Fourth Session – Forty-First Legislature

of the

Legislative Assembly of Manitoba

Standing Committee on Justice

Chairperson
Mr. Doyle Piwniuk
Constituency of Arthur-Virden

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MANITOBA LEGISLATIVE ASSEMBLY
Forty-First Legislature

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LEGISLATIVE ASSEMBLY OF MANITOBA

THE STANDING COMMITTEE ON JUSTICE

Thursday, May 9, 2019

TIME – 6 p.m.

LOCATION – Winnipeg, Manitoba

CHAIRPERSON – Mr. Doyle Piwniuk (Arthur-Virden)

VICE-CHAIRPERSON – Mr. Len Isleifson (Brandon East)

ATTENDANCE – 11 QUORUM – 6

Members of the Committee present:

Hon. Messrs. Cullen, Friesen

Ms. Fontaine, Messrs. Isleifson, Johnston, Mses. Lamoureux, Lathlin, Morley-Lecomte, Mr. Piwniuk, Mrs. Smith, Mr. Teitsma

PUBLIC PRESENTERS:

Bill 9 – The Family Law Modernization Act

Mr. Jason Bekiaris, private citizen
Mr. Ronald Bewski, Family Mediation Manitoba
Ms. Robynne Kazina, Family Law, Manitoba Bar Association
Mr. Lawrence Pinsky, FAMLI Mediation and Arbitration
Mr. Allan Fineblit, private citizen
Ms. Christine Ens, Mediation Services

Bill 5 – The Mental Health Amendment and Personal Health Information Amendment Act

Mr. Keith Kovacs, private citizen
Ms. Bonnie Bricker, private citizen
Ms. Kristen Valeri, Health Sciences Centre
Ms. Cassidy Allison, private citizen

Bill 20 – The Courts Modernization Act (Various Acts Amended)

Ms. Susan Dawes, Provincial Judges Association of Manitoba
Mr. Mark Toews, Manitoba Bar Association

WRITTEN SUBMISSIONS:

Bill 5–The Mental Health Amendment and Personal Health Information Amendment Act

Anna Ziomek, College of Physicians and Surgeons of Manitoba

MATTERS UNDER CONSIDERATION:

Bill 5 – The Mental Health Amendment and Personal Health Information Amendment Act

Bill 6 – The Statutes Correction and Minor Amendments Act, 2018

Bill 8 – The Referendum Act

Bill 9 – The Family Law Modernization Act

Bill 20 – The Courts Modernization Act (Various Acts Amended)

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Mr. Chairperson: Good evening. Will the Standing Committee of Justice please come to order.

This meeting has been called to consider the following bills: Bill 5, The Mental Health Amendment and Personal Health Information Amendment Act; Bill 6, the statutes correction the minor–and minor amendments act, 2018; Bill 8, The Referendum Act; Bill 9, The Family Law Modernization Act; and Bill 20, The Courts Modernization Act (Various Acts Amendment).

I would like to inform all in attendance of this–provisions of our rules regarding the hour of adjustment–adjournment. The standing committee meeting is considered–a bill must not sit past midnight to be 'heared' public presentations or consider the clause by clause of a bill, except unanimous consent of the committee.

We have a number of presenters registered to speak tonight, as noted in the list of presenters before you.

On the topic of determining the order of public presentations, I will not–I would note that we do have one out-of-town presenter in attendance, marked with an asterisk on the list.

With this in mind, is it–what is the order does the committee wish to hear the presentations? Would you–would the committee allow the person from outside of–outside guest to present first? *[Agreed]*

A written submission from the following person has been received and distributed to the committee

members: Anna Ziomek, the College of Physicians and Surgeons of Manitoba, on Bill 5.

Does the committee agree to have the document appear on Hansard's transcript of this meeting? *[Agreed]*

And I just want to remind the public presentation guidelines. I just want to make sure that if anybody's–there's no allowing of any filming or recording in the committee room.

