and their lives in the province of Manitoba.

I'm pleased to be sponsoring these amendments that are–comprise Bill 3, replacing section 2 of The Family Maintenance Act, essentially establishing new rules regarding recognizing the parents of children conceived through reproduction, including through surrogacy.

There are two things I would want to make clear that the bill is doing. It's ensuring legal recognition of the intended parents who have legal rights and responsibilities regarding their child. And also, of course, we are safeguarding the rights of children, first and foremost.

We know the background to this, that in Manitoba amendments are required because a section of our act was found to be unconstitutional, and so that's–we're bringing forward the changes that provide the remedy. The bill corresponds to the court's order.

And we know as well that the provisions respecting surrogacy provide a clear path as to what happens upon a child's birth and who has parental rights and responsibilities. I'll speak just a bit more about that in a moment.

I want to indicate that the bill includes safeguards. I think it's important to keep in mind. It includes safeguards to protect vulnerable persons, including requiring a written surrogacy agreement before a child is conceived using surrogacy.

Now, the agreement, as we've said before, is not enforceable as a contract. Now, that's because this is about a child, it's not about property, and the agreement serves as proof of the parties' intentions. The clearly stated requirements set out in the bill will enable an expedited process for the court order to declare that the intended parents are the legal parents and the surrogate is not the legal parent.

There's been a lot of discussion about the issue of expediency and whether the process can work quickly

enough, and I'll come back to that point in just a moment.

But we believe that judicial oversight is a good path, and a path that ensures that the requirements are met will promote good relationships before, during and after the pregnancy, and strike the proper balance. And that's really our intent in all of these things, that we had people today who spoke about their experience, and that is good, it's important, it's valid. But we need to protect the rights of all persons, including the children, the intended parents and the rights of surrogates as well.

So we know that with these amendments Manitoba joins other jurisdictions that have updated their parentage laws to deal with assisted reproduction. And we–as we've heard tonight, not all provinces have proceeded in the same way, but we have done hard work in the department, and I want to acknowledge the Department of Justice, I want to acknowledge those individuals who have spent a lot of time and a lot of effort and done a lot of work, become experts in their own right in the–in this area, a very complicated area. So we thank them for their service to all the people of Manitoba.

I want to speak just for a moment about a few things in no particular order. I did appreciate the acknowledgement this evening that the bill does, of course, move to erase the names of spouses of surrogates from legal forms. It's a step forward. We had people attest to the benefit of this and how it was not working to–in the interest of the parties previously.

I want to indicate there were–there's been a number of concerns expressed about expediency, whether the process will be quick enough. And I think it's very important for us to not throw out a court-based process because of a general concern that's not been tested about expediency. The clearly stated provisions for a preconception surrogacy agreement and post-birth consent of the surrogate, we believe, will enable an expedited process for a 'declaratary' order of parentage.

I believe that the courts, the Vital Statistics Agency and the department itself will all seize upon the need for things to happen quickly. I think that we will focus our attention at being able to support and implement procedures to ensure that intended parents are recognized as expeditiously as possible.

Where the requirements set out in this bill are met, it's anticipated that the court process can be streamlined. We should not lose sight of the fact that by virtue of the fact that so many things are being clarified, so many things are being delineated, this will assist the courts.

I would also want to make mention of the fact that in jurisdictions like BC, that were referenced several times tonight, it has not been the case that an administrative process has erased significant paperwork or administrative duties. In fact, that jurisdiction has seen administrative paperwork grow. So there is no clear connection between court-versus-administrative process and somehow erasing paperwork.

We do want to make sure the process works. We will be observing, monitoring this process, but we should not assume that the courts do not share our interest in making these things happen quickly.

Heard a number of comments of support for the bill, including the–that it's a streamlined process. I heard individuals indicate that they believe that these are significant measures that will allow the parents' name to go on a birth certificate in a timely manner–I believe Lisa said that earlier today.

