First Session — Thirty-Fourth Legislature

of the

Legislative Assembly of Manitoba

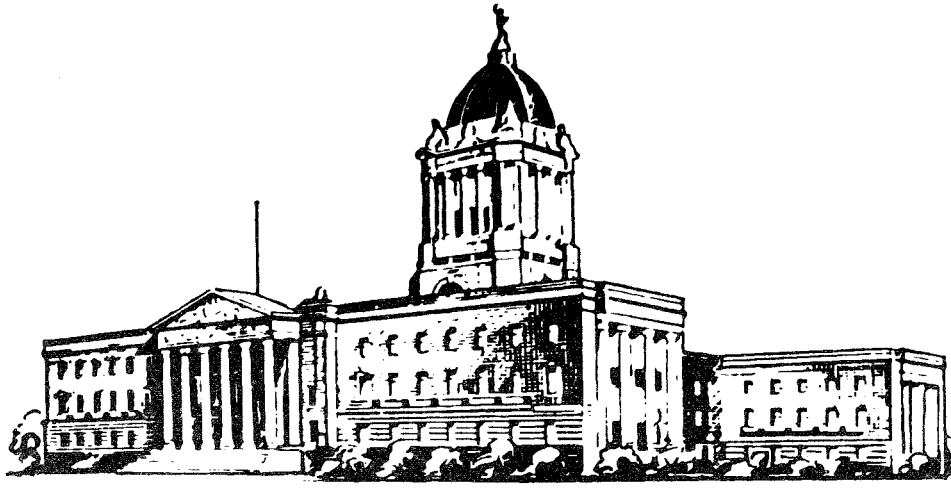
STANDING COMMITTEE

on

LAW AMENDMENTS

37 Elizabeth II

Chairman
Mr. H. Enns
Constituency of Lakeside



VOL. XXXVII No. 2 - 8 p.m., THURSDAY, DECEMBER 15, 1988.

MG-8048

ISSN 0713—9586

Printed by the Office of the Queens Printer, Province of Manitoba

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Thirty-Fourth Legislature

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LEGISLATIVE ASSEMBLY OF MANITOBA

THE STANDING COMMITTEE ON LAW AMENDMENTS

Thursday, December 15, 1988

TIME — 8 p.m.

LOCATION — Winnipeg, Manitoba

CHAIRMAN: — Mr. Harry Enns (Lakeside)

ATTENDANCE — QUORUM - 6

Members of the Committee present:

Hon. Messrs. McCrae, Orchard and Ducharme

Messrs. Angus, Burrell, Doer, Edwards, Enns, Ms. Hemphill, Messrs. Rose and Taylor

APPEARING: BILL NO. 38:

Mr. T. Dalmyn - Canadian Mental Health Association

BILL NO. 47:

Mr. P. Meyer - Private Citizen

Mr. D. Sexsmith - Broadcasters' Association of Manitoba

Mr. A. Peters - Private Citizen

BILL NO. 11:

Ms. J. Bjornson - Manitoba Charter of Rights Coalition

Ms. B. Suek - Manitoba Advisory Council of the Status of Women

Ms. M. Peek - Private Citizen

Mr. A. Hamer - Concerned Families for Fair Child Access

Mr. W. Muirhead - Concerned Families for Fair Child Access

Ms. S. Braid - Concerned Families for Fair Child Access

Ms. L. Lamb - National Association of Women and the Law

Dr. M. Matas - Manitoba Law Reform Association

Mr. J. King - Family Law Subsection, Manitoba Bar Association

Ms. R. Rachlis - Family Mediation Manitoba

Ms. N. McCormick - Private Citizen

Dr. C. Ross - FATHERS (Fathers Association To Have Equal Rights)

BILL NO. 40:

Mr. N. Turnette - Winnipeg Greens

Mr. F. Steele - City of Winnipeg

MATTERS UNDER DISCUSSION:

Bill No. 38—The Mental Health Amendment Act (2)

Bill No. 47—The Liquor Control Amendment Act (2)

Bill No. 11—The Child Custody Enforcement Amendment Act

Bill No. 40—The City of Winnipeg Amendment Act (2)

* * * *

* (2005)

Mr. Chairman: Committee, come to order. We have a number of presentations to be made. I would seek some guidance from Members of the committee. I recognize Mr. Cowan.

Mr. Jay Cowan (Churchill): Thank you, Mr. Chairperson. Given that there are two Bills where there are either just one or two persons who want to make presentations, I would suggest that perhaps we would consider reviewing those Bills first, Bill No. 38 and Bill No. 47, and then go on to the other Bills where there is a longer list of presenters who would be prepared to speak on those specific Bills.

Mr. Chairman: Committee Members have heard the suggestion from Mr. Cowan. The Chair is open to advice from the committee. It seems reasonable to me. Should that be the procedure of business? (Agreed)

I also remind our visitors and presenters that should there be other people wishing to make presentations they may do so by speaking to staff, at the head of the table here, to have their names added to any Bills that they wish to make presentations to.

Mr. Cowan: One final point, if there are any out-of-town presenters, perhaps they could identify themselves and we could hear them first, as well.

Mr. Chairman: I thank you, Mr. Cowan. That has been the tradition of our work here at these committee meetings. If there are persons from out of town, out of the city making presentations, we will endeavour to hear them first on the Bills that they are speaking to, to help facilitate their presence here.

BILL NO. 38—THE MENTAL HEALTH AMENDMENT ACT

Mr. Chairman: I will then call on presentations on Bill No. 38. We have two persons listed as wishing to make presentations. Bill 38, The Mental Health Amendment Act, I call on Mr. Bill Martin and Mr. Tony Dalmyn, I believe, from the Canadian Mental Health Association. Would you please come forward?

* (2010)

Mr. Tony Dalmyn (Canadian Mental Health Association): My name is Dalmyn. Mr. Martin and I have agreed that only I will speak.

Mr. Chairman: Thank you.

Mr. Dalmyn: We have circulated a brief and left the requisite number of copies with the Clerk. I do not know if everyone has it in front of them at the present time.

Mr. Chairman: Thank you, they are being distributed at this time. Proceed, Mr. Dalmyn.

Mr. Dalmyn: The remarks I am going to make are directed only to Sections 4 and 5 in the Bill which have an impact on Section 5, and which enact a new Section 5.1 within—I should say subsections 5 and 5.1 of Section 24 of The Mental Health Act.

Section 24 is new legislation through the 1987 amendments. It provides that persons suffering from mental illness, like anyone suffering from any other illness, have the right to consent or not to consent to treatment, even if they are involuntary patients in a hospital. Section 24 quite logically and reasonably provides a number of exceptions. It provides that a physician may administer emergency treatment without the consent of a patient; it provides that the Public Trustee may authorize treatment of a patient.

The Attorney-General (Mr. McCrae), in introducing the Bill and on second reading, quite correctly pointed out an anomaly in the legislation which is being corrected. The Act, as passed in 1987, says the Public Trustee "may give consent to treatment where the patient has been found incapable of managing his or her affairs, balancing a cheque book or dealing with property." This amendment is designed to clear that up. My association agrees with that.

The problems I am going to identify fall into two classes. I will deal with the administrative problems first. The administrative problem is the resources given to the Public Trustee to carry out the Public Trustee's responsibility. Under the new legislation the Public Trustee is supposed to consent to treatment in the best interests of the patient. This type of legislation has operated in Ontario and other jurisdictions for some time. The decision-making process is difficult. The Public Trustee is supposed to decide what the patient would do in his or her best interests if the patient was competent.

In principle, the Public Trustee should be given an opportunity to review with the patient's family, friends and others what the patient would do if competent, to look at the history and try to make a reasoned decision. In practice, what has been happening is that the doctors—often in the emergency ward, often not the treating doctor—are phoning the Public Trustee for emergency consent or phoning for a blanket consent.

* (2015)

Under the Act, we have a review board. The review board is supposed to decide if the patient is competent or not and the review board has the power to make a decision on behalf of the patient, if the patient is resisting or declining treatment. What we have in practice is the Public Trustee being called on on the spur of the moment to make very difficult decisions. I do not see a problem with the Public Trustee making the decision on adequate information. I do not see a problem with the Public Trustee making the decision even though the Public Trustee is not a doctor. The whole idea is that, if you or I go for medical treatment, the medical treatment is explained to us and we apply our best judgment to it even though we are not doctors.

What the Public Trustee brings to this task is empathy for the patient and independence. The Public Trustee is not getting a chance to do that. The legislation as proposed here is going to write into law the idea that the Public Trustee is going to make the decision on the basis of a telephone call. You have the wording in proposed 5.1 that upon being notified by the physician who completed a certificate that is being sent to the medical officer, the Public Trustee may give consent to psychiatric or other medical treatment on behalf of the patient until the review board or the court determines the patient is mentally competent or the certificate is cancelled.

In my submission to you, if it is an emergency, the doctor can deal with it under the existing law in 24.7 and 24.8. There is no need for telephone consultations. In my view, and in the view of my association, the Public Trustee's involvement should be temporary. There can be differing interpretations on this. It may well be the opinion of the Legislature of Manitoba that the best course is that on a patient being found to be incompetent to make medical decisions, the Public Trustee should be given legal responsibility. That should rest with the Public Trustee unless the patient appeals to a review board. If that is the case, the legislation should spell out in 24.5 and 24.6, in similar terms to the restrictions and the guidance given to a review board under section 25, what the Public Trustee is supposed to be looking at. These are important decisions. It is not a matter of rubber-stamping a doctor's decision.

I think by all accounts this is the most difficult and challenging area of medicine. There can be different opinions. The doctor should be capable of engaging in a constructive and serious dialogue with the Public Trustee for the family to determine the best wishes of the patient.

I appreciate that the legislation is new. When I was here in July of 1987, I suggested we were going to have problems with the legislation and it should be brought back for review. I appreciate that the Court of Queen's Bench has said the legislation in general is constitutional. To say it is constitutional does not mean that it is good. I suggest there can be improvements—24.5, 24.5.1. In one sense, they are merely housekeeping; in another sense, you are losing the opportunity to improve the Act. That summarizes my comments for you.

Mr. Chairman: Thank you, Mr. Dalmyn. Are you prepared to answer questions that committee members may have of you?

Mr. Dalmyn: Yes, sir.

Mr. Chairman: Do I hear any questions from committee members? Mr. Doer.

Mr. Gary Doer (Leader of the Second Opposition): You have had excellent consultation, according to the president of the organization, on some of the mental health initiatives. Have you discussed this with the Minister, and what would be the reasons for not making those changes in terms of the feedback you have received?

Mr. Dalmyn: The Minister has had a very good consultation process, but it was broken into two parts. There were two committees, one dealing with major amendments or matters of policy. My association participated and I represented my association. This type of housekeeping legislation was dealt with by departmental committees. We were generally aware this was coming. We did not see the letter of it until we saw the Bill, so we have not had a real opportunity to engage the Minister in a dialogue on this issue.

Mr. Harold Taylor (Wolseley): Mr. Chairman, through you to Mr. Dalmyn, is it your suggestion, after hearing your presentation, that 5.1 should be lifted from this amending Bill?

Mr. Dalmyn: I would not agree that 5.1 should be lifted. The wording about "upon being notified that the certificate is being transmitted" should definitely be lifted but, instead of lifting the rest of 5.1, I would add to it that the Public Trustee is giving a temporary consent until the patient appeals to a review board, and it should contain some guidance for the Public Trustee and some information for the public as to what the Public Trustee is looking at: the best interests of the patient, the wishes of the patient, has the patient made them known while competent, the benefits and risks of the treatment.

Mr. Chairman: Thank you, Mr. Dalmyn.

* (2020)

Mr. Dalmyn: Thank you, Mr. Chairman. Thank you, Members of the committee.

Mr. Chairman: Do we have any further presentations on Bill 38? Hearing none, we will then proceed to consideration of Bill 47.

BILL NO. 47—THE LIQUOR CONTROL AMENDMENT ACT (2)

Mr. Chairman: We have several persons listed here for presentations: Mr. Peter Meyer, private citizen; Mr. Adrian Peters, private citizen; and Mr. Del Sexsmith from the Broadcasters' Association of Manitoba.

Mr. Peter Meyer.

Mr. Peter Meyer (Private Citizen): Mr. Chairman, Gentlemen, thank you for the opportunity of being able to come and say a few words on Bill 47.

I would like to oppose Bill 47. It is a very weak excuse to use the American beer commercial policies as an example to allow breweries in Manitoba to advertise throughout the whole day. I believe that Manitoba should ban all liquor advertising so as to set a good example to the rest of Canada and to the USA.

Presently, beer commercials are always associated with good times, beach parties, good health, success and sports. Subconsciously, young people today are growing up with the idea that in order to have fun or a good time they must include alcohol in their parties and outings. If liquor advertising is to continue, then let us show the true story such as smashed cars, bloodied bodies, abused and neglected children, disparity and poverty. Equal time should be given to show the results of alcohol abuse.

It is also reported that younger and younger children are being abused and becoming addicted to alcohol. In yesterday's paper we read of a Kindergarten teacher who is now saying that the children in Kindergarten in the Indian reserve are playing games of serving alcohol and also playing games of rape. Usually rape and alcohol are usually tied quite closely together.

If you compare the AIDS epidemic to the alcohol epidemic, then AIDS is a drop in the bucket. At least 50 percent of fatal car accidents are alcohol related.

I also believe that sports events should not be sponsored by the beer industry. Let the breweries go and pick their three-star selection in the back lanes of Main Street.

Also, these special event vans that the breweries supply for sporting events could be better used as ambulances so they could assist the police to haul drunks in.

Also, the liquor industry could build some big hospitals to house many people that get into accidents through liquor abuse and those unable to work because of alcohol addiction.

The tax on alcoholic beverages should be greatly increased. At the present, the tax only covers a very small fraction of the true social cost of clean-up. Approximately 90 percent of those in the Remand Centre and in Headingley are there directly or indirectly because of liquor abuse and of liquor offences.

The Government—I would like to add a little bit here—I believe are going to build a new remand centre for some $30 million. Possibly you should approach the liquor industry to fund that for about 90 percent of the cost. If we could clean up the abuse of liquor, the present Remand Centre would be practically empty. I have talked to police and guards and that is what they tell me. They say practically about 90 percent are directly and indirectly related to liquor offences.

Brand names of beer should always be included in the media reports. For example, in today's Free Press, we read of this stabbing tragedy on page 3. It reads that killers had injected themselves with drugs and consumed several beers. The name of the beer should be included in capital letters in these reports. I think that would make—you know, a lot of times we read

the paper and it says well, alcohol was involved, and alcohol was involved in this. Sometimes, we read of rubbing alcohol but a lot of times it is beer and I believe that if people would see this in capital letters that hey, these men had drank, say, Molson's Canadian or something or Labatt's Blue, it would bring home a little more forcefully the danger of too much beer consuming.

Liquor sales at the arena and stadium should be discontinued. Surely, if people cannot go to a sporting event and do without alcohol for two or three hours, there is something drastically wrong with society.

* (2025)

No extension should be allowed at the airport bar. In fact, I think liquor should be removed completely from the airport and airlines as there are more and more problems on airplanes because of alcohol. Just last week, my wife took a trip to Vancouver and she said, by the time we got to Vancouver, there were several passengers who had consumed so much alcohol already that the stewardess' were having quite a rough time to control them. Imagine, what a sick society when we cannot take a two-hour trip without getting half drunk. It is amazing.

In addition, I think the legal age of drinking should be raised to at least 21 years of age. I realize that the liquor industry makes large political contributions and they expect something in return, but I believe that they have far too much freedom already. No amount of money can pay for the misery and suffering the liquor industry is causing.

Now, the most important paragraph—I believe I will hear at the end, and I think it has been proven here tonight. I believe there are only three people here to speak to this Bill. I wonder where all the pastors and priests and rabbis are. It is amazing. These are the people who have to perform the funeral services for those who are killed in accidents. They are in contact with the misery and suffering of alcohol abuse. Yet, when they have an opportunity, they do not seem to come out. I do not know what it is.

However, the greatest tragedy I see is that we are becoming accustomed and conditioned to reading about people being killed by drunk drivers or people being stabbed at drunken parties, so that we are becoming immune to the suffering that the alcohol industry is causing. I think that is the most important part of the whole letter. It seems that we read about it every day and, the more we read about it, the less it affects us. I think it is a real danger in society that we have become so accustomed and so immune that we just shrug our shoulders and say there is nothing we can do. I realize for a Government, it is much easier to loosen the law than to tighten it up. I would urge you, as lawmakers, to tighten it up as much as you can.

People are being—you cannot read a paper these days. In today's paper there alone are four people being sentenced to prison for murder. All four of them were under the influence of alcohol. Think of the cost, some of these men went for 10 years, I believe, and some for 14 years. If you think of the cost of the courts and of course a lot of these people can get Legal Aid. They get the best lawyers and the highest priced lawyers in the city. Then we add that to the court costs and now we have to put them in prison for 10 years or 14 years. Those four people are going to cost the taxpayers well over $1 million. It is time that the liquor industry is taxed far greater—much more tax, so at least the taxpayer is going to get a little bit back. Today, I do not think he is getting back one cent on the dollar.

So I guess that is about it for me. But I am really disappointed there are not a lot more people here to speak on this, that is my greatest disappointment.

* (2030)

Mr. Chairman: Are there any questions coming from the committee for Mr. Meyer? Hearing none, thank you, Mr. Meyer.

I call on Mr. Adrian Peters.

Mr. Del Sexsmith. Mr. Sexsmith, representing the Broadcasters Association of Manitoba.

Mr. Del Sexsmith (Broadcasters Association of Manitoba): I represent the Broadcasters Association of Manitoba which is, in effect, an association of the private radio and television stations in Manitoba. I thought I would take this opportunity to speak in support of the amendment which would, in effect, eliminate the curfew that has been in place in Manitoba for 20 years.

In general, I would just like to reiterate the heart of our argument and that is an argument we have made for many years now that, in effect, the curfew as it applies in Manitoba is discriminatory to Manitoba radio and television stations. Some time ago, we supplied a list of media operating in Manitoba that are allowed to carry beer and wine advertising on an unrestricted basis. That list consists of, and I will read it to you: newspapers, magazines, bus cards inside and outside, billboards, signage and public access facilities, cable television, satellite television, off air from Saskatchewan and Ontario border stations, off air from U.S. border radio and television stations, sports advertising, university and community college publications, back-lit posters, all ethnic publications, special events promotions, or in restaurant advertising, specialty publications, bus benches, KNRR-TV, airport display advertising, U.S. cable radio stations, Winnipeg Jets and Winnipeg Blue Bombers mail-out advertising, mall posters, transit shelters, theatre, symphony, ballet, opera, dance and sports programs.

The only media licensed in the Province of Manitoba that cannot carry beer and wine advertising on an unrestricted basis at this moment happen to be Manitoba radio and television broadcasters. We would just like to point out that beer and wine happen to be food substances. So prior to their being advertised in any other province in Canada, they are submitted to the National Food and Drug people and subject to their regulations. In the event that this memo goes through as suggested, then we would expect that there would be Liquor Control Commission regulations in place as well.

Our final argument, of course, is that advertising is a matter of choosing a brand and has not been demonstrated in any survey previously to affect consumption or social habits.

Mr. Chairman: Do we have any questions for Mr. Sexsmith from the committee? Hearing none, thank you, Mr. Sexsmith, for your presentation.

I understand Mr. Adrian Peters is with us. I will give him an opportunity to make his presentation. Mr. Peters, please.

Mr. Adrian Peters (Private Citizen): I am Adrian Peters, as you know. I would like to thank you for having me attend here to hear what I have to say on Bill No. 47 and other amendments to the Act.

We have been operating a British-style tavern in the Exchange District, at 120 King Street, for the past 15 months. On May 15 this year, we expanded the premises to include the downstairs portion of the establishment, and this expansion involved putting in a 24-foot solid oak bar and typical pub-style seating.

Section L160-34887, Subsection 24(2) states that a licensee may serve liquor to patrons without food, if the patron is seated at a table where 50 percent of the patrons seated have ordered food. Because reference is made specifically to tables, we cannot use the stools placed at the front of bar, and because we cannot use the stools, the entire area of the bar has been subtracted from our usable seating capacity and has thus resulted in a net loss of 13 dining room seats and seven cocktail lounge seats from an operation that only had an overall rated capacity of 114 seats. This reduction of almost 20 percent raises serious concerns about the continued profitability of our business. I draw your attention to the fact that the Act previously did allow for over-the-counter food and beverage service in a dining room. So our request for an amendment to the Act to allow over-the-counter food and beverage service is one of restoration rather than precedent.

It is common in a British-style tavern for patrons to stand while enjoying food and/or beverage. Since the Act does not appear to address this matter, we assume that if we allowed patrons to follow this custom in our establishment, we would be guilty of an infraction.

In neither of the foregoing examples, there does not appear to be a basis for considering these activities either illegal or immoral. While we are not directly affected by the proposed changes in Bill No. 47, we welcome the initiative. We do feel however that there remains much room for a more civilized attitude toward the service of food and beverage in licensed premises in Manitoba.

Specifically, we would urge the Legislature to give consideration to the immediate creation of a category of licence that is commonly known as a dining lounge licence. This category of licence exists in other Canadian provinces and provides the rules governing the ratio of food to beverage service are suspended at a point in the evening when the service of full course meals is no longer likely. Licensees would then be able to use their vacant restaurant space as an extension of their lounge.

An alternative to the foregoing, if it were thought to be too bold an initiative, would be to change the Act in such a way as to allow for freestanding neighbourhood style pubs on an experimental basis, restricted to areas of significant historical value and/or significant tourist value. Based on our experience at the King's Head, the British pub style establishment draws a wide variety of patrons from many walks of life.

In conclusion, I would like to draw your attention to the fact that the police have never been called to our premises, nor have we had to employ a doorman in an area where it might be assumed to be a necessity. Thank you.

Mr. Chairman: Thank you, Mr. Peters. Do any committee Members have questions?

Mr. Harold Taylor (Wolseley): Mr. Chairperson, a question through you to Mr. Peters, not wanting you to be cited for an infraction of the Act, but do you have that practice now of patrons standing as they would in a British pub and consuming their beer in that fashion?

Mr. Peters: Many of our patrons are native British and do attempt to, in what is the restaurant area, and we do have to tell them that it is not.

Mr. Taylor: In other words, they rise to the occasion. What would be your view on consumption practices? Would there be a variance in the amount of alcohol consumed if patrons were standing, as opposed to the way we have it under our Act today, where it is compulsory, it is required, to sit? What would be your comment on the amount of alcohol consumed and the state of the person as they left the premises if in practice they were standing?

Mr. Peters: I am not clairvoyant. We have never had any difficulty with the service of alcohol, either to patrons seated or patrons standing in the cocktail lounge. I cannot see that it would create a problem in the restaurant.

Mr. Taylor: Can you give us any experience of comparative practices in British pubs and what happens there on the extent of alcohol consumption in an evening by a patron who is standing and conversing with other patrons as opposed to what we have, seated in armchairs, and statistics that there might be on the level of alcohol infractions of people leaving pubs in cars.

Mr. Peters: I am sorry, I do not have any hard data on that. My general feeling is that the style of licensing that we have, the categories of licence that exist in Manitoba encourage an attitude that I would characterize as herding more than socialization, and my personal view is that the British pub style of service is that much more civilized.

