LEGISLATIVE ASSEMBLY OF MANITOBA

THE STANDING COMMITTEE ON INDUSTRIAL RELATIONS

Tuesday, March 13, 1990

TIME — 10 a.m.

LOCATION — Winnipeg, Manitoba

CHAIRMAN — Mr. Edward Helwer (Gimli)

ATTENDANCE - 11 — QUORUM - 6

Members of the Committee present:

Hon. Mr. Enns, Hon. Mrs. Hammond

Messrs. Ashton, Burrell, Cowan, Edwards, Ms. Gray, Mr. Helwer, Ms. Hemphill, Messrs. Pankratz, Patterson

* Substituting (by leave) for Ms. Gray, Mr. Lamoureux at 12 noon.

WITNESSES:

Mr. James McClelland, Private Citizen

Mrs. Bev Hindle, Private Citizen

Mr. Allan Rieger, Private Citizen

Mr. Jack King, Family Law Subsection of the Manitoba Bar Association

Ms. Jeri Bjornson, Charter of Rights Coalition (Manitoba)

Ms. Mona Brown, Manitoba Association of Women and the Law

APPEARING:

Mr. John Angus, MLA for St. Norbert

Mr. Harry Harapiak, MLA for The Pas

MATTERS UNDER DISCUSSION:

Bill No. 31—The Labour Relations Amendment Act

Bill No. 57—The Pension Benefits Amendment Act

* * * *

* (1005)

Mr. Chairman: Order. I have called the Standing Committee on Industrial Relations to order. As was previously agreed the committee this morning will start clause-by-clause consideration of Bill No. 31, The Labour Relations Amendment Act. Once the committee has completed this Bill, the committee will then go on to consider Bills Nos. 57 and 80.

At this point I would just like to indicate to committee Members that there are some presenters registered to speak to Bill No. 57. Mr. Cowan or Mr. Ashton.

Mr. Steve Ashton (Thompson): Yes, I do not think we were aware there were a number of presenters on Bill No. 57. In fact there are five separate presentations. I would suggest we deal with the presentations on Bill No. 57 first. I can indicate, I think we may need some time on Bill No. 31 in terms of amendments. So I would strongly suggest that we deal with the public presentations.

Mr. Chairman: No, I think the committee had, we had agreed to deal with Bill No. 31 first and get it over with. Right. The Government House Leader (Mr. McCrae) has announced it in that way. Mr. Harapiak.

Mr. Harry Harapiak (The Pas): Mr. Chairman, it is a long-accepted practice, when the public is here to make presentations to committee we hear the public first. We do not make the public wait while we carry on with the work of the House.

POINT OF ORDER

Mr. Jay Cowan (Churchill): On a point of order. Just because the Government House Leader wishes to inconvenience the public does not mean that this committee has to abide by what I believe is an ill-prepared plan on the part of the Government House Leader. The practice is to hear presentations. The committee is the master of its own agenda. Therefore I would suggest, Mr. Chairperson, out of deference and respect for the public that we allow the presentations to take place.

* (1010)

Mr. Ashton: Mr. Chairperson, if I also might be of some assistance, in my discussions as House Leader for the New Democratic Party with the Government House Leader (Mr. McCrae) on a number of occasions, the question has come up as to the ordering of Bills that have been referred to committees. The Government House Leader indicated quite clearly that it was up to committees to determine the order in which Bills would be dealt with. I raised this most recently for example in terms of Bill No. 56 and had suggested that there be a particular order in terms of dealing with it. The Government House Leader on that particular Bill had indicated once again, and it has been our practice as committees, that essentially the Government House Leader indeed refers certain Bills to committee; but once they are in committee, it is the committee itself which determines the order of business.

I quite frankly do not feel we should be inconveniencing members of the public. I did not realize until we walked in this morning, quite frankly, there would be this number of presentations on Bill No. 57. Since people are here for Bill No. 57, I think we should hear them and then move on to 31. That is a decision, Mr. Chairperson, as I said that is consistent not only with our practices but also the discussions that I have had as House Leader with the Government House Leader.

COMMITTEE CHANGE

Mr. Chairman: Okay, before we proceed any further, we have one vacancy on our committee. I wonder if we could have leave to appoint Mr. Pankratz (La Verendrye) to this committee in that vacant position?

Mr. Ashton: Mr. Chairperson, on a point of order—

Mr. Chairman: Just a minute.

Mr. Ashton: Well, on the matter we dealt with—

Mr. Chairman: Yes, Mr. Ashton.

Mr. Ashton: Our proper procedure in terms of committee substitutions when the House is not in sitting is that a motion be moved, by leave, and it be—

Mr. Chairman: Yes, I agree.

Mr. Ashton: —recorded and later be moved in the House. So I would suggest that we, to make sure there are no disputes on who is on the committee—

Mr. Chairman: Thank you for the correction, Mr. Ashton.

Mr. Parker Burrell (Swan River): I move that Mr. Pankratz be added to the committee to replace the vacancy, by leave.

Mr. Chairman: Is there leave to do so?

Some Honourable Members: Agreed.

Mr. Chairman: Agreed. The substitution will be Mr. Pankratz for the vacancy. Is the substitution agreed to?

Some Honourable Members: Agreed.

Mr. Chairman: Agreed. If it is the will of the committee then to hear the presenters—the Honourable Minister first?

Hon. Gerrie Hammond (Minister of Labour): Yes, I believe that we will go on, and we will hear the presenters first.

Mr. Chairman: I have a list here of the persons wishing to appear before the committee: Mr. James McClelland, Mrs. Bev Hindle, Mr. Allan Rieger, Mr. Jack King, Ms. Jeri Bjornson, Ms. Mona Brown. If anyone else present wishes to appear before this committee, please advise the Committee Clerk, and your name will be added to the list.

Did the committee wish to impose a time limit on the length of any public presentations? -(interjection)- No? Okay. Is it the committee's will to sit till 12:30 then, or what is the committee's will?

An Honourable Member: Twelve o'clock.

* (1015)

Mr. Chairman: Twelve o'clock? -(interjection)- What do I hear, 12 or 12:30?

Mr. Cowan: Perhaps we should test it at 12 to see if we are through with the presentations and through with the bulk of our business. If we could finish up by 12:30, that would probably be appropriate; but if it appears that we cannot at that time, have committee rise.

Mr. Chairman: Thank you, Mr. Cowan. Then we will set twelve o'clock and if it takes a little longer, that is fine.

BILL NO. 57— THE PENSION BENEFITS AMENDMENT ACT

Mr. Chairman: Okay, the first presenter, Mr. James McClelland. Have you a written copy of your brief, Mr. McClelland?

Mr. James McClelland (Private Citizen): Yes, I do. I have a copy—

Mr. Chairman: The Page will distribute it for you. Mr. McClelland, please proceed.

Mr. McClelland: My name is James McClelland. I have lived at my present address for the past 21 years. I am speaking to my grievance in relation to The Pension Benefits Act (1983), which mandates—Section 31(2)—a division of my pension between me and my former wife even though she has agreed to waive such a division. It is my understanding that the amendment provided by Bill 57 currently before the Legislature is not retroactive and therefore affords me no help at all.

The circumstances: my former wife and I were married September 13, 1969, separated on June 1, 1987 and divorced in the fall of 1988. Twelve years younger than me, she has been employed by Air Canada for 26 years.

In concluding the divorce, we settled all our finances in court and because we had no children and made comparable incomes, we each waived the rights to the other's pension—divorce agreement, September 20, 1988.

As of July 26, 1989, after 35 years of employment with the City of Winnipeg, I was eligible to retire. In preparing to do so, I found that my wife's waiver with respect to my pension benefits is overridden by the Province of Manitoba's PBA. To explain, 31(2) of the PBA applies only to employees under the jurisdiction of the Province of Manitoba and not persons employed by companies headquartered outside the province, nor to employees of the Government of Canada, or its corporations or agencies. In other words, my pension would be divided, but the pension of my former wife would not. Under this arrangement, I would retire with a half pension and she would retire with a pension and a half.

By February 1989, I had begun contacting the Manitoba Government about my problem. I received

a sympathetic response, but months passed with no change. Meanwhile, generally by both telephone and letter I have contacted many other persons and places from Health and Welfare Canada to the Ombudsman of Manitoba; at all levels of Government, among all three major political Parties; even certain radio and newspaper people. It seems that everybody agrees I have a grievance and that I am being unfairly treated in the case of my pension from my employer. I would be happy to share the relative correspondence.

A way out of the problem: I understand that the amendment via Bill 57 to The Pension Benefits Act does not provide for retroactivity for couples divorced between December 3l, 1983 and the present. Therefore, the amendment does not deal with my particular problem. The amendment could however exclude persons such as me from the legislation and permit me to seek a judicial settlement.

Since my former wife supports my stand on this matter and wants no part of my pension, which is in fact inferior to hers, we could return to court following a satisfactory amendment to the PBA and sign a new agreement.

I would just like to add a little footnote on here. My wife has remarried, and she and her present husband both have good pensions. She will co-operate in any way to end this impossible situation.

Mr. Chairman: Thank you, Mr. McClelland. The Honourable Minister has a question for you, Mr. McClelland.

* (1020)

Hon. Gerrie Hammond (Minister of Labour): Mr. McClelland, when you were proceeding with your divorce and separation, did your lawyer advise you about the Manitoba pension requirements?

Mr. McClelland: No, he said that it was not clear, but he did write in there that, in the case of a dispute, I would have to sue my wife for her half of the pension. In other words, I would have to go to the courts, and we would have to go through the whole judicial system, but he obviously cannot make any move until the amendment is put through. I understand that he feels that after—the way Bill 57 is worded right now, my wife and I could probably sign a new agreement, the same agreement, but just dated after the Bill has been passed. That is the impression I have right now.

Mrs. Hammond: I thank you for that. He did not give you any indication what the law was as it stood.

Mr. McClelland: No, because I did not know until I went to retire and the pension board notified me.

Mr. Chairman: Thank you, are there any further questions? Mr. Ashton.

Mr. Steve Ashton (Thompson): Yes, I noticed from your brief that you indicated you had contacted the Manitoba Government and received a sympathetic response, but essentially there had not been any action taken. I am just wondering who you contacted in the Manitoba Government?

Mr. McClelland: I contacted the Premier (Mr. Filmon), who referred me—

Mr. Chairman: Mr. McClelland. I am sorry.

Mr. McClelland: I contacted Premier Filmon, Mr. McCrae, the Minister of Industrial Relations, Gerrie Hammond. Those are the only Members that I can remember right now.

Mr. Ashton: You said you received a sympathetic response. Did they talk in any way about Bill 57 at all, this Bill that was being introduced?

Mr. McClelland: They said at that time that it was under review by the pension board and they were moving to have an amendment to it. They just were not quite sure at that time what Bill 57 would contain.

Mr. Ashton: Essentially from your brief this morning, you are saying that Bill 57 does not deal with your particular case.

Mr. McClelland: My lawyer thinks that we may be able to, after the Bill is passed, go back and re-sign the divorce agreement. That is the impression I have anyway. I do not know. That is what I have been told.

Mr. Ashton: What is your wife's position on this matter?

Mr. McClelland: She supports me in every way. I had lunch with her the other day and she told me she got married New Year's Eve and that the fellow she married has a good pension. She has a good pension. He works for the federal Government. She would like to support me to get me out of this situation. She would like to see me retire where we are still good friends although we have divorced.

Mr. Ashton: So essentially in this particular case, you are asking the committee to look at Bill 57 in view of the type of circumstances that developed. You are saying in this particular case both yourself and your former wife are of the same mind on this. I am just asking this so I can get a clear picture.

Mr. McClelland: I just feel that we should be able to go back to the courts and settle it in a case like this where we almost made the same money and everything. I was shocked when I went to retire and was told I could not retire. I cannot retire on a half a pension. I do not want to drop dead on the job either.