I wanted to clarify–there were some comments that Vital Statistics wasn't working fast enough–and we acknowledge, in Manitoba, there's been big problems at Vital Statistics, but I heard our Minister of Finance (Mr. Fielding) share just very recently an almost 99 per cent reduction in accumulated backlog. That's been through the hiring of staff, it's been through moving employees from term to permanent, bringing in expertise, bringing in technology. So we are very pleased with the advances at VSA that is helping to correct some of those challenges.

I do want to correct the record. There has been a number of times–one person made the comment that the court order process is out of date and that somehow Manitoba was unique in its court order process. That is not correct. About half the provinces have a court order process; about half the provinces, maybe less, are administrative in their approach. It is not true to say that Saskatchewan has an administrative model. There is a certain circumstance in which Saskatchewan contemplates an administrative model. Otherwise, it's based on a court process. So I do want to be clear for the record on those questions.

***** (20:20)

I heard an individual say that the bill goes a long way to achieving improvements. We believe that as well. Is this perfect legislation? These are very complicated issues, and so at the end of the day we say, while not perfect, we think that this is a very, very

good step in the right direction. It acknowledges the shortcomings in Manitoba. It creates remedies that strike, we believe, the right balance between the rights of parents, the rights of the surrogate, the rights of children.

I appreciate the acknowledgement by one of our last speakers–I think it was Matt–who said that the two days for that period of time, that interval of time, is sure better than the Ontario seven days. So we want to acknowledge that as well. Thank you, Matt, for that acknowledgement.

I would want to say that the bill is based on an acknowledgement that we need checks and balances. We believe this is a good checks-and-balance approach, safeguards against abuses and clarifies a lot of things that weren't clear before.

I think I'll end my comments about there. Once again, I just do want to thank the department for their–for the heavy lifting that they did in respect of this bill. We believe that this is a significant step forward for Manitoba. We believe it serves the interests of parents and children and surrogates. It strikes the right balance. And we look forward to the work of ensuring, as speakers have said, that the processes going forward will be expedited, will be quick and that we are working in the best interests of the intended parents, children and surrogates.

Thank you, Mr. Chair, for allowing me to make these remarks. Once again, thank you to all the speakers tonight at committee.

Mr. Chairperson: And we thank the minister for those comments.

Does the critic from the official opposition have an opening statement?

Ms. Fontaine: Well, again, to all of the presenters this evening who shared their journeys and their experiences and certainly their expertise, their legal expertise in respect of Bill 3 and recommendations on how to strengthen Bill 3, I'm not sure if we heard from the minister just now that he's actually taking into consideration any of the recommendations and levels of expertise that were provided and shared generously with us this evening, which is really the purpose of this standing committee. The purpose of the standing committee is to hear from experts and then to consider some of the recommendations.

So I'm not sure if I heard from the minister any intention of any of the recommendations or proposed amendments that were presented this evening. But I do want to take, you know, a minute to just say miigwech to all of the presenters who came out this evening and shared. I think that was really important. And I agree with my colleague, the member for River Heights (Mr. Gerrard): we did–I suspect all of us actually learned quite a bit this evening, and so we're very appreciative of that.

And certainly, Bill 3 will finally amend The Family Maintenance Act to allow LGBTQ2SA parents and parents struggling with fertility issues to more easily be recognized as legal parents to their children. As society changes and family structures change, our Manitoba legislation must accurately reflect the needs of Manitoba families. Legal parentage impacts so many areas of a child's life and well-being, including citizenship, health-care decisions, custody rights and inherited rights. And so I'm pleased to see that this legislation is finally moving forward.

As we know, these changes are long overdue and actually were originally brought forward by the NDP back in 2017. It took the Chief Justice ordering the PC government, the Brian Pallister-Stefanson governments, to take–finally take action on this issue. And although the PC government has dragged its feet on this issue by allowing the deadline to pass, I'm pleased to see that finally moving on this.

There's been a lot of discussion on the administration model, and I think from folks around the table–or presenters and legal experts have asked for an expedited process but also to look–for the government to look at an administrative model as well.

So again, that–I just want to thank everybody for that and we can move forward.