* (2040)

Mr. Steve Ashton (Thompson): I have had some opportunity to talk to Mr. Peters prior to the committee

hearings in terms of some of the difficulties he is running into. It would be fair to say that the problem in Manitoba is that we do not have a licence category that allows for the type of establishment that you have, unlike British Columbia and Ontario, for example, where neighbourhood style pubs are a specific licence category. Is that basically your bottom line problem, the fact that our licencing does not really have a category of licence for your type of operation?

Mr. Peters: Yes, it is definitely the problem.

Mr. Ashton: You made reference, I know, to police visits, etc. I know the neighbourhood in which you are located where you have a number of large hotels within a short radius. I am wondering if you could indicate the type of problem that some of those hotels are having. I believe you expressed, it was 160 police visits in six months to a hotel across the street?

Mr. Peters: I believe that was the case. I do not, again, have the figures in front of me. It was 163 calls, I believe, in a recent six-month period.

Mr. Ashton: 163 calls. What has been the experience at the King's Head pub?

Mr. Peters: As I said, we have not had to call the police, much less if we employed the services of what is called a bouncer.

Mr. Ashton: The hotels, in particular that one hotel you are referencing, which presumably has a license category, which fits under Manitoba law and it presumably is not allowing the licences, has had a 160 police calls, and you, with the number of problems that you have outlined in your brief, have not had any police calls at all. Would that be a correct assumption?

Mr. Peters: That would be fair to say.

Mr. Ashton: If I could be just permitted one comment, Mr. Chairperson, I think it shows to me that if we are going to be looking at the liquor laws in Manitoba, and certainly we are looking at some amendments tonight which deal with some concerns that have been expressed, that we might want to broaden our consideration to include allowing I think for the kind of operation that Mr. Peters operates, a neighbourhood style pub, which I think has proven just on that one particular count to be a very—I think the word you used was "civilized" type of outfit, type of operation. It does not promote excessive drinking; instead it promotes socialization. I think Mr. Peters has raised an excellent point in his brief.

Mr. Chairman: Thank you, Mr. Ashton.

Hon. Gerald Ducharme (Minister of Urban Affairs): Mr. Peters, you have mentioned that you have expanded the premises to include a restaurant in the lower level of the building and this expansion involved putting in this 24-foot-long solid oak bar. In the lower level, do you also have, other than the bartender, someone serving on the floor?

Mr. Peters: Yes.

Mr. Ducharme: So that would include both levels? You have another level that they serve at the same time. They have somebody else up there all the time?

Mr. Peters: One of the drawbacks to our premise is the business was created I believe with a core area grant out of a warehouse. It was built on two separate levels, so our cocktail lounge does not directly adjoin our restaurant. So there are two separate bars to service the customers in each area.

Mr. Bob Rose (St. Vital): Mr. Peters, my knowledge of pubs in that is limited. I would like to know, in this hotel, where 160 police calls came in approximately six months, do the Manitoba liquor laws allow for people to stand in the beer parlors in that particular hotel or any hotel in Manitoba?

Mr. Peters: I believe they do allow for stand-up areas in beverage rooms. I think it is an across the board—

Mr. Rose: Would not that then seem to go contrary to your argument then?

Mr. Peters: In what sense?

Mr. Rose: In the sense that you say you have had no police calls where they all have to sit down and yet there has been 160 police calls in a place where they are allowed to stand up, and you are wanting a place where they want to stand up?

Mr. Peters: Oh, I see, well, I am not familiar. I have only once ventured in there when I had a flat battery in my car to use a telephone and call a tow truck. I am not familiar with whether their operation, in fact, has a stand-up bar or not.

Mr. Chairman: Thank you. Mr. Peters.

Mr. Peters: Thank you.

Mr. Chairman: I will now revert back to the orders of the Bills as were listed, with the will of the committee.

BILL NO. 11—THE CHILD CUSTODY ENFORCEMENT AMENDMENT ACT

Mr. Chairman: We will deal with Bill No. 11, The Child Custody Enforcement Amendment Act. We have a number of presentations. If it is helpful, I shall read the list of presenters: Alison Norberg and Jeri Bjornson, Manitoba Charter of Rights and Coalition; Beverly Suek, Manitoba Advisory Council on the Status of Women; Ms. Marlene Peek, private citizen; Mr. Alan Hamer, Mr. Bill Muirhead, Ms. Sandra Braid, Mr. Jeff Cudmore, Mr. Randy Marshall, Concerned Families for Fair Child Access; Ms. Louise Lamb, National Association of Women and the Law; Dr. Manuel Matas, Manitoba Law Reform Association; Mr. Jack King, Family Law Subsection, Manitoba Bar Association; Mr. Ruth Rachlis, Family Meditation Manitoba; Ms. Norma McCormick,

private citizen; Dr. Colin Ross, FATHERS (Fathers Association To Have Equal Rights).

Mr. Gary Doer (Leader of the Second Opposition): Just for the record, it is Mediation Manitoba, not Meditation.

Mr. Chairman: Mediation? I am sorry.

Mr. Doer: No problem.

Mr. Chairman: Meditation or Mediation, that is interesting. One could ponder on that one, could one not, Mr. Attorney-General?

Ms. Bjornson.

* (2050)

Ms. Jeri Bjornson (Manitoba Charter of Rights Coalition): The Charter of Rights Coalition would like to thank you for this opportunity to appear before this committee.

The Charter of Rights Coalition, to introduce you to the group, is a group whose ultimate goal is to see that all statutes, policies, regulations and programs in the Province of Manitoba comply with the equality sections of the Canadian Charter of Rights and Freedoms. CORC has done a considerable amount of work in the area of family law and access assistance since this proposal came forward.

Prior to that, we had done a major review of Manitoba's statutes, policies, programs and regulations in which we had covered the entire area of family law. For nearly two years, we have been in consultation with the Attorney-General's Department and Community Services in regard to this Access Assistance Program, although I might add that we did not identify this as a pressing need in our review of programs in Manitoba.

It is the position of CORC Manitoba and that of other women's groups that any discussion of access and any Access Assistance Program must have, as its first and foremost goal, the interests of children.

In fact, that is the demand of The Family Maintenance Act. It is also our position that there are situations where it is not in the best interests of the child to maintain contact with both parents. There was a lot of early research in the area of joint custody which seemed to indicate that maximum contact with both parents was always in the best interests of children, and much of that research was done by Judith Wallerstein. Recently, there has been accumulation of a large body of literature which calls Wallerstein's earlier conclusions into question, and I would like to note that some of that research has been done by Wallerstein herself.

In a study entitled "Parental Participation and Children's Well-being after Marital Dissolution," three male researchers at the University of Pennsylvania looked at several dimensions of parental involvement to see which was the most critical for children after the dissolution of marriage. They discovered that there was little support for the hypothesis that paternal contact is always beneficial to the child.

This research also revealed that apparently children in maritally disrupted families were not doing any better if they saw their fathers more regularly than if they saw them occasionally or not at all. They also found some evidence that the level of child support is related to the incidence of problem behaviour. We felt they had some words of wisdom in there in this report.

The policy implications of findings reported here are unsettling, because they clash with prevailing practice that attempts to increase parental involvement. We see no strong evidence that children will benefit from judicial or legislative interventions that have been designed to promote paternal participation, apart from providing economic support.

* (2050)

In a series of studies done for the Centre for the Family in Transition, they have found similar results. These studies concluded that custody arrangements were not significantly related to child adjustment and that children with more problems had parents who were more physically and verbally aggressive toward one another.

A second study in that series which focused on families in conflict found consistent evidence that children who had more frequent access were more emotionally troubled and behaviourally disturbed where there was parental conflict. The researchers concluded by saying these findings caution against encouraging or mandating joint custody or frequent access when parents are in ongoing disputes.

We think it is also necessary to look at the whole area of family violence when we are looking at custody and access.

Studies indicate that for many women abuse does not stop with the end of marriage. Overt conflict in the form of physical and verbal abuse between separated and divorced parents is severely detrimental to the psychological health of the child and, where the post-separation parental relationship is marred by such abuse, there seems to be a common chain of events.

The more frequent the access of the child to each parent, the greater the contact between the parents. The greater the contact between the parents, the more intense the conflict. The more parental conflict, the greater the psychological harm to the children.

CORC (MB) does not include this information as an argument against giving children the opportunity to know and spend time with both their parents after separation or divorce. As a personal aside, I have a joint custody arrangement. In fact, CORC (MB) and other women's groups support such arrangements when they are truly in the best interests of the children. The above research is cited to dispel the myth that frequent contact with both parents is always in the best interests of the children and to make legislators more knowledgeable about those situations where such contact might be seriously harmful, where there is considerable discord or conflict, and where there is a history of child abuse or wife abuse.

Under no circumstances should the issues of access and maintenance be linked for enforcement or for any purpose. It is children who suffer when money used to provide children with the necessities of life is withheld. The statistics are well known about poverty among female-headed, single parent families. There is a wealth of data that puts a lie to the assertions that women are gaining improper or undue benefits from child maintenance payments.

CORC (MB) also finds any comparison between maintenance enforcement and access enforcement unacceptable. In matters of maintenance, if the money does not arrive, there is no question of weighing conflicting evidence. In matters of access, there are complex issues at play.

As mentioned before, CORC and many other women's groups have been in consultation with the Attorney-General's Department and Community Services and raised our concerns about this Access Assistance Program. From the beginning, CORC (MB) has maintained that there is no demonstrated need for this program. A public perception has developed that there are hundreds of vindictive women in Manitoba who are withholding access for purely selfish reasons. This we dispute. There is also a perception that all non-custodial parents are willingly taking advantage of access. This we also dispute.

CORC (MB) feels that the research commissioned by the Attorney-General's Department does not demonstrate a need for the implementation of an extensive Access Assistance Program. Only 15 percent of those parents surveyed indicated that they were currently experiencing difficulty with access. There was no attempt within the research to specify or verify the difficulties alleged. Custodial parents, either corresponding with those access parents interviewed or a separate sample, were never surveyed. Of the 23 percent who reported that they had problems, they were not asked about ways in which those problems had been solved. We suggest it might have been helpful to evaluate the process used by those who have solved their problems.

I think everybody involved will acknowledge that access is a point of contention between parents, but few accept it as a major social problem. In the words of a Toronto lawyer, "I cannot tell you how many access problems are solved with three phone calls."

We would also like to note that the Manitoba research was surveyed to capture the most recent information on access orders available. However, it is these very recent access orders that constitute the very situations where there may not have been time to work through the normal adjustment period.

Further, James Richardson, in a study done on The Divorce Act (1985), states that despite the literature access was not especially significant, even among the men we talked with. As CORC looks at the Manitoba research and Richardson's findings, we do see a picture that is being painted by some groups that there are numerous women withholding access from their former spouses.

We also do not see a clear demonstrable need for this program. CORC (MB) would also like to note, that despite the failure to address some other major concerns, the intensive consultation with community groups did result, we believe, in an increased recognition of the problems that custodial parents have with access parents who do not take advantage of access.

In the study referred to by Richardson earlier, he noted that although only 1 percent of non-custodial parents were denied access by the courts; in situations where the wife had sole custody, the father does not in fact see the children in about 11 percent of cases. However, Richardson does not assert that this is a result of unreasonableness, or defiance on the part of the custodial mother. Instead the data reveals a number of reasons why this is so, including that the father has no interest in maintaining contact with the children or that the father has moved away.

In situations where access parents do not take advantage of the access, the custodial parent is left with sole responsibility for the caring of children and other problems, including disappointed children who wait to see their parents and loss of income and other expenses for the custodial parent. We acknowledge that the program in Bill No. 11 has been drafted in such a way as to attempt to address some of these issues. However, we feel that they fall short of the mark and may do more harm than good.

Our fundamental question about parents who do not exercise their access responsibilities toward their children was put by Gerrie Hammond, MLA from Kirkfield Park, when she said, "Access parents who do not exercise their rights—I have a problem I suppose with this one because how do you force someone to be responsible?" CORC (MB) recommends that the Access Assistance Program not be implemented. We assume it is going forward—advertisements for two positions showed up in the Winnipeg Free Press on the weekend of December 3.

We would like to turn our attention to the program itself and having mentioned the advertisements for staff, we would like to begin by commenting on our concerns about staff for this program. If the program is to work, there must be adequate staff, adequate in numbers and in understandings of the complexities of the issues and emotions that play in any dispute related to access. Unlike maintenance disputes, here we are discussing people themselves. The issues related to access are complex and the variables many.

Many women find themselves frightened and vulnerable for a long time after the end of the marriage. The program staff must be expert in skills which will reduce hostility, develop trust and better communication. The focus must be to work with the existing agreement while maintaining an openness to recommending that there are times when access is not in the best interest of the child.

* (2100)

Richardson notes in his study that Canadian courts, almost invariably, grant some form of access or visitation rights to the non-custodial parent. This seems to be the case even where there is history of violence

or insanity. CORC has some concerns and questions about the use of volunteers for supervised access. Where will they be found? How will they be screened? How will they be trained?

Like program staff, the volunteers must be aware and sensitive to the complex issues related to access, as well as the concerns of the children with whom they are working. CORC understands at the present time that mediation in this program is voluntary, and we are convinced that it must ever be thus. Under no circumstances should there be any element of compulsory mediation worked into any access enforcement program.

We agree that there are times when mediation is successful and helpful. But mediation is a process that assumes equal bargaining power between disputing parties. When it is forced on one party, the equality is gone from the very beginning. We would also like to note that where abuse is an issue that mediation should not be included as an option for a proposed case plan. Mediation does not work in situations where there is abuse and in fact there are times when it may be harmful. "In cases where there has been a history of spousal or child abuse, one party has exerted continuing control over the other by violence or threats of violence. Victims of domestic violence are intimidated by the abusing spouse or parent and may be incapable of asserting their own interest during mediation for fear of retribution." We would note that these dynamics should also be considered in any interventions with a child.

The counsellors and all program information available to the public must make it clear that mediation is voluntary and all possible measures must be taken to ensure that refusal of a mediation option cannot be used against the custodial parent in any further action concerning custody or access. An integral part of this program is compulsory conciliation, and we want clarification of this term and the intention behind it. We understand that the Attorney-General's Department is responsible to enforce court orders but want to stress our concern that under no circumstances must it be demanded that the two parties meet face to face. In fact, if that happens, we have set up "defacto" compulsory mediation.

CORC has concerns about the three-month maximum for access supervision and accompanying counselling. We are of the opinion that there will be cases where this is not long enough. Research clearly points to the need for a situation as free of conflict as possible to serve the best interests of children. Many of the behaviors which lead to conflict are long-standing, and it seems to us that the time period is too short to allow for the elimination of old behavior and the learning of new behavior. In fact, this short period may cause more harm than good, especially where there has been a short period of "conflict-free" access followed by conflict. So we would recommend that the time limit be eliminated and be at the discretion of the supervisor or counsellor.

Keeping in mind that the program must at all times be based on the best interests of children, we have a recommendation for major changes in the legal component of the program. One of the possible aspects of a case plan is that a counsellor may recommend that the client apply to have an order varied. Although there are provisions for referral to an access enforcement lawyer where access is not being exercised or is being denied and the other parent refuses to participate in the program, no such provisions are made where the recommendation is that a custodial parent apply to have the order varied.

The cost of legal proceedings is high. In our opinion, most women who are also custodial parents will not be able to pay for those legal proceedings. In some cases, but by far not most, women may be able to use Legal Aid services, but the reality is that Legal Aid services are woefully inadequate, especially when it comes to family law cases. It is the position of CORC that for this program to be called truly child centred that the mandate of the access enforcement lawyer must be extended to include selected order variance applications where such application is considered in the best interests of the child.

We have expressed our reservations about this program and, since it is to be implemented as a pilot project and is breaking new ground in its inclusion of a full range of services, CORC (MB) recommends that an advisory committee be established before the program is implemented. We envision this committee with a broad mandate which would include: ongoing assessment of the program, development of the necessary protocols and screening processes for all components of the program, research into non-compliance with access orders, and the development of a clear and comprehensive tool to assess the project at the end of its three-year pilot period.

Although we are not convinced of the need or wisdom of this program, we do concur with Susan Crean when she says, "It remains to be seen whether the Manitoba option will fare any better than the Ontario option, although there is no doubt at all that if any approach should be adopted as a model at this early stage, it should be Manitoba's and not Ontario's."

And finally, to Bill 11 and its direct relationship to the Access Assistance Program, the first draft of this proposal did not include within the legal component the provisions for posting of a surety or compensation where expenses have been incurred. It is the inclusion of these provisions which has necessitated the introduction of Bill 11.

In CORC's response to the April 23, 1987 draft of the proposed Access Assistance Program, we did point out the need for the passage of legislation prior to the onset of the program. At that time, CORC and other groups saw the provisions for reimbursement and the posting of a surety as a way to alleviate the financial costs which result when access parents do not live up to their responsibilities as set out in court orders.

We continued to accept the assumption that there are some custodial parents who might benefit from these provisions, but we have had some serious second thoughts about the inclusion of these provisions in the program and the passage of this amendment to The Child Custody Enforcement Act. We are of the opinion

that the potential of misuse and possible harm to the "new" family unit might outweigh the potential for good. CORC believes that Bill 11 could be used as a tool for harassment of custodial parents who have valid reasons for denying access. If these amendments are passed, we would love to be able to find a way to restrict the provisions so that they could be used only by those parents who had taken advantage of the Access Assistance Program.

As Mr. McCrae stated in the speech on second reading of this Bill: "This Bill is to come into force on Royal Assent so that parents who have been having difficulties and who have the means to do so, may immediately take advantage of these new powers given to the court."

Considering the fact that most of Canada's poor are women with children, custodial parents, it stands to reason that they are not the ones "who have the means" to take immediate advantage of these provisions. Very few custodial parents will find themselves in a position of using the provisions of this Bill without taking advantage of the Access Assistance Program and/or a referral to an access enforcement lawyer. Those who will be able to use these provisions are those parents who possess the "power" of having "the means to do so." We have come to believe that that these monetary remedies will be of little practical benefit to those who we once thought they would serve.

One of the arguments which is often made against existing legal provisions for the enforcement of custody orders is, in the words of Ian Scott, the Attorney-General of Ontario, that they are "draconian," and he has a point. It does seem slightly absurd to imagine any good purpose can be served by putting the children's primary caretaker in jail or by siphoning money from the family budget.

But CORC Manitoba sees similar problems with the provisions for compensation and the posting of a surety. The result of section 14.1(1) will be the "siphoning of money from the family budget." The penalty will be levied against the family unit, not only the parent, with the possible result of harming the children and their well-being.

With these concerns in mind, CORC Manitoba recommends that in the event that the Access Assistance Program is implemented, that the provisions for reimbursement and the posting of a surety be removed from the legal component of the Access Assistance Program. This recommendation would eliminate the need for Bill 11.

CORC recognizes other problems with Bill 11 which we believe support a position of the rejection of the Bill at this time. Bill 11 does include provisions that there must be "wrongful denial" of access but the problem, as we see it, is that there is no definition of justifiable denial of access. As well, we are not aware of any consensus of what might constitute justifiable denial of access. The Ontario legislation may have a starting point for the discussion working towards such a consensus. Their legislation lists a number of reasons for denying access which are included in the brief.

* (2110)

CORC Manitoba recognizes that the inclusion of definitions is fraught with difficulties. What are reasonable grounds? In the case of illness, how does one determine it? By whose watch does one determine the hour? Questions are many and the possible result is that such definitions could become serious points of conflict, exactly what we are trying to eliminate in this program.

On the other hand, CORC is convinced that before any legislation is passed, there must be some clear understanding or consensus about justifiable denial of access. Without that, it seems impossible to protect the best interests of the children. CORC finds itself in a conundrum and suspects that the Attorney-General (Mr. McCrae) also found himself in a conundrum in regard to a conclusive definition of justifiable denial of access.

CORC suggests that the discussion towards consensus take place prior to the enactment of any amendments to The Child Custody Enforcement Act and that that issue could be referred to the advisory committee which we have recommended.

Throughout the consultation process, CORC has had concerns about the lack of clarity and elaboration in regard to reimbursement of expenses and posting of sureties. We do not know how this will work. How will expenses be paid? Will there be provisions to enable the use of a surety to reimburse expenses? What expenses will be considered reasonable? How long will the surety be held? These are serious problems which we believe must be addressed before any legislation is passed.

CORC has noted that Section 14.1(1), dealing with cases where access has been wrongfully denied, "directs the court to take into consideration the best interests of the child." This directive is not included in Section 14.1(2), dealing with the failure to exercise access. CORC recommends that if this legislation or similar legislation is to become law that the directive "to take into consideration the best interests of the child" be added to Section 14.1(2).

CORC has lobbied long and hard for the expansion of the unified family court system. We think that if Bill 11 is passed and new powers are given to the court that this is just one more reason to expand the unified Family Court system and the appointment of specialist Family Division judges.

CORC has raised several concerns about the proposed Access Assistance Program in Bill 10. These concerns we believe are serious and valid. We do not support the implementation of the Access Assistance Program but, assuming that the program will be implemented we ask, therefore, that you consider seriously our recommendations.

Manitoba is again breaking ground in the area of family law. Therefore, we urge the Attorney-General and the Legislative Assembly not to rush into this program and legislation before the full implications are understood.

Mr. Chairman: Thank you, Ms. Bjornson. Do we have questions from the committee? Mr. Doer.

Mr. Doer: Mr. Chairperson, I would like to commend the committee for a very thorough presentation. The Charter of Rights Coalition, all the groups listed, have endorsed the brief presented here this evening.

Ms. Bjornson: We have not circulated this brief, but all of the points included in this brief have been agreed upon by the steering committee, which works by consensus.

Mr. Doer: We had heard just recently that there were some problems with this Bill that you have identified in your presentation. On second reading, I suggested that the Minister responsible meet with the groups prior to getting to this stage of the committee. Has there been any further consultations in recent weeks or recent days, indeed—I think I spoke last Friday on this Bill—with a desire to be ahead of the rest of the country but at the same time doing it in a proper way that makes sense.

Ms. Bjornson: We have not met with the Attorney-General, but we have raised our concerns in the last few days with the Family Law Division.

Mr. Doer: Is there just a major disagreement between the Family Law Division in terms of the points you are raising? I know you cannot speak for them, but your perception of their—

Ms. Bjornson: My perception is that in a number of these areas we are thinking somewhat the same and that there is some agreement, at least acknowledgement, of our concerns. There is a fundamental disagreement about whether there is a need for this program or not.

Mr. Doer: There seems to be two suggestions throughout the Bill with all the criticisms of the proposed Bill. One is to not pass the legislation at this time and to spend more time thinking about the implications of (a) the move, and (b) some of the other details of the aspects contained in the legislation. Is that basically correct?

Ms. Bjornson: That is basically our position. I think what we would like to see, knowing that the program will probably be implemented and that it is a pilot program, would be the elimination of the reimbursement in sureties as a possible plan of action which would then eliminate the necessity for Bill 11. Let the program go through if it is going to be implemented, go through its three-year pilot project with an advisory committee, with a broad mandate to continue looking at this and monitoring the program. But at this time, after much thought, we do not want to see Bill 11 passed.

Mr. Doer: Your coalition meets on a fairly regular basis, I would imagine, with the Minister responsible for the Status of Women (Mrs. Oleson), and I notice that there are concerns raised in the brief from that constituency, if I was to use that term. Have you met with the Minister responsible for the Status of Women on this issue?