Mr. Ashton: Well, I sure hope it does not come to that. I appreciate your coming before the committee and advising us here of your own personal situation. Thank you.

Mr. McClelland: Well, I appreciate the opportunity.

Mr. Paul Edwards (St. James): Mr. McClelland, thank you for coming forward this morning. I know you have

taken a very keen interest in this whole issue and, indeed, this legislation for some time now. It has been a pleasure for myself and other Members of our caucus to meet with you on a number of occasions to discuss your particular situation. I venture to say that the situation you have brought to the committee is, in all likelihood, not unique in this province. There may be many who have found themselves in your situation. It is indeed a troubling one.

* (1025)

You had indicated that there was some indication that your wife—assuming that she continues to be willing to make a division like this—would be willing to re-sign a new agreement in light of this new legislation. If this legislation is passed, maybe I can just get a clear idea, is the advice to you from your lawyer and your wife's lawyer that would be feasible, that you could write another agreement in light of this new Act, thereby taking advantage of the new rules with respect to the 20 percent deviation?

Mr. McClelland: That is my understanding.

Mr. Edwards: As I think I have indicated to you earlier, it is my opinion that if we were to make this retroactive it would cause no small amount of chaos amongst those who had negotiated agreements, settlements under a certain regime and to have another one come in and impact their agreements retroactively I think would not be appropriate. I just say that because I think there are a lot of people—while this is a public forum—out there just do not know what happens in the Legislature on a daily basis and cannot be expected to go and amend their agreements based on the law changing.

Rather I am quite sure, I am hopeful, that there is a smaller number of people like you who made agreements which were not viable under the old regime but can make new ones under this law. I simply express to you our hope that after all of this work and effort on your behalf, you and your wife through counsel can see your way to renegotiate and do what you had intended to do some time ago, so we certainly hope that is possible in your case.

Mr. Jay Cowan (Churchill): Mr. Chairperson, obviously, you have had some discussion of the new Bill with your lawyer. You indicated in your comments that your lawyer believes that you could now come forward once this Bill is passed, sign a new agreement with your wife, and that would resolve the difficulty that you have, is that the case?

Mr. McClelland: That is the impression I have.

Mr. Cowan: The impression that he has given you after a study of the Bill, I assume. My question, and it puts you in a difficult position because you are then somewhat torn between whether to pressure for retroactivity, in which case you know that your situation would be solved, or to take a chance that perhaps under this particular legislation you might be able to redraft a new agreement and put you in somewhat of a dilemma. Would that be the case?

Mr. McClelland: I drew up this brief before I actually saw Bill 57, and I am under the impression as I say that I know it is just too difficult to make it retroactive, but I thought it was clear that if for instance it was referred back to the judicial system that would get the politicians off the hook. I just thought that would be a way of not opening the floodgates. That is all I was concerned with.

Mr. Cowan: Basically, what you want from this legislation is an opportunity to redress your own grievance, and you would like some assurance; and as we go through the final drafting, we must ensure that it is in there that if it is not going to be applied retroactively it at least has the provision for you to be able to renegotiate a new agreement with your ex-wife. Would that be the case?

Mr. McClelland: Yes, that is really what I have intended with my brief.

Mr. Cowan: I want to thank you for coming forward. It is very helpful when we are dealing with legislation like this to have the experience of persons like yourselves to help us improve upon the drafting of the legislation. I can assure you that all the legislators will be bearing in mind your own circumstance when reviewing the final draft of this legislation so as to hopefully provide you with an opportunity to redress this grievance in the most efficient and expedient manner.

Mr. Chairman: Thank you for coming forward this morning, Mr. McClelland.

Mr. McClelland: I thank the committee for the chance to present my brief. Thank you very much.

Mr. Chairman: Our next presenters are Mrs. Bev Hindle and Mr. Allan Rieger. We are just distributing your brief, if you would just wait a minute please until we distribute the brief. Okay, please proceed.

* (1030)

Mrs. Bev Hindle (Private Citizen): I, too, would like to thank the committee for the opportunity to speak. This presentation is being made jointly by myself, Beverly Hindle and my ex-husband who is with me here today, Allan Rieger. We wish to speak in favour of amending The Pension Benefits Act, but against Bill 57 because we consider it incomplete as it is.

Firstly, our situation is this. We were married for 15 years and separated in March of 1986. Together we made decisions about dividing assets and agreed that neither would make any claim on the pension of the other. Both of us feel we neither need nor want any portion of the other person's pension.

The Manitoba Pension Benefits Act, however, requires that on marriage breakdown each spouse has one-half interest in the pension benefits of the other, that is the benefits that accrued during the marriage. Because of this we were not able to follow through with our agreement. Now while it is mandatory that my pension

be split with Al getting half, the reverse is not possible on Al's pension.

As we have already heard, he works for the federal Government and this provincial statute has no jurisdiction over his federal pension. So the Act is giving Al half of my pension and giving me none of his. Because the legislation is clearly inequitable in its application to us and because it has left us in this dilemma, we found it necessary to review the situation and we have the following comments.

The first point relates to the jurisdiction of the Act, that The Pension Benefits Act has jurisdiction over certain pensions and not others is a major flaw. As such it can be grossly unfair by applying to one spouse and not the other. In our case, it gives Al half of my pension and none of his to me.

Bill 57 may eliminate some of the jurisdictional problems of the Act—and I do mean some—it will be probably very few, but it will not help all others in similar situations to ours. It will help where both spouses have pensions fairly close in value and they both agree to waive the rights to one another's pensions. However, consider the following scenario.

Two spouses separate; both have pensions, but one much smaller than the other, with the difference being greater than the 20 percent that is identified in Bill 57, as will happen when a woman is home raising a family for about 10 or 12 years and then later goes out into the workforce. Let us imagine only one, the smaller pension, is subject to the Act, like mine. Because of this jurisdictional problem with the federal pension on the large pension—let us say the husband works for Air Canada, Canada Post or some other such federal Government department or corporation—by the operation of the Act, the small pension is divided, leaving the party probably more in need with a reduced pension. The other spouse—the fellow that works for Canada Post or Air Canada—less in need, he receives a pension and a half. The Pension Benefits Act has worsened the pension situation and Bill 57 has done nothing.

Just as a matter of interest I checked with Stats Canada, and I understand that there are over 18,000 federal civil servants in the Province of Manitoba. There are an additional 15,000 that work for federal Crown corporations, so you can see it might be useful to consider how this Act might apply in that many situations.

Our second point, and one that I consider to be very important, is that there are no provisions for appeal. I consider this extraordinary. Surely law makers realize that when new laws are made, invariably there are problems or loopholes that present themselves. When the law deals with the direction or disbursement of someone's assets, there must be a forum to consider the equity and/or circumstances which may not have been contemplated when the legislation was drafted.

Every single person I have talked to has been very sympathetic with myself on this issue, and they agree that the Act should not be manipulating my life in this way. It is outrageous that there is nothing that I can do.

Our third point is that it is inconsistent. If you know The Pension Benefits Act and you look at Subsection 31(2) of the Act and Bill 57, you will see they are inconsistent with the right to waive pension benefits as outlined in Subsection 23(3) of this same Act. In Section 23, when a pensioned individual dies, it is mandatory that the survivor has two-thirds pension benefits. However, Subsection 23(3) allows a spouse to waive that right in favour of other options. Why is this right to waive not available in a marriage breakdown situation? It is inconsistent.

Our next point is that the Bill is not retroactive. It is clear that there already have been inequities created by the operation of The Pension Benefits Act. I am living proof and I guess so is Mr. McClelland. Not simply problems that would arise in the future, but those of yesterday, last year, and so on. The creation of Bill 57 is evidence in itself of inequities of the past. Why is the Bill not making some provision to handle these situations? If we make mistakes, we correct them, do we not? Why would you not want to help us?

Our last point relates to personal rights. The Pension Benefits Act and Bill 57 assume so much control over personal matters in a divorce. Provincial statutes do not dictate who gets a car after a marriage breakdown, nor do they direct how much child support is to be provided to a spouse, the latter being equally important, an equally critical issue, would you not agree? In these matters, people are free to decide on their own and if necessary they may apply to the courts to adjudicate any disagreements and at that time statutes may be considered.

This failure of the Act to recognize an agreement or settlement between two parties violates the personal rights and freedoms to which we have become accustomed in this country. At least by allowing a forum for appeal, persons would be afforded the opportunity to natural justice in cases where the Act operated inequitably, certainly a small token in terms of rights and freedoms.

Our recommendations: We recommend that, in addition to the contents of Bill 57, consideration be given to adding a section which would allow spouses, regardless of the separation date, to apply to the Superintendent of Pensions or to an appeal board or similar forum, which would consider whether individual cases might be excused from the requirements of Subsection 31(2). Specific guidance might be given in this section or in guidelines established by the commission for the superintendent or board to consider factors which would reflect the intent and the spirit of the Act.

Incidentally, I have no quarrel with the spirit and the intent of The Pension Benefits Act. The superintendent or the board may also consider recommending disclosure of pension values because a lot of people do not realize what they are, myself included, or by making referrals to court in certain cases prior to consideration of appeals. I am not sure that every case should have to go to court.

We also respectfully suggest that a concerted effort be made to inform the legal profession of the

requirements of such legislation. There are very many people who have made separation or divorce agreements after the coming into force of the Act, who have waived pension rights not knowing it was unlawful.

I have attached a sheet at the back. I made some suggestions for appeal to The Pension Benefits Act and perhaps which might be included in Bill 57. I understand the purpose of The Pension Benefits Act is to promote and improve and protect pensions in Manitoba and our suggestions for appeal are in keeping with that.

If you look at Section 10 of The Pension Benefits Act, you will see that it outlines the duties of the Pension Commission and our suggestion is that perhaps another clause could be added to that section and that would be to include hearing appeals under Section 31 of the Act. We expect that the pension commission or the Superintendent of Pensions would act in those appeals regarding the spirit and intent of the Act.

Then also, it would be necessary to add another subsection to Section 31 and I have suggested the following:

Any persons aggrieved by this section may at any time prior to the division of pension benefits, appeal to the Superintendent of Pensions, who may upon hearing the appeal, make a decision to allow the applicants to be excused from the provisions of Subsection 31(2), regardless of the date of separation of the spouses. I guess for myself and Mr. McClelland that last phrase would be very important.

* (1040)

It is not my intent that the Pension Commission be faced with the need to adjudicate a heated battle between separated spouses. Certainly not so. Guidelines established for appeal may, in some cases, require a court order before consideration of appeal where the spouses are not agreeing or where they drag other issues forward.

I guess that is pretty much all I have to say except to add that this issue has created a tremendous unknown for my future. My husband and I are not able to plan our retirement. This law is forcing my ex-husband, Al, to take half of my pension, which he does not want, and it is taking from me thousands of dollars that I feel I have earned. Because that is so ridiculous, I am asking you to help me. Before I sit down, I guess, if you have any questions of myself or my exhusband, Al—

Mr. Chairman: Thank you, Ms. Hindle. The Honourable Minister here has a question for you.

Mrs. Hammond: I wanted to ask you the same thing, Ms. Hindle. Did your lawyer advise you of the Manitoba Pension Benefits Act?

Mrs. Hindle: No. Nothing was said at all.

Mr. Allan Rieger (Private Citizen): When we talked to our lawyer, you have to realize this was what you could call an amicable separation, that we felt that we would divide our property just like so. It was our decision to do that, and our lawyer made no indication that we would have any problem with our pension fund. I believe Beverley came up with this problem about two, three years after we had separated, and basically, he obviously did not seem to know anything about it or chose not to talk to us about it.