Mr. Chairperson: Okay, and we thank the member for those comments.

During the consideration of a bill, the enacting clause and the title are postponed until all other clauses have been considered in the 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 this agreed? *[Agreed]* Thank you.

Clauses 1 through 3–pass; clause 4–pass; clauses 5 through 7–pass; clauses 8 through 11–pass; clause 12–pass; clause 13–pass; clauses 14 through 17–pass.

Shall clauses 18 through 20 pass?

An Honourable Member: No.

Mr. Chairperson: I hear a no. Okay.

Clause 18–pass; clause 19–pass.

Shall clause 20 pass?

An Honourable Member: No.

Mr. Chairperson: I hear a no. The floor is open for questions.

Ms. Fontaine: I do have some questions for the minister. So while section 20 of the bill sets out that a donor is not automatically a parent by reason only of their donation, is it intended to explicitly mean that donors are not parents for all purposes of law of Manitoba?

Mr. Friesen: According to the way you've called out the clauses and by virtue of the fact that you got agreement from the committee, the question is arising at 20 sub 1, but these are consequential amendments, and if you revert back to the bill, all members of the committee will recognize that this section was dealt with earlier and no one spoke against the clause passing.

So this clause has already been passed at committee, Mr. Chair.

Mr. Chairperson: Thank you very much, Minister.

We're just going to seek some clarification.

***** (20:30)

Any further questions? Hearing none– *[interjection]*

So, thank you for your patience.

Clause 20–pass; clause 21–pass; clause 22–pass; clauses 23 and 24–pass.

Shall the enacting clause pass?

An Honourable Member: No.

Mr. Chairperson: I hear a no.

The floor is open for questions.

Ms. Fontaine: So just a little apology to the minister. I guess we had already passed the parts that I wanted to go back to, so I apologize for that. I do have a couple of questions, if the minister would be so kind as to answer.

So the minister has previously explained that certain sections of the bill work in conjunction to clarify who the parents are after two days. Could the minister just reiterate for the committee the sections specifically that specify who the parents are after two days, and would the minister support changes to clarify the presumption of parentage?

For instance, like, who has the authority to make decisions for the baby from two days to court order? Who has the authority to make decisions like health decisions?

Mr. Friesen: Mr. Chair, I'm going to ask you to deliberate with your officials there, and I have a question about procedure.

Mr. Chair, this is a clause-by-clause deliberation of the bill, so I'm looking for a clarification of how, during the enacting clause vote, the member is asking global questions. The member has had second reading. She's had a Q & A section of 15 minutes. This question never arose during second reading. At no point today did she indicate in her comments that this was a concern of hers.

I need a procedural of how the member can be bringing a global question during a specific, clause-by-clause consideration. I'm not sure I've seen this done.

Mr. Chairperson: Thank you, Minister, and we'll– just going to seek that information.

So we–just for clarification, the enacting clause encompasses the entire bill, so it is enacting the entire bill. So therefore it is a global discussion, and the question will be allowed.

So, I will leave it up to the–back to the minister if he would like to provide an answer.

Mr. Friesen: So, Mr. Chair, in response to 24.1(1), the question is about what happens after two days; and the answer would be that, after two days, when a surrogate provides consent to relinquish entitlement to parentage, the intended parents would then take the child into their care, and they would have parental rights and responsibilities.

And I would additionally add, the parties may clarify their intentions in the surrogacy agreement.

Mr. Chairperson: Are there any further questions?

Ms. Fontaine: Would surrogates have to provide an affidavit under this current model? As well, would surrogates have to take part in the court process if they have signed consent?

***** (20:40)

Mr. Friesen: So, the question is essentially on the section of 24.1(2) and 24.1(3). The question is, first, do surrogates sign an affidavit? Well, surrogates in a contract would sign a document, and an affidavit may be requested by a presiding judge in a court proceeding, may not; a signed document may be requested. It would not be the case that the surrogate would have to take part in a court process, to the second question.