Ms. Bjornson: We have not met with her on this issue, but all of our correspondence has gone to her.

Mr. Doer: I was a little confused by the point raised on the survey. Could we please have an explanation to the survey on the top of page 4? Who conducted the survey, was it an independent survey, was it random, and the figure that was reached in terms of only 15.9 percent indicating that they were experiencing difficulty with access?

Ms. Bjornson: The survey was done by the Attorney-General's Department. It was a random survey. I believe they started with about 440 names—I do not have the research in front of me—and interviewed approximately a little over 100 people. Out of that information, they extrapolated that there might be 200 people who would use this program in a year. We think that is high.

Mr. Paul Edwards (St. James): I also want to congratulate the presenter for a very thorough job. It obviously shows a lot of work and I thank the presenter for that brief and her presentation.

I wanted to ask her, first of all, if she has seen the revised Bill by the Attorney-General which has an (a), (b) and (c) to each of the sections.

Ms. Bjornson: No, I have not. The only Bill that we have received was the original Bill 11 as it was introduced in the House.

Mr. Edwards: How long have you been listed as a person who was wanting to present?

Ms. Bjornson: Since about six hours after this Bill went to second reading.

Mr. Edwards: You might be interested to see the proposed amendments, as I have received them two days ago, and they do now have a section (a) of the only two sections which do anything in this Bill. Maybe I will just read that for you. Seeing as you have not seen it, you might be interested to hear it. This is an addition to the two substantive sections.

Ms. Bjornson: I can get my own copy of the Bill. Go ahead.

Mr. Edwards: I must say, I find it is quite unfortunate, given that you have put all this work into this and obviously have done a very thorough job and have been interested since the first day, that you do not have and did not get the new Bill. It is not that long to start with.

There is an (a) added, which states, with respect to 14.1(1), "Require supervision of the access where the court is satisfied that a person or agency is willing and able to provide proper supervision." The same—

* (2120)

Mr. Chairman: Mr. Edwards, I interrupt with a great deal of reluctance, but I remind committee members that the purposes of examining and asking questions of the presenters and people who are before us, are for the purpose of clarification of their presentations, of their briefs, not to introduce potential suggestions

or amendments, as legitimate as they may be, that you may be wishing to present to the Bill. We do that at committee stage later on. With that gentle admonition, I would ask you to reconsider your final question.

Mr. Edwards: This is not my amendment, nor is it the presenter's. It is the Attorney-General's amendment and I would simply mention that same wording is applied to both of the sections. I realize it is short notice. It adds that option of supervision. Does that affect your submission in any way? Do you have any comments to make?

Ms. Bjornson: We probably would have added a section on that addition. I think that adding that to the Bill would not elicit our support for Bill 11 at the present time. What it does is adds one more thing that the court can do rather than the monetary issues. But I think, under the circumstances, that we would not support the inclusion of the supervised access. It is possible within the Bill at the present time—or the program, excuse me.

Mr. Edwards: I am interested in some of the earlier statements that you made. Are you suggesting that perhaps our judges are making mistakes in ordering access so often?

Ms. Bjornson: I am suggesting that there is a myth about, that it is always in the best interest of children to be in contact with both parents. We would say that is not true. We do not believe that it is always true.

I think our position would be that the friendly parent rule in the new Divorce Act has put women in a position where they are unwilling and somewhat nervous about raising concerns around access, and so that often family court judges are in a position of not even knowing some of the situations and having the information there to make decisions on. So I guess we are saying there are times when the decision to give access is not in the best interest of the child. I certainly do not have any statistics to say that there are hundreds and hundreds of times that is true either.

Mr. Edwards: I just want to touch on one of the statistics that my honourable friend raises which was the 15 percent statistic, and that comes from a study that the Attorney-General's Department did to support this. That 15 percent—and you go on to say that there does not appear to be a need for this program. I am just confused. Are you saying there is not a need for this program based on that statistic, or are you saying there is not a need for this program in this form and we should try and come up with a better program?

Ms. Bjornson: We are saying that we do not believe that statistic demonstrates a clear need for the program. That statistic is broken down in ways that people might use such a program. That, along with the other information and the fact that we believe that there are some problems with this research and that is that many of those who were interviewed were in the very earliest times of working out an access order, there are some normal problems in that process. So we just do not see that there has been a demonstrable need.

Mr. Edwards: This will be my last question. I promise.

An Honourable Member: Do not be intimated. Ask as many as you want. Right, Mr. Chairman?

Mr. Chairman: Absolutely.

Mr. Edwards: I respect the Chairman. I do not want to monopolize the floor. I simply wanted to ask, and I do not want to put words in your mouth, but I heard some statistics and I have not obviously read your brief completely about statistics about access by fathers not being good in X percentage of cases or not always being good. Does that mean that generally, do your statistics show and do you say that mothers make better parents overall than fathers?

Ms. Bjornson: No, I did not say that.

Mr. Edwards: Do the statistics say that? Can you just run me through those statistics again which had to do with contact with fathers?

Ms. Bjornson: The statistic that we used came from a 1987 study which was done for the federal Department of Justice, and in that study they found that 11 percent of fathers who had access did not, in fact, see their children. That was the statistic, and there were a number of reasons given. In 55 percent of the cases the fathers were not interested in maintaining contact with the children and, in 30 percent of the cases, the father had moved away.

Mr. Edwards: Are there any statistics that show what percentage of fathers who have access, and maybe you stated this, actually frustrate the custodial parent, the mother and the child, by abusing that access right?

Ms. Bjornson: I do not have those statistics in front of me.

Mr. Edwards: If this program could address both of those problems, and you say there are 15 percent who are having access problems, does that 15 percent include both access problems from the point of the custodial parent and from the parent with access? Would that be a larger figure, do you surmise, if it did include both of those aspects? And if this program could deal with both of those, would it be supportable then?

Ms. Bjornson: Well, this program does deal with both of those.

Mr. Edwards: It purports to, but you have pointed out criticisms—

Ms. Bjornson: Yes, there are criticisms. The program does at least address both those issues. This piece of research that was done by the Attorney General's Department interviewed only non-access parents. It did not interview custodial parents, and so I mean there are two things there. One is that, therefore, it did not include figures about frustration of access or not taking

advantage of access. It also had no component in it to verify the claims that access had been denied.

Mr. Edwards: Just very briefly, there has not been a demonstrated need—I have not been in politics that long but I guess it seems a bit probably unique to say that we do not need something and obviously the need is there. Do you have in mind something else you would rather see? I mean, is there something else—not that there is money to throw around or to spend—and maybe it is in your report, specifically, that you would rather see?

Ms. Bjornson: No, we do not have a proposal. We do not believe that there needs to be an Access Assistance Program at the present time.

Mr. Chairman: Thank you, Mr. Edwards. Do we have other committee members wishing to address the witness? Hearing none, thank you, Ms. Bjornson.

I call on Ms. Beverly Suek, the Manitoba Advisory Council on the Status of Women.

Ms. Beverly Suek (Manitoba Advisory Council on the Status of Women): I would like to start off by saying that the Manitoba Advisory Council on the Status of Women supports the presentation made by the Charter of Rights Coalition.

(The Acting Chairman, Mr. Parker Burrell, in the Chair.)

The coalition has presented a comprehensive analysis. I will just be highlighting some of the major points of concern to us. We would like to begin by commending the Family Law Division of the Attorney-General's Department, and the Family Dispute Services of the Department of Community Services, who we have met with frequently. As a matter of fact, we met with them today to go over some of our concerns and discuss the differences that we may have on these issues and the similarities.

I would like to talk both to the Bill and the program because we see them as being quite interrelated. I am not going to read from the brief. I am just going to highlight a few points because many of them are repetitive from what Ms. Bjornson said. I would like to say that the Advisory Council also feels that the research was not comprehensive enough to justify that there is a need for this program.

As was said before, only custodial parents were interviewed for this research—121 custodial parents were interviewed—and of those 121, only 15 percent identified having a need for this kind of program. Non-custodial parents were not interviewed and unfortunately a lot of people do not know that there are public hearings today. We have talked to a number of custodial parents who would have liked to have been here but do not have the time to make a brief or be able to present. I do not think they have been sufficiently heard from. There still needs to be a great deal of research with custodial parents to find out what their views are on this issue.

* (2130)

Our belief is that the program should be put on hold until such time as there is more in-depth research done and until custodial parents have a voice in this issue. We have concerns about the Bill and the program as it stands right now. I would like, in speaking to this, to ask you to keep in mind that single-parent women are the poorest group in Canada. The last Stats Can figure showed that single parent women are the largest group in Canada who live below the poverty line.

So we are talking about people who do not have resources. First of all, the program could possibly be used to intimidate custodial parents, because they do not have the resources to defend themselves. They do not have the resources to be able to hire a lawyer to defend themselves and therefore they may go along even though they think it is not in the child's best interests.

A lawyer, in this program, is supplied to the non-custodial parent if the complaint is found to be justified. A lawyer is not supplied to the custodial parent if their concerns are justified. I do not know what is going to happen when a counsellor finds that there is very good reason to vary the access order, and that the child might in fact be harmed by not varying the access order, and yet there are no resources for the custodial parent to be able to do that.

After long custody battles in divorce, a lot of custodial parents already have big legal bills and they are not about to take on more. So, without the provision of having that available to the custodial parent, I think that we are going to have some problems with this program.

I also question the need for financial penalties that are listed in the Bill. When you are putting financial penalties on a single-parent woman, you are also putting it on the whole family and the children are the ones who end up suffering. The penalty comes out of the family income. These are already poor families. I also question the cost of this program. Given the fact that we are not convinced there has been a demonstrated need for this program, it could end up being a very costly program. You are talking about counsellors; you are talking about mediators; you are talking about lawyers.

I think it is a big initiative to take on. I understand that the federal Government is paying for half this program for three years. That may be the rush to take advantage of that program but in three years, if it goes on, then the province will end up paying all the costs of this program and have we found enough of a need to justify that happening?

We are also concerned that if the program does go ahead that the counsellors be available both day and evenings for people, because in most families both parents work and certainly most single parents work. So we are looking at a very costly program. We also question the component that has volunteers doing the supervised access, working with a lot of women's organizations that use a lot of volunteers, I can guarantee you that you are going to have a hard time finding volunteers to do supervised access.

So our point is that we do not think there is enough of a need demonstrated as yet to justify this program

or that the outcomes will be of great enough benefit. We talk about mediation not being mandatory in this program but, when a custodial parent knows that if they do not go through the program, they do not go through mediation, then it can go straight to penalties under Bill No. 11 or, when it becomes an Act, then of course they will go. I mean, that is as mandatory as you can get without actually dragging people off.

We do not see enough reference to being child centred in either the Act or the program. We would like to see an Act and a program that centres on the needs of the child. Too often, I think we talk about ownership of children, who owns the children, who has rights to children, how do we divide up children. I think that is a totally sad, sad situation. It is the children who we are concerned with and what is good for them. That is our main concern.

I would like to sort of just end by talking about some of the general assumptions on which a Bill such as this or a program such as this is based.

(Mr. Chairman in the Chair.)

We certainly question some of those assumptions. One of them is that this is the flip side of maintenance enforcement that because we are doing maintenance enforcement we should do access enforcement. We certainly question that. One is money, one can be assessed and documented and collected. That is an entirely different thing from access where you are talking about human dynamics, you are talking about people, you are talking about children. An access order that was made five years is not necessarily valid for a child today. So I think you are talking about an entirely different subject. I very much disagree with the simplistic comparison with maintenance enforcement.

The other assumption that we question is the fact that there seems to be an image out there of all these women withholding custody. I think that is more the rare case than the general case. It is true that there are some good fathers out there who do have trouble getting access. I think that is a real problem and that is sad. Most women, most custodial parents, really care that their children get the best care and that they have contacted as much as possible with the husband. I think that it is very rarely frivolously denied without some substantial reason from the custodial parent. In fact, in my experience with people, it is often the children that do not want to go.

We as parents, and I have six children of my own, we often think we are very important to our children but when they get to be about five, it is their friends and their school and their community and playing baseball or going skating with their friends, or somebody's birthday party that becomes much more important to them, than being trucked off to another community where they have no friends, no one around, no birthday parties to go to. I think it is very hard on children. That assumption that we can move children around and we can share them, I think, is an assumption that I have difficulties making.

I would like to end by just making some specific recommendations that we made on the last page of our proposal and that is that, first of all, we would prefer to see this whole process put on hold until more comprehensive research can be done that includes the needs of custodial parents around access, and that assesses the results of access programs elsewhere.

Secondly, if Bill No. 11 is passed and the access enforcement implemented, we strongly recommend that legal assistance also be made available to the custodial parents, particularly in cases where abuse is alleged. Financial limitations must not prevent custodial parents from their best efforts to protect their children from harm.

Thirdly, should the pilot project proceed as planned, we urge the Government to involve the community in monitoring and evaluating to the greatest possible degree and to provide a publicly available report at the end of a three-year period.

I would like to add a fourth that we missed, and that is that cases in this Access Enforcement Program be referred only to Family Division judges who have specialized knowledge of family disputes.

Last, but by no means least, we recommend that Bill No. 11 be reviewed to ensure that it reflects a specifically child-centred philosophy in dealing with access issues.

In conclusion, we would like to remind you that Manitoba is seen across the country as a leader in the area of Family Law. Many other jurisdictions have looked to us for leadership and innovation in this very difficult and complex issue. We are sure to be watched closely as we take on this issue of access enforcement. The well-being of many children is at stake, and you can be assured of our support for positive changes, and of our challenges in the ongoing process.

Mr. Chairman: Thank you, Ms. Suek. Do we have questions for Ms. Suek?

Mr. Doer: Thank you for the presentation on behalf of the Advisory Council on the Status of Women.

The project was jointly announced in July by the Attorney-General (Mr. McCrae) and the Minister responsible for Community Services (Mrs. Oleson) or responsible for the Status of Women (Mrs. Oleson). Have you had any opportunity to discuss this with the Minister responsible for the Status of Women, and what has been her feedback to you on the joint proposal that was made by the Attorney-General?

Ms. Suek: I discussed it many times with the Minister responsible for the Status of Women, both before it was announced and after it was announced. There was no decision in terms of any changes. We just discussed our concerns about the Bill.

* (2140)

Mr. Doer: There are a number of groups that are listed as groups for purposes of consultation about the Bill. Has there been consultation on the Bill with individual organizations or has there been any round tabling of

the various groups: the Charter Coalition, the Advisory Council on Status of Women, the Committee on Wife Abuse, the Bar Association, the YWCA, etc., a broader group together in terms of discussing this Bill? Has there been a process that has really taken place with one group and the Government separately? How does it work just so I can get an idea?

Ms. Suek: As I understand, it was individual consultations. I certainly did not participate in a round table discussion. It was individual with us.

Mr. Harold Taylor (Wolseley): A question I have is, could Ms. Suek advise the committee with the views of the Manitoba Advisory Council on the Status of Women as to the decisions in recent years out of the Manitoba court. Is it or is it not child centred in your view? Are they child centred?

Ms. Suek: I cannot say that I have a precise knowledge of access orders over the recent years. I am not sure that I could answer that with any definite answer.

Mr. Taylor: The reason I raised that, Ms. Suek, is that the statement by your organization and the preceding delegation both said that this is neither child centred at one moment or not child centred enough, and the reason I asked that is that we are talking about the fact of court orders not being followed and it is on both sides. So the question is, is it a problem with Bill No. 11 or is it a problem more basic with the fact the court orders themselves are not child centred? I think this is very germane to the subject matter.

Ms. Suek: I think it is germane too. I am not the person to answer the question. We have a few lawyers coming up so you might want to ask it of them. My concern about it not being child centred was more the wording in the Bill and the wording in the program which, to me, is interpreted more as parents' rights over children, as opposed to children's rights over themselves. So that is where my concern comes.

Mr. Taylor: You raised the point about the aspect of finances and securing performance and that, and I guess I tend to share your concern that dollars can be a problem with both custodial and access parents. One may be a recipient and maybe not have quite enough dollars to provide properly for the family. On the other side, the access parent may be providing for two families, again not a very happy situation and a shortage of dollars both ways.

I would ask you then, and performance is the issue here, the following of a court order. Has your group discussed any other mechanisms, considered any other mechanisms, other than a dollar penalty to try and assure performance?

Ms. Suek: No, I mean, I certainly do not think a dollar penalty is appropriate in these kinds of cases but I have no idea what else might be appropriate. I do not see that there is a tremendous need for this program generally to—I mean, people seem to be on the most part resolving these issues for themselves in court or between each other. So I do not see any penalties that need to be put in place.

Mr. Taylor: I guess from the statistics we have, some people may conclude that. I found it interesting you may want to make comment is the fact that the statistics that are being displayed this evening are of those from the custodial parents. I wonder if you would like to speculate at what might happen if there had been an even balance of statistics garnered from the other side.

Ms. Suek: The statistics that we were talking about were non-custodial parents. Only 15 percent of the non-custodial parents saw that there was, felt that there was a problem, that it was unresolved. The custodial parents have not, were not interviewed for this study.

Mr. Taylor: Then I heard just a word slip. Mr. Chairperson, the other point is that there were 23 percent who had problems previously. We are not sure how painful or how long a duration it was before they were resolved, which they seem to be. But one adds 15 percent and 23 percent, at 38 percent to me is saying that there is a problem. That is saying that three out of eight cases is problematic.

Ms. Suek: Well, on the other side of that though, Mr. Taylor, is that if people can resolve issues for themselves as 23 percent of them did, I think that the Government should let them resolve it for themselves. I am not sure that the Government should intervene when people are able to do that for themselves.

Mr. Taylor: I guess I could share your view if we knew the time frames involved, Ms. Suek. If it was five years before that resolution was in place with what trauma on the part of the parents and what trauma on the part of the children, and what wasted time of life and what wasted money, if I knew those things, then I could agree with you. In that I do not know them, I certainly have some big questions.

Ms. Suek: Back to our original point about let us do some better research on this so we know the answers to those questions because I do not have the answers to the questions and certainly they were not in the research. I think that we need better research if we are going to undertake a program of this kind.

Mr. Edwards: The second last paragraph, you say that you recommend that Bill 11 be reviewed to ensure that it reflects a specifically child-centred philosophy. Did your group come up with any specific recommendations with respect to this Bill in the event that it should be passed?

Ms. Suek: No, but we would love to participate in an advisory committee to shape alternatives for the Bill if that comes about.

Mr. Edwards: A better Bill.

Ms. Suek: A better Bill, or no Bill at all.

Mr. Chairman: Are there any further questions?

Ms. Maureen Hemphill (Logan): I want to thank the Status of Women and the Charter of Rights Coalition for their briefs and presentations.

There is one thing that I would like to emphasize. It seems to me, first of all, you have made a number of recommendations and in both cases they are very reasonable recommendations. If this goes ahead, would you please take this into consideration and do this or do that. I think your message is clear from both of you that you really do not want this Bill to go ahead.

I think we need to make sure that we understand that because I do not want any confusion, because you have gone ahead and put forward very reasonable suggestions for change if it does go ahead, that should not take away from your firm and strong position that you do not believe this Bill should go ahead at this time at all, that the statistics and information are confusing and contradictory and are not at all clear that what we are aiming to achieve is going to be achieved through this program, is going to benefit children and that it needs more time. It needs more research and more involvement of the people involved and groups and organizations like yours. I just want to ask if that is the case.

Ms. Suek: That is absolutely the case. We would like to see that Bill 11 not go ahead. Our concern though, as Jeri Bjornson mentioned, is that they are already advertising for counsellors for the program and so it seemed like it was imminent. That was what our concern was too.

Ms. Hemphill: Mr. Chairperson, I just want to indicate that there have been many jobs that have been advertised by the Government or by many Governments and, after the advertisement, the jobs were either stopped completely or put on hold for a very long period of time. You should not consider that the advertisement of two positions means that this needs to go ahead or should it detract you from your main position is that it definitely should not go ahead in its present form.

Ms. Suek: Well, we were certainly surprised, because the public hearings had not been held and the Legislature had not decided on Bill 11 that the program should be put in place.

Mr. Chairman: Thank you, Ms. Suek. Any further questions from committee Members? Thank you, Ms. Suek, for your presentation. I call on Ms. Marlene Peek, a private citizen.

* (2150)

Ms. Marlene Peek (Private Citizen): First of all, I would like to thank you for the opportunity to speak today.

Speaking as a single parent who has recently had the misfortune of seeing the justice system at work in the area of access and custody, I would like to state my views in opposition of Bill No. 11.

My first point is that I feel there should have been more forewarning and public notice of these hearings in order to get a reliable sampling of the opinions of the citizens they encompass. There are many single parents who are not aware of these hearings tonight and, therefore, must rely on myself and various human rights organizations to speak on their behalf.

I must oppose this Bill at this time, since it is clear that the problem does not lie in enforcement but in accurate investigation. The manner in which the justice system is now investigating these cases involving access continues to keep our children in abusive and neglectful situations. Too many children are being abducted, abused and neglected after lost battles in court. The justice system seems to want to give the addicts, alcoholics and child abusers the opportunity to prove themselves before taking action. The obvious assumptions that are being made in this respect have cost our children their stability, their self-respect and, in some cases, their lives. By enforcing access without upgrading its methods of investigation, the justice system will only be putting our children at further risk.

There are many fathers and mothers who are rightly fighting for just access to their children. I feel that they will be creating a more complex problem by failing to recognize the points I am making here tonight. Perhaps in consideration of these comments and those of other concerned individuals and organizations, a Bill could be developed to ensure the accurate investigation that is so lacking in our justice system and so necessary to ensure the well-being of our children. Only then can enforcement be considered a positive solution.

Mr. Chairman: Thank you, Ms. Peek. Do we have any questions for Ms. Peek from the committee? Hearing none, I thank you for your presentation.

We have a group of five persons listed next on our presenter list, representing Concerned Families for Fair Child Access. I call on Mr. Allan Hamer, please. I will introduce your whole group: Mr. Allan Hamer, Mr. Bill Muirhead, Ms. Sandra Braid, Mr. Jeff Cudmore and Mr. Randy Marshall. We do that for purposes of recording your names for posterity in our Journal of the Legislature.

Mr. Allan Hamer (Concerned Families for Fair Child Access): My name is Al Hamer. I would like to thank you for hearing us tonight. I have found this whole experience very invigorating. I represent a group of people from all walks of life: mothers, fathers, grandparents, interested people, Concerned Families for Fair Child Access.

Sandra Braid is our legal advisor. She is a lawyer who has seen both sides of custody through her law cases with Newman MacLean. Bill Muirhead is a junior high school teacher with the Assiniboine South School Division and he has seen access problems that crop up professionally through school and also personally through his own case. Bill is going to lead off our discussion. We are going to do it in three parts; it is relatively lengthy.

Mr. Chairman: We are hearing from Mr. Bill Muirhead.

Mr. Bill Muirhead (Concerned Families for Fair Child Access): I would like to thank you for this opportunity

to speak to you about this very important issue, being the enforcement of custody and access orders.

Our presentation will take the form of general opening remarks, followed by a detailed overview of our proposals, including a contrasted comparison of the proposals of those of Bill 11 in the Family Law Branch.

Lastly, we would like to leave time for you to express any comments, questions or concerns, something that may strengthen our proposal.

For this purpose, we have also given a proposal to the head of the Family Law Branch and are currently awaiting a response. We feel more strongly that only by cooperating and working together can we hope to solve this very severe social problem for all children of divorced and separated parents in Manitoba.