I would like to make a couple of points in support of Beverley here. Sometimes we do things in our personal financial lives that may make more or less sense from a dollars-and-cents point of view. We will perhaps buy a house that strains our finances; it is our choice. I agree with the intent of the legislation, but it is legislation that in a way is sort of protecting people from themselves. It is true that some people do need to be taken care of in this situation, but we made a decision without really considering that you are going to get more or I am going to get more. She has her life to lead, and I have mine. I am moving away from here to get married, and we feel that we have just an agreement here.

We are both financially stable. As Beverley pointed out, I work for the federal Government; my pension is secure. It is not a matter of whether I get more or she gets more. We are both happy with the arrangements that we made, and we are being told that we cannot do this. In other words, we are being protected against our own foolishness. It may very well be that Beverley is going to get a lot more out of this; it may be that she is going to get a lot less; we made a financial decision jointly, and we would like to be able to make those decisions for ourselves.

Mr. Edwards: Thank you both for coming forward to tell your stories. I think that the initial intent of the Bill back in 1983 was obviously to protect those who cannot protect themselves. Inherent in any legislation which attempts to do that, there are exceptions, and people get caught up in a relatively paternalistic approach to the people who the law attempts to serve.

Obviously from your presentations, it appears that you are two of those people who perhaps quite clearly did not need the mandatory protection. I guess that is in some part what this Bill attempts to deal with. There is an exception to the initial strait jacket, if your pensions are within 20 percent of each other. I wonder if you can tell us, you have not mentioned if that exception will assist you in any way, or do you know at this point if it will?

Mrs. Hindle: No, it will not for two reasons. One, that it is not retroactive and two, because the value exceeds 20 percent. I tried in my presentation to make the point that where the pensions are separated by more than 20 percent it is an even bigger problem. I think that with my suggestion that there be a forum for appeal, the 20 percent provisions in the present Bill 57 will eliminate large numbers of appeals because they will be able to be excused by this proposed legislation. There are still going to be a large number that will not be helped by that 20 percent provision, and in fact they are in a worse situation and need more help.

Mr. Edwards: When you say forum for appeal, perhaps I missed part of your presentation on that.

Mrs. Hindle: That is my recommendation.

Mr. Edwards: I know, but what I am saying is, did you think that through in any detail? Can you give us any guidance on what—

Mrs. Hindle: The appeal? Yes, I think that on the last page of the submission there is a suggestion of adding a duty to the Pension Commission's list of duties that are already in the Act in Section 10, add one job, make it appeals under Section 31, and then add another subsection to 31, 31(5) saying, if you are aggrieved by this legislation, or the situation, that you can apply to be excused from that Section.

Mr. Edwards: As you know now, on the dissolution of a marriage, the division of the property goes before a court.

Mrs. Hindle: It does not always.

Mr. Edwards: It does not always, but ultimately the recourse of the parties is to go to court to get the court to divide property. There is an argument that goes something like this, (a) the courts cannot be trusted to do it properly, and (b) in the course of negotiating or coming up with any settlement, the husband, who in most cases will own the property, will be able to trade off things against the pension. In other words, the husband might say, look, I will fight you in court for custody of the children if you do not let me keep my pension. That type of situation. That type of exploitive situation which can arise, and I do not think anybody denies that those kind of bitter feelings, obviously not in your case but in others, can arise and can lead to that kind of blackmail in which children may or may not become involved.

The straitjacket which this Bill initially put into place, and to a large extent continues, is based on that premise, I believe, that we cannot trust the individuals involved in the negotiation because they are likely very bitter towards each other and perhaps prone to that type of blackmail. We further cannot trust the courts to make an appropriate decision because they may not know all of the threats or all of the caustic comments that may have been made between the parties before they get to the court. That is what I perceive to be, in any event, just what was at the basis of this and I would like to know your comments on those arguments.

Mrs. Hindle: I acknowledge what you are saying and I think that even further on that point, traditionally women have been manipulated because very often they have a lesser degree of business experience. Because of a lesser degree of business experience they often come out short. You remember, I am asking the Pension Commission to be the appeal or the Superintendent of Pensions and I expect that the intent and the spirit of the legislation is foremost in the minds of the people sitting on the Pension Commission and in particular the Superintendent of Pensions. So I expect that all those arguments about kids and all that kind of thing will simply not be heard by that person.

I said in my presentation that I did not expect the Pension Commission to be faced with adjudicating a great battle where children are brought into it and assets and all this other kind of thing. I do not think that should be the case. Maintenance of proper pensions is the primary purpose, I think, of the Act and the commission. So I felt that they should be the perfect body to hear an appeal. Where it is just a weighing of assets on one side or the other, I do not think it should be considered, and that should be within their guidelines. Where you have a person like me who is getting my pension cut in half and Al who is getting a pension and a half and he does not need it, why would they not rule in my favour because they would be maintaining my pension for me, which is smaller, and in cases where women have been at home raising children even smaller still than mine.

Mr. Edwards: Can I just respond to that? I hear what you are saying and I hear the frustration. In large part it is echoing what Mr. McClelland brought forward, that kind of straitjacket that catches people who really should not be caught in the legislation. With respect to the pension commission and your view that they would not even consider obviously the other things, they are just looking at assets. Perhaps I did not make myself clear in the last question. That is precisely what I am saying is a criticism of the court process presently, that they cannot know or do not sufficiently investigate what other pressures are there for someone to give up pension rights, i.e., any threats about dragging someone through court in a custody battle, that type of a threat.

* (1050)

Let me just leave that with you if you want to comment on it. I have one more other question and I will join it to this. That is, could you not renegotiate an agreement? You are obviously ad idem on what you want to do with your property. Could you not renegotiate an agreement and set off other assets against the portion of your pension that is going to be given to your husband so that while ultimately you may have to share your pension with him, you can even it out through a different division of other assets? Has that been canvassed at all or is that just an impossibility?

Mrs. Hindle: I guess I object to that. I am wondering if you are suggesting that I accept a car from Al instead of half of my pension. I think that is inappropriate for my retirement and I do not think the spirit of the Act really wants that.

Mr. Edwards: No, nor does the spirit of the Act want what has happened to you to happen, but what I am saying is that it certainly has been my experience that in many cases where the parties really acknowledge that a splitting of pensions was not entirely appropriate, they have taken that into account when they have divided other assets. That is my only point, that it has happened. It happens regularly by people attempting to get around this. It is by no means perfect nor perhaps desirable, but it is done. I just raised that with you. I am sure that you probably canvassed that.

Mrs. Hindle: I think that if a person has no pension to give, I think then that is the only time a consideration

should be made of weighing assets in place of pension. If that becomes necessary, and I guess in some cases it would, I would think the only asset that should be offset would be money that would be put into a locked-in pension plan. I think that reflects the spirit of the Act.

Mr. Edwards: I think that may in fact be often what is done. Assets are divided in such a way that there are other investments made for the other spouse.

One other thing before you respond; is it your advice to this committee to scrap the whole system or would it be your advice to increase the percentage differential as an exception?

Mrs. Hindle: Neither. My suggestion is to establish a forum for appeal.

Mr. Edwards: That is enough?

Mrs. Hindle: Regardless of separation date, just let somebody hear the case and say yes or no, you have to do it.

Mr. Edwards: That would completely satisfy your concerns about this entire regime, just simply to have an appeal provision to the pension commission.

Mrs. Hindle: I think what has been already put into Bill No. 57 would be useful because it will reduce the numbers of appeals, but yes, to add appeal, that appeal being available to anyone who has separated regardless of the date, so that the retroactivity problem will not remain.

Mr. Allan Patterson (Radisson): Mr. Chairman, I am no expert on pensions at all, but I do know that some years ago, about the late '70s or early'80s, there was a thrust on the part of the federal Government and the 10 provinces to come forward with what has been called the uniform pension benefits Acts, the 10 provinces and their jurisdictions and the federal Government. There has been great progress in this. I guess the similarities are greater than the differences.

We can see here how the individuals can be seriously hurt or handicapped by one or possibly a couple of the jurisdictions getting significantly out of step or trying to progress a little too far. I do not know offhand if Manitoba is the only province with this particular provision. There might be one or two others.

At any rate, I am just more or less thinking out loud and throwing something out. Would it not be helpful if there were a simple amendment to this particular clause in our Act that it would apply only when the two pensions are under Manitoba jurisdiction? If there are two different jurisdictions, they therefore would not apply, and the parties would be free, such as yourselves and the previous presenter, to make their own arrangements. Would this be satisfactory to you?

Mrs. Hindle: I guess I would have to say no, because then you would lose the usefulness of the Act. I think that maybe originally when the Act was drafted it was intended to look after women who had no pension. I realize it works the other way too. No, I feel that regardless of the jurisdiction of one or two pensions that the Act should still remain in force, but just where that unfairness does occur, to be able to appeal.

I guess I cannot imagine in my head all of the situations that could come up where one's pension is subject to the Act and the other not. I suppose the amounts might be reversed, and the pension that is being split is a gigantic one, and the pension that is not being split is small. I suppose it could work that way, and it would be equally unfair. I do not think that would work, although I have to admit I have not thought that out.

Mr. Patterson: I guess the ideal solution would be for all 11 jurisdictions to pass similar legislation at the same time.

Mrs. Hindle: That is not what the pension companies say. Great-West Life and Investors tell me that this is one of the biggest headaches in the country.

Mr. Parker Burrell (Swan River): It seems to me that what the problem is in both cases is that you both seem to agree. That is something that is rare in the Legislature, as you know. It also seems to me that what you want is very straightforward. This clause that you have worked out, obviously with some thought and so on, is really to me very simple. I will certainly work to add a clause like this or with the aid of our legal department to make sure that it is correct. I can see where this would solve your problem as well as the previous presenter. It seems to me very straightforward and simple. Because that is the way I am made, I suppose that is the way it seems to me.

I think it is a very good presentation, and I think you have worked out a very reasonable solution to the problem, except that if there was no pension involved and so on, surely the person that was adjudicating the problem would take that into consideration. Maybe we could word it so that would not be the case. I want to thank you for your presentation.

Mr. Chairman: Are there any further questions? If not, thank you very much for your presentation Mrs. Hindle and Mr. Rieger. Mr. Jack King is our next presenter.

Mr. Jack King (Family Law Subsection of the Manitoba Bar Association): Good Morning.

Mr. Chairman: If you would just wait a minute, Mr. King, till we distribute your brief here. Everyone has a copy. Please proceed now, Mr. King.

* (1100)

Mr. King: I am here on behalf of the Family Law Subsection, which is one of the subsections of the Manitoba Bar Association, which in turn is affiliated with the Canadian Bar Association.

The present legislation of course provides that an employment pension which falls within provincial

jurisdiction has to be divided in accordance with The Pension Benefits Act. That mandatory requirement at present cannot be overridden by a court order or separation agreement. Effectively then it means that the Act provides that the parties following a separation do not have any discretion as to how the pension of one or both of them is dealt with if those pensions fall within provincial jurisdiction.

The proposed amendment provides for either party having a limited discretion as to how to deal with their pensions following a marital breakup. If the difference in the value of the pension is 20 percent or less, then the parties can contract out of the otherwise mandatory provisions of the Act.

The Family Law Subsection's response to these amendments is this: We support the amendments on the principle essentially that something is better than nothing at all. We say the amendments do not go far enough. It has been consistently our position that separated couples, adequately informed and advised, and as an aside I can say from listening to the last two presenters there may be a problem about adequately informed and advised, but such people in any event should have the right to divide their pensions or account for the value of their pensions in such a way as may be appropriate to their particular circumstances.

We take the position that there should not be a mandatory division of pension benefits under The Pension Benefits Act. We agree completely that pensions must continue to be treated as a sharable marital asset under The Marital Property Act. We also agree that the present structure that we have in our society is such that the majority of pensions are probably held by men. That of course means that the decision as to whether to split pension contributions or take the payment in some form in lieu of division will be decisions that would have to generally be made by women. Well we submit that women and men have the right to make that kind of decision. For it to be suggested that they should not have that right or that they are incapable of exercising that right in any rational fashion is incredibly demeaning.