Ms. Fontaine: Would the minister agree that greater clarity should be provided to this section to specify that neither of them are required? And why did the minister not include the ability for a surrogate to apply for a declaratory order? For example, what if the intended parents passed away and the surrogate is left needing to apply? Why should she need to apply under the general section and not have the easy, streamlined process that is designed under the section dealing with surrogacy births?

Mr. Friesen: To the–to answer the first question, no, I do not agree with the statement made by the member. I think it's important to understand that the language of the legislation is as it is in order to contemplate a wide variety of scenarios and not to stipulate. Certainly, we can't stipulate to the courts that an affidavit would be necessary. We can't stipulate to the courts, a presiding judge, what form of documentation would be required to be signed by a surrogate.

To the other question, I refer the member to section 23.1 of the act, which indicates that: Subject to sections 24.1 and 24.2, any person who has an interest may apply to the court for a declaratory order that a person is or is not a parent of a child, whether born or unborn. And, of course, under any person, that person could include a surrogate.

Ms. Fontaine: Would court orders under section 24.1(3)–would court orders under this section have to be done on an expedited basis within days of them being submitted to the court?

Mr. Friesen: The member can see that 24.1(3) indicates the making of declaratory orders by the courts, and it uses the test of satisfaction, so there's certain tests that must be made in order for the court to make declaratory orders.

The member's asking a different question. The member's asking a question about expediency. That question's already been addressed in this committee a number of times. The member should not make the assumption that courts will be disinterested in these processes. Certainly, we should make the assumption that the significant tightening up, the significant clarifications in law as a consequence of these amendments, will help, will assist the courts.

We should have every expectation that that should make deliberations easier and more expeditious, but, of course, we have also made the commitment. Department officials will be providing court and Vital Statistics branch with support; we'll make sure. We have a vested interest to make sure to implement procedures to ensure that intended parents are recognized as expeditiously as possible.

Ms. Fontaine: Alberta's legislation states, and I quote, that a person may not bring an application under this section without the permission of the court, end quote.

Could the minister explain why a similar leave provision wasn't put in the proposed legislation here in Manitoba, specifically for orders made in surrogacy in the standard case where all the conditions are met?

Mr. Friesen: I'm referring the member to section 24.3(1), division 3, under general provisions. The member, if she's following along, will note that in that section, it states that: On application, the court may confirm or set aside a declaratory order that was made under this part, or make a new order, if evidence that was not available at the previous hearing becomes available.

So the member can clearly see that there is a process built here by which the court can confirm or set aside a declaratory order, exactly as the member was specifying. And while these situations would be rare, you can clearly see that there's a test, and the test is if evidence that was not available at the previous hearing becomes available. And I would say that's a very standard test in such documents, to say, if there's new evidence, that would then be the trigger for such a determination.

***** (20:50)

Ms. Fontaine: Would it be the intention that birth certificates are amended by Vital Statistics based on the orders from section 24.1(3) are done on an expedited basis?

Mr. Friesen: Mr. Chair, I'm going to refer to two sections in the bill: 24.1(3), the member has seen we have discussed this evening there's a number of tests that must be met in order for the court to make the declaratory order so the members of the committee can clearly see what those conditions are that must be met.

Then I refer the member to 24.1–24.8(1) of the section called orders to be filed with Vital Statistics, and you can see there that the registrar or clerk of the court must file in the office of the director of Vital Statistics a statement respecting every declaratory order of parentage made under this part.

To the member's question, we have every expectation that with the dramatic improvements made at Vital Statistics, with the attention of the courts and with the intention of the department to watchdog the process, that these processes will be timely.

Mr. Chairperson: Any further questions?

Hearing none, enacting clause–pass; title–pass. Bill be reported.

The hour being 8:53 p.m., what is the will of the committee?

An Honourable Member: Rise.

Mr. Chairperson: Committee will rise.

COMMITTEE ROSE AT: *8:53 p.m.*

The Legislative Assembly of Manitoba Debates and Proceedings
are also available on the Internet at the following address:
http://www.manitoba.ca/legislature/hansard/hansard.html