Let me begin by saying that as we all know, you cannot legislate behavior, you cannot legislate reasonableness and you cannot legislate fairness, but you can provide an environment that encourages the upholding of the law—in this case, court orders of registered specified access agreements. What legislation can do is to put both procedures for the resolution of access disputes and sanctions for those individuals who, by design, willfully break the law.

Members of the committee, we are not talking about crimes of physical violence that leave scars for all to see. We are dealing with a crime that leaves psychological scars on children and those who love them the most. The most defenseless members of our society are victimized by those who purport to love them the most. Children have the right to be loved and cared for by both parents, whether married or divorced or whether their parents live together or not. We believe that to be paramount. We hope to show you that in our proposal and we hope to make recommendations that would strengthen Bill 11.

In August of this year, the access problems of a number of individuals were outlined in Mike Ward's column, a columnist with the Winnipeg Free Press. Among the cases mentioned was that of Allan Hamer. Mr. Hamer's phone number was included so that those experiencing similar problems could call him. Both our organization, the Concerned Families for Fair Child Access, and this proposal, have grown out of the response to those newspaper articles. Although only 10 of us worked on this paper directly, our membership numbers over 100.

Before I continue with the specifics of our brief, I would like to say that we are not mediators, conciliators, legislators by training. Most of us are not lawyers. Rather, we are a group of custodial and non-custodial parents, grandparents, family members and concerned citizens who care about children.

We have lived through the effects of the current court and social service system as they deal with access problems, and we speak from personal knowledge and experience within the system. We have done our homework. We have tried to read all of the relevant documents and we are now here to present this proposal. We are not experts. We do not purport to be experts, but we are concerned and we have tried to make ourselves aware of the relevant information that has been published from numerous sources.

We have learned a lot in this process. I personally have learned a great deal. I have never read so much since I was at university. We believe that our program has merit and worth and that it is cost effective and will solve the majority of access disputes in Manitoba—

Mr. Chairman: I regret to interrupt you for a moment, but could I ask committee members to refrain from their private conversations to the extent possible? It is difficult sometimes to catch all the presentation being made. I thank you. Please proceed.

Mr. Muirhead: We believe it is cost effective and will solve the majority of access problems in both rural and urban Manitoba, something that Bill 11 hopes to address but does not address at this point. This is a third draft of our proposal. For those of you like Mr. McCrae and Mr. Edwards, the difference between the second and third encompasses some minor word changing and some pagination changes.

If you now turn to page 1 of the proposal, you will see that our goals and objectives of our group encompass many areas that concern children and parental conflict. I would like to read some of those to you:

1. To prepare a realistic proposal for presentation to the Government to improve the enforcement of access orders. (And that is why we are here tonight.)

2. To prepare other proposals aimed at improving the Family Court System in the following areas:
   (a) mediation/conciliation services;
   (b) home assessment program;
   (c) legal aid system;
   (d) counselling and education of separating/divorcing parents.

3. To provide information to the public to make them aware that separated or divorced parents have equal responsibility to their children, both emotional and financial, and that through this co-responsibility, children will not be effected as greatly due to marital breakdown and divorce.

4. To provide a support group for parents experiencing access problems.

We have met our first goal by being here tonight. We hope to be able to appear before you to address issues on certain subjects in the future, if you deem it and if it is appropriate.

A comparison of our proposal and that of the Family Law Branch would take a great amount of time and, as the night is proceeding, I would like to touch on a number of very important issues to us.

Firstly, the goals and objectives of Bill 11 as set out by the Government, we agree with 100 percent. We agree that parents have to be assisted in accessing their children. We believe that the clientele that Bill 11

is currently trying to address is correct, and we agree with that. We agree with allowing non-custodial parents to maintain or reestablish relationships with their children. However, we disagree on perhaps a fundamental point of the pilot program, and that is that the pilot program relies on a social service program, that of compulsory or quasi-compulsory mediation.

Most of us have been through mediation. Most access orders have come about through the experience of having gone through mediation. We see the enforcement of access orders taking a quasi-judicial method and we will further go on to highlight that.

We support mediation. We believe mediation is an important service. However, we do have a problem with mediators validating non-compliance by treating both sides of a dispute as equally valid, which is perhaps one of the aspects of mediation.

Further, for a mediator to recommend or to channel the non-custodial parent towards an access lawyer perhaps tips the imbalance or tips the balance, the neutrality of the mediator towards one parent or the other. We have a concern about that. We have a concern about the people who would be hired and have to work within the program.

The idea of contempt charges, while on paper, seems to solve the problem. We have a concern about that. We believe that is important. However, most family lawyers and senior partners of firms that we have talked to in the city say that the best defence for a contempt charge is to apply for variation of the order, which puts both parents back into a court situation, adding to more expense and further typing up of the courts. As you saw on Sunday, this seems to be a major problem and we have all experienced that.

Posting of a performance bond, surely, we agree with. We agree with it from both custodial and non-custodial parents. We see no excuse for parents who have access not to exercise that access. I think that is important.

The time factor is one area that has not been addressed in this program, and we have serious concerns about that. Ontario's Bill 124, An Act to Amend The Children's Law Reform Act of Ontario, introduced in April 1988, provides for an expedited hearing to take place within 10 days of the service. We have a concern that this program would drag on and that a resolution to the access problem may take many months. Now many months in the life of an adult may not be very long, but two weeks in a child's life is a very long time, and we believe that the time factor must be addressed because children's time is more important than the time of their parents.

What I would like to do now is turn it over to one of my other committee members, who will further go on to explain this program, and I will come back and sum up in a few minutes. Thank you.

Mr. Chairman: Thank you, Mr. Muirhead.

Ms. Sandra Braid.

* (2200)

Ms. Sandra Braid (Concerned Families for Fair Child Access): When we reviewed Bill 11, we took a very close look at the proposal proposed by the Family Law Branch in the Attorney-General's office, as we see that Bill 11 and a proposal must go hand-in-hand. We see Bill 11 as a vehicle by which this proposal can go through. However, we have some problems with the proposal in itself and we have some problems with Bill 11.

Starting with the proposal, we state, first of all, it is not really a new proposal. What it is doing is making the system, as it stands today, more accessible monetarily to the non-custodial parent who is experiencing access problems. We find that at present there are serious problems in the system. I know, as an attorney, that in many cases the problem is immediate. People want to see their children today or tomorrow and have accountability immediately. With the system proposed by the Attorney-General's office, that accountability goes through an access counsellor who refers to mediation. If mediation does not work, then there is a further proposal to a lawyer who must make a motion to the court. That takes time, especially setting up mediation, and mediation is already fairly booked and sometimes people wait two to three weeks just to get an appointment. That, to us, is not sufficient. We are looking for something that is immediate and accountable. The system which you will be hearing about in a minute, we think, solves this major problem.

The other problem is at present the police are enforcing our court-ordered access. On more than one occasion, as a domestic attorney, I am phoned on the weekend and explained: "I am at the house, the children are inside, I am perfectly sober, I am not doing anything untoward and I have been told that I cannot see my children today," because the custodial parent just does not feel it is convenient. The police should not have anything to do with the enforcement of access orders. This is a domestic problem, which will be better handled on a social governmental scale, rather than tying up our City of Winnipeg Police Department.

Our problem is that as well with the proposal is that in fact it jumps. There should be something in between mediation and a contempt charge. Also, with the contempt charge, at present the remedies are not sufficient. The judge, on contempt, is faced with a very difficult problem, and that is looking at a single parent who has children. Awarding anything that is monetary is going to be extremely difficult for them to, in their own minds, award.

Our proposals suggest alternatives to financial remedies and using financial remedies only as a last resort. We see that a contempt order should be a last resort and one of the reasons we are looking at contempt being a last resort is that the judiciary is already overcrowded, already overly busy and this would do nothing but add to the caseload and we have not seen anything in the proposal that would supply more judiciary to be able to handle this increased caseload.

Also, the problem with Bill 11 is that in fact with the exception of the posting of a surety bond, the things that are in there are things that a judge can order already. He does not need a Bill to make these orders. They are already in his discretion. However, these orders

are not being made and that is not because the judge has not thought of them or considered them, because they may not be appropriate in most of the cases. What Bill 11 is doing is codifying the judge's possibilities and options that he considers. I do not know and I do not have any research on it as to whether or not this is going to change what a judge decides.

We are looking at putting Bill 11 into perhaps a codified form that sets up an entirely new system. I have included in the materials for you a copy of the present maintenance enforcement legislation and how they set up a system. We believe that in the same way that complex system was developed through a complete legislation is something that Bill 11 should be like. It should provide for powers of a deputy registrar to handle some of these cases. As we have heard earlier in the research and I will not repeat it, sometimes all that needs to be done is a few phone calls.

Our proposal, in essence at the very first stage, takes out and weeds out these cases where in fact phone calls would be helpful. It also goes to a second stage in between any contact with the judiciary, thus freeing up the judiciary to handle other matters such as variations. We applaud the Attorney-General's Department in putting forth the maintenance enforcement system in 1985 and find it works well. However, we do not see any reason why an access enforcement system could not work the same way. We are looking mainly as well at costs. Costs are key in setting up a complete program.

The program we have proposed, we figure, can work as a tail along with maintenance enforcement. We supervised access rather than having volunteers. We have investigated in Manitoba and there are two such agencies that are already running very similar to supervised access programs. We would like to hinge on to those types of agencies rather than create another bureaucracy to handle something that should perhaps be interrelated with the same specialists and the experts, perhaps doing the same job with a bit of help and working together.

In effect, we would ask that Bill 11 would not go through in its present form. We are quite concerned that the proposal from the Family Law Branch and the Attorney-General's office is going through by February 1, simply because it is an arbitrary date that they have set to get started. We think it would be a very sad thing if this program goes through only because it has been started, and I am asking you to consider that it is really not too late to consider other options.

We have not had an access enforcement program in Manitoba before. In fact, there is not a formalized access program hardly anywhere, and a few months to consider to make it the best possible program and actually have other provinces and states point to Manitoba and say this is something that we would like to take, we would like to borrow it, I think would be fabulous. We have concerns that tying up the taxpayers' dollars for three years on a proposal that is going to cost money through hiring a Crown attorney to go through the access cases, an access enforcement officer or two, plus an increased burden on the judiciary, the clerks of the court which also must be considered peripherally, is simply a lot of money to be just saying it is too late to do something else.

Thank you. I am going to turn the mike over to Mr. Alan Hamer to discuss the proposal in detail.

* (2210)

Mr. Chairman: Thank you, Ms. Braid.

Mr. Hamer: One page 9 of the papers in front of you, we outline our ideas on a proposed access enforcement program. I am not going to go through the whole thing, but I am going to highlight it. You have got your copies there you can read up on in detail.

I think one of the things to point out, first of all, is that Bill 11 is dealing with enforcement of an already existing court order. That order is based on the assumption that both parents have had some contact with mediation services in most cases. We also stress that there should be continuing contact with mediation services throughout this process. The order has been judged to be in the best interests of the children already, by capable courts, by lawyers arguing back and forth, by mediation services, by all the social services that we have in place already. So we are talking about enforcing something that is correct.

We anticipate that early awareness of this program will eliminate a lot of the future problems, just like in maintenance enforcement. When the lawyers talk to you about your maintenance, they tell you you can go on the maintenance enforcement program. They will also give you the same information for the Access Enforcement Program. The onus would be on the complainant parent or on a complainant to register with the system and make the first formal complaint. Hopefully, we would like to have make-up visits involved in there so that, if there is a missed visit for some reason or other that is perfectly legitimate, maybe the parents can get together and agree on a make-up visit on a future date.

When the case is opened, there would be a continuing documentation of non-compliance, and a file would be maintained that can be used as a last resort as evidence in court. We have heard tonight from a lot of people who have been very gender specific—men, women, mothers, fathers—one of the first things that we did in our meetings was used the terms, complainant, non-complainant, custodial and non-custodial. We do not refer to gender in this, and it works both ways, this system. It works in the way that if you have a non-custodial parent who is not exercising his access that can be documented. It works in the way that a custodial parent who is not allowing access as a specified court order, that is also documented.

The first step is registration with the Access Enforcement Division. Again, as I have said, it is anticipated that the parents' lawyers will inform their clients of this particular service. Upon registration, the intake worker will send a letter out to both parents explaining how the system works, very much similar again to the maintenance enforcement system. In the appendices in this, there is a letter from Maintenance Enforcement for your information.

The second step is actually making the complaint. Either parent can make a complaint, no problems with that. The intake worker is then going to mail a letter—it will be a form-type letter—to the non-compliant parent requesting a written explanation of the incident and make-up visits. That parent can respond in three different ways really. One is a reasonable explanation. I was in Brandon, the car would not start in this weather, I could not get back in time. I am sorry. How about making it up on next Tuesday? Fine, no problem. That stays on file and that is the end of the case.

Another one is that is a reasonable explanation for non-compliance in the long term, and that can deal with things like abuse. At that point, we recommend that there is an application to vary the order. That would be again a formal procedure in court because apparently the current order is not working. That is fine. In the meantime though, the current access agreement should be maintained. If there is a problem concerning the safety of the children, we recommend supervised access, and the Supervised Access Program—as a matter of fact, I just found out about another one today. There is one in the City of Winnipeg called the Marymound Program, as opposed to the Marymount Program, and they are more than willing to get involved with this on a gratis basis until it gets too much for them to handle.

If the non-compliant parent fails to respond, a second letter is sent out in seven days. If there is still no response or the response is totally unreasonable by the non-compliant parent, a letter is sent out summoning the non-compliant parent to appear before a deputy registrar, much as again in the case of maintenance enforcement. They appear in front of Mrs. McGregor. At that point, the deputy registrar becomes involved.

I am sorry, I have left out a section here. There is also the case of the buildup of a number of complaints where you have had a sick child every Friday for the last nine weeks. It gets a little suspicious and the intake worker can have a look at that and refer that also to the deputy registrar. There is obvious non-compliance going on. It is a pattern that sets once you build up a case. When the deputy registrar gets involved, they can recommend several things. One is, of course, immediate compliance, stating appropriate consequences for failing to comply.

A second recommendation would be a return to mediation. Maybe the parents can get together and work this out. A third one will be make-up visits. A fourth one would be mandatory supervised access in cases where the children's safety is a concern. A fifth area is a negotiated settlement between the parents that may include make-up visits, monetary restitution for expenses incurred, and supervised access again. The last step is referral to the master. That is when you cannot get the person to comply with the court order.

At this point, we envision an awful lot of the cases ending. They are just not going to go any further. Again, like in maintenance enforcement, appear once before Mrs. McGregor and she will scare the heck out of you. With all the due consequences that come up, we feel that an awful lot of people, particularly some of the vindictive cases, will take the people out of the court system at that point. They will voluntarily maintain the access agreement.

The last step is involvement of the master. The master can do a number of things and usually we are into the hard core cases now. Maintenance payments can be held in trust. Now, we do not at all agree with the withholding of maintenance payments or the non-payment of maintenance payments. We feel children need that and that is very important, but you can use it as a stick to say, if you do not comply on Friday, you are not going to get those maintenance payments. We are going to hold them in maintenance enforcement until such time as you comply with the access. Another one can be fines. Another area is performance bond, as discussed in Bill No. 11, restitution of funds for expenses incurred.

Again, that can work both ways where you have a custodial parent sitting at home with plans for the weekend waiting for the non-custodial parent to come to pick up the kids, and they do not show. All of a sudden you have to,cancel the plane tickets, the hotel reservations. It costs a lot of money to do that, quite apart from the kids being pretty disappointed. It also works the other way where the non-custodial parent again made up plans for a trip to Calgary, what-have-you with the kids, and that person cannot get the kids to go with him. It is tough.

From there, you go to contempt of court charge with its sanctions. One of the sanctions can be community service, that can be performed while the children are not with the offending parent, so the kids do not even have to know about this. Of course, the last one is a jail term. We hope that it just does not come to it. That is some pretty hard stuff in there. What you have got there is an in-depth four-page review and you also have a two-page highlight summary. If you want to refer to it, feel free.

I am going to turn back to Bill now and he is going to sum up on some of this. Thank you.

Mr. Muirhead: Somebody tells me that when you receive a lot of information in a short period of time it is very difficult to retain it, so if you will let me act as teacher for a minute, if you will turn to page 14, you will find a summary of our proposals and the strength of our proposals. I will go over them very quickly.

Access problems can be addressed easily and quickly at the simplest level, before serious disputes develop.

Parents who are dissatisfied with a current agreement are given increased motivation to attend mediation to resolve problems instead of taking the matter into their own hands. As a result, children are less likely to become victims of parental disputes.

Access according to the current agreement will generally be maintained throughout mediation or subsequent access disputes.

Contempt charges as the "last resort" outcome of access assistance will be eliminated by dealing with

the problems at lower levels of the courts. As a result, the potential for multiple contempt charges and the associated expenses will be reduced.

The program is equally applicable throughout Manitoba, and not just those centres which have access to mediation services.

* (2220)

If I could stop here for a minute, I think that is of critical importance. Having taught in rural Manitoba and lived in Winnipeg, I have always been amazed at the number of services that are available inside the City of Winnipeg as opposed to those outside. We took great pains to try to develop a program that was equally applicable to all Manitobans, no matter where they geographically reside.

The program is equally applicable to custodial and non-custodial parents. I think it must be fair that what we are herefor is that both parents have a responsibility and both parents should be assisted for whatever problems occur. In summary, this program will encourage parents to cooperate with existing orders.

The one thing we have not talked on and we spent a great deal of time on was cost effectiveness. We tried, we spent a lot of time, and we hope the proposals that we bring to you tonight are cost effective. We have to keep in mind in this day and age that Government money is not overrunning, that there is a shortage of money, and we hoped by adopting a program and making these proposals that these programs would be economically feasible for the Government to undertake.

In areas of supervised access, where allegations of child abuse or other parental irresponsibilities preclude the child's access to either parent pending investigation, we recommend that contact be maintained for some form of supervised access. We recognize that those charges may be investigated and we recognize that a number of those allegations are unfounded and that sometimes we feel the accused parent should have continuing regular supervised contact with their children so that once these allegations are investigated, if they are found to be false, there will still be a relationship to go back to. As Allan pointed out and so did Sandra, there are programs available in London, Ontario called the Marymount Program which works very well, and we understand that there are some social services in the city that will undertake that also.

Finally in closing, I would like to point out that you have a unique opportunity here. Bill No. 11 is an important Bill. You can see that by the number of people who want to speak on it. It is an important problem and you have the opportunity and you have the power to enact legislation for the benefit of children, to empower children to have rights, to have access to both parents and to be loved by both.

Thank you very much.

Mr. Chairman: Thank you, Mr. Muirhead. Do we have questions for this group?

Mr. John Angus (St. Norbert): Mr. Chairman, through you to Mr. Muirhead or whoever the spokesperson is, it is a short question. First of all, I would applaud the effort and the research and the work that has gone into preparing this brief, excellent effort. The question is, have you had an opportunity to present your concerns to the authors of the Bill, and what was their response? Have there been any amendments or changes to the Bill based on what your representation was?

Mr. Muirhead: As a matter of fact, we did meet with the Attorney-General and—I did not attend that meeting, so let Mr. Hamer respond to that.

Mr. Hamer: We did spend an hour in the Attorney-General's office with the Attorney-General in the Family Law Division. We presented it much the same way we presented it here, and we are awaiting at this point a comment on it.

Mr. Angus: I am to assume then that this was after the Bill was originally drafted and proposed and came to your attention?

Mr. Hamer: Yes, I believe 10 days ago.

Mr. Angus: I see, and you have not had any response as to whether they have agreed with any portion and/or are prepared to make changes along some of the lines that you have suggested?

Mr. Hamer: Not as yet.

Mr. Edwards: I believe it was Ms. Braid who mentioned that, I thought I heard, you do not support this bill? Is that correct?

Ms. Braid: That is correct.

Mr. Edwards: Do you need this Bill to implement your proposal?

Ms. Braid: We need a Bill to implement our proposal. However, it is our position that this Bill, as it stands, really does not do anything that cannot already be done. In fact, it is codifying some Common Law, although that may be a handy resource tool for the Legislature to point to something and say, oh yes, we can now do this for sure. They have been doing it already, just not to a large extent. We are stating that we need a Bill that is similar to the maintenance enforcement Bill that we have provided for you in order to make the mechanics of our administrative system that we have proposed work.

Mr. Edwards: Would you be willing—then, obviously there has been some pressure to have this pilot project come forward or something come forward, and certainly I am sure that you agree that it is good that it has come forward in the form of being considered for a Bill on a pilot project, be willing to accept the delay in, and it has been suggested before that there be some kind of an advisory body, get together to see, and I agree you are coming from two different perspectives, but do you agree that it is worth waiting to come up with something better?

Ms. Braid: Most definitely, we believe that rushing into something that has not been perhaps as carefully looked at as we believe could be and having other options perused at a little bit more time and looking at them in regard to other systems, for example. Although we have been working on this proposal since August, we only had it ready a few weeks back and then met with the Attorney-General (Mr. McCrae). We do not think that is sufficient time to do the research involved to determine if the proposal that we have is any better or any worse than the proposal at hand.

Mr. Edwards: Finally, and maybe it is a redundant question, it has been suggested by two of the speakers prior that there was not a demonstrated need for this Bill. You most definitely, although you are willing to wait, do disagree with that. Am I correct?

Mr. Hamer: We agree with the Bill, the intent of the Bill, no doubt about that, for sure. We also agree with the courts literally enforcing their own orders, which is tantamount to supplying a lawyer for contempt charges. We just feel the gap between the two is very large and can be filled with numerous other steps that are less expensive, and they do not need the severity of a contempt of court charge. We think that most of the case would be eliminated by putting some median steps in there.

Ms. Hemphill: Mr. Chairperson, just a quick question, I am wondering, the point you made about maintenance payments and saying that you did not really think that maintenance payments should be withheld because they were needed for the care of the child, I am wondering how you think you can use maintenance payments as a stick without withholding, which you did not seem to be prepared to do. Was there a suggestion that you threaten to withhold for a weekend without any intention of withholding?

Ms. Braid: Actually, that is a last resort of our proposal, the financial consequences. If you have got to that stage we have a seriously non-compliant custodial parent. Maintenance monies are usually being paid and most usually nowadays being paid through maintenance enforcement. In no way do we say that the obligation should in fact be taken away from the non-custodial parent from paying those monies out. However, we are saying in certain drastic cases, it may be that if the court says to somebody, we have these monies, we have not made the non-custodial parent renege on their obligation, we are holding those monies, and all you have to do is comply with a court order which you have been ordered to do, we think that may be a final push without having to resort to something as serious as a contempt charge which will also cost money, especially lawyer's fees.

Ms. Hemphill: So you are suggesting that even although you are saying that it is in the final stage, you are suggesting the withholding, the use of withholding maintenance payments to get them to comply?

* (2230)

Ms. Braid: At the master's level, what we are looking at is that as being one of several options, the other options being make-up visits, the fines, community service work. The master who runs the show cause hearing, we anticipate, will be able to evaluate whether or not that withholding of maintenance funds would in any way endanger the children. We would also anticipate that in no way would a master make an order if he thought the children were going to be harmed by it.

Mr. Chairman: I thank you for your presentation, hearing no further questions.

Our next presenter is Ms. Louise Lamb from the National Association of Women and the Law.