You listened to the last presenter. Was it fair to say to someone of that obvious intelligence and understanding of the issues that she did not have the right to make a decision about her own pension? It is demeaning to a whole raft of well educated, well informed women who want to make their own decisions but are not allowed to do so under the legislation. The lack of flexibility in that legislation frequently results in hardship, because the separated spouse is not able to trade those future pension rights for a present advantage.

I gave you a little scenario in the brief. It is not an uncommon one. When you get a couple in their twenties separating and one spouse has been working for perhaps the provincial Government for a few years, the value of that pension is going to be negligible upon the separation. The wife, if it is the husband that had the pension, is now going to be entitled under the legislation to one-half. That, in 30 years time, when that pension comes to be paid is going to be a meaningless and ridiculous amount of money.

In many cases it would be far better for that person, and that person very often wants to have $5,000 in cash if the pension is worth $10,000.00. That $5,000 immediately is probably going to create a far greater benefit for that spouse in that situation.

We do not dispute that in very many cases, it is far better to actually allow the division of the pension credits as provided for in this Act to take place. I would think they would have to be exceptional circumstances before it would be sensible for a wife in her 50s or 60s or even in her 40s to take anything but her share of the pension when the marriage and the pensionable employment have been of long duration.

In short then what we say is that the legislation should provide some flexibility; it should allow for people to make choices. The present legislation does not allow any change. The proposed amendments allow change or choice to a very limited extent only.

We say the pension credit should be treated like any other asset and it should be noted that under The Marital Property Act, spouses have the discretion under that Act to deal with their assets in any way that they can come to agreement upon. Those assets that fall totally under The Martial Property Act are not subject to some overriding mandatory provision as to how they are dealt with. You are allowed to trade things off.

There are some arguments advanced that pensions fall into a special category, that they have to be treated in a different manner to other assets because members of private pension plans are not permitted to opt out. They must participate. Members do not have access to the pension benefits prior to retirement and they cannot bargain with those future benefits in specie.

It is also suggested that the restrictions the present Act has reflect the philosophy that people should save for the future. It has also been suggested that there is no reason for plan members who are separated to be treated differently from plan members who have not separated. Family law subsections response to those concerns in general terms is that we agree there has to be a Government concern about the validity and sanctity of pension plans in their entirety.

Our position does not allow separated spouses with pension plans to deal with those plans in a way that an unseparated employee could not do. We are not suggesting that an employee would be able to cash in part or all of his or her pension plan in order to meet the other spouse's claims under The Marital Property Act. All we are saying is this, that if the separated employee's spouse wishes to buy out the other's interest in their pension plan, then she or he has to use assets other than the pension plan to achieve that purchase and the sanctity of the pension plan itself is in no way diluted.

Finally, as I pointed out in my brief, there is, I think, a clear distinction between the Canada Pension Plan and private pension plans. The Canada Pension Plan has a basis that is aimed largely at social welfare, the principle that people in their old age should have some minimum income.

Private pension plans are just that, they are private pension plans entered into between employers and

employees or groups of employees. They are aimed at fostering the private savings of those employees and providing a job benefit. The family law subsection suggests that the real function of the Government in matters of private pensions is to ensure that the overall pension plan is administered in such a way that a retiring employee will be guaranteed of a return in accordance with the contributions that he or she has made to that plan. Family law subsections suggestions outlined in this brief in no way detract from the Government's ability to follow that mandate.

Perhaps I could also just address a couple of points that the other presenters have made. As far as retroactivity is concerned, there is no problem with retroactivity provided, it would seem to me, the pension has not already been divided. Once it has been divided then retroactive clause would affect the validity of the pension plan itself.

As far as appeals are concerned, well, I am a lawyer, I believe in the courts rather than some administrator of a tribunal exercising a discretion. In principle I am probably not very far away from the previous presenter. I would just say, however, that there must be a statutory reason for any appeal and there has to be pre-ordained limits for the jurisdiction and discretion that is exercised at that appellant level.

* (1110)

Mr. Chairman: Thank you, Mr. King. Are there any questions?

Ms. Avis Gray (Ellice): Mr. Chairperson, thank you, Mr. King, for your presentation. I am wondering if you could comment. You mention that there was some concern about the fact that lawyers, oftentimes—not oftentimes but there certainly has been indication by the presenters today and in fact I have had a number of phone calls from individuals affected by this legislation where in all cases the lawyers did not seem to have any knowledge of this legislation or its impact. Do you have any suggestions or advice for individuals who have found themselves in a situation where in fact the lawyers have allowed the parties to make agreements and not taken into account the legislation that currently exists in Manitoba, which I would think lawyers should be aware of?

Mr. King: As I understand the previous two presenters, they were not told by their lawyer of the effect of The Pension Benefits Act, and if that advice was not given, then I am appalled and angry that there was that failure. It is quite shameful. One can educate everyone to a certain level, but you cannot necessarily ensure that people, whether it be lawyers, doctors or dentists, keep up with legislative trends and changes.

There are recourses, of course, that people have because we have a disciplinary code and there is also a contract that exists between client and lawyer. If the advice given or the failure to give advice has resulted in a loss, then there is the right to complain to the Law Society for disciplinary reasons. There is also the right to sue on the basis that the retainer has not been met. I agree, it is a significant problem if clients are not being advised of the ramifications of the decisions they are making, the decisions that are set out in a written separation agreement. Proposals that we would have for amendment to this Act would go somewhere at least to trying to ensure that any lawyer would have no option but to bring the provisions of the legislation to the attention of the client.

Ms. Gray: Mr. King, again just to clarify in your presentation, in regard to pension benefits being treated as future income, I am just not quite clear with the Family Law subsection. Does the subsection support the concept or believe that in fact pensions should be treated as future income?

Mr. King: We are saying that pensions should be treated like any other asset, and the future income concept comes into play when you make the decision. Is it best to take an immediate fiscal advantage, or is it better to wait for the future income that will come to you as a result of the pension split? Essentially, it is an asset that we say is treated in exactly the same way as any other asset.

Ms. Gray: Do you believe, Mr. King, that there should be more consideration of pensions not being locked in, so that if there are individuals in situations where they may be going bankrupt, and I am not necessarily referring to separated couples, do you feel that our laws and pension plans should be such that those future benefits of pension could be available to someone who might find themselves in immediate dire financial strait?

Mr. King: I think that opens a Pandora's box. You are asking, as I understand it, whether there should be an abolition of any vesting rules. I think immediately, off the top of my head, that would create problems relating to the ongoing sanctity and validity of a pension plan. For example, I would think it would make grave differences to how the Government here would invest in pension plans for the benefit of its employees if those plans were not vested and could be drawn upon at will. We will never suggest that the employee should be able to draw on his pension plan before the fullness of time.

Ms. Gray: What I am suggesting, in this particular legislation as it is being amended, do you believe that one of the purposes behind or the concepts that are being looked at in this particular legislation are that pensions are a sanctity as you put it, and this is why this legislation is drafted the way it is?

Mr. King: I see this Section 31 and the amendments as being essentially paternalistic or maternalistic—whichever you like. That is the way I see it, and that is how the Family Law Subsection sees it.

Ms. Gray: Mr. King, you make the statement in your presentation, you talk about women's rights to make decisions, and you indicate that for legislation to suggest that they do not have that right or are incapable, is very demeaning. As one reads it, it may sound reasonable. I guess my question would be, however,

if women and men, for that matter, are all well-educated, well-informed and quite capable of making reasonable decisions, why do so many people end up in divorce court and custody disputes and marital property disputes?

Mr. King: Just because people are well-educated and rational, does not mean to say that they do not have emotions. Custody matters have a very different structure and rationale than property matters. Property matters that end up in court are questions of legal interpretation in the main. Sometimes the dispute sets the evidentiary basis. Just because people have arguments about custody matters, about maintenance and about property issues, does not mean to say—I do not believe, with all respect—that people therefore should not have the right to make decisions.

Mr. Chairman: Mr. Patterson had a question.

Mr. Patterson: I am just curious and unclear on this example on page 2 of your brief, Mr. King, where you refer at the bottom of that large paragraph about the payment would go into an RRSP, but that because of inflation, the wife would receive a very low monthly payment. Well, if it is locked into an RRSP, that RRSP is growing at compound interest over the 20 or 30 years, whatever it might be, and it would seem to me that the return from it at the time of cashing it in would be equivalent to its initial value—not something less.

Mr. King: Obviously it is going to grow, depending upon the interest rate and so on. Still, that interest rate is affected by inflation. The value of that dollar paid out in 30 years time is going to be affected by the events that occurred in the 30 years preceding and, right, it is worth $5,000 in 30 years time. What we are saying is that $5,000 might have, paid now, given a far greater benefit. It might have enabled that young woman to go to university and increase her income by several thousands of dollars every year. That flexibility, that choice that she could have made is not available to her.

Mrs. Hammond: We met once before, Mr. King, because I was concerned about the number of people that were telling us that their lawyers had not been advising them about this particular piece of legislation. I will ask you what I asked before is, how do lawyers that are dealing with people's lives choose to ignore a Bill like this, because I would think that when this type of legislation comes in, the Law Society would be well aware of it or is that not what happens when this type of a piece of legislation comes in?

Mr. King: I think that two issues here under the head that you just raised. One is the failure of the lawyer to advert in any way to the legislation. That would seem to me to be negligent. The other is the lawyer and the client trying to find some way around the legislation. Of course, when you provide legislation which says to people, you do not have any choice, you must do this, then lawyers are going to try and find some way around it. So there are a lot of agreements that have been drawn up and have been attempts by the lawyer and the client to get around what is seen as wording in the legislation that is not applicable and desirable for those particular people.

* (1120)

Mrs. Hammond: I just have one more question on this, in this type of legislation though, it is very risky for people to make that kind of designation, to make that kind of decision and then, whether they have made it or not, not to split, and then someone finds out and it is automatically split, and then to try and go back on the other party. I have a very difficult time with lawyers allowing this type of discretion to happen when this type of law is on the books, whether they agree with it or they do not agree with it.

Mr. King: The very fact that there have been so many attempts to get around the legislation perhaps is an indication in itself of how unfair the legislation is seen across its broad application.

Mr. Harry Harapiak (The Pas): Mr. King, one of the difficulties is the retroactivity, and you said in your comments that if the pension had not been distributed, that it was still in the future, then there would not be as great a problem. In Mr. McClelland's presentation he said, if there was an opportunity for him and his wife to sign a new agreement after this legislation became effective, it would relieve his problem. Do you think this would relieve a lot of the problems out there if there was an allowance for that in the new Act?

Mr. King: I do not think it is going to help Mr. McClelland at all if his pension has already been divided.

Mr. Harapiak: You also seem to be not supportive of having an appeal process that did not include the courts. Can you tell us why you would not allow the superintendent of insurance to hear those appeals?

Mr. King: I think that was essentially a personal comment that I as a lawyer prefer the courts rather than a tribunal, but I think the most important comment that I made in respect to the appeals is that, whoever is the appellate body must have a well-defined jurisdiction from which it operates and a well-fined discretion within which it operates.

Mr. Harapiak: So as long as the superintendent's course of action was spelled out quite clearly, then you would not have any difficulty with him handling those Bills.

Mr. King: I would like to see what is proposed first. If you are going along to the Superintendent of Pensions and saying, we want you to make a different decision because it is just not fair and you, superintendent, can tell us what you think is fair, well that would be completely unsatisfactory.

Mr. Chairman: Are there any further questions? Mr. Angus.

Mr. John Angus (St. Norbert): Mr. Chairman, the whole concept of appeal, given the ability to work out some

regulations, deadlines for making the appeal and conditions for appeal, is that one that is acceptable to you? It sounds like common sense. I know we want to cut the pie trim enough or the thread trim enough so the lawyers do not have to argue over every syllable and every line, but give some right of appeal for those injustices. Is that something that is so offensive to you, the appeal process?