Before we proceed with the presentation, we do have a number of other items and points of information to consider.

First of all, if there are anyone else in the audience who would like to make a presentation this evening, please register with staff at the entrance of the room. Also, be–for information of all presenters, while written version or–of the presentation are not required, if you are going to accompany your presentation with a written materials, we ask that you provide at least 20 copies.

If you need to help with photocopying, please speak to the–our staff at the back of the room.

As well, in accordance with our rules, the time limit of 10 minutes has been allotted for presentations with another five minutes for questions from committee members. If presenter is not in attendance when their name is called, they will be dropped to the bottom of the list. If the presenter is not in attendance with their name is not–called a second time, they will be removed from the presenters' list.

Lastly, I would like to advise members of the public regarding a process for speaking in committee. The proceedings of the meeting are recorded in order to provide a verbatim transcript. Each time someone wishes to speak, whether an MLA or a presenter, I first have to say their person's name. This is a signal that Hansard recorder is to turn on the mics on and off.

Thank you for your patience and we will now proceed with the public presentations.

Bill 9–The Family Law Modernization Act

Mr. Chairperson: Now I will call on Bill 9, Jason Bekiarif *[phonetic]*, a private citizen. Did I pronounce your name right? Your last name?

Mr. Jason Bekiaris (Private Citizen): Very close–Bekiaris.

Mr. Chairperson: Bekiaris, okay. Mr. Bekiarif *[phonetic]*, you can–okay, I now call on Mr. Bekiarifs *[phonetic]*. Do you have any written materials to hand out to the members?

Mr. Bekiaris: I do.

Mr. Chairperson: Okay, so we'll get one of the staff to hand them out, and as the staff member is handing them out, you can proceed with your presentation.

Mr. Bekiaris: Ladies and gentlemen, before I begin, I'd like to take a few seconds to thank everyone for the opportunity to speak today and the chance for my voice to be heard.

My name is Jason Bekiaris. I'm the father of three amazing children–my daughters Kaylee and Jordyn, ages 10 and 7, from a previous relationship, and my two-year-old son Holden, from a current relationship.

I'm also a man who hasn't seen his daughters in more than three years.

My ex and I were in a common-law relationship for nearly 10 years and have two incredible children together. Unfortunately, like other couples, we spent another three to four years after that inside a courtroom arguing over who should raise our children and how much access the other should have to them.

Unfortunately, many relationships end this way and even more end up in front of someone that's deemed responsible to make those decisions for us and, like other relationships the family court system often determines such access based on a variety of reasons.

When we separated, our children were four and not even one year old, as my youngest daughter was still breastfeeding. The Court of Queen's Bench decided, pursuant to The Family Maintenance Act, based on the ages of our daughters that the–their mom would have primary care and control of both children although we were awarded joint custody. I was awarded physical care and control of both girls every second weekend from Friday at 5:30 p.m. to Sunday at 5:30 p.m. extending over long weekends.

I was also awarded five days on and five days off during spring break, and we would alternate Christmas and New Year's for five days each as well.

I've included a copy of pages 2 through 4 of our custody agreement which outlines this division of time as stated.

We also had an agreement for five days on and five days off through summer holidays. Of course there were Skype calls, regular phone calls, Easter, Thanksgiving and more, all in the documents that I've shared with you.

As you can see, there was never a reason I should not have access to fair and reasonable time with our children. In fact, I'm very proud that that's a ruling that I've seldom seen as far as how much access a father has had with his children.

However, my ex did not follow the court order. We found ourselves in court 12 times over a span of four years. In one instance, one of the judges indicated sternly that he would find my ex in contempt of court and allocate court costs to be based on the fact that I had to file emergency hearing after emergency hearing.

***** (18:10)

Two weeks later, we were back in court, after I spent another $3,000, in front of the same judge. We asked for costs and he simply questioned who on earth said you'd get costs. I pointed at the judge and replied, that would be you. At which point he ruled in her favour. I was fined $500 for opening my mouth and exposing the previous ruling.