Ms. Louise Lamb (National Association of Women and the Law): Hello, good evening. I have some paper for you. I do not know that I have enough copies. I was told 15 would be adequate. This is intended to be part of simply bedtime reading for our presentation tonight. There is a lot of food for thought which I have attached in the form of appendices to the brief. I will be referring to those appendices as I work through my presentation. I will try to be brief.

Mr. Chairman: Excuse me, Ms. Lamb, with your indulgence and those others who have been with us all evening, I wonder if it would be fair game, on the part of the committee Members who are trying their best to pay attention to take perhaps a very short four or five minute break and stretch our legs. Could we do that. Thank you!

(RECESS)

Mr. Chairman: We will try it again, if we can get our committee Members back. Again, can we consider resuming the committee? I need a few more committee Members to complete a quorum. Ladies and gentlemen, we have a quorum. The committee will recommence. I would ask you to come to reasonable attention.

Ms. Lamb: Thank you. As I was saying before we took our brief break, I intend to be brief and I intend to be blunt. Before I am too blunt, I want to properly introduce myself.

Mr. Chairman: I want to assure you that will be well-received and refreshing.

* (2040)

Ms. Lamb: I am with the Manitoba Association of Women and the Law, an association which may be well known to some of you. We have been around since 1974. I think I have been a member since then. We are one of 24 member caucuses of a national organizational that is called NAWL, the National Association of Women and the Law. Our members are primarily lawyers and law students. We do have some Members who are non-lawyers who are interested in legal policy issues. We are a non-profit organization and, like some of the other groups you have heard from earlier tonight, we are dedicated to improving the legal status of women in Canada.

One project which NAWL has been heavily investing volunteer time and effort into in the last two years has

been a review of court decisions. The project is called The Gender Equality in the Courts project. We are looking specifically at the judgments of courts in many areas affecting women, notably family law and many others. I am particularly interested in the comment, I think, that Mr. Taylor made about whether we can accept that the decisions that the courts make, the decisions that are the subject of this whole access enforcement program, really are wise decisions.

Well, let me tell you that our Gender Equality Project in the Courts has revealed—we did not know this already but it is highlighted that we certainly cannot be sanguine about the ability of our courts to always be right, an impossible task in any event. But in the Family Law area, there are some horrendous decisions being made. Because Mr. Taylor raised the issue of what are some of the decisions that are being made, I want to just briefly describe some of those decisions.

One decision has to do with the exercise of access rights—it had to do with a case that made the Winnipeg Free Press about a year and a half ago of an access father who had been in conflict over many years with the custodial mother and her parents. He assaulted his ex-wife's father, broke his jaw in two or three places in front of his children when he came to pick up the kids for his access visit. A judge of the Manitoba Court of Queen's Bench, in sentencing him for assault, decided that he should serve his sentence on weekends in order so as not to interfere with his exercise of his access rights. In other words, we can question that decision.

The whole premise of that decision is that even when an access parent is violent towards a family member in the presence of children, some courts still do not accept that kind of behaviour can be detrimental to the child who has witnessed it. So there is one example. Now, luckily, but after much frustration and cost by the parties involved, that case was successfully—well, it was a criminal decision. That case was appealed to the Court of Appeal, and the Court of Appeal changed the consecutive weekends sentence so that there was some recognition that access parents have responsibilities as well as rights. That is only one story.

Another case which we found in our review of court decisions had to do with a decision involving an access dispute where the court accepted that there was evidence of sexual abuse by the father. There was physical evidence of sexual abuse, something that is quite rare in sexual abuse cases. Most cases of sexual abuse do not involve physical evidence but in this case there was physical evidence. The trial judge did not award access at the time but he did say that he was—and I will just find the specific reference. I will quote the trial judge.

"In view of that conclusion that the girls were sexually molested and that the father is the person responsible, I am convinced that it would be quite contrary to the interest of the two children, in this case, for their father to have any access whatsoever to them in the immediate future. The father may raise the issue of access again, on or after the 1st day of May, 1989." This is a very recent decision.

"The children will then be seven years of age and will have had a reasonable opportunity to recover, in some measure, from the trauma they have suffered. It will be up to the court at that time to determine what, if any, access should then be granted and whether that access should or should not be supervised access."

Admittedly, this judge did not order access at the time, but do we feel comfortable with the notion that children who have been sexually abused can recover within the 15 months that this judge was contemplating allowing for that recovery? As the person who studied this decision for MARL notes, this time limit which gave the mother 15 months to recover from her legal battles to date completely downplays the effect of sexual abuse on the children and once again shows greater concern for parental rights than children's rights.

The judge also went on to make some rather gratuitous remarks about how the mother had had those children ofter the age of 35—I shudder—and that she had been overinvolved with them, suggesting that perhaps that had something to do with the abuse. In any event, I leave that with you as another example of the unquestioned wisdom of our courts.

Another case that you may recall from press accounts some several years ago now, three or four, was a case involving—it was Cyrenne vs. More. I may not be pronouncing the names of the litigants properly. It had to do with an application by a male babysitter for access to a three- or four-year old female child. The Family Court judge awarded access—this was simply a male babysitter—he awarded access, it went to the Queen's Bench on appeal and a justice of the Queen's Bench upheld the decision. It had to go to the Manitoba Court of Appeal before that order was undone. So again, can we afford to be sanguine about the wisdom of our courts when they are making these decisions in the first instance? I think not.

Let me go back to the more orderly presentation that I put together, and perhaps just another introductory remark. The last presentation suggests that these access issues—access denial, failure to exercise access—are simple issues. Issues that are so simple that they can be taken care of by way of a summary "show cause" proceeding before people who are not necessarily judges, for example, the use of the deputy registrar is touted as one portion of this so-called "show cause" procedure. Well, these kinds of issues are hardly simple. The best interests of the children are hardly simple. I urge you not to be swept away by the notion that a quick summary procedure is the answer to our problems here.

I want to go back then to my presentation as I had originally conceived it. I wanted to note that these access enforcement initiatives that you are considering, hopefully, you will not have to consider them without due time for proper consideration, but they are founded on two assumptions and it is NAWL's position that those assumptions are unfounded.

The first assumption, and you have heard Jeri Bjornson talk about this, is that children almost invariably benefit from frequent contact with both parents following divorce and separation no matter what the degree of conflict is between the parents. That is one of the major foundations of this kind of initiative,

and the decisions I just alerted you to should give you pause there, but there is other research to substantiate that this is simply not the case. I will not repeat the research that Jeri alerted you to, except that—well, I will quote one excerpt from one of the studies that she quoted. That had to do with the study from Pennsylvania by three male sociologists at the University of Pennsylvania. This is at page 2 of my brief if any of you are following along.

I say this committee should heed the note of caution sounded by Professors Furstenberg, et al., and then I quote: "This topic surely merits more careful attention by researchers and policy makers. It is disconcerting to discover weak evidence for an almost commonplace assumption in popular and professional thinking that children in disrupted families will do better when they maintain frequent contact with their fathers. In the absence of better and more convincing evidence, policy makers rely on conventional wisdom that is, unfortunately, an unreliable guide for social reform." May I use that old adage: "The road to hell is paved with good intentions."

* (2250)

I also note, and I have underlined this in my brief, that we are not referring to this kind of research because we question the ability of men to parent because we question that men ought to be involved with their children. But what we are asking legal and social policy makers to do is deal with reality. Do not sacrifice the interests of children in pursuit of an ideal. There have to be some societal changes first before we impose on children the burden of living with this ideal of two involved parents, where the reality is that the parents are in conflict and there have been unequal levels of involvement during the course of the marriage.

The second foundation of this whole initiative, both the Access Enforcement Program and Bill 11, is the notion again that has been addressed by other speakers that access denial is a widespread problem that warrants tipping the balance between litigants by providing free counsel to one side. Again, and some of the appendices I have attached to my brief deal with this in more depth, there is not any foundation for that assertion and with all due respect to the Attorney-General (Mr. McCrae), who appears to have assumed the truth of that assumption in his remarks and introducing the Bill, there is absolutely no support for that contention that this is a serious and pressing problem which demands that this committee and the Legislature of Manitoba deal with what are far-reaching measures without adequately studying and contemplating the unfortunate side effects and diseconomies—what an inadequate word to talk about potential danger to children.

In talking about the assumed wisdom of the courts who make access orders in the first instance, another researcher—interestingly enough, another male sociologist, this time a Canadian—has some comments to make that are I think quite instructive. He is James Richardson, who is a sociologist in Fredericton, New Brunswick. Mr. Richardson, I believe it is Professor Richardson, was commissioned by the federal Department of Justice to do some research and attempt to evaluate the Divorce Act 1985, which is the new legislation that we are now living with in the divorce arena. He studied divorced couples. He looked at 1,300 divorce cases—and I am now dealing with page 4 of my brief—he studied 1,300 divorce cases in four major Canadian centres and he was paying particular attention to issues relating to custody and access because of the publicity.

The federal Government, Members of Parliament and the Senate, were barraged with an incredible amount of publicity and material by what we refer to as the fathers' rights groups or the men's rights groups who were asserting that access denial is "the worst form of child abuse," that it is the most horrendous problem in family law, that it opens a Pandora's box and is responsible for all of the trauma that children suffer in the course of divorce. That was the barrage that the federal Government was faced with in dealing with the amendments to the Divorce Act, which led to the Divorce Act'85.

So Richardson was commissioned to take a calm and hopefully rational look at whether these were truths or whether they were myths, and he concluded that in effect that assertion, that access denial is a major problem, was a myth, and I quote him at page 4 of my brief. He, after noting that he was attempting to pay particular concern to the interest of fathers' rights groups, he says himself: "Certainly the author," referring to himself, "in the course of this research, has encountered men who, having lost a custody battle, carry on a a personal crusade, often monitoring every behaviour and relationship of their ex-spouse in the hope of finding evidence to overturn the previous decision."

And in C. Wright Mills' famous phrase—some of you may know who Mills is. Unfortunately, my education was inadequate. In any event, in C. Wright Mills' famous phrase, some of these men have turned "a private trouble into a public issue." So let us be cautious here about weeding out the private troubles from the public issues. You are not simply dealing with individual cases where there have been injustices. You are dealing with a program that will have a broad effect that will be positive in some respects and negative in others. We assert that the negative effects will outweigh the positives.

But in any event, moving on, Professor Richardson noted that it is very, very rarely that access is ever denied to a non-custodial parent. In fact, he notes that even in cases of insanity, access orders are made. Presumably people who are sanguine about supervised access think that would be appropriate. In any event, you can see that the courts very, very rarely deny non-custodial parents the right to access.

So does it make sense that we should assume that every case of access denial is without valid foundation? In fact, I think it is unsafe to assume that most access denial cases are without valid foundation. I think there is valid foundation in the majority of cases, given the inadequacy of our courts in making the initial decisions and this overattention, if I can call it that, to parental rights rather than parental obligations in the child's best interests.

I will not deal with Richardson's review of the nature of access problems that he found in his survey population, because you heard about that from Jeri Bjornson. We do note that the research that underlies or purports to underlie the Manitoba program suffers from some methodological inadequacies, and again I have attached an appendix to the brief that deals with those inadequacies.

But certainly no one can claim that there is a sound empirical basis for this program on the basis of that research, with all due respect to the good intentions of the Family Law Department.

I also want to deal with this notion that access enforcement measures can be justified because custodial mothers have maintenance enforcement and, therefore, equality requires that men should have access enforcement. I quote a woman who has just recently authored a book on child custody. Her name is Susan Crean. She has just published this book in November of 1988 and again, if you have the time to review it, I have attached the salient portions of the chapter dealing with this issue.

But what Susan Crean notes, and I am not ashamed to make this observation in front of you tonight: "No woman could fail to note the irony in this situation. It took women's groups 15 years of lobbying and required piles of research and statistics to convince provincial Governments to do something to enforce support and maintenance orders. And the default rate there was 80 percent, and thus, as large in social terms as the access problem is small." So please do not make the mistake of linking those two programs and, worse yet, please do not make the mistake of confusing a method that is adequate and appropriate to deal with maintenance enforcement and applying that to a situation like access denial where the parameters are so much broader and more complex. Please do not make that mistake.

I have talked a bit about the inadequacies that the courts sometimes display in making initial access orders. I also want to talk about the inadequacies of mediation in dealing with some of the very situations that lead to access denial. I am talking now about violence. I understand that the mediation movement is making some attempts to come to grips with this notion that, can you really mediate instances of spousal violence? We do not think you can, and I think the mediation movement is trying to come to realistic grip with that issue.

But unfortunately, again, we can not be sanguine about the ability of mediators or conciliators or counsellors to weed out the inappropriate parents. Oh no, they will never get to the legal arm of this program. They will never get free counsel to pursue their aims. Well, I do not think we can be so sanguine.

Again, because an example speaks louder than my going on in generalities, I have attached to my brief, as Appendix VI, something that I received from a staffworker at a battered women's shelter in Kingston Interval House. I think, if this Bill had been given appropriate publicity among the larger constituency that is interested in these issues, including the Battered Women's Movement, that you will find similar stories in Manitoba. I am going to use some Ontario examples. But nevertheless, these examples demonstrate that mediators cannot necessarily be assumed to have the judgment or skills to deal effectively with family violence.

* (2300)

Again, given the time, I will not go through the specific examples except to draw your attention, particularly, this is again at Appendix 6, to a case involving a woman named Catherine who was involved in a mediation over access to her children. The mediators did not take her husband's overt threats of violence seriously and in the end were able to extract her—there were access visits taken on in another location. The mediator was able to extract the address and phone number of the home. Ultimately, the husband got that information, began exercising access by picking up children at the home and in the end, shot his ex-wife in the leg. In any event, the mediator showed up at the hospital to apologize because she had not really believed that he would be violent. An example, but can we really be so sanguine about the abilities of a mediation system to weed out, so confident that we can leave the weeding-out process in their hands with this draconian measure of free legal counsel to the access parent as the ultimate threat? I do not think so.

I would endorse the comment that Bev Suek made that again I do not think we can necessarily accept that there is not a compulsory component to the mediation that is built into this Access Enforcement Program when you have those kinds of draconian measures in the background. Is a parent really going to feel safe refusing mediation when it is being recommended? I do not think so.

I want to stress, especially, that actually NAWL became involved in reacting to this program back in 1987. One of the first complaints that we had, and we had a lot of trouble coming to grips with whether there was some merit in this program, we wanted to take a good look at it, talk about it among family law

The fact that this program could claim to be addressing the best interests of the children and not provide counsel to a custodial parent, where the counsellors themselves in the program had determined that they did not want to enforce this order because it was not in the best interest of the child to see the non-custodial parent. We think, and I do not think I am using language that is too strong, we think it is unconscionable, that if this program goes forward in a pilot form or not, in any form, then it is absolutely unconscionable that free counsel should be provided to the non-custodial parent whose access rights are violated once he has gone through or she has gone through this process of conciliation and counselling and whatever, and not provide it to the custodial parent in the opposite situation.

Again I use the word "blunt" to describe my remarks in my brief. I cannot make any apologies for that. I am not questioning the motives of those who put the program together.

I state in my Bill that I think Bill 11 is a smoke screen. It is a smoke screen because it pretends to do

something for custodial parents. It pretends to give them effective free legal assistance in certain situations so that we can relax and say, well, it is evenly balanced here. The non-custodial parent is getting free legal counsel in access denial situations but, boy, you know, those custodial parents are getting free legal counsel to go to court and get an order for the posting of a bond, for posting of security. In the fast developing events tonight, I understand that there is a proposed amendment to this Bill that removes the provisions relating to sureties and substitutes a power to order supervised access.

That does not really address our concerns. We still say Bill 11 is misguided and unwarranted. For one thing, I have already told you we cannot be too sanguine about the notion that supervised access is the answer to all access denial problems.

Secondly, we cannot be too sanguine about the notion that there are all sorts of qualified people out there who will supervise effectively.

The other problem I have, and it is not that the courts cannot order supervised access now, they do on some occasions. The problem I have is that to even enshrine this proposed amended Bill suggests that there is kind of a bottom line here, that the worst cases can be solved by means of supervised access.

Again, I have been talking at you, I hope to you, and you are engaging in my thought process here. You know, I have been telling you, do not make these false assumptions. Do not think these problems are simple. Bill 11 is a very short Bill and it is a very simple Bill, but it is a very harmful Bill. I will not bother you then with some of my other remarks about how even Bill 11's assistance to non-custodial parents has some problems in terms of posting sureties. If you are really going to take that out, hopefully you will get rid of the whole thing, but I will not bother you with that.

I do repeat, Bill 11 is a smoke screen to obscure the inequities of the proposed access program and the most glaring inequity, aside from the fact that there is no proof that this is necessary, is this imbalance in providing legal counsel on both sides of these issues. Again, would you please think about the diseconomies with this Bill, the harm that may be done to children and to custodial parents who are afraid of abuse being visited on themselves. Think about that before you enact these kinds of provisions.

I wanted to say something more about this notion that there could be an immediate quick fix by having access problems dealt with summarily. I think the best person to talk to you about that is not me, as a lawyer and as someone who is—I will not say rabble rousing, I have been involved in social policy issues for a long time. I think the best person to address this issue of whether there can be an immediate fix to access denial problems is Marlene Peek who has had some personal experience so I would like, assuming I had another five minutes, to ask her to address you on that issue before I make myself available for questions. Marlene, could you talk about that? Is that in order, Mr. Chairman?

Mr. Chairman: Ms. Lamb and Members of the Committee, I wonder if we could, just prior to hearing from Ms. Peek, allow the Attorney-General (Mr. McCrae) to make a brief announcement with respect to the ongoing nature of these committee hearings.

Hon. James McCrae (Attorney-General): Thank you, Mr. Chairman. I thank the presenters for their indulgence. I think I can say that the parties gathered around this table agree that in regard to the ordering of this committee's work, we might tonight listen to the remainder of the presentations so that we can accommodate all those people who have been here and waiting for as long as they have.

The committee had a meeting scheduled for 8:30 in the morning. Due to the lateness of the hour, I suggest we cancel that sitting, Mr. Chairman, and consider scheduling a meeting for Monday evening at 8 p.m. for the conclusion of the clause-by-clause study of the Bills before this committee.

Mr. Angus: Mr. Chairman, I am not familiar with the procedures of the committee. Does that mean that we conclude public representation this evening?

Mr. McCrae: Mr. Chairman, as I understand my discussions with Honourable Members, certainly with respect to the ones who are on the list and here tonight, if someone should come forward at the last minute, and Honourable Members agree to hear that particular presenter or presenters, that would be a matter to discuss at that time. Certainly, as a courtesy to those who have been so patiently sitting here all this evening, we should at least hear all of those who are here.

* (2310)

Mr. Angus: I have no objection certainly to hearing and giving every bit of attention to the people who are here and have gone out of their way to make presentations this evening. It has been my experience that as people make representation and as it is reported, the pot starts to boil and delegation after delegation decides that they also want to throw their hat into the ring and the process can go on. I do not want to see us go through the same difficulties on Monday night and then again on Tuesday night or, if we are, I would like to be aware of it. That is all. We will have to wait and see what happens, I suspect.

Mr. Chairman: Mr. Angus, the committee will deal with events as they shall unfold. Somebody else says that is always the case.

I invite Marlene Peek to make her presentation.

Ms. Peek: I would like to add a few short comments with respect to some specific points that were made here tonight. I would like to address the time element that was previously discussed.

While I agree with the importance of a quick solution, in many cases, such a solution is not possible. In many cases, a certain amount of time is necessary for hostilities to cool. In my particular case, without the waiting periods involved in court dates and mediation, we would be in court battling a custody battle that

would be at the expense of our child, and I am sure that our case is not a unique one.

With respect again to investigation, if a parent is a good communicator, they could be very convincing in court, especially with adequate representation. I feel that investigation must go further before a court order could be justified. Again I point out that without this investigation the best interests of the children are being overlooked.

On one particular occasion during our first pre-trial hearing, my husband presented himself as a very articulate, upstanding gentleman. This same upstanding gentleman, while high on drugs, neglected to secure our daughter in her stroller at a stage where she was climbing and allowed her to fall on her head. This same gentleman refused to refrain from smoking marijuana while she was in his care. Without going any further with my personal experience, I hope I have made this point clear.

Mr. Chairman: Thank you, Marlene Peek. I would ask Ms. Lamb to resume, or you have concluded?

Ms. Lamb: I could say more, but I think I have said enough.

Mr. Chairman: Thank you. Have committee Members questions of Ms. Lamb?

Mr. Taylor: Ms. Lamb made reference to one of my questions to an earlier delegation, Mr. Chairperson. I was, however, disappointed that she chose not to refer to the general quality of decisions by courts in Manitoba and instead chose to bring out what all of us, I think, can call notorious cases. Could she add something as to her group's feelings as to the quality of decisions? In a general sense, how well are they working? How fair are they to both parties?

Ms. Lamb: Mr. Taylor, how do we identify the outrageous and notorious cases until we suddenly discover that we are in the midst of what is becoming a notorious case? I mean, you know, hindsight is 20-20.

I am certainly not here to condemn all judges, but gender equality in the courts is a major problem. It is not confined to Manitoba; in fact, it is a problem across Canada. The fact that judges are as guilty as others of making assumptions about quick fixes, assumptions about the appropriate roles of the sexes, as I say, how can we be so confident that a particular case, our case, will not turn out to be the notorious or outrageous one?

Mr. Taylor: I hear the comment from Ms. Lamb about the fact that Manitoba courts obviously at this time, hopefully, not forever, but obviously at this time are weighted more to one gender than the other and I do not think—

Ms. Lamb: And I am sure we could debate as to which gender you are referring to.

Mr. Taylor: Obviously the male gender. There is no joke about that, and we hope we are going to see an improvement.

Ms. Lamb: I will send you a copy of NAWL's study as soon as it is publicly available.

Mr. Taylor: What I am asking is, could we have a little more precision as to the quality of that decision making? Because one of the issues here and part of the motivation I would hope of this initiation, which I believe was an initiation of the previous Government, is that there was some general acceptance that access orders had a general validity, were workable, and as such should be therefore enforced.

Ms. Lamb: As a matter of fact, most access orders do not, problems are not encountered. You have heard us say over and over again it is only a small minority of cases that this program is going to address. The question is, in that small minority of cases, are workers, counsellors, and conciliators going to encounter those notorious cases? Maybe so.

Mr. Taylor: Do you consider three-eighths a small minority?

Ms. Lamb: I do not understand the question.

Mr. Taylor: The question being, when one adds 23 percent of previous serious problems that have been finally been worked out, and 15 percent of current—

Ms. Lamb: No, no, no, they were not defined as serious. We do not know how they were worked out. If you are referring to that research, no, I do not—

Mr. Chairman: I hesitate to interrupt—

Ms. Lamb: I am sorry, Mr. Chairman.

Mr. Chairman: I ask Mr. Taylor perhaps to use this opportunity to solicit for clarification further information from Ms. Lamb on her presentation, and not necessarily to get into an argument or debate with her. We can do that quite nicely amongst ourselves.

Mr. Taylor: That is a point well taken, Mr. Chairman, and hardly my intent, but I guess I find a little bit of difficulty getting the information I am looking for.

Ms. Lamb: Mr. Taylor, I think that is why this Bill needs serious study and further research. I do not think that legislators—and I am not suggesting you are doing that—have the right to look to the public to do their job. I mean, we are waiting to help. We want to share the benefit of our experiences and our own research, but the onus is not on us to do your what should be careful inquiry for you.