Mr. King: It is certainly not offensive at all because that would be something that would at least go part of the way to where we wanted to be, giving people the freedom of choice that has been manifestly taken away from, for example, the last two presenters.

Mr. Chairman: Mr. Burrell has a question here.

Mr. Burrell: Do you see any simple solution to the problem, especially both presenters were in complete agreement and were willing to sign an agreement saying they wanted no part of the other spouse's pension? Do you see any simple solution to that type of a problem, or do you see, as I can see, where if the couple was only married for five years or something and if you wanted to keep the pension intact maybe at that particular time it would be the time to settle it without being retroactive? Do you really see any simple solution to people that really agree, obviously intelligent people that can certainly make up their own mind and split all their other assets? I do not see where a pension is any different than any other asset, can you see a simple solution for that?

Mr. King: The simplest solution, in general terms, is to change the legislation so the people do have the ability to make that choice. For the last two presenters, no, there is not any simple solution now because I would suspect their pensions have already been divided.

Mr. Burrell: So in the future it would be easy to correct—do we correct it with this legislation?

Mr. King: You correct it when the pensions are within 20 percent of each other, but you do not correct it when they are 21 percent or more.

Mr. Chairman: Are there any further questions, if not, then thank you very much for your presentation Mr. King.

Mr. King: Thank you.

Mr. Chairman: Our next presenter is Ms. Bjornson. If you would just wait a minute Ms. Bjornson until we distribute your brief. Ms. Bjornson, please proceed.

Ms. Jeri Bjornson (Charter of Rights Coalition-Manitoba): I want to thank you for the opportunity to be here this morning to speak on this Act. I am here representing the Charter of Rights Coalition, a coalition of groups and individuals which has as its major foci, education about the equality guarantees of the Canadian Charter of Rights and Freedoms, and working for the amendment of Manitoba statutes, policies, programs and regulations to ensure they comply with the sex equality guarantees of the Charter.

The steering committee of the Charter of Rights Coalition is made up of representatives of its affiliate groups as well as affiliates at large. For some of you who have been present at other committees and task forces, et cetera, at which time the Charter of Rights Coalition has presented, we may have a surprise for you this morning. The Charter of Rights Coalition is here this morning in full support of the amendments to The Pension Benefits Act as they are enshrined in Bill 57.

CORC has completed two audits of provincial statutes, et cetera, making recommendations for amendments which would meet what we believe are the requirements of the sex equality guarantees of the Charter. In 1985, with the publication of our first statute audit, CORC took the position that the mandatory split of pension credits at the time of marriage breakdown must be maintained. Since that time we have been lobbied extensively by both private citizens and some Government bureaucrats to change our position and have rethought it. Our conclusion through that process has been to maintain our support for mandatory splitting of pension credits as outlined in The Pension Benefits Act.

We have had meetings with the Family Law Subsection of the Manitoba Bar—and that will be obvious as I make my arguments this morning, some of which Jack King has already done the rebuttal for—the Family Law Branch of the Ministry of Justice, and we have also presented to the Manitoba Pension Commission. Much of our time in the last year has been spent looking at the whole area of pensions.

CORC's position that there should be mandatory equalization of pension credits with a prohibition against any trade offs at the time of marriage breakdown is based on two basic principles: 1) is that marriage is a partnership of equals. That anything acquired by a couple during marriage is assumed to have been acquired through the efforts of both, and 2) that pensions are a special type of asset set aside for future benefit and must be treated as such.

* (1130)

Applying our first principle that marriage is a partnership of equals, a principle which is enshrined in Manitoba law, leads us of course to the logical conclusion that pension benefits earned by either or both spouses during marriage must be shared equally at the time of marriage breakdown. Pensions should not be thought of as the property of one spouse. The reduction of disposable income which results from pension contributions is a reduction of family income. Manitobans are in fact fortunate to have this principle enshrined in The Pension Benefits Act and in The Marital Property Act in cases of pensions which do not come under Manitoba pension legislation.

Once again Manitoba has been at the cutting edge in the protection of women's economic security. In fact I was watching a news show from the United States the other day where a representative from a group called the Older Women's Union of the United States mentioned Manitoba's pension legislation as something

that they would just love to have in American jurisdictions. As well, there are a number of organizations in this country pushing their own Governments and the federal Government to have our legislation.

There has been much discussion revolving around our second principle in the issue of mandatory equalization of pension credits. It is the position of CORC Manitoba that pensions are a special type of asset which must be set aside for the future. We believe that this is based on basic pension philosophy. I would like to add here that I do not feel the least bit demeaned by this legislation, nor do I think it is either maternalistic or paternalistic. There are those you have heard this morning who have contended that the mandatory equalization of pension benefits without the option of trade off at the time of marriage breakdown is paternalistic. Well, if that position is paternalistic, so is all pension legislation. Canadian society has accepted that pensions are a special asset, an asset which Governments have the right and responsibility to regulate. We have The Manitoba Pension Benefits Act, after all. We have accepted the concept that there is a public interest in private pension plans. Pensions are not treated as are other assets.

The regulations related to the disposition of money contributed to pension plans is one indication of how they are treated as a special future asset. The provisions of The Pension Benefits Act do not as a rule allow that funds be withdrawn once they have been contributed to the pension plan. Pensions are treated, by law, as forced savings for the future. Even in the most dire circumstances, such as a foreclosure on a mortgage, an individual would not be able to draw their accumulated pension benefits to save their home. The Pension Benefits Act also prohibits both the pledging and seizure of pension benefits. The law clearly contemplates that the only use of a pension is for an individual's use after retirement.

The mandatory nature of Section 31(2) of The Manitoba Pension Benefits Act with the "lock-in" provisions is clearly in line with other provisions of The Pension Benefits Act.

There has been considerable pressure from some groups and individuals to amend The Pension Benefits Act to allow more flexibility at the time of marriage breakdown. Specifically, most pressure has been to allow for an override of mandatory splitting of pensions by a separation agreement or court order. You have heard those arguments this morning.

The rationale for the enactment of the splitting of pensions and "lock ins" is to recognize the vital need for both spouses to continue to develop pensions in their own right after marriage breakdown. This is especially important for women. Male pension plan coverage is significantly higher than female participation. In fact, 52.3 percent of employed males and only 37 percent of employed females were covered by private pension plans in 1986, the latest year for which we have figures. Employed women, as we all know, make considerably less than men. Women who are not employed outside the home do not have access to homemakers' pensions.

One of the most common arguments raised against mandatory equalization of pensions at the time of marriage breakdown is that it fails to recognize the immediate economic needs of women upon marriage breakdown. This argument we believe ignores both the principle that pensions are forced savings for the future and the need for women to develop pensions in their own right.

The most common argument is that women may receive more benefit by receiving an immediate cash settlement or another asset, most often the example is the family home, rather than the right to share equally in the former spouse's pension credits.

Well, in the words of The National Council of Welfare in a document on pension reform released in February of this year: "Allowing pension credits to be traded off in a separation or divorce can work to the particular detriment of women. A young woman might waive her right to $10,000 worth of pension credits for an extra $10,000 equity in the family home, for example. That may be appealing in the short term, but leave her in financial difficulty when she gets to retirement age."

In the case of family homes and other assets, there are other provisions which could be used to maintain a woman and her children in the home if the courts decided that that was in the best interests of the children. It is those spouses who have no other assets who need the protection of The Pension Benefits Act the most. CORC is also of the opinion that it is unfair to give separating spouses the right to maintain their home, or other assets, through the use of pension credits when that right is not, and should not be, afforded to others who participate in private pension plans.

CORC is also fearful of the possibility that pension credits will become bargaining tools in relation to other issues of divorce, such as custody. This is a situation which has been raised time and time again, as we have discussed the amendments to this Act, by women who have separated in jurisdictions where the splitting of pension credits is not mandatory or in cases where the pension did not come under the Act.

Having argued for the principle of mandatory pension equalization at the time of marriage breakdown, we now get to the specific amendment contained in Bill 57, that of allowing spouses, who have a dollar value of pension credits payable to their spouse that is equal to or within the 20 percent of an equal split, to maintain their own benefits and their own plans. CORC supports this amendment. In fact, during consultations leading up to the introduction of this Bill recommended a similar amendment.

We do have a concern with the drafting of the Bill and would recommend that an "and" be added between clauses (b) and (c). We feel this would make the intent of the amendment clearer. This amendment will address those situations where couples have lost value of their pensions because they have had to pull them and split them, even though they were of nearly equal value. While addressing these situations it does not compromise the basic intent of the principle of mandatory splitting of pensions, recognizing the

equalities of spouses in marriage and protecting pensions as future assets.

There are those who have and will continue to argue that Manitoba should compromise this legislation because there are cases which are difficult to negotiate because pensions under other jurisdictions are not subject to a mandatory split. CORC recognizes this problem and urges the provincial Government to work through all channels possible to challenge the federal Government and other provincial Governments to require credit splitting or equalization upon marriage breakdown. It is time that they caught up with Manitoba's progressive stand.

CORC also commends to the Government continued assessment of provisions which might improve Manitoba's Pension Benefit Act without compromising the mandatory splitting and lock-in provisions of the present legislation. I would like to mention a couple of those. Considering an option between either taking retirement method or termination method of evaluation. Also, especially after this morning where we have heard two cases which do seem to be unfair, both of which seem to me, from what I have heard, to have been related to poor legal advice and the unwillingness of lawyers to begin to negotiate what is shareable under The Marital Property Act by having the couples waive their pension rights although they were not waivable.

* (1140)

There are a few pensions which are not splittable, which is difficult, but many situations, and I think some of those we heard this morning are situations where one is mandatorily splittable and the other was splittable but the negotiation was not made to split those, instead the legal advice was to waive. CORC is of the opinion—and has raised this before, and I think is even more strongly of the opinion after the stories this morning—that a future addition to The Pension Benefits Act might be sanctions against lawyers who try to allow their clients to circumvent the law or sanctions against lawyers who do not give the legal advice that these mandatory splitting provisions are in The Pension Benefits Act.

I think it is stories like the ones we heard this morning that indicate very strongly the need for such sanctions against allowing waivers. CORC also is aware that the Minister of Labour (Mrs. Hammond) is looking at other ways of improving this Act. It is a new Act. It is on the cutting edge. There are some problems, but the main issue is to maintain the integrity of the mandatory splitting with no trade offs and a lock in.

Mr. Chairman: Thank you, Ms. Bjornson. Are there any questions? The Honourable Minister.

Mrs. Hammond: I would just like to thank Ms. Bjornson for her presentation this morning and for some of the suggestions for future consideration.

Mr. Edwards: Let me just add our thanks, Ms. Bjornson. As you noted earlier, you have represented CORC's views on many issues, even in my brief time in this Legislature, and we certainly appreciate the ongoing work of CORC in this area. Thank you again for presenting this morning on this very important Bill and scheme which is not without its controversy, but it is one in which we want to look very closely at where we go. Thank you.

Mr. Chairman: Thank you very much, Ms. Bjornson. Our next presenter, Ms. Mona Brown. Do you have a written presentation, Ms. Brown?

Ms. Mona Brown (Manitoba Association of Women and the Law): No, I do not have a written presentation because I left my copies at home, but the Manitoba Association of Women and the Law had made a written presentation earlier to the Pension Benefits Commission and I will just be reading from some notes.

Mr. Chairman: That is fine, thank you. Could you bend your other mike down so that we could hear you? Good. Please proceed then. Thank you.

Ms. Brown: My name is Mona Brown. I am a lawyer in Carman, Manitoba, and I am a co-chairperson of the Manitoba Association of Women and the Law. MARL is one of 27 caucuses of the National Association of Women and the Law.