This continued for years, all of which I'd seen my children the following weekend, before she would refuse access to me again. During the nearly four years spent inside the courtroom, I lost my job based strictly on the time spent away from work. I lost my home. I became homeless. I got sick. I didn't eat, and I lost 91 pounds. Including the equity loss in the sale of our family home where she did not follow the instructions set through the judge, I lost my entire life savings of $161,000.

Nearly four years later, she has still not abided by the order set forth in Court of Queen's Bench, and I find myself destitute and penniless. I work night and day to pay child support to the sum of $593 every two weeks, with a $10 administration fee to Steinbach Credit Union every two weeks. That's an additional $240 a year. This has now put me on the verge of being homeless again at the age 45; I'll be 46 in September.

I used the word responsible earlier in my presentation, but another word of equal value and weight is accountable. To this date, there isn't one lawyer or judge, and certainly not my ex, that has been found accountable for the fact that I have not seen my children in almost four years.

I contacted the office of Hon. Heather Stevenson *[phonetic]*, Minister of Families, Deputy Premier on March 18th, 2019, and they declined to assist me. They did, however, suggest I contact the Minister of Justice, Hon. Cliff Cullen. So I reached out to him on March 18th, as well. I did not receive a response until April 18th, a full 30 days later. They also indicated they were not prepared to assist or listen to my story. When I found out about Bill 9 through a story on CBC News Winnipeg, I thought of others who have experienced similar situations such as myself.

The opportunity for families to deal with disagreements outside of the court system is a glimmer of hope. Whether child custody disputes, division of property and sorting out child and spousal support, Bill 9 offers an alternative to the outrageous court costs levied to those who find their relationship ending. The estimate, according to CBC News, is that 3,000 to 5,000 couples or more divorce or separate each year in Manitoba. Based on those numbers alone, can you imagine the dollars spent each year in the family law system that would be better spent on our children's future?

Part of any custody agreement is that both couples attend a course called For the Sake of the Children. Well, when are we going to actually start thinking about the children and a little less about the time or money spent in court where only the lawyers win?

Bill 9, while a pilot project, offers to facilitate resolution, helping reduce or resolve disputes. It also enforces disclosure of information or recalculation of child support. I was ordered to pay much less than the $603 I pay every two weeks. Why have I not been reassessed based on my current salary, which is much less than I used to make? I have no idea. Well, that's right. The same response that I give people when they ask why don't I–do I not just take my ex back to court to see my daughters? After 12 visits to court and being denied my rights as a Manitoba taxpaying citizen, how many more times do I have to keep going to court? That and the fact I do not have a dollar to my name. I could literally show you my bank account; I have nothing.

I wasn't given an opportunity to speak in court. I was not given an opportunity to represent myself as often as I asked, and I certainly was not awarded the same rights that others have received. Like I said, I'm on the verge of being homeless again.

I've exhausted every dollar I've made fighting to have fair and reasonable access to my children. I don't know why, but I presume based on gender, race, religion or sexuality, I have no idea, but I am not entitled to the same rights as others. I'm simply not able to continue to go to court a 13th or 14th or 15th time in hopes that I finally have a relationship with my children.

Can you imagine their confusion? Putting everything aside for even just a minute, imagine them thinking where did Daddy go? Why did Daddy leave us? I can't answer those questions. I have not been given that opportunity, and the only choice right now is through the court system again, and we've seen how well that's worked not just for myself but others.

So when we look at Bill 9 and the fact that it offers hope, I encourage others to stand up and support this act.

In closing, I work in drug and alcohol addiction and mental health treatment. I help others. I have a great career that I'm passionate about. I also have a clean criminal record check. I've attached a copy of my Manitoba Child Abuse Registry, which shows I'm not listed pursuant to section 19.34 of The Child and Family Services Act. I've also attached a copy of my Adult Abuse Registry, which shows I'm not listed pursuant to section 42 of The Adult Abuse Registry Act. Unfortunately, with only 48 hours or so notice of this presentation and the time, I did not have enough time to gather my criminal record check for you, but I can assure you that is also clean.