Mr. Taylor: At one point, Ms. Lamb, you made reference to the fact that there is not evidence to suggest that any child spending time with both parents is necessarily beneficial. You said there was little evidence of that, and what I would ask is on the—

Ms. Lamb: No, I do not think you are—

Mr. Chairman: Pardon me, I should just explain. I ask for presenters or Members of the committee to be

recognized by the Chair. It is for the purpose of the transcription of Hansard—

Ms. Lamb: I apologize.

Mr. Chairman: It is easier for them to identify those people speaking. Ms. Lamb.

Ms. Lamb: No, I think it is Mr. Taylor.

Mr. Taylor: At least, Mr. Chairperson, what I thought I heard was a statement of the fact is that there is not evidence by study to indicate benefits to be had automatically by children having access to both parents.

Ms. Lamb: In conflict-ridden marriages, yes.

Mr. Taylor: Well, I do not know that we are talking marriages, we are talking about the aftermath—

Ms. Lamb: Yes, the aftermath of marriages, conflict-ridden relationships between parents.

Mr. Taylor: The problem one gets into in these situations, and I would ask Ms. Lamb's comment, is the fact that when there is conflict of parents after the marriage, it seems that what you are saying is that justifies denial of access to children for one parent and denial of access to the children to that parent.

Ms. Lamb: No, we are not saying that. I do not know how you have extracted that from my remarks. We are not saying that at all.

Mr. Taylor: All right. And what evidence—

Ms. Lamb: In fact, I have left you in the brief, in an appendix, with reference to research. Unfortunately, I did not have the time or the resources to copy the entire studies that have been referred to by Jeri Bjornson and myself, but I would be happy to supply those to you if you really have, you know, the time and the interest in reviewing the research that we are quoting. We are quoting recent research, credible research, and I would be happy to give you that so that you can form your own conclusions as to what we can infer from it.

Mr. Taylor: I would thank Ms. Lamb. If she could convey that at a later date, I would be much appreciative of that.

Ms. Lamb: Certainly.

Mr. Taylor: That is the last of my questions.

Mr. Edwards: I will be brief. I was just interested, Ms. Lamb. You said that your group—and obviously you have done a lot of work tonight and I thank you as well for your very thorough piece of work and presentation. Did you have an opportunity to meet with the Attorney-General (Mr. McCrae) prior to the meeting tonight, your group?

Ms. Lamb: As I say, not since the introduction of Bill 11, but MAWL has certainly met. We took the initiative, as I say, some years ago, I think it was two years ago, to ask for a meeting with the Family Law Branch and they were kind enough to meet with us. So we have had a meeting. Certainly, meetings were possible and some did take place before the introduction of Bill 11. Since Bill 11, no, we have not had an opportunity.

* (2320)

Mr. Edwards: I believe you are in agreement with the first two presenters, that to your view just is simply not the proven need for this program. I think that is what I heard you say. Correct me if I am wrong.

Ms. Lamb: That is one of our major concerns. The other is that it may be harmful. It may have side effects which outweigh any benefits.

Mr. Edwards: I understand. When you met with the Family Law Branch back in 1986, and I understand they did an initial study back then—I think I saw the initial pilot program and some of the aspects that they put forward. Were you convinced at that time as you are now that aside from there not being a proven need, were some of the ideas they had then better than this program now? Have you had a chance to review the program they have got in detail?

Ms. Lamb: The premise as I have noted—again, I do not think this is too strong. One of the most appalling, to us, flaws of the program from its inception or the idea has been this uneven application of the provision for free legal counsel and the fact that it cannot really be seen to be serving the best interests of the child with that inadequacy. But we have also always questioned the need for the program and, as I say, one of the appendices to our brief is a letter which we wrote detailing the methodological inadequacies of the study but you have heard about that from previous speakers.

Mr. Edwards: Finally, Ms. Lamb, there was a prior speaker who indicated that the new provision in the new Divorce Act does certainly suggest outright that a parent who is friendly to the other parent's involvement is, therefore, given preference in the issue of custody. Do you agree that is a flawed provision?

Ms. Lamb: Boy, do we ever! I have briefs and papers and articles, which again I would be happy to share with the Members of this committee, and if you are interested I will send them to you, absolutely. Again, I refer in this brief to the sadly typical way in which family law reforms are enacted lately, based on myths and not on empirical evidence or careful study. The so-called friendly parent role is an excellent example of that kind of flawed approach. I think, as Bev Suek noted, that parents and particularly women are now paying the price. That was a very ill-judged provision.

Mr. Chairman: Thank you, Ms. Lamb.

Hearing no further questions, I will call on our next presenter, Dr. Manuel Matas from the Manitoba Law Reform Association.

Dr. Manuel Matas (Manitoba Law Reform Association): Mr. Chairman, I would just like to begin by saying that

in response to the first speaker, Ms. Bjornson, who spoke on behalf of a group called Charter of Rights Coalition, that in my opinion the Charter of Rights applies equally to men and women.

Secondly, in response to Ms. Lamb, I would agree with Ms. Lamb that there are some horrendous decisions being made in family court. Ms. Lamb referred to cases of physical violence and sexual assault. I would like to suggest that these cases are the minority, not the majority of the total number of divorces. When the divorce rate is close to 40 percent of the general population, in my opinion, only a small percentage of these cases involve sexual or physical abuse or violence. However, since Ms. Lamb raised the issue of child abuse, I think it is worth remembering that children are more likely to be abused by their mothers than by their fathers, especially by single mothers, and many studies have shown this to be the case.

Throughout history, women have been the primary perpetrators of infanticide. A review article on domestic violence which appeared in the Journal of the National Association of Social Workers—the journal is called "Social Work"—the November/December 1987 issue, showed that mothers abused their children 60 percent more often than fathers do. Although the majority of married women are now working outside of the home and in fact the majority of women with children less than five years of age are working outside of the home, the courts have been reluctant to accept the supposition that these women have a financial responsibility to their own children.

Miss Lamb made a reference to The Maintenance Enforcement Act and said that 80 percent of men were defaulting on child support payments prior to The Maintenance Enforcement Act. Although very few women have been ordered by the courts to make child support payments, studies of women have shown even higher default rates on child support payments. One study done in Texas showed that 95 percent of women who were ordered to make child support payments defaulted on their payments.

I am a psychiatrist at St. Boniface Hospital. I have been working full time at St. Boniface General Hospital for the past 10 years and I have been acting head of the Department of Psychiatry for two-and-a-half years. In addition, I am the medical director of the Family Therapy Clinic at St. Boniface General Hospital. Prior to working at St. Boniface, I lived in Toronto and I worked full time as a psychiatric consultant to the Scarborough Board of Education for three years. Over many years, therefore, I have seen in my practice many, many children and families who are going through separation and divorce.

Over the past couple of years, I have become aware of a widespread and flagrant violation of child custody and access court orders. I have found that often the custodial parent will deny the non-custodial parent access for personal reasons which have nothing to do with the best interests of the child and, in my opinion, this is a form of emotional abuse of children. I will not say that this is the worst form of abuse but it is a form of abuse.

When we talk about access, we must remember that we are talking about the child's access to his or her parent. It is an extremely cruel and destructive act to deny a child access to the non-custodial parent unless, of course, the parent in question is alcoholic, drug addicted and abusive or otherwise unfit to parent, although I believe that these cases would be the minority. Of course, it is not only the children and the non-custodial parent who suffer. It is also the extended family, particularly the grandparents.

I was on the Peter Warren Show last year for an open line radio show discussion of custody and access, and I was saddened and appalled by the number of grandmothers who are not allowed to see their grandchildren because the custodial parent, out of meanness and spite, refuses to let them do so. Some of you may also know that I am an inveterate letter writer and, over the past few years, I have written letters to the Minister of Justice and the Attorney-General, both past and present, on a topic of child custody and access.

I have also written many letters to the editors of the Winnipeg Free Press and the Globe and Mail. As a result of my letters in the Globe, I have received phone calls and letters from all over Canada. One man in Red Deer, Alberta, who was a non-custodial parent, phoned me to say that his ex-wife and two children just disappeared one day and he had not seen his children in two years. Another man in Halifax, Nova Scotia, also a non-custodial parent, whose ex-wife lives in Winnipeg, told me that he was supposed to see his children for one month every summer. He sent his ex-wife plane tickets for the children but she never put the children on the plane. Now he has to hire a lawyer in Winnipeg to represent him to have the court order enforced. I believe that this man should be compensated for his expense.

I received correspondence from a grandmother in Winnipeg who told me that she had the experience of having a police cruiser come up to her home and two uniformed police officers took away her two grandchildren, ages three and five, in a police car because her former daughter-in-law, who was the custodial parent, had apparently made some false allegations against her son. These two small children were severely traumatized by this experience, not to mention the grandmother, and yet there were no consequences for the perpetrator and no remedy in law.

Up until the implementation of the pilot project on access enforcement, some of the most flagrant violations of court have had no consequences for the perpetrator. I believe that Manitoba, with the introduction of this project, will be in the vanguard of a more humane system of family law, and that Manitoba will become a pioneer and a model for other provinces in the area of access enforcement, just as it has been in the area of maintenence enforcement.

I support Bill 11 because it is fair and balanced. It is a child-focused project and it will, in my opinion, support the best interests of the child. Subsection 16(10) of The Divorce Act, 1985, provides that "making an order under this Section, the court shall give effect to the principle that a child of the marriage should have as much contact with each spouse as is consistent with

the best interests of the child and, for that purpose, shall take into consideration the willingness of that person for whom custody is sought to facilitate such contact."

The importance of the involvement of both parents after separation or divorce is now recognized by federal legislation, and I believe that Bill 11 will reflect and complement federal legislation in this area.

Finally, I wish to commend and support the provision for conciliation and mediation in the Access Assistance Program, since I believe that recourse to court action should be a last resort in the resolution of child custody disputes.

It is only recently that the adversarial nature of the formal judicial process has been recognized as potentially damaging to the parties, especially to those with ongoing relationships such as divorcing families. Mediation is viewed as being effective in helping parties in conflict come to a joint resolution of their disputes, especially when it is obvious that amicable relationships must be sustained, as is the case with parents of minor children.

* (2330)

To quote Elizabeth Koopman, who is with the Institute for Child Study, University of Maryland, it is acknowledged that while the formal spousal roles of husband and wife are ending, there is a vital need for ongoing collaborative involvement in child rearing by both parents. The custody mediator's task is to help transform the initial presentation of contending spouses into that of problem-solving parents, and to direct their energies into essential child-focused activities.

I believe that Bill 11 will help to do just that, since Bill 11 is child-focused and, for that reason, I support the legislation. Thank you.

Mr. Chairman: Thank you, Dr. Matas. Do committee Members have questions of Dr. Matas?

Mr. Rose: Dr. Matas, in one of the earlier presentations I have been reading, I am confused by the information. I thought maybe you may have some data or thoughts on this. It revolves around the problem of false allegations of child sexual assault during family custody disputes. Do you have any information on the reason that there is a lot of them that are unfounded to a large extent that may be founded? Have you any data on that?

Dr. Matas: The literature that I am familiar with shows that allegations of sexual abuse, which were made in the context of a child custody dispute, are more likely to be false than otherwise, and I personally have seen in my practice a number of men who have been falsely accused of sexual abuse, whose lives have been destroyed by false accusations, but I do not have the exact percentages.

Mr. Rose: I just want to clarify it. You state in your research or your knowledge that it is more likely to be false. In other words—

Dr. Matas: That is correct.

Ms. Hemphill: I am wondering if, in light of the fact that a number of the previous presenters were quite clear and saying quite strongly that they did not believe there was sound empirical basis that demonstated that access was being being denied in significant numbers, I am wondering if you have any knowledge of any studies or information or empirical data that demostrates the opposite, that says or shows that access is being denied in significant numbers.

Dr. Matas: Two pieces of information, one of the previous speakers, Mr. Hamer, said that in response to a newspaper article in the Free Press by Mike Ward he received something like 300 phone calls. The pilot project which was proposed by the Family Law branch suggested that 200 families per year would be using this program. Another study suggested 15 percent of access orders were problematic. Now, even though the total numbers may be small in each individual case, the result can be very disturbing for the individuals involved.

Ms. Hemphill: Mr. Chairperson, are you familiar with the recent Richardson study that suggested that there was not a serious problem, that access is rarely denied in Canadian courts and that the numbers are very small and that there are reasons in some of those cases for the denial of access? Are you familiar with that study, and do you believe there are ever valid reasons for denial of access?

Dr. Matas: Well, I will answer your last question first, which is that, yes, I do believe that there are in some instances valid reasons for denial of access, but I would also say that as a physician, if I am treating a patient who has an illness even though it may be a very rare illness, it is still very distressing to the individual who is so afflicted. I believe that individual is in need of assistance, whether or not it is a rare condition or a common one.

Mr. Edwards: The allegation, or one of the points that has been made previously tonight, and I am sure that you have heard of this, is that we are overemphasizing the value of access to the non-custodial parent and in particular, in most cases of course, that is the father. Do you, as a psychiatrist, take issue with that?

Dr. Matas: I take great issue with that statement because I think that as a psychiatrist we are trained to look at the total family including the children, both parents, and both sets of grandparents and the extended family, and I think we have to consider the needs of all the members of the extended family, including the grandparents.

Mr. Edwards: I appreciate your comments about the grandparents and indeed the non-custodial parents. Do you not agree that what is good for the child is first and foremost and comes before all else?

Dr. Matas: I would agree with that statement and I would think it would be a very unusual case in which

it would not be in the child's interest to have continuing access with grandparents.

Mr. Edwards: By that, you mean to have access to grandparents, the non-custodial parent and everything else regardless. Access generally then is preferable for the child.

Dr. Matas: I do not know what you mean by regardless.

Mr. Edwards: Perhaps you could just define that for us. Where do you draw the line? What does it take for access to be bad for a kid?

Dr Matas: I think if we make the assumption that both parents love their children and have the best interests of the children at heart and use that as an assumption until proven otherwise, until for example it is shown in a court of law that one or the other parent or one or the other set of grandparents has been detrimental to the well-being of the child, then I think we should continue to try to help that child after the divorce have as much contact with every member of the family as is possible.

Mr. Edwards: Finally, Dr. Matas, these studies that have been quoted and indeed we have seen documentation that say the uprooting of the child in many cases of joint custody and access orders to go somewhere else, to leave the environment and spend days on a regular basis with the other parent, that as a psychiatrist, to you, holds no water?

Dr. Matas: I would say that many of us who work in the social sciences are quite familiar with the way statistics can be twisted to serve one's purposes, and I think it is more important to look at the needs of the child rather than to look at statistics.

Mr. Edwards: Thank you.

Mr. Doer: Is this the official position of the Manitoba Law Reform Association? We are speaking a lot from your personal professional experience. The brief you presented, is it the position of the Manitoba Law Reform Association?

Dr. Matas: Our association supports the concept of access enforcement.

Mr. Doer: So this brief has been endorsed by the Manitoba Law Reform Association?

Dr. Matas: No, it has not. I just found out about this hearing and I have put this short presentation together. I have not had a chance to present it to my association. However, our association supports in principle the concept of access enforcement.

Mr. Doer: Does the Manitoba Law Reform Association support Bill No. 11 as before us tonight?

Dr. Matas: Well, as I said, I just heard about the public hearings within the last couple days and I did not have a chance to present the Bill to the association.

* (2340)

Mr. Chairman: Do we have any more questions of Dr. Matas? Hearing none, thank you, Dr. Matas, for your presentation.

Our next presenter is Mr. Jack King, representing Family Law Subsection, Manitoba Bar Association.

Mr. King (Family Law Subsection, Manitoba Bar Association): Good evening.

Mr. Chairman: Do you have a brief for the committee Members?

Mr. King: Yes, I do. As a lawyer whose practice is almost exclusively in the area of family law and has been for several years, it is to me and my family law colleagues that parents come, parents whose access has been denied and parents who cannot persuade the other parent to exercise the ordered access. I am, however, not here tonight in my personal guise. I am here as the chairperson of the Family Law Subsection of the Manitoba Bar Association to speak about Bill No. 11 and the related program.

Now, in doing that, we are not talking, as some people have, about the fallibility of the courts in the making of access or other orders. We are talking about a program to facilitate that which has already been ordered by the court. After hearing and after an agreement perhaps, there is an overriding public interest in ensuring that the decisions of the court system are not ignored. Otherwise, we start walking happily down, not the road to hell perhaps, but certainly the road to anarchy.

That there is a need for an Access Assistance Program—and I stress access assistance, not access enforcement, which is the phrase which is being bandied around tonight. That there is a need for such a program is, we believe, indisputable.

For a number of reasons, including apathy, anger, irresponsibility, many parents do not exercise the access permitted them or do not allow the non-custodial parent to see the children as ordered or agreed. Sometimes, but it is rare, a complete denial of access or complete failure to exercise access results.

More commonly though, the denial or non-exercise will be sporadic. Access will be cancelled, the parent will not show up as arranged, or show up 10, 15 minutes, an hour later, be continually late in returning the child, and so on. All those little problems arise. They are very, very difficult for parents to deal with.

The cumulative effect of that sort of behaviour is, I would suggest, harmful to the children, and it is harmful to the relationship that they should enjoy with their parents. It is also frequently detrimental to the interests of the parents themselves, and it is specifically detrimental to the interests of the parent against whom those actions are directed.

For example, the failure by a non-custodial husband to exercise arranged access can result and often does in the ruination of the plans made by the custodial

mother, and a consequential and undesirable financial burden being placed upon her. At present, the only remedy for a parent faced with these difficulties, unless they give up, is to seek the intervention of the police, which is a bit like using a cosh on a rabbit, or the intervention of the court or to ask for a finding of contempt from that court or bury the order.

That process which we say should remain available does not address the root causes of the behaviour, let alone remedy that behaviour in any way. If anything, that sort of intervention aggravates the problems.

The Family Law subsection over the last two years has asserted that there should be in place a system which would be harmonious with a Unified Family Court and the existence of the conciliation services, a system that provides for an intervention process to help resolve difficulties without resorting to this blunt instrument of immediate court intervention.

In summary then, the Family Law subsection certainly supports the concept of this Access Assistance Program.

As to the form of the program, you have before you a program devised by the Family Branch of the Attorney-General's Department and the Family Dispute Services, the Department of Community Services. I am going to go through that program shortly. They have devised a pilot project to access assistance and the legislation of course is now before you.

Now you have also heard another proposal, detailed, hard work obviously went into it, given to you by Concerned Families for Fair Child Access. I want to deal with that proposal first, and I would suggest that there are four major concerns that you should have about the Concerned Families proposal.

The first one is that it is unnecessarily complicated. It is a marvelous stainless steel model without any heart. It is a multi-step process. It ends with a right of appeal to the Court of Queen's Bench from any decision made by the master. Two of the consequences of a multi-phasic program like that, increased delay, and increased cost.

The second problem is that it seeks to make use of a bureaucratic system already in place, but already in place with the enforcement of maintenance orders. There is no correlation between the enforcement of a maintenance order and the enforcement of an access order. The skill and expertise required to enforce a maintenance order is limited.

It is of a substantially different nature to that required for an intervention in access matters. The bureaucrats who under this proposal, that is Concerned Families, would deal initially with access enforcement problems have no training, no skill and no background in any related discipline such as to enable them to deal with the complexities that exist in disputes centred on children.

The Maintenance Enforcement Program is an excellent one, but it deals with money, and the cold clear logic of that particular program is not one, I would suggest, that is transferable in any way to the emotion and human drama that centres on the problems of children.

Thirdly, the proposal does not contain any first instant mechanism dealing with the causes of the problem. It deals with the symptoms. That is in broad contrast with the proposal made by the Attorney-General's Department. Now it is true of course that the Concerned Families group suggest that the deputy registrar have the power to order a further assessment to be done by family conciliation. Firstly, an assessment is not mediation, and also there is a public policy concern because of the increased work that such an assessment order would place upon an already completely overloaded family conciliation.

Then fourthly, I would suggest that constitutional and jurisdictional problems about the proposal made by concerned families in that both the deputy registrars and the masters would be given powers which they do not presently enjoy and which may well be beyond the scope of anyone to give them.

The proposal advanced by the Family Law Branch and the Family Dispute Services, as well as avoiding the problems inherent in the Concerned Families proposal, has four significant benefits. Before making those, I would like to refer to the planned program itself. There seems to have been, and I say this with all respect, some confusion in the minds of some of the previous speakers as to what the program is. A councillor is going to do a preliminary assessment to identify the problem areas and the potential benefits and risks of access to the children.

Mediation will be offered, it will be voluntary. Where a mediation does not work or the offer is not taken up and detailed rights of access exist in a court order, the court order has to be specific. Then the coordinator is going to assess the case to determine the nature of the problem and its impact on the children. Then the next step is the coordinator attempts to work on a plan with the parents, and the custodial parent is invited to attend an individual meeting, not a meeting where the other parent is, so that parent's views can be presented.

* (2350)

The custodial parent will be allowed to come with a lawyer or a friend and they may decline completely to attend. If they do that, then a referral may be made to the Attorney-General's Department for the consideration of taking proceedings in accordance with the legislation before you. Where the custodial parent attends, then of course the program coordinator is going to try and work out a plan that is going to deal with the problems that have created the denial of access or the failure to exercise the access.

The access councillor has the discretion not to refer the matter for court action. That is, if the councillor is of the opinion it is no longer in the child's best interests for the access to take place.

Now there have been some comments about difficulty in finding skilled councillors and so on. But I would suggest that there are already in Winnipeg a number

of very skilled councillors and people who could well do this sort of job. If that decision is made by the councillor, then of course the parent still has the right to apply to the court on his or her own.

The program too is going to provide a service for custodial parents to assist in approaching non-custodial parents for not visiting their children. That, in a nutshell, is the program that is being offered.

In some previous material, you were referred to an extract from a book, "In the Name of the Father," which is by Susan Crean. In there, there is a passage in which he talks about the Manitoba program that is before you today. She says this, this is on page 132, it may well be in the material that was given to you before. She says, "that in Manitoba at least the program was developed as a pilot project and one which will provide a variety of counselling and conciliation services including supervised access. It is aimed at helping both parents and is designed to work towards smoother access relations, reserving court for the last resort, in response to the fact that many people do not really know what liberal access means when a court orders it, and need help figuring out how to plan and structure it into their lives." That is another person's view of that program, and of course it is parallelled in what you have before you.

Now the four significant and overwhelming points in the program before you, the Attorney-General's (Mr. McCrae) proposal, are these. Firstly, it allows for someone with the appropriate training to be able to offer skilled help at the initial stage. Conciliation approach is offered. That means that the underlying causes of the problem can be addressed before we have to rely upon that austere and dry jurisdiction of the courts. That means that the human element of the problem is addressed, not just the mechanical aspects of it. I would suggest that initial form of intervention is going to help or greatly enhance the chances of disputes being resolved without going before a court.

Secondly, the proposed program is more expeditious than Concerned Families. It has a two-step process which would be utilized if the matter goes to court. That, relative to the other proposal that you heard about tonight, is going to save both time and money.

Thirdly, the proposed program is more clearly designed to take into account and utilize the existing system. That is mainly one in which a Unified Family Court and specialist judges work in tandem with a family conciliation service staffed by competent professionals. The fact, Louise Lamb's comments about certain decisions probably highlight the need for family law matters to be dealt with by judges with specialist backgrounds in family law. That is what she said really goes to.