Our group is a group that was formed in 1974, and has been vocal in presenting on many issues to the Legislature, specifically looking at equality of men and women, vis-a-vis legal issues. Although all of our members are not women or lawyers, as we have male members and members from other professions and related people from the public, we do tend to focus our energies into legal issues as they affect Manitoba men and women. Our goal is to bring forth greater equality through legislative change.

Myself, I have been practising for 12 years and I have been practising for the last 10 years in rural Manitoba. I welcome the opportunity to present to you today, and I wish to compliment the Government on what we believe to be excellent legislation.

The Pension Benefits Act, with the mandatory split, has been in for some time and, in my belief, with a few exceptions, has been working quite well. We realize the Government has come under pressure from some groups to make significant amendments to this legislation, to allow for trading off of pension credits. We are very pleased that the Government has not seen fit to do so and has simply taken our suggested amendment to the Pension Commission and gone with the 20 percent rule to avoid situations where we had economic hardships through interests in two pensions being almost equal.

Let us go back to the basic principle behind the legislation. Whenever you formulate legislation, you should never look at it from the point of view of exceptional cases—the old adage, "hard cases make bad law." We should look at the principles behind the legislation first and foremost, and then go on to formulate our legislation or our amendments to legislation in accordance with those principles.

It is my basic belief, and I believe that The Pension Benefits Act and other pension legislation, federally

and provincially, has the basic philosophy of encouraging people—and in some cases forcing them—to save for their retirement. Pensions are treated as a special type of asset in the Act; there is no doubt about it.

Most private pensions require mandatory participation of their employees. An employee cannot say: I would rather put that money into a cottage at the lake; it will be an asset for later on; I would rather have that. They do not have that option. If they are employed in an organization that has a pension scheme, they do not have choice. It is paternalistic or maternalistic, if you wish to call it that. We are forcing people to save for their retirement.

In the same way, you do not get RRSP deduction contributions from income tax unless you have put into those plans. We are forcing and encouraging people to save for their retirement, and I believe that is a laudable goal for this legislation. Also, we have to be looking at society from goals of wanting to make sure that elderly people are comfortable in their old age and that they are not being supported by the public purse.

Pension legislation is such that once dollars have been contributed into a plan, we cannot just take them out. Once we have money into a plan after a very short period of time it vests, and you cannot then not just take yours in the normal instance out. There are some exceptions in the legislation that deal with illness, where up to 25 percent can be withdrawn for that, which is a reasonable exception I would believe.

Other than that, we are forcing people to keep these assets within their plans. It is, for instance, possible that someone could be in financial difficulty, as Ms. Gray has alluded to, and be possibly forced in a position where they might be losing their marital home or their family farm. We have instances in my area where the wife may be a teacher or a nurse and be involved in a private pension plan, and yet the husband is losing his farm. She cannot say, I want my pension credits out so that we can save the family farm. This is for her retirement. This is for their retirement. It is a family asset. It is a shareable asset, and it is for their retirement.

The Marital Property Act has had a ruling in Manitoba saying, generally speaking The Marital Property Act covers all pensions. Any pension credits acquired during the marriage is shareable. However, The Marital Property Act says, because we have a pension benefits legislation which is automatically shareable if you have a private pension plan, those assets are not otherwise shareable because of that in the Burke (phonetic) case. That is fine.

In the examples we saw here earlier today, the first two presenters, it is my belief that they received very bad legal advice, and I would recommend to them to sue their lawyers, because they had shareable assets in accordance with our Marital Property Act. If one party in the one example had a Pension Benefits Act plan that was shareable and therefore not shareable under The Marital Property Act, and the other party had a plan federally—and unfortunately we cannot force the feds to clean up their act with respect to all of their plans, but they are slowly doing it—then she should have been entitled to one half of her husband's built-up credits in that plan pursuant to our Marital Property Act during the length of time of the marriage and receive those, probably under the George Formula, which is a formula where courts award the pensions at the time they actually start receiving the pension, and then a portion of the pension is automatically given to the other spouse.

* (1150)

She should have been entitled to that, and I believe our legislation does in fact contemplate all situations because the combination of our Pension Benefits Act and The Marital Property Act say that all pensions are shareable. If you do not get it under The Pension Benefits Act, then you can make an application under The Marital Property Act.

We firmly believe that Section 31(2) of The Pension Benefits Act requiring the mandatory split, we very much support the 20 percent exception because of the Sado (phonetic) type case where we had pensions that were almost equal and because they had to be taken out of a plan, and reinvested in a different type of plan, each party in fact went to an economic disadvantage. We could see that, so we thought of the 20 percent rule and recommended that to the commission to avoid that situation which did seem to be an economic hardship to the parties.

Generally speaking, we would like to see the splitting or the trading off of credits continue to be prohibited as is in this legislation, and that is why we heartily support the legislation. There are a number of reasons given why this should not be the case, particularly given by the Family Law subsection of the Manitoba Bar. Here we differ from our colleagues. As a lawyer who practises family law, I can certainly understand why they are recommending that. It is much easier to come to a settlement if you have some cash, some liquid assets which you can trade. It is much easier. Is this what is in the best interests of the spouse who does not have pension credits? By our statistics, which Ms. Bjornson just read out to you, we can clearly see that is normally women. Is it in their best interest to allow that to happen?

I deal with women in marital property and family law matters on a daily basis. During the course of those negotiations, I can see people who come in who are prepared to give up absolutely everything. They are prepared to give up all their marital property. They are prepared to give up all their pensions. Just do not let him petition for custody, or I am just scared of him. He is physically abusive. I just want to get out of the situation. I will sign anything.

You can counsel them—and I can tell you I try—as much as you can to try to get them not to do that, but they are prepared to sign away anything. If I am being maternalistic or paternalistic in saying everyone needs protection in their retirement, then I see it as a philosophy of the Act and I am prepared to take the lumps for being that way with respect to women and

parties when they are negotiating settlement agreements and separation agreements. It is a difficult emotional time for people. It is not the time to be forcing them with more decisions than they need.

The major concern I have with respect to that is the question of the disposable income available to the parties. Many times we have proponents of allowing parties to trade off the credits, suggesting that the wife may very much need that $10,000 or $20,000 now today to buy the marital home so she can keep the marital home, to go back to school, as in Mr. King's example with a younger woman, whatever.

We have protection in our system for that. It is called The Family Maintenance Act, and you can make an application for maintenance. The reality is what is going to happen if you allow trade-off credits, as people will trade off those credits now, because they see it as something concrete that they can get their hands on right now. They will be poor in their old age, and they will not get as much maintenance from their spouse.

We already have statistics that say that maintenance awards are inadequately low in the province, that the husband is usually after divorce living on 71 percent of the combined family income, and the wife and children are living on the balance. We already know we have an inequity there. Let us not compound it further by giving her more money so a judge can look at her situation and say, well, she has these disposable assets here. She can pay down her mortgage partially. She does not have as big a mortgage payment.

The other factor to consider there is that in many instances when this type of situation is needed, when you have to have this cash payment just to be able to buy the marital home, she will not be able to have the funds to keep up the marital home. She will end up losing the marital home anyway down the road, and she will not have those funds available in retirement.

The second argument given in favour deals with the situation of people who may become ill. We have that covered in our Pension Benefits Act now. We do not need to worry about that. We have the 25 percent rule.

The third argument given deals with the old problem of, well, people are doing it anyway. Lawyers are drafting agreements that way. People are trading off their credits. Mr. King says to us, well, perhaps that shows you that a lot of people want to do that. I have two comments to make with respect to that.

Sometimes I am not sure who is raising it: whether it is the lawyer saying, well, if we could trade your pension credits here, then you would have enough money to buy the marital home; or whether it is the client saying, I do not want this system, draft something different. In my experience I have dealt with many people who have come to me for a second opinion on something and have been very much counselled by lawyers to trade their credits off now. Take the benefits now. They have not been counselled about their retirement needs or properly counselled about the fact that their spouse may have a claim under The Pension Benefits Act. In any event, this is prohibited.

Now in many other types of legislation we do have sanctions and penalties for someone who disobeys the legislation. We also have sanctions and penalties for people who aid and abet in the disobeying. The Manitoba Association of Women and the Law has recommended to the pension commission and again recommends that we seriously look at, and I know you will not be able to do that in considering the legislation right now, but for future that we seriously look at fines to the parties if they attempt to circumvent the legislation, and to parties who aid and abet. I can assure you that will probably decrease the number of lawyers who are prepared to go that route.

If you can just look as another example, we have speeding legislation and that prohibits people from going too fast on the highway, partially for their own good, paternalistic, and partially for the good of society, because we want to protect other people in society. The fact that people speed does not suggest that we should amend The Highway Traffic Act to change the speeding limits. It does not follow rationally. In the same way, it does not follow rationally that the fact that some people want to trade out of these agreements, says that we should not have this protection in the legislation. Indeed, if you were to ask any employees who are part of private pension plans if they would not like to be able to access that cash for some other purpose, they probably would say yes. If they could find a lawyer who could do that for them they would go ahead and do it.

It is just a function of people do not like being told they have to force and put money away now for retirement that is years away, and maybe it is that lack of thinking for the future on the part of the public generally, both male and female, that has required our pension legislation generally to be paternalistic.

With respect to the assets themselves, there is one drafting change that we would also like to make with respect to the actual drafting of the legislation and that deals with Section 31 (3.1), after (a)(ii) and before (b), we would recommend the putting of an "and" after the semi-colon, just to make it abundantly clear. Three or four of us lawyers read the legislation and were not sure whether you were recommending trading in all cases or not, and if three or four lawyers can sit down and have to discuss for half an hour as to what it says, then I think that "and" might clarify that somewhat and we would recommend that change.

I would also just like to comment briefly on the first two presenters—and unfortunately I did not hear the first presenter, but I heard the second—on the second presenter's suggestion of an appeal process. I would be very much not in favour of an appeal process for a number of reasons. Firstly, we have no appeal process in other instances such as financial hardship, et cetera.

Secondly, we would then have to have a mechanism for appeal and probably then appeal to a court and I would see almost everybody thinks they have an exceptional case. It would involve protracted litigation again and it would go back to the whole bargaining concern that we have concern about, women wanting to sign away anything rather than a threat of going to court. If there is an appeal mechanism, the spouse can say I am going to appeal this unless you give me what I want, I am going to appeal. There is always that concern there.

Finally, with respect to the appeal, I would be concerned that we have a principle here, if we start allowing exceptions to the rule in every instance, what kind of a principle will we have left? There may be that there are hardship cases. In my view, most of those hardship cases are covered under The Marital Property Act. I am yet to have anyone give me an example of one that is not covered because pensions are covered as a marital property asset and, unless you have already divided them as a shareable asset or unless they are Manitoba Pension Benefits Act situation which is definitely divisible under this, by mandatory action, then you are entitled to your one half. I just do not see why the lawyers acting for the parties here did not proceed to divide in accordance with the George formula.

I would like to just reiterate by supporting the legislation and complimenting the Government on a job well done with respect to this legislation. Thank you for the time to submit.

* (1200)

Mr. Chairman: Are there any questions for Ms. Brown?

Mr. Edwards: I would just like to say, Ms. Brown, and I think I speak on behalf of all committee Members, thank you for coming forward. You were also a person who has over time presented to committees of the House and worked with Governments on many initiatives and your work is appreciated, and that of your group. Thank you.

Mr. Chairman: If there are no further questions, I want to thank you very much for your presentation this morning.

That concludes our presentations. Are there any other presenters out in the audience there this morning? We did not have anyone registered to speak to Bill 80. That concludes our presenters this morning.

BILL NO. 31—THE LABOUR RELATIONS AMENDMENT ACT

Mr. Chairman: What is the will of the committee? Shall we go into clause by clause of Bill 31 first?

Mr. Steve Ashton (Thompson): I have no objections in starting the process now.