And why am I not seeing my children to this day? I'm an honest, hard-working man that is dedicated to being the best person and the best father I can be. However, I have not been given that chance. Maybe Bill 9 will finally give my children the opportunity to have their father in their lives. Better yet, maybe they can have an education one day with the money we save from not spending it all in a courtroom.

Thank you so much for your time. I appreciate the opportunity to stand before you, and God bless.

Mr. Chairperson: Thank you, Mr. Bekiaris, for your presentation, and now we have some questions from the minster of–Minister Cullen.

Hon. Cliff Cullen (Minister of Justice and Attorney General): Thank you so much for joining us tonight and sharing your story.

Clearly, we have a lot of work ahead of us in terms of making changes to the system, and you certainly clearly pointed out the conflict and the cost and the heartache that families go through when they go through this process. And our approach here on this bill is to try to take a lot of that conflict and cost out of the system, out of the court system. And hopefully through an easier process, hopefully a more personal process, we can have resolutions to conflicts such as yours.

So that's certainly the intent of this legislation. We're breaking new ground here; this is the first in Canada, so we have no framework to go by, and that's why the nature of the pilot program. So we– we're optimistic we can get this legislation passed and hopefully help families such as yours work through the process, and provide better outcomes for so many Manitobans that, as your say, go through this process.

So I will say thank you for sharing your story, and we are trying to get this legislation right to help Manitoba families such as yours. Thank you.

Mr. Chairperson: Mr. Bekiaris, do you have anything to add, or?

Mr. Bekiaris: I appreciate that. I mean, actions speak louder than words, so I hope it happens. I want to see my daughters. There is an order in place that says I have X amount of access. If she does not show up, which she does not, I can't do anything about it.

I've exhausted every option humanly possible. I've begged at the doorstep of lawyers. I cannot raise more money; I have no more money. I have exhausted the Steinbach Credit Union for loans; I've exhausted my mother, who's here today. She's the reason I'm able to be here today. She put gas in her car and drove me here because I can't do it myself. My credit cards are maxed, my overdraft is maxed. I've exhausted every option in an effort to see my children. *[interjection]* Thank you.

This is important to me. It offers hope, not just for myself but others who will go through this as well. So, thank you. If anybody can make something happen, I'm more than willing to–I support that a hundred per cent.

Mr. Chairperson: Mrs. Fontaine, you had a question?

Ms. Nahanni Fontaine (St. Johns): I know we only have a couple of seconds left, but I just want to say miigwech for coming tonight and sharing your story

with all of the committee here tonight, and just one quick question in respect of Bill 9: Do you plan to try and utilize this pilot project in dealing with the current situation that you're finding yourself within?

Mr. Bekiaris: Oh, sorry. Absolutely. To–I would absolutely use that. I have–I don't know how else to find a way to see my children, but this is not anywhere close to being done. I–they're not going to–they need–any child needs a mother and a father in their life. There's no question about that. So yes, absolutely.

***** (18:20)

Ms. Fontaine: Just one more follow-up question.

In respect of Bill 9, I'm sure that you've had an opportunity to take a look at it. Would you have any recommendations on how to strengthen Bill 9, given what you've gone through in the last many years?

Mr. Bekiaris: Any opportunity–sorry, I'm not used to–*[interjection]*–any opportunity for a couple to have a chance to meet, whether it's a mediator, somebody that's appointed–anybody that can sift through the nonsense–there's so much time that's spent dealing over petty material garbage. That is not necessary. It's about the children. It's about making sure they have a mother and a father. It doesn't matter who they're with, but they need to have both in their life.

So if there's an opportunity for families to not have to exhaust every cent they ever make, the financial hardship, being 'impovered' by not being able to have the money to just–okay, well then, fine, we'll just go back to court so I can see my kids again, and then that order not being followed and no accountability for it. So if there's a way that families can have somebody that can mediate something.