The fourth high point of the proposal is that by allowing initial non-adversarial intervention, it avoids the no-choice coercion that is implicit in what we have right now.

I know time is getting late. I will just make these last two points if I may.

Firstly, a question where the separation agreements not reduced into court orders should also be enforced. This is a pilot project. It is meant to last three years. I would suggest that, at this time, it would be undesirable to potentially overwhelm a fledgling program with the work that might result from having agreements as well as orders to enforce. If there is a problem because a person has an agreement, then that can be solved fairly easily by reducing that agreement into an enforceable court order.

The second consideration, and this was mentioned by some of the groups before, is whether the Government, already providing lawyers to enforce an access order, should also provide lawyers to apply for variations on behalf of the party. I would suggest that there is very good reason why the Government should not appoint lawyers to act free of charge to parties wishing to vary an order. Essentially, it is a public policy reason.

The enforcement of the orders of a court is a matter that is, as I said before, in the public interest. The variation of an existing order is essentially a matter of private interest. There is a difference in substance between the two.

In summary then, there should be an Access Assistance Program. It is necessary. It would be used. The program should be at least along the lines put before you now by the Attorney-General's Department and the Family Dispute Services. And, thirdly, Bill 11 should be passed. Thank you.

Mr. Chairman: Do we have questions for Mr. King?

Mr. Edwards: Mr. King, we have heard earlier presenters that quote us statistics and one in particular about the 15 percent of custodial parents surveyed, I believe it was, said that there was a problem with access. They suggested that did not merit this type of program and intervention. You say it does. Do you have any statistics?

Mr. King: I have the statistics of the meetings that I have every month and every year. And I can tell you that I, as one family law practitioner in this city, have at least five and probably 10 problems every year that could have been assisted by such a program. There are 20 people in the city doing as much family law work as I am. You multiple those.

* (2400)

Mr. Edwards: Is this, in your opinion, the most pressing problem facing the Family Law Branch?

Mr. King: It is certainly a very pressing problem.

Mr. Chairman: Any more questions of Mr. King? Hearing none, thank you, Mr. King, for your presentation.

Mr. King: Thank you.

Mr. Chairman: I now call upon Ms. Ruth Rachlis, representing Family Mediation Manitoba.

Ms. Ruth Rachlis (Family Mediation Manitoba): It is mediation, Mr. Chairperson, and perhaps some

meditation on the subject would also be effective, perhaps, ought to be. We have not thought about that.

Mr. Chairman: Please proceed.

Ms. Rachlis: Yes, I am representing Family Mediation Manitoba. We are an organization whose goals and objectives are in part to support programs and interventions in the system which will reduce the stress experienced by children whose parents are undergoing the separation and divorce process. We are supportive of this Access Assistance Program, which give parents another level of opportunity to work out access issues in a way which can be more beneficial to their children. I do not intend to speak as specifically as most of the presenters before me did, not just because of the hour but I feel that those people perhaps have more skill in some of the specifics. But I wish to speak generally to the process of any program which gives children a chance to have their parents work out their conflicts in a way which do not make them end up as the victims of their parents' conflicts.

Marriage and parenting issues strike at the very core of being for most of us. You can tell by the presenters who have come here tonight that this is a very important issue for most of us. When they go well, they provide the raison d'être for our very existence. Good marital relationships can help us transcend difficulties in many other areas of life. Conversely, when they do not go well or when they are in the process of conflicts and disillusionment, research show that adults involved may experience great vulnerability, threats to their self-esteem, disappointment, sense of failure, and I could go on and on with what people feel like when these events happen to them.

The result of this state or these states is often a diminished capacity to parent. The ability to see the world from the child's perspective is lost and the best interests of the child are often not considered, as one's own needs become front and centre.

Family Mediation Manitoba believes that parents can best be helped to rebuild and regain their abilities to parent through processes which remind them that, while their marriage may have ended, their parenting roles will never end and that the children do need access to both parents in a manner which allows for the parent-child relationship to continue to be maintained and strengthened.

We believe that Manitoba took an important step in setting up the Queen's Bench Unified Family Court in 1984. This structure coordinated the legal needs of families going through divorce, allowing them to deal simultaneously with the divorce, the access and the maintenance issues related to the process. As well, Manitoba introduced, through their Community Services Department, the Family Concilation Services, a service offered voluntarily to parents who wish to avail themselves of an alternate method of dispute resolution regarding custody and access issues.

We believe, and the research does support this, that where parents can maintain harmonious relationships following separation and divorce that children are less traumatized from the effect of that divorce. So the argument about what the research shows about how often children see their parents, how often they do not see their parents, we do know that if the parents fight, the children lose. We know that. We know that many parents have been unable to mutually and voluntarily agree on access plans, and the court has ordered these. While the majority of these ordered plans have been satisfactory, many have broken down due to factors contributed to by either or both of the parents.

Family Mediation Manitoba strongly favours the design of this plan for access assistance, which provides just another chance, another opportunity outside of the court situations for parents to try to reconcile their difference regarding the access with the help of skilled counsellors. We believe that the provisions that are in there, put therein, which protect the child through supervised access where this appears advisable will allay fears that this attempt may result in danger to the child. We understand that the counsellor will not recommend further action where he or she is concerned about potential abuse of the child and that a referral may be made to the mandated agency, the Child and Family Service Agency, where this is deemed advisable. We support these built-in safeguards which focus on the child's physical and emotional security. We are very child focused. We know that parents can make mistakes and anything that we can do to make sure that the child is protected, we support that.

In summary, Family Mediation Manitoba supports the belief that a child in most circumstances ought to have access to both his or her parents following separation and divorce. We believe most parents want to have the best interests of their child as a central focus and we believe that any opportunity for dispute resolution at various levels of the system ought to be present to assist parents to make this happen. Family Mediation Manitoba supports this access program. Thank you.

Mr. Chairman: Thank you, Ms. Rachlis. Do we have questions for the presenter from the committee? Hearing none, thank you again for your presentation.

Our next presenter is Miss Norma McCormick, representing herself, a private citizen.

Ms. Norma McCormick (Private Citizen): Thank you, Mr. Chair. I intended to come and make a brief presentation just to the substance of the Bill, but I feel compelled, because of what I have heard tonight by way of background, to tell you about why I am here.

I am a single parent with four children, aged 6, 9, 12 and 14. My 14-year marriage to my former husband ended when he, a high school teacher, became sexually involved with a 16-year-old student in the school in which he taught. I moved out of my marital home and into rented premises and, in the ensuing year, my kids shunted back and forth between our family home and my house, and their father and I shunted back and forth from family concilation.

During this time I was shocked to learn that his conduct would be seen by the court as irrelevant to the question of custody of our children. Although he

had a documented history of violence against me, because he had not abused my children, it was seen to be irrelevant. Although his relationship with the young student was about to become a criminal offence in January with the introduction of Bill C-15, it was at this time only a matter of professional misconduct.

After a protracted and frustrating time with family concilation and an expenditure of approximately $6,000 in legal fees, we have not yet been to court. During this time, my children, in accordance with a mediated parenting agreement spent two nights a week and every second weekend with their father. A typical every second week and every second weekend was Friday and Saturday night with them alone at his house, while he and his girlfriend were out, and I was alone at my house. We would talk on the phone and I would promise them to talk to their dad about letting them come to me on the evenings he planned to be out. His position was that these were his weekends, even though he was not prepared to spend the evening time with them.

During this time he made no contributions to school expenses, child care or clothing. He did buy some sports equipment, as well as birthday and Christmas gifts. My lawyer had worked out a financial sharing scheme that would see our children's expenses split equally on a reconcilation of receipts, with other than regular expenses, such as the day care, the subject of pre-purchase consultation between us for purchases over $25.00. He and his lawyer refused to discuss the children's expenses until the time at which our marital assets had been dissolved, including the sale of our marital home.

In June of 1987, he left Winnipeg on a summer vacation to England. In August, we saw his job advertised in the paper and contacted his employer. He had in fact resigned and on October 21, some four months later, he contacted the kids by letter to say that he was sick of the fighting and would not be returning to Canada.

In September, I had been to court to obtain an uncontested divorce, sole custody of my kids and a maintenance order, which remains to this day, almost entirely uncollected.

As of December 1, 1988, his outstanding maintenance account is $17,000.00 In the ensuing year, the kids heard from him at Christmas by way of gifts and by telephone, because we called him at his mother's home in England. He also sent them letters and gifts on their birthday. He instructed them to write to him at his grandmother's house, although he made it clear to them that he was not living there and could not give them an address.

In June of 1988, he phoned from Australia to make arrangements with the children to meet him in England. He was calling before I got home from work, and I instructed the children that he had to make these arrangements through me. He continued to call, always after the kids were home from school but before I got home from work. The substance of his converstations were to instruct my 11-year-old daughter on how to get airline tickets from the travel agent, and how and when they would get to England.

* (0010)

I knew that he would keep on calling until the details were arranged, and I was able to intercept one call, advising him that the arrangements had to be made through me. I asked him if he intended to contribute to the kids' care financially and his response was that he would pay the airfare and that the kids costs during the month they spent in England would be his. When I indicated this was hardly good enough, his response was that I would not dare keep the kids from him and his family and, if I tried, he would turn the children against me for all time. He also told me that he had legal advice that I could not deny him access to the children for not paying the unreasonable maintenance order.

Several days later, I had a call from the Bank of Montreal. They had a bank draft for me in the amount of $2,400, which was $600 short of the required amount of airfare for four kids, which I took to maintenance enforcement and applied to his account. The children have heard from him by mail twice since. Both times, he decries the cruelty of my actions to keep them from him and he has sent them some British pounds for stamps and paper so they could write to him at his mother's address, although he cannot tell us where he is living.

Now that is the sob story that I did not intend to tell you, and what I do intend to do now is address why this Bill is very important to me. You have probably guessed that I am not wildly supportive. To the contrary, I think the Bill should be deep sixed, and that your resources should be expended in another way which I will detail later.

First of all, how do non-custodial parents get to be non-custodial parents in the first place? It appears that even criminal conduct is not likely to interfere with the current presumption of joint custody.

I also want to know whether Section 14(1) could be used against me should my ex-husband endeavour to get reasonable access defined as a month in England. This is in my estimation double jeopardy. Should he go to court, I would be required to hire another lawyer at the expense of our inadequate family income. Could I be required to reimburse him for the expense of the children's airfare, or for his airfare in getting from Australia to England in anticipation that the kids would be there?

I say double jeopardy because I want to speak to the fact that, while I have heard laudable things about our maintenance enforcement program, I would speculate that the great majority of maintenance orders in this province still remain in one form of default or another. Either they are not paid at all, they are not paid on time, or they are not paid in the amount that is ordered by the court.

Another point that I would like to make is that we have a vast population of children in this country who are growing up in poverty. Children make up the largest single group of poor people in Canada. Despite a decline of the total number of children living in Canada, the number living in poverty has gone up. More than 1

million children are growing up in Canada in poverty, an increase of a 120,000 children since 1980. When we factor out the reasons, women are often sole supporters of their children, and women to this day still earn only two-thirds of the wages that men earn. In the era of serial monogamy, men move on to establish new relationships and diminish their capacity to support their first family and their first obligation.

Also I want to address Dr. Matas' contention with respect to statistics about women involved in abuse. That is something I do know a great deal about, child abuse. I spent four years on a federal Government commission, now known as the Badgley Commission, which studied the question of sexual abuse of children. But I was not hearing Dr. Matas say that women were sexual abusers of their children, but rather physical abusers. Again I want to point out that poverty has a serious effect on families. Poverty creates stresses that compound the already difficult task of raising children. Low income parents run a greater risk of encountering problems that erode their capacity to parent their children competently. So if we are going to talk about why women may be abusers of children, I would like to suggest that perhaps it is lack of resources, lack of support, lack of respite, which can be a contributing factor.

With respect to the contention that sexual abuse allegations are raised inappropriately in the context of marriage breakdown, I feel very compelled to point out that allegation and counterallegation does not constitute an investigation into whether or not a child has been abused. On the Badgley Report, we found that 99 in 100 sexual offenders against children are male. That does not mean that 99 in 100 males have abused children, but the large portion of sexual offenders against children are men.

We found that much to our amazement that one in six offenders against a child is in the child's immediate circle. It is either a member of the child's own family or in a position of trust or authority over children. Now again, I think it is important to speculate that all situations of child sexual abuse which surface during marriage breakdown are equally not unfounded. Accusations must be investigated and it is not the responsibility of the parents to determine the validity of the acuusations, but rather the skilled professionals who we have in police child abuse units and Child and Family Services professionals.

Just in closing, I want to refer to something that is in Louise Lamb's brief. It specifically provides information on preliminary research findings which refute a presumption that the allegation of sexual assault during child custody disputes are always false. This information comes from a study that was done by Drs. Pearson and Tones (phonetic) of the Sexual Allegations Project in Denver, Colorado. The Pearson-Tones Paper is based on a 16-month project conducted by two organizations with particular expertise in domestic relations cases and sexual abuse problems.

With respect to the contention that false allegations of child sexual abuse have become the weapon of choice in resolution of domestic disputes, the Pearson-Tones Study suggests that there is no basis for this statement. It concludes that on a study of U.S. domestic relations courts, interviews with professionals and a survey of relevant literature, that a number of sexual abuse charges arising during divorce and custody visitation disputes represent a very small percentage of even uncontested divorce and custody cases. This study also concludes that there is no evidence to support that allegations arising out of divorce or custody disputes are more likely to be false than allegations of sexual abuse in general. Deliberately false allegations made to influence custody decisions are viewed by knowledgeable professionals as rarities. In addition, the study concludes that allegations arising out of custody disputes after custody disputes have begun should not be dismissed as implausible.

I think that just to conclude, we must avoid succumbing to a women-blaming mentality in terms of determining whether or not women are using their resources and their information to protect their children. I will stop now and answer any questions.

Mr. Chairman: Thank you, Ms. McCormick. Do committee members have questions?

Mr. Edwards: Ms. McCormick, I heard you make specific reference to this Bill, in that it should be deep-sixed. I will remember that. Did you have a chance to look at the details of the program and, if so, do you have any specific comments on that? I note that some of the things that you have raised with respect to speculating about things that may or may not come out of that Act with respect to you, I can certainly see your point. Does this program pose problems for you?

Ms. McCormick: Yes, it does. Actually, first of all, the question is I would have to go to court to determine what is reasonable access. Now whether or not reasonable access gets defined as one month in the summer, in which case then if he got one month in the summer then I could be accused of wrongly denying him that month. Now, with respect to my specific recommendations, first of all that causes me a problem, particularly if he gets free legal advice to obtain that opportunity to get that ruling, and I have to pay. Now what I suggest is a couple of ways if you are going to keep the Bill that you could alleviate my anxiety. One would be to amend the Bill to ensure that no parent whose mediation account is delinquent can have a system-supported intervention. If the non-custodial parent is supported with free legal assistance, then the custodial parent should be similarily supported.

Mr. Edwards: That is fine Mr. Chairman.

Mr. Chairman: Thank you. Any other questions by the committee? Hearing none, thank you, Ms. McCormick, for your presentation.

The next presentor is Dr. Colin Ross representing the F.A.T.H.E.R.S., Association to have equal rights. Dr. Ross.

Dr. Colin Ross (FATHERS): I would just like to point out that I was a bit confused about the agenda here. I was under the impression that I was coming to speak

to you on December 15. I see actually it is the 16th I have been scheduled to speak. I have also learned something—

Mr. Chairman: Dr. Ross, we have a habit as legislators from time to time not to see the clock. Proceed, please.

Dr. Ross: I have learned something about the life of the politician as well this evening. I see it can be complicated and tiring, and I am certainly impressed by the amount of effort that goes into making a decision about a Bill like this.

Since it is late, just by way of a brief interlude and for a bit of relaxation, I would like to start by taking you to a strange and unusual science fiction world of the future. I would like you to consider whether this is the kind of society that we would like to live in at any time. In this world of the future, the people who fulfill the social role of surgeons have no training in anatomy and, as a consequence of this, there is a very high rate of mortality in the hospitals. The people who are assigned the task of building bridges in this society have never taken engineering courses. Not suprisingly, bridges collapse quite frequently in this society. Those who are charged with the role of policemen in this society have no training in the use of handguns or firearms, which results in the unnecessary deaths of many citizens. Equally as strange in this society, the people who are charged with making decisions about the best interests of children of divorce have no training in child psychology, in human development, in the needs of the family, or in mediation, or dispute resolution on any human level.

* (0020)

Now, if I bring you back to the present, you will see that only one of those conditions applies to our society which to me is a very unusual and strange circumstance and peculiar really to the judiciary. It does not hold for any other professional group in our society. Now in Manitoba, that situation is compounded because in our Unified Family Court, if you include Mr. Justice Hamilton, we have six judges, two of them which is one-third, have no previous experience in the practice of family law prior to being appointed to the court, and they are basically appointed as patronage appointments. So you are looking at one-third of the decisions made in our court being made by people who have no training in family dynamics, child development, human psychology and no experience in family law.

To my way of seeing things, therefore, it is not surprising that you hear horror stories like the one that has just been recounted to us. I think we have to be aware that there is really a major structural flaw in the way the Unified Family Court is set up and the way it works. In terms of immediate remedies, I would see one possible partial remedy really doing away with patronage appointments. Appointments to Unified Family Court should be based on extensive experience in family law, commitment to family law, and also a hard to define characterological disposition for that kind of work, a sensitivity to human problems and human relationships, because we are dealing with Bill No. 11 here which has great impact on the lives of children in Manitoba.

I am just going to speak briefly, and summarize a few things, and make a few comments. I and the Fathers Association To Have Equal Rights are strongly in favour of Bill No. 11 as it stands, which gives you basically a split vote this evening, five to five. The one group expressed support for Bill No. 11 given that more teeth were added to it. I am counting that as a positive vote. You will notice if you review the tally that the vote is quite evenly split, male versus female, irrespective of the organizations which the speakers are representing. That is also an unusual and distressful situation to me, and it speaks to the adversarial relationship between the sexes in the area of family law, which is something I would like to see remedied.

I think you have to give consideration to the fact that it is mostly feminist groups who are opposing access assistance and father-oriented groups who are in favour of it. You have to look at the meaning of feminist groups being in favour of maintenance enforcement and fathers' groups tending to be against it. Fathers Association to Have Equal Rights is in favour of both maintenance enforcement and access assistance, but the lines between the sexes and the adversarial relationship between the sexes has been played out for you tonight in this forum and underlines the need for non-adversarial, non-legal, non-court-based solutions to these kind of problems, and Bill No. 11 defines a pilot project. It does not define what to me is draconian; it is child-centred. It has been considered for a number of years. It is not going to lead to instant enforcement of access which is against the best interests of the children. The orders have already been through a system which is flawed, but which includes home assessments, argument back and forth by both lawyers in a judicial decision, and before the order is going to be enforced there is a second round then of assessment by trained workers in the mediation service. There is no jumping straight to enforcement of access which is against the best interests of the children.

I should say, just to digress briefly, I am a psychiatrist at St. Boniface. My area of expertise, for which I have research funding, is the adult consequences of childhood sexual abuse. The people I deal with have been severely and cruely abused, physically, sexually and emotionally, as well as neglected on average over 10 years throughout their childhood. They have had perpetrated against them extremely bizarre and sadistic forms of abuse and the consequences of that abuse are terrible. There is no way that anybody in their right mind could support forcing children into an abusive relationship with a non-custodial parent, it is just unconscionable. There is no way that Bill No. 11 is setting up a system that is likely to do that, that is going to compound that problem, that is going to increase the likelihood of that happening. In fact, it introduces a second review of the whole situation before the existing order is enforced, and it brings into play the possibility of recommending against the enforcement of the access, which otherwise the police might be empowered to enforce.

I would like to comment just on a couple of points that have been raised thoughout now on a kind of point-

by-point basis. One is the issue of linking maintenance and access. I personally, based on extensive reading of professional literature having to do with divorce, and the FATHERS group as well think that maintenance and access ought to be completely disassociated and separated from each other. The two are qualitatively different, and there is no way that maintenance should in any way be used as a lever on the custodial parent for enforcement of access. We are clear on that point.

As far as trading back and forth statistics, as a reasearch-oriented psychiatrist, I would like to caution you that the literature on custody divorce access maintenance and so on is very weak. All the studies have serious methodological flaws. There is not a single, properly designed, well-controlled randomized study. So there is nothing sound, empirical and scientific on which you can base any decision. That holds for any position that you would like to advance, pro or con, any proposal that could be made in family law. So as politicians you are in a position where you have to make decisions without scientific basis.

Now that leaves you basically with two options. One is that you can procrastinate for 10 or 20 years waiting for research to be done or you can make some kind of decision now. I believe that although we do not know the percentages and the experience of the FATHERS group, we know of just anecdotedly hundreds of fathers who feel that their relationship with their children has been undermined and that their access has been blocked for no good reason.

I am also aware that there are many sadistic and abusive fathers. There is no way that that can be denied. But I feel that the discussion has been focused too much on abusive fathers, sexual abuse and child abuse. That is criminal, it is damaging, but it is a minority of fathers. There are many decent and good fathers who are having their access blocked for no good reason. So I do not think that we can really afford to wait for a decade or two until better evidence comes in, because there are many children who need the better relationship with their parents now than they are able to get, and they need an enforcement system to back that up.

It is a little late here. I am just collecting my thoughts for a second now.

There has been a question about the payment for the lawyers. I was quite struck by Jack King's comment that there is a distinction between the public interest and the private interest and that if we do not enforce court orders, flawed as they might be, what kind of a society do we have? We are tending towards anarchy, so it is necessary to enforce these orders once they are made. We want to educate judges and make sure they make better orders, and we want to be able to review the orders effectively. So, therefore, it is a public interest, public policy matter to enforce orders and to support that because the citizen has the right to have the laws of the land and the judgments of the judges enforced at no cost to themselves.

Feminist groups make a point, which is a legitimate point, that single female parents are poor in Canada and over-represented amongst the poor. Therefore if the father has legal fees paid for, it puts the mother at a disadvantage. The counter to that which you have to weigh and consider—and I cannot give you a sort of mathematical cost benefit analysis on it—is that many mothers have Legal Aid while the fathers are paying their own legal bills. So there is a balance and a counterinequity in the system already that you have to bear in mind when you are considering whether both lawyers ought to be paid for. I think in an ideal society, family law would be like health care, that family law would be provided free for both parties by the Government, but we do not have that society and we do not have that much money right now. If, in theory, it could be budgeted that both lawyers could be paid for, that would be excellent in my opinion. But if in reality there are not funds for that, the fall-back position is I think supporting the public interest.

I think that really just pretty well sums up what I would like to say, keeping my remarks as brief as possible.

Mr. Chairman: Thank you, Dr. Ross. I invite members of the committee, if they have any questions of Dr. Ross.

Mr. Taylor.

Mr. Taylor: Thank you, Mr. Chairperson. To Dr. Ross, have you seen the amendments proposed to Bill No. 11 that came out a few days ago?

Mr. Ross: I only learned of this meeting yesterday. I have scanned them as I was sitting here this evening.

Mr. Taylor: The situation is that the suggestions to the Bill are changed and the provision that was there requiring some sort of an undertaking and probably a financial undertaking to potentially ensure compliance down the road is removed and there is instead a substitution of a clause that deals with the supervised access context, should that be required. I just wondered if you had any comments you cared to pass on to the committee on both of those: one, the removal of the first clause, what you might call a performance clause; and the adding in of the unrelated clause which is the supervised access.