Mr. Chairman: Is that the will of the committee? We shall now proceed with the Bill, Bill No. 31; the Bill will be considered clause by clause. During the consideration of a Bill, the Title and the Preamble are postponed until all other clauses have been considered in their proper order by the committee. Mr. Edwards.

Mr. Paul Edwards (St. James): Mr. Chairperson, I would like to ask that in light of the hour if we could by leave of the committee replace the Member for Ellice (Ms. Gray) with the Member for Inkster (Mr. Lamoureux). She has another appointment that is pressing, and we are wondering if we can get leave of the committee to replace.

Mr. Chairman: Is there leave to do so then? Leave is agreed. Is the substitution agreed to?

Some Honourable Members: Agreed.

Mr. Chairman: Agreed. Mr. Ashton, do you have a question?

Mr. Ashton: I am ready for clause by clause.

Hon. Gerrie Hammond (Minister of Labour): I am wondering, Mr. Chairman, if we could wait just a few minutes for legal counsel. He seems to have stepped out during that presentation.

Mr. John Angus (St. Norbert): Mr. Chairman, I wonder if I could just bring to the attention of the committee some information that was brought to my attention by one of the delegates that she wanted to be assured—she actually asked if she could make representation to the committee again to clarify and she was denied that because of the fact that you do not want to get delegates into debating contests as to representation. She wanted to make sure that their pensions were not split. They never asked for them to be split, and they were not split. They felt that there was some misrepresentation, or they felt that the committee may have been misled thinking that the pensions—there was some confusion in that area. I just want to make sure that they were not asked for and they were not split.

Mr. Chairman: Thank you for bringing that to our attention, Mr. Angus. No, I think it was quite clear. The committee will discuss that, and I believe we have understood that. Thank you for bringing that to our attention, though. Mr. Ashton, did you have something to say?

Mr. Ashton: I would suggest that we proceed into 31, we are not going to complete it this morning sitting. I would suggest we start. In terms of Legislative Counsel, there will be more than ample opportunity in terms of dealing with any amendments at that point in time.

Mr. Chairman: Thank you, Mr. Ashton.

Okay, we will start with clause 1 then. Mr. Ashton.

Mr. Ashton: Yes, I have an amendment to clause 1. I move that the following section be added after section 1, final offer selection—

Mr. Chairman: Do you want to wait until it is distributed, please? Okay, Mr. Ashton, please proceed.

Mr. Ashton: I move, seconded by the Member for Churchill (Mr. Cowan),

THAT the following section be added after section 1:

"Final offer selection"
1.1 In this Act, "final offer selection" means the final offer selection process set out in Part V.1 of The Labour Relations Act.

THAT section 2 be amended by striking out "Subsection 21(1.1)" and substituting "Subject to section 4.2, subsection 21(1.1)".

THAT section 3 be amended by striking out "this Act" and substituting "section 2".

THAT section 4 be amended by striking out "this Act" and substituting "section 2".

AND THAT the following sections be added after section 4:

F.O.S. review and Review Committee
4.1(1) On or before June 1, 1990, the minister shall, under section 5 of The Department of Labour Act, authorize a review of the use and effect of final offer selection and shall appoint a committee, to be known as the Final Offer Selection Review Committee, comprised of

(a) a person nominated by the Manitoba Chamber of Commerce;

(b) a person nominated by the Manitoba Federation of Labour; and

(c) a person nominated by agreement of the persons nominated under clauses (a) and (b), who shall serve as chairperson of the committee.

Review terms of reference
4.1(2) The Final Offer Selection Review Committee shall, in its review under subsection (1), examine whether, and if so, the extent to which, final offer selection

(a) enabled collective agreements to be renegotiated without resort to strikes or lockouts;

(b) enhanced or diminished harmonious relations between employers and employees;

(c) had an impact, whether beneficial or detrimental, on the respective economic interests of employers and employees who rely on collective bargaining in settling terms of employment; and

(d) generally served the public interest in harmonious labour management relations in the province.

Review research
4.1(3) Where the Final Offer Selection Review Committee so requests for purposes of the review authorized under subsection (1), the minister, under section 5 of The Department of Labour Act, shall, on behalf of the committee, retain the research services of persons or institutions who are expert in the research and analysis of issues relevant to employer-employee relations and who are recommended by the committee.

Comparative F.O.S. research
4.1(4) For purposes of the review under subsection (1), the Final Offer Selection Review Committee may review the use and effect in other jurisdictions of collective bargaining dispute resolution processes that are substantially similar to final offer selection, whether or not such processes apply in the other jurisdictions by operation of a statute or a term of a collective agreement.

Review report
4.1(5) The Final Offer Selection Review Committee shall, no later than the 180th day following the day on which the minister authorizes the review under subsection (1), submit a written report to the minister setting out the findings of the committee in respect of final offer selection and the committee may include in its report such recommendations as it considers justified by the findings.

Tabling of review report
4.1(6) If, when the review report under subsection (5) is received by the minister, the Legislative Assembly is in session or is scheduled to commence or resume a session within 10 days, the minister shall table the report in the Legislative Assembly no later than the 15th day following the day on which the report is received.

Distribution before tabling of review report
4.1(7) If, when the review report under subsection (5) is received by the minister, the Legislative Assembly is not in session or is not scheduled to commence or resume a session within 10 days, the minister shall

(a) immediately send a copy of the report to each member of the Legislative Assembly;

(b) immediately give public notice of receipt of the report;

(c) provide copies of the report to members of the public where copies are requested; and

(d) table the report in the Legislative Assembly no later than the 5th day following commencement of the next ensuing session or resumption of the current session of the Legislative Assembly.

Reinstatement of repealed F.O.S.
4.2(1) Unless the review report submitted under subsection 4.1(5) includes a recommendation against continuation of final offer selection, final offer selection stays in force.

Continuing F.O.S. repeal
4.2(2) Where the review report submitted under subsection 4.1(5) includes a recommendation that final offer selection not be continued, the repeal effected by section 2 of this Act comes into effect on January 1, 1991.

Sunset clause repealed
4.3 Section 3 of An Act to Amend The Labour Relations Act, S.M. 1987-88, c. 58, is repealed.

(French version)

Il est proposé que le projet de loi soit amendé par adjonction, après l'article 1, de ce qui suit:

Arbitrage des propositions finales
1.1 Pour l'application de la présente loi, les termes "arbitrage des propositions finales" s'entendent de l'arbitrage des propositions finales que prévoit la partie V.1 de la Loi sur les relations du travail.

Il est proposé que l'article 2 soit amendé par substitution, à "Le paragraphe 21(1.1)", de "Sous réserve de l'article 4.2, le paragraphe 21(1.1)".

Il est proposé que l'article 3 soit amendé par substitution, à "la présente loi", de "article 2".

Il est proposé que l'article 4 soit amendé par substitution, à "la présente loi", de "l'article 2".

Il est proposé que le projet de loi soit amendé par adjonction, après l'article 4, de ce qui suit:

Étude de l'arbitrage des propositions finales
4.1(1) Au plus tard le ler juin 1990, le ministre autorise, en application de l'article 5 de la Loi sur le ministère du Travail, une étude portant sur l'utilisation et l'effet de l'arbitrage des propositions finales et il constitue un comité dénommé le "Comité d'étude de l'arbitrage des proposition finales". Le Comité est composé:

a) d'une personne désignée par la Chambre de commerce du Manitoba;

b) d'une personne désignée par la Fédération du travail du Manitoba;

c) du président du Comité désigné par consentement des personnes désignées en vertu des alinéas a) et b).

Mandat
4.1(2) Le Comité d'étude de l'arbitrage des propositions finales examine, à l'occasion de l'étude visée au paragraphe (1), la question de savoir si l'arbitrage des propositions finales:

a) a permis la renégociation de conventions collectives sans que les employés recourent à la grève ou que les employeurs recourent au lock-out;

b) a favorisé le maintien de relations harmonieuses entre les employeurs et les employés ou a nui à ces relations;

c) a eu un effet, positif ou négatif, sur les intérêts économiques des employeurs et des employés qui comptent sur la négociation collective afin de parvenir à fixer des conditions de travail;

d) a, de façon générale, servi l'intérêt du public dans les relations du travail dans la province.

Le Comité se penche, le cas échéant, sur l'importance du rôle que l'arbitrage a eu.

Recherches
4.1(3) Si le Comité d'étude de l'arbitrage des propositions finales lui en fait la demande aux fins de l'étude autorisée en vertu du paragraphe (1), le ministre retient pour le compte du Comité, en application de l'article 5 de la Loi sur les relations du travail, les services de personnes ou d'établissements qui sont experts dans la recherche et l'analyse portant sur des questions ayant trait aux relations du travail et que le Comité recommande.

Recherches comparatives
4.1(4) Pour l'application du paragraphe (1), le Comité peut étudier l'utilisation et l'effet, à l'extérieur de la province, des processus de règlement des différends survenant à l'occasion de négociations collectives qui sont en grande partie semblables à l'arbitrage des propositions finales, que ces processus soient prévus par une loi ou par une convention collective.

Rapport
4.1(5) Le Comité d'étude de l'arbitrage des propositions finales présente un rapport écrit au ministre, dans les 180 jours suivant la date à laquelle le ministre autorise l'étude visée au paragraphe (1). Le rapport contient les conclusions du Comité relativement à l'arbitrage des propositions finales. Le Comité peut également y faire les recommandations qu'il estime fondées.

Dépôt du rapport
4.1(6) Le ministre dépose le rapport visé au paragraphe (5) à l'Assemblée législative dans les 15 jours suivant sa réception si l'Assemblée législative siège ou doit ouvrir ou reprendre une session dans un délai de 10 jours.

Distribution avant le dépôt du rapport
4.1(7) Si l'Assemblée ne siège pas ni ne doit ouvrir ou reprendre une session dans un délai de 10 jours, le ministre:

a) remet immédiatement une copie du rapport à chacun des membres de l'Assemblée législative;

b) donne immédiatement un avis public concernant la réception du rapport;

c) fournit des copies du rapport aux membres du public qui en font la demande;

d) dépose le rapport à l'Assemblée législative dans les cinq jours qui suit l'ouverture de la session suivante ou la reprise de la session en cours.

Rétablissement de l'arbitrage
4.2(1) L'arbitrage des propositions finales demeure en vigueur, à moins que la rapport présenté en application du paragraphe 4.1(5) ne contienne une recommandation allant à l'encontre de sa prorogation.

Maintien de l'abrogation
4.2(2) L'abrogation prévue par l'article 2 de la présente loi prend effet le 1er janvier 1991 si le rapport présenté en application du paragraphe 4.1(5) contient une recommandation selon laquelle l'arbitrage des propositions finales ne devrait pas être prorogé.

Disposition de temporisation
4.3 L'article 3 de la Loi modifiant la Loi sur les relations du travail, chapitre 58 des Loi du Manitoba de 1987-88, est abrogé.

Mr. Chairman: Are you moving that in both English and French?

Mr. Ashton: Yes, that is moved in both English and French versions.

Mr. Chairman: Would you like to speak to the amendment, Mr. Ashton?

Mr. Ashton: I most definitely would and I know the Member for Churchill (Mr. Cowan), who has been very involved in terms of drafting this amendment, has a number of comments. I know that we will probably be back in tonight. We will not have time to deal with it this afternoon. I think it is important that notice be given to the committee of this particular amendment. If anyone has sat through these committee hearings over the last period of time, I believe one thing has been absolutely, fundamentally clear, the hearings of this committee in terms of final offer selection in many ways have been a snapshot of labour relations in 1990.

* (1210)

We entered the committee hearings. The New Democratic Party, recognizing we were in an uphill battle to save final offer selection to give it a chance, we made arguments in the Legislature. We spoke for two weeks on second reading. The Member for Churchill (Mr. Cowan), who is here today, spoke in I believe one of the landmark speeches that I have seen in this Legislature in the time that I have been a Member. We fought hard on second reading, but we were defeated in terms of second reading.