And hugely important, the recalculation of child support. Four years, I'm paying the same child support. I make $15,000 less now. I'm helping people. That's super important to me. That notwithstanding, where does the other $15,000 come from that I have to pay on? It's credit cards, it's bank loans, it's my poor mom, who should not be helping me at 45 in a hope that I'm not swinging from a tree one day because I'm not seeing my children.

So yes, we need this. Absolutely.

Mr. Chairperson: Mr. Bekiaris, the time for the questions–our five minutes–is up, but I just want to thank you very much for, you know, coming here tonight and being brave and telling your story. And thank you for answering the questions, and thanks for coming out tonight.

Bill 5–The Mental Health Amendment and Personal Health Information Amendment Act

Mr. Chairperson: Okay, we'll get back to Bill 5 presenters, and that's with The Mental Health Amendment and Personal Health Information Amendment Act.

So the first person that we have on the list is Keith Kovacs, a private citizen. So I'll call on Keith to come up.

Mr. Kovacs, do you have anything to hand out? Any materials?

Mr. Keith Kovacs (Private Citizen): I apologize, Mr. Chairman. I'd hoped to have some ready; my current mental health struggles prevented me from having them ready in time.

Mr. Chairperson: No problem. We can go ahead with your presentation. Thanks, Mr. Kovacs.

Mr. Kovacs: Before I launch into things, I do want to mention, for the benefit of anyone in the gallery who is dealing with their own mental health struggles, I will be discussing my own history of having been abused as a child and my own struggles with suicidality. So if there is anyone in the gallery who needs to excuse themselves from the room for the sake of their own mental health, please do so. I don't want to trigger anyone else's health issues. I also want to note before I get into this, to allay some concerns, I am now doing much better on medication.

My father began to physically abuse me when I was eight years old. This is, I believe, where my struggles with mental health began. The abuse was ongoing until, eventually, my mother chose to divorce him at 16.

As a teenager, I was suicidal. I have attempted suicide several times. I've tried hanging myself. I've attempted to overdose on pills. I once locked myself out of the house intentionally in–at night in late January, hoping that I would die of exposure.

I say this to establish that I am precisely the sort of Manitoban that Bill 5 aims to help, and I want to underscore that, in my case, I believe that Bill 5 will, in fact, do more harm than good.

My struggles to this day include, on top of my father, who abused me directly, my mother has repeatedly gaslit me about my abuse. She does not

believe that my father abused me. Two of my three siblings are much the same. They don't believe what happened. The one sibling who does believe me is in Toronto, so the amount of support that my youngest sister has been able to provide has been very limited.

The risk of a disclosure being made to any of these people about something that I discuss in confidence with a mental health professional is, frankly, terrifying to me. The–pardon me, Mr. Speaker–I'm sorry, Mr. Chairperson.

I've been non-contact with my family for several years now. That's been one of the things that has helped significantly in my recovery is to not be dealing with that stress in my life directly, and I want to continue to–thank you–I want to continue to be here. I want to be here for my two children. I want to see them grow up. I do not want to be harmed, but I do still struggle sometimes with thinking about hurting myself.

I have presented at the crisis resource centre before. That was very helpful to me, but the rhetorical question that I'd like to put before you is how many breaches of privacy does it take to have a chilling effect on people seeking help?

The answer, I would think, is none. It only takes the perceived risk of a privacy breach to have that chilling effect.

Since December, when I became aware that Bill 5 was being considered by the Legislature and had passed second reading, I have found it increasingly difficult to trust local health-care professionals with the struggles that I've been going through. I've increasingly being paying out-of-pocket to try and receive therapy online from practitioners who are not in our jurisdiction simply out of the fear of a privacy breach.