Dr. Ross: Supervised access is good. The big problem is who is going to do it. That problem has already been raised, and who is going to fund that. I do not know where the money is for that. To me, it is an unresolved problem at the moment.

* (0030)

Mr. Chairman: Any other questions of Dr. Ross? Hearing none, thank you Dr. Ross for your presentation. That concludes the presentations on Bill No. 11.

BILL NO. 40—THE CITY OF WINNIPEG AMENDMENT ACT (2)

Mr. Chairman: We have another Bill to consider, Bill No. 40. We had on the list several presentors. I shall call them out: Mr. Sidney Green, of the Manitoba Progressive Party; Mr. Nick Turnette, Winnipeg Greens.

Mr. Turnette.

Mr. Nick Turnette (Winnipeg Greens): Mr. Chairman, I thank you, and I am sorry to let you know that Sid Green is not here and I do consider Bill 40 to be very important. You will be missing Mr. Sid Green's great oratory, which I have always enjoyed listening to whenever he has come to make presentations here.

I am going to be short because I am tired too, but I do think that there are some issues that have to be looked at in terms of Bill 40, The City of Winnipeg Amendment Act (2).

As an individual who has been active in urban politics and civic politics since 1971 and has participated fully, both in the extra-parliamentary and parliamentary way, I can understand how any particular Government is interested in bringing some house cleaning legislation or administrative aspects to cleaning up and administering, but there is a major clause that does concern me because it is basically a political clause which undermines the whole administrative function and the process of cleaning up something because it implies something of putting the cart before the horse. That is Section 5(1) which implies that the council will be amended from 29 to 23 councillors.

That in fact implies the political decision that has been made without any justification of why it is being done. Unless we look at the kind of reform issues that have been discussed for the last three years, with the Lawrie Cherniack Report taking over a year to a year and a half, with hundreds of citizens' representations being presented of looking at the kind of political structure that City Hall is required, the whole issue of leadership and accountability that is required to be set up at City Hall before one looks at the issue of the size of council. How can one make a decision on the size of council unless one looks at the issue of whether city council should be a full-time job or a part-time job, whether city councillors should be paid a decent salary or the kind of salary that they get today? Those decisions have to be looked at first before one says should we reduced council to 23 or even, as Bill Norrie suggested, 18, or should we leave it at the present rate of 29?

I think it is fundamentally dangerous to mix political decisions into administrative decisions. The rest of the Bill is a housekeeping cleaning Bill which is quite fine in general. It tightens up some of the tax situations, but this kind of thing presumes that first of all we are going to have, as the Government has indicated, a political Bill coming forth responding to the Cherniack Report before the October elections of 1989, which are coming up fairly soon, and presumes to make a political decision now of saying we are going to reduce council from 29 to 23 and then are going to come up with the political reform structures afterwards.

I think that again is putting the cart before the horse because it implies there is a political direction, that somehow this particular Government has decided we will cut council down and then the rest of the reforms will come forth. But what are the rest of the reforms? To what extent is the Conservative Government here prepared to adopt the Cherniack Report in terms of accountability, in terms of the issue of the political structure of a semi-parliamentary type of Executive Committee. I would go further. I personally, of course, believe Party politics belongs at City Hall, but many people do not. However, if we talk about the Cherniack Report, how much—

An Honourable Member: Mr. Chairman, could you pass my comments to Mr. Turnette, that I can hear him.

Mr. Chairman: Members of the committee, could we just perhaps keep our private discussions to a minimum? Please proceed.

Mr. Turnette: How much further can we deal with, to what extent is this Government prepared to implement other aspects of the Cherniack Report in terms of centralization of policies at city council versus decentralization of services within the community committees where the power of the community committees will be expanded? To what extent is this Government prepared to suggest an independent body to review the salaries of councillors, which is what the Cherniack Report has suggested? To what extent is this Government prepared to introduce legislation relating to the civic Ombudsman and to the whole relationship of Freedom of Information by-law?

Until all those decisions are being looked at, the decision of the size of council cannot be introduced before those things are asked. So I would strongly recommend to all committee Members, and I will finish my comments, to please delete Section 5.1 from this particular clause. Go ahead with the streamlining of the rest of Bill 40, but eliminate that one, because that is a political decision that implies something before you have even looked at the whole reform of city council, which is absolutely of necessity.

Having been involved since 1971, the mess at City Hall is unbelievable. We have to look at even broader issues than the Cherniack Report looked at, I think, in order to really look how effective City Hall should be, how effective people's participation is going to be in City Hall. With less than 30 percent participating at City Hall, five acclamations, just think of the one little side issue. If we are talking about cutting down from 29 to 23, just like the other one, any other consideration, we have had five acclamations at several of these issues in elections. What if we have 10 acclamations and only 23 council, we will have 30 seats—you know, you could have 50 percent of council acclaimed. Just think of the kind of political consequences you are raising in this issue because you have not looked at the issue of political reform at City Hall. Look at political reform. Do not mix it in with administrative matters, and I think then you will have a decent Bill. I thank you for your time.

Mr. Chairman: Thank you, Mr. Turnette. Just before I allow questions from Members of the committee, I do take it that you are in no way reflecting on the rural councils in Manitoba who by rule get voted in by acclamation on many occasions.

Mr. Turnette: No.

Mr. Gary Doer (Leader of the Second Opposition): Some would argue the odd Tory gets—you could argue the old yellow dog syndrome. Mr. Chairperson, I was expecting your declaration for Mayor tonight, Nick, and I was just—

Mr. Ternette: No, I think you know who is going to be running. Al Golden is the one who has already suggested he would be running.

Mr. Chairman: Order, order.

Mr. Doer: Sorry, Mr. Chairman.

Mr. Turnette: And I am not Al Golden.

Mr. Doer: Sorry, Mr. Chairman, I thought with your levity I could have a little latitude in my—

Mr. Chairman: Certainly.

Mr. Doer: They certainly heard your message loud and clear in terms of the issue of council and its relationship to the other pending decisions, we hope, and its absolute vacuum in the present context of this Bill. You have been involved in studying urban issues for a number of years. The other areas of the Bill with the streamlining, as you said, of the tax system, you and your organization that you have been dealing with would have no objection to that?

Mr. Turnette: At the present time, no.

Mr. Bob Rose (St. Vital): I want to thank you for waking me up. I was starting to drowse. But in all your studies, and taking into account that I agree with you that you cannot start making political decisions just to gather public favour without looking at the whole thing, and you and I recognize—we are in agreement, I think—that there is a real mess at City Hall. We see it every day—police, zoning, expansion, finances and politics. It is unbelievable.

I would like to see some comments. One thing you did not touch on, and I realize that it is not an admission, but I would like your thoughts on if there was a total review, along the line, and I spoke to other people and I agree with the recommendations that are mostly—and so does city council. Of what is before us, with all those reviews and restructuring at City Hall, do you really think that there is a need in a city like Winnipeg for five commissioners? What are your thoughts on that?

Mr. Turnette: No, again, I think it is in terms of the political accountability that it is important. I am not sure that the Cherniack Report—I do not think it goes far enough, to be very honest. I would prefer a much more accountable structure which is more of a political Party system set up at City Hall, which then people can judge as to what their policies are, because we do not have the policy decision making at the present time as it is. We have a really great deal of difficulty because people do not know who is accountable for what at City Hall at the present time.

But the question is that there is some form of accountability has to be structured. I am not sure that we need that many commissioners, to be very honest. I think there are different ways of doing it, but let us move towards that direction. I am open, as are many other citizens who are involved in this participation of looking at it, but people are demanding leadership and accountability, and accountability just does not exist at City Hall, and has not existed since Unicity to be very honest. The reason is that Unicity actually set up accountability and it was never followed up because the decentralization was supposed to be in the community committees. They were supposed to be able to carry out many of the functions originally, but the Bill was changed before the actual legislation was implemented, which took away powers and centralized powers to such an extent that you do not have a delivery of service and policies all at the same level. I think that creates a lot of the problems at City Hall.

* (0040)

Hon. Gerald Ducharme (Minister of Urban Affairs): You have no problem with the numbers on how many people they represent, but you do not have any problems with the numbers that these people represent.

Mr. Turnette: In general, not. I am not necessarily opposed directly to reduction of council if it is tied to specific reforms within council, which indicate what the role of council really is. If council becomes a full-time position, which I think it needs to be—I think the running of a city is a full-time business. Whatever my politics is, I have argued that all over. For the last 20 years, I have argued that is not a part-time position. If that is included within the legislation and it pays salary, independent salary, I do not think council should set their own salaries. I have never believed in that. If it sets up the pay scale to that thing, then I can see some form of reduction. I mean, there are other cities that operate with less councillors but the pay scales are higher and they are full-time positions. Now, if councillors take more policy responsibilities rather than the administrators who get the high salaries today, and councillors take on more full-time responsibilities or playing some of the responsibilities that the administrators do today, then maybe we can do with reducing council.

I do not favour council reduction unless I see what the other natures of the reform are. If the other natures of reform are only minimal and not serious in terms of accountability and leadership at council towards the citizens of Winnipeg, then I am not in favour of reduction.

Mr. Ducharme: You are aware though that the previous Government had suggested 29 without implementing the report also. That was the reason why we have the Boundaries Commission for this year, because they did go along with the 29 without suggesting the other, except for a White Paper that took 18 months to probably come forward to this particular Government.

Mr. Turnette: I did respond to the White Paper and I know it is taking time. My concern is again the issue of mixing political decisions in an Act which is basically

an administrative Act and not looking at other issues because we do not know what the other reforms are going to be. I mean, if you cut council now, you are going to have to include that into the next Bill that you are going to bring forward and then you have to justify it. I find that difficult because there is no justification for it in this particular Bill and I find that really difficult in terms of dealing with legitimate political decisions.

Mr. Ducharme: Okay, when you are reconstructing council and you are talking about the numbers of councillors, would you favour the 23 if it was less, had less, would you say, disruption on what we know as the boundaries of the community committees as we know them today than, say, 29 was to have?

Mr. Turnette: Yes, I would favour that the boundary should be somewhat maintained but I am also concerned to be very honest with—this is my personal observation—of the Inner City versus suburban split. For me, that has always been a major point, if suburbia has too much control over the Inner City that there has to be also geographical and an Inner City and suburban equality level to be created. If we do not have that—now these are my personal views—then we are not taking into account the problems of the core area as compared to the suburb because there has been, as you know, quite often a split in terms of suburban interest versus Inner City interest. I think those two have to be overcome in order to have a better vision of what kind of a city we want as a whole rather than constantly trying to fight within that kind of a contextual battle of Inner City versus suburbia.

Mr. Ducharme: Just one more question when you made your presentation to the Boundaries Commission and you looked at the 23 and the 29 maps, did you notice any differences in the disruption of the community committees of whether the 29 or the 23 had the effect on those old boundaries?

Mr. Turnette: No great differences except that I would question, if you are going to continue to have six community committees, why 23? Then you should maybe have 24. You would want to have equal councillors in each of the wards, in each of the community committees to have a fair vote in situations. But see, I am not hear to argue in favour or against whether it is 23 or 24 or 29. My whole point is that should be part of a major reform of City Hall as a whole rather than in the particular small administrative policy paper which does not deal with policies or issues of council but just deals with certain administrative matters, which is fine. You can do that, but do not mix politics with administrative matters. That is the real concern I have, so delete this clause, then people will get participation.

How many people wanted to come and talk about it? How many people even knew this was coming up? Four people were ready to come. Unfortunately, because of the time, only myself would stay here. If people knew that we would have major reforms at City Hall, we would have hundreds of people out here, believe you me. The Cherniack Committee got hundreds of citizens out discussing how City Hall should be structured.

The whole point is that people did not pick up on this, that we have a political point that is already predetermining the kind of reforms that are going to be suggested before those reforms are even discussed.

Mr. Ducharme: When you look at 23 or 29, either way, you have people who have predetermined by what they—they have ideas along the future. As you can probably appreciate, the new administration has only been in force for eight months. We do have plans for the next Session but, because of the Boundaries Commission meeting like they are, we felt that if we looked at the maps and we looked at the different areas and we looked at the different community committees and what effect it had. So to be fair to the people of Winnipeg, we felt the fairest way to do it was—hey, listen, we at least went out to the boundaries people and showed them a map of 23 and a map of 29 and said, you go with it and then they know at least where they are going, but I appreciate your comments.

Mr. Turnette: But if I may just respond to that, all the councillors, no matter what their political stripes, including Mayor Norrie, has indicated that, yes, he favours even more reduction, 18, but he says do not include this in this because this reduction of council, as far as he is concerned, has to be tied into the reform of his ability to be able to provide leadership at council. So even all of the city councillors themselves do not say do not separate one little political issue and put it in the administrative faction instead of dealing with the reforms first.

All we are saying is you are putting the cart before the horse. I do object to 23 and maybe that should be discussed, but put it in the other Bill. Do not put it in here now until you are ready to deal with serious reform of City Council.

Mr. Rose: Mr. Turnette, you have said that you do not think that there should be a reduction in the size of city council before there is a restructuring such as—you have said the White Paper did not go far enough, and certainly the White Paper was introduced. I was wondering, as a new MLA, I would be interested to know when that White Paper was introduced, if there was any significant group in the province or even any real knowledgeable person, outside of Mayor Norrie, who was strongly in favour of reduction of the number that was on the White Paper of 29.

Mr. Turnette: I am not sure. I was not involved in the informal discussions in terms of the—are you talking about the NDP White Paper, the response to the Cherniack Report?

Mr. Rose: Yes.

Mr. Turnette: I know there was a split within the NDP at that time. I am not a member of the NDP at the present time, but at that time when I was active there was a split. I am not going to go into details on that, but there were people who favoured the original size. There were people who favoured a reduction and there were some who actually favoured an increase in size.

There is a split within the NDP view, in terms of size of council, but I do not think that was the issue. The issue was how the size of council reflects to the restructuring of city council. I think that is how you view it. If the restructuring is valid and there is a power base built, an executive structure built into it, then maybe you can reduce council. I would not object to that but, if it is not built into it, if it is going to continue to be this whole concept of lack of direction and policy, then restructuring—if that is the kind of structure that it is going to be—not major structural changes are going to occur, then reduction of council is not going to solve the problem. I think that is the real problem.

Mr. Rose: I well recall that city council favoured maintenance of 29. Do you recall what the position of the Opposition Party was at that time?

Mr. Turnette: No, I am sorry, I do not.

Mr. Chairman: Hearing no more questions, I thank you for your presentation.

I have one more presenter to appear before us. Mr. Steele, I believe it is.

Mr. Frank Steele (City of Winnipeg): Good morning.

Mr. Chairman: Good morning.

Mr. Steele: I am the city solicitor for the City of Winnipeg, Mr. Chairman. I really do not have a formal presentation to make. I came this evening essentially in a watching capacity, tracking primarily the provisions of Bill No. 40 which relate to business tax.

* (0050)

As I understand it, there are really no amendments to that Bill coming forward, and so be it. I do want to point out, however, that there are some sections in the Bill which we believe can be tightened up. Those matters have been discussed with staff of both Urban Affairs and the Attorney-General's Department. I think in due course the tightening up can take place, but I think because of the lateness of the time that we had to discuss those possible changes, it is really not possible to do it now. But it does not really give me that much concern because the Bill is to come into force on proclamation. Since the business tax changes are not intended to come into play until 1990, I think there is ample opportunity to address those concerns. Those concerns, by the way, do not go to the concept of the change that is in the Bill. We have no concern with that at all. It is more mechanical than technical.

Mr. Chairman: Thank you, Mr. Steele. Do we have any questions?

Mr. Ducharme: I have a couple. I agree with you, Mr. Steele. I know your taxation is not going to take effect until 1990 so that this at least gets you into the ball park to get your by-law done up and then these changes could be made at that time.

The other question I have for you tonight is, have you ever been consulted? I know I was, at 1:30 this afternoon, on a new proposal, amendments put forward by the Liberal Opposition in regard to the Auditor's Report. I am aware that City Auditor, Marks, has requested this in the past. I know he requested it a few years ago. But have you been consulted by anybody in regard to those particular amendments? If you have not and you have briefly seen them, have you any concerns in regard to the amendments that have just been forwarded?

Mr. Steele: Mr. Chairman, I saw the proposed amendment when I arrived here this evening for the first time. I know there is a provision contained in the Bill, Section 5 and this, I think, builds what is proposed, builds on that as I understand it. I have no instructions as solicitor for the city with respect to the proposed amendment, I believe, sponsored by Mr. Angus. But I have to say in that regard, however, that it does give me concern only to this extent. That proposal has not been considered by city council or the administration of the city.

I guess the concern is that those amendments give certain powers to the auditor which are mandatory. That is to say, he must do these things and he must do them each and every year. Some of those amendments are, what I would call, operational audits, and that can involve a number of staff and obviously that has financial consequences. So all I am saying is that the city really has not had an opportunity to consider these and I guess that gives me some concern. I am not saying these proposals are not desirable. I am not saying that. They may very well be desirable but the city simply has not had an opportunity to look at it.

Mr. Ducharme: I have the same concern. I believe the amendments have merit because I think some of us at City Hall, when we were there, supported some of those concerns of Mr. Marks. However, the process bothers me because I agree that it is not a permissive type of legislation. It is a "may" or "shall" and that is the part that probably bothers myself when you deal with it. If you did bring it in, what would be the date that the city could probably—what would be the first—the time element that they would take, I know you are the legal counsel, to bring in to get it going? What do you think the time frame would be if it was passed now, say, rather than giving some lead time with some consultation to get them prepared? What would be the lead time now?

Mr. Steele: I cannot really answer that, Mr. Ducharme, but I think certainly if the City Auditor had an opportunity to analyze these particular proposals, he would have to come up with the kind of staffing needs, because certainly I do not believe he is staffed to do that at present. So it would then be a question of hiring and training people to do this work or, alternatively, to farm it out.

Mr. John Angus (St. Norbert): I have no comments on the amendments at this particular time. The amendments have not as yet been officially introduced, but I welcome the administrative comments by the solicitor for the city and the very thin line he is walking

between political opinion and political direction at City Hall. I apologize for putting him in a situation, I suspect, if the mayor and/or Executive Policy Committee and/or the city would talk to the Official Opposition, they might have a better idea of what their intentions were or what their concerns or thoughts were.

Mr. Chairperson, I do, however, want to address the one concern that Mr. Steele indicated in terms of the business tax. I am sure that he is aware that the remaining legislation, the existing legislation, remains in effect until by-laws are enacted and passed at City Council. That is the second-last statute in the Act that is being proposed by the Minister. Would that not allow you by by-law to tighten up any of those concerns that you have?

Mr. Steele: No, the concerns I have, Mr. Angus, relate to the provisions of the Bill itself. I think the staff people with the AG's Department, Urban Affairs, recognize that. But we have the opportunity to make the corrections, I think.

Mr. Angus: Would you like to leave a copy of those proposed amendments with the committee for their consideration?

Mr. Steele: I do not have them here. I believe that the formal drafting was attempted by staffpeople of the Attorney-General's Department.

Mr. Doer: Just in case you are not here, Mr. Steele, at the next hearing, and I would not blame you for not wanting to put this on the lead item of your festive season schedule.

Mr. Steele: It is a busman's holiday for me.

Mr. Doer: It certainly must be. So at this point in time the concerns you feel will be incorporated in amendments that the Minister of Urban Affairs (Mr. Ducharme) will bring forward, and you have seen those amendments and you are satisfied.

Mr. Steele: I am satisfied with that, yes.

Mr. Doer: Okay. The second question, the original proposal from City Hall was consistent with what is in the legislation. As I recall it, the detail was not as detailed as what is in this Bill. It is consistent with the Executive Policy Committee Report that was delivered to the province in'85 and then forwarded back to the city in '86 and back and forth a couple of times, just to make sure it is right, it is consistent all along in terms of the two parties cooperating, in terms of the affairs of the city tax system in this regard.

Mr. Steele: That is correct.

Mr. Doer: Thirdly, there was the present amendment by the Minister of Urban Affairs (Mr. Ducharme) in the Act of dealing with Auditor. I would typify that as being less than what is required in the provincial Government and less certainly for value-for-money auditing in the federal public service, more powers but less than the provincial Auditor and less than the federal Auditor. Is that the desire of city at this point?

Mr. Steele: I am treading that fine line that Councillor Angus—

Mr. Doer: I am talking about the technical powers, not the political powers.

Mr. Steele: Let me jump in, what the heck!

Mr. Doer: On a technical analysis, nothing else.

Mr. Steele: I do not believe the city formally requested that particular provision dealing with the Auditor. Having said that, however, I have no concern about it except I would rather have seen the wording "track the similar provision" that is contained in The Provincial Auditor's Act, your own Act.

Mr. Doer: From a technical perspective, you gave an analysis of staffing under the value-for-money alleged amendment which is coming forward, has been announced today. So we all operate in the old proverbial fish bowl. Would the tracking of the provincial Auditor require extra staffing but probably not as much staffing as what is perhaps contemplated in the proposed amendment?

Mr. Steele: No, I think we are talking about two different things now, Mr. Doer. The changing of the wording or even indeed the same wording that is in the Bill at present is really not the same kind of thing that is contained in the proposal that I saw this evening.

Mr. Doer: Yes, I understand that.

Mr. Steele: They deal with different issues.

Mr. Doer: Yes, I understand.

Mr. Steele: So that simply relating to what is in the Bill at present, I do not think creates a problem of staffing.

Mr. Doer: To your other point though, if we were to move closer to what the provincial Auditor does, which is in-between absolute debits and credits and value for money which is the other extreme, if you will, somewhat in between, the power to do operational analysis and have referrals to it, would require additional resources.

Mr. Steele: I expect so but I would prefer to rely upon the Auditor himself to provide that information. It would be my expectation though that you are right.

Mr. Doer: Thank you.

Mr. Angus: Mr. Chairperson, just through you, in relation to the changes for the tightening of the tax reform, being that the committee is not sitting until Monday night at eight o'clock to decide on these things and that Legislative Counsel was dealing with them today, I see no reason, from my perspective anyway,

why they cannot have something ready for Monday night so that we can do it properly the first time. Is that a difficulty, through you, Mr. Steele and/or perhaps to the Minister?

Mr. Ducharme: The only thing about it is that we do have some cases where, unfortunately, we have two legal departments, -(Interjection)- I completely agree. So on the wording—and we felt that instead of getting involved in that we know we can sort it out. The main concern was at least let them get in the process of getting that tax idea forwarded. Both of them agreed it would not interfere with what was going on.

Mr. Angus: Okay, that is good. My final, final question, is it conceivable, through you, Mr. Chairperson—

Mr. Chairman: Promise?

Mr. Angus: I promise. He does not even have to answer it because you might rule it as hypothetical, Mr. Chairperson. Is it conceivable if value for audits were performed that the city may indeed save sufficient money to legitimately fund a good, effective Audit Department?

Mr. Steele: I enjoy my job too much to answer that question.

Mr. Chairman: I just remind the committee that I understand the arrangements for this committee to resume its hearings will be at 8 p.m. on Monday to consider the Bills, which will be more formally announced in the House tomorrow (Friday) I presume.

Committee rise.

COMMITTEE ROSE AT: 12:57 a.m.