We knew as we went into committee that we were continuing to face an uphill battle but, Mr. Chairperson, something happened in the committee, something that I feel is unprecedented in this Legislature. As I said, people came forward to this committee, not just people who had been used to making presentations to committee, but people who had never made a presentation to a committee before. Many of them were not here with prepared statements. Many were nervous. They indicated that when they spoke. They spoke from the heart. They spoke about a world in which people can still be denied the most fundamental rights in their workplace.

We have had people talk, what it is like day-in and day-out to be refused breaks to go to a washroom. We heard stories of people held up at a store and then being told they had to get right back to work with no break. We have heard people who have been working for companies for years, full-time employees originally, who have had their hours cut back to the point where they are very much struggling to fight for their own jobs.

We also heard about 1990 and the situation that we are in, in terms of labour relations. We heard about what it was like even before the most recent changes in The Labour Relations Act were brought into place in terms of final offer selection. We heard people come before this committee and talk about what it was like to walk the picket lines at Westfair Foods. We heard people come before this committee to talk what it was like to walk the picket lines at Unicity Taxi. We had people describe the situation at Fisons, a strike that could have gone months and months and months.

We heard people talk about situations whether it was before FOS was introduced or at the time that FOS was introduced or when it was subsequently introduced and in place. It was clear the message this committee received from those people who came to this committee and spoke personally from the heart. They said that final offer selection was working in their view. They said it deserves a chance, and that is what this amendment is all about.

We recognize we are faced still with an uphill battle. The Conservative Minister of Labour (Mrs. Hammond), the Conservative Caucus have sat through the hearings and asked very few questions, giving very little indication of any reaction to the presentations that were made. We have no indication from the Conservative Government whatsoever if they are willing to listen to the working people of this province who came forward and spoke from the heart.

Their position, as I understand it to this point, and the Minister of Labour (Mrs. Hammond) can correct me if I am wrong, is that they wish to repeal final offer selection, period, no review, not even the sunset clause that was put in place. They want to repeal it as of now. Throughout these committee hearings we have seen that this is not based on the experience with final offer selection.

We have had people come before this committee, and I have asked them, have they been contacted by the Minister of Labour (Mrs. Hammond), people who have been involved in terms of disputes in which final offer selection was used? The answer overwhelmingly has been no. Let there be no bones about where the Conservatives are coming from on this Bill. If the Minister of Labour wishes after the completion of my comments to say that she has listened to the working people of this province, I will be glad to hear her say that, but to this point in time the Conservative position has been one of repeal, period.

Mr. Chairperson, there is another Party in this Legislature who sat through the committee hearings, and I do believe they have listened more than the Conservatives, and this is what puzzles me. I am talking about the Liberals. For more than two weeks we had people come here and talk from the heart. They said, give final offer selection a chance. What have the Liberals proposed? They have proposed repealing FOS and studying it after the fact. They have proposed giving final offer selection a stay of execution for 10 months and then studying it after the fact.

Mr. Chairperson, that was not the message of people before this committee. They did not say kill final offer selection, conduct the post-mortem and then try to revive it after six months. I cannot think of anything that could be a more inaccurate reflection of this committee than that proposal. As I make this amendment, my appeal is to the Liberals because, as I have said, I believe the Conservatives have clearly shown that they are not willing to listen to the working people of this province on this issue.

If the Liberals really believe that they have listened—and that is what they said when they announced their so-called amendments to the process—my appeal to

them is give final offer selection a chance. Do not repeal it prior to a study. Have a study such as we have outlined in this report. Give that study a chance, and base the decision on whether we keep final offer selection on that study. That was our position when we introduced final offer selection in 1987. That is why we built in a sunset clause. We understood that it was new and innovative at the provincial level, and we said it needed to be studied.

We have made other suggestions throughout this committee. We suggested that if people had difficulty with the five-year process, to look at a four-year process, and as we move this amendment, we are willing to go as far as we possibly can to save final offer selection, because this amendment deals with the study process, deals with time lines. It would not be my first preference. I would prefer to see it go five years, but if as part of our efforts to save final offer selection, if this is the way in which to give it a chance, to give it that study first, to prevent it from being repealed, then that is why we have introduced this particular amendment.

Mr. Chairperson, I do not ask Members of this committee to support this matter because of the New Democratic Party or the speeches we made in the Legislature. I hope those were listened to, but I ask committee Members to support this matter, this proposed amendment, for the people that came before this committee, because what this does, unlike the Conservative position of repealing final offer selection, period, or the Liberal position of repealing it and studying it after the fact, it provides a very real study. It puts a study up front. It provides a balanced committee for the study. It provides a time frame, and it provides a mechanism to deal with whether final offer selection continues or not. That is all people before this committee asked for.

They are not asking for any special treatments. They are not asking for something that they feel is going to disrupt labour relations in this province. They are saying that final offer selection has worked. It has worked, in my opinion. In fact, as we have gone through these committee hearings, what has been interesting is how not myself or my colleagues have seen this monolith, this wall that was put up, these arguments that were used against final offer selection, we have seen those arguments torn apart brick by brick, Mr. Chairperson, not by myself, not by Members of our caucus, but by the working people of this province. They came before this committee and they said, no, it does not reduce accountability of unions to its membership—one of the arguments put forward. They said, no, it does not lead to people going on strike for 60 days, sitting out on strike and waiting for 60 days to access final offer selection under the second window. They said, no, the suggestions that it creates division in the workplace are not true.

* (1220)

They said quite the opposite, that it has helped resolve some pretty bitter situations. Who can ignore the presentations by SuperValu workers who came before this committee and said the only thing that has brought people together, people who in 1987 were opposite sides of the strike, people who have walked the picket lines and the people who have crossed the picket lines, the only thing that has brought them together is saying that, yes, final offer selection deserves a chance?

We have seen argument after argument dismantled. The argument that somehow final offer selection is costing us jobs, Mr. Chairperson. We had a presenter who indicated quite clearly that he was opposed to final offer selection when it was first introduced, but he believes it has saved several hundred jobs in this province, saved jobs. I could continue on argument, after argument, after argument, but the message is clear. It has come from people who supported final offer selection. It has come from people who opposed final offer selection. It has come from people who are involved very directly in the labour movement. It has come from private citizens who came here to speak, working people, about their own perspective.

My appeal to this committee is to support this amendment. I believe -(interjection)- well, the Minister for Natural Resources (Mr. Enns) says okay. I hope that when he comes to vote on this Bill that he will say okay. Once again, it is not for myself or my colleagues. It is for the working people of this province. This, I believe, is a mechanism that allows us all on this committee to show just how truly the democratic process can work.

We had a Bill that was introduced. We had arguments that were presented. Those arguments, as I have said, have been demolished by the presenters to this committee. We have heard the message from the public. Close to 90 percent of the presenters that have come before this committee have said, save final offer selection, give it a chance. Now is our chance to show whether we are listening or not.

With all due respect to the Minister, if she does not support this amendment, I believe it will indicate that she has not listened. To the Liberals who say they have listened, if they vote against this amendment and seek to repeal final offer selection prior to any review, they will be saying that they have not listened.

My appeal to this committee is please listen to the working people of this province. Please give final offer selection a chance, support this amendment. I believe this is not only democracy in action—this type of process we are seeing—but I believe in our duties to the public interest that we should recognize that this type of amendment can form the basis for giving the type of review that is required, for giving final offer selection a chance, and showing fundamentally that we as Manitoba Members of the Legislature can and do listen.

Let us send a signal, Mr. Chairperson, by supporting this amendment that we have listened and our democratic system is working, and that we believe in this very important issue that the people of Manitoba who have spoken should be listened to. Thank you.

Mr. Chairman: Thank you, Mr. Ashton. Mr. Cowan, do you want to start now, or do you want to continue later? What is the will of the committee?

Mr. Jay Cowan (Churchill): I can go till 12:30. It is another five minutes. I wanted to start the comments.

Mr. Chairman: Okay, till 12:30. Fine. Please continue, Mr. Cowan.

Mr. Cowan: Mr. Chairperson, this amendment is brought forward by the New Democratic Party caucus as a way to bring some reason into the process of determining the fate of final offer selection. As it stands now, final offer selection is going to be repealed. It is going to die, because of the political debts of the Conservative Government and the Liberal Opposition.

I would suggest to you that the Conservative Government knew very well what they were doing when they made their campaign promise to repeal final offer selection. I am not certain that the Liberals understood the process as well as they should when they made that campaign promise, but I do believe that they have come to have a better understanding of what final offer selection means to the people who work in our plants, in our factories, in our shops, in our restaurants, in our service industries, in our public sector through the presentations that we have all heard over the past number of weeks.

I know that they have come to have a better understanding of it because they have made one step in the right direction. That is to extend the time frame for the continuation of final offer selection for a short period of time. They made one fatal flaw in developing that compromise. That fatal flaw was that they could not extricate themselves enough from their campaign promise to allow for a rational process to unfold.

The rational process is for an independent review to take place, not as a post-mortem, not as an autopsy, not after the fact, to take place not after final offer selection has been repealed, but for a review to take place before that final decision to repeal final offer selection is made. This amendment provides for that review to take place. It provides for an independent review. If that review were to say that final offer selection is not working in the public interest, is not serving the public interest, is not working in the interest of employers and employees with respect to creating harmonious labour relations and preventing unnecessary strikes and lockouts in this province, then the amendment that we proposed allows for, as a matter of fact, calls for, insists upon a mandatory repeal of final offer selection on January 1, 1991, the same time frame that the Liberals have proposed.

The difference, of course, is that we provide in our amendment for an independent review to take place before that. If that independent review decides that final offer selection is in the public interest, has served Manitobans, then that repeal not take place as part of this legislation. If another Government wants to come forward and deny what that independent review has found to be the case and attempt to repeal final offer selection again, they can do that, no matter what Government it might be, but what this amendment does is put the horse back before the cart. It does not say repeal it and then study it, repeal it, do a post-mortem, repeal it, do an autopsy. It says, do an independent review, structure it in the most unbiased, neutral, independent way that you can. As a result of that independent review, determine what will happen with final offer selection.

That is a reasonable, rational approach. It is not one that is based on ill-thought-out or ideological campaign promises to big business and the corporate sector. It is not one that is based on a misunderstanding of final offer selection and what it means to this province. It is one that is based on the experiences that we have gained as a province over the past number of years with respect to final offer selection. It is one that will be triggered by a reasoned, rational, independent, unbiased, neutral study of what final offer selection has meant to this province.

All of us listened to workers who came forward and some employers who came forward over the past number of days and weeks. I can tell you, Mr. Chairperson, that I entered into this debate very, very intellectually wedded to final offer selection. I had studied it. I felt it was a rational process. I thought it was a good process. I thought that it would work. I thought that it was going to serve the interests of Manitobans generally. I believed that was the case because I believed that it made the labour relations climate a bit more balanced out there, that it gave some power to those that had been disaffected in the past. It gave power to those that had been powerless or at least lacked equal power with others in the past. It leveled out the playing field a bit.

* (1230)

I studied it. I studied it right from Brevans (phonetic) in England in the early 1900s to the most recent article which was just published the other day in Industrial Relations which says final offer selection has been working in the Province of Manitoba, and I thought it would work. I listened carefully to what was said to me by so many presenters, and while I had an intellectual support of final offer selection, when the presenters had finished their comments I felt, in my gut, in my heart, in my soul, in my very presence that what we had done several years ago was the right thing to have done and to kill it at this time without providing for an independent assessment and review of it would be the wrong thing to do. Not only would it be the wrong thing to do—

Mr. Chairman: I wonder if I could interrupt the proceedings now because it is 12:30, Mr. Cowan. You will be allowed to continue after, whenever that may be. Committee rise.

COMMITTEE ROSE AT: 12:31 p.m.