Now, I understand that there are cases that the legislation is intended to address where there are supportive family members who need to be contacted. It would be my hope that in the majority of situations where there is a supportive family that a health-care professional could obtain the consent of the patient to make that disclosure. My understanding is that with the consent of the patient a doctor can disclose anything to whomever. That's the nature of patient consent.

When there is no consent, we have to ask ourselves why. Why has the patient refused to give consent to making a disclosure to family members, to roommates, to the other people who would nominally be in the circle of care? And, in most cases, I believe, when that consent is withheld it's because the patient has a good reason to feel that that person cannot be trusted to be supportive.

We know our own families better than anyone else. While we aren't–while as a patient I'm not an expert in practicing mental health, I know my parents; I know my siblings better than any doctor who's treated me and I feel that I am better capable to decide whether or not they should be trusted with information about my care.

Let's turn to a moment for harm reduction. For me, the ideal way to reduce the impact of Bill 5 would simply be to strike it in its entirety and not proceed forward, but I believe that the government intends to proceed, seeking to help people like Reid Bricker and his family.

The single most important thing that I think that could be done to reduce harm for people like myself who don't have a supportive family environment would be to allow a mechanism, an advance directive for mental health, for instance, that would allow us an opportunity to declare in advance that, no, that person in my life cannot be trusted; do not make disclosures to them, even if I'm in a crisis. That is not the person that you should be calling and involving in my care.

***** (18:30)

And I also feel that it's very important that if such a mechanism is considered by the committee, that it needs to be something that can be accessed and enacted by minors without requiring parental notification or consent. My first suicide attempt was when I was 15, and having my father told about that at that time would've been absolutely disastrous for me. If it had happened, I probably would not be here to speak to you today.

So, I'm sorry, I'm starting to ramble a little bit. I do hope that the committee will carefully consider the need for privacy in mental health by especially those of us who have been abused by people who are close to us when considering potential amendments to the legislation.

And if it please the Chairperson, I am ready for any questions.

Mr. Chairperson: Mr. Kovacs, thank for your presentation, and now we'll go on to questions, and Minister Cullen has a question for you–or Mr. Friesen has a question for you.

Hon. Cameron Friesen (Minister of Health, Seniors and Active Living): Thank you, Mr. Kovacs, for being here at the committee this evening to share your personal story, and thank you for the courage with which you've shared it.

And I want you to know these–that it was not easily arrived at, that we came to the belief that Bill 5 would be advantageous to have in place in this jurisdiction. I do accept, like you say, that in some cases, reflexively going to next of kin could actually cause tremendous pain or more. And in the bill itself, we've contemplated this. We've looked at the examples of where similar provisions are in place when it comes to Personal Health Information Act, The Mental Health Act, places like Ontario and PEI and New Brunswick, and we would contemplate the ability to register in some way where there would be a concern expressed by an individual about a person in their immediate family or social circle that they would not want registered.

So the intent of the bill is to actually provide a better balancing of the rights of the individual, but that ability to keep people safe in the rare instance that someone is being discharged from hospital and there's a belief by a health provider that they could be at risk to themselves or others. So, in other words, I know we'll hear other testimony this evening, but I do thank you for being here this evening. I thank you for your presentation and for the points that you have made about being careful about how we approach this to make sure we get it right.

Mr. Chairperson: Mr. Kovacs, do you have anything to reply the minister?

Mr. Kovacs: Thank you, Mr. Friesen. I would like to take this opportunity. I'm also grateful for the caution that you showed. I understand that on December 8th, having read the Hansard, that there was some pressure to rush through the committee stage and third reading all in one day, and I understand that you were resistant to that, and I would like to thank you for that caution, which I appreciate very much.

My one concern is that the mechanisms that are being discussed appear to be something that is dealt with procedurally with the various regional health authorities. I don't–I haven't seen any of that in the actual text of the bill itself. The bill itself is, of course, very short, simply changing some wording in the two existing acts. So I would hope that the committee would consider enshrining in legislation some protections for people like myself who do not have a–who do not have supportive next of kin.

Mr. Chairperson: Any further questions?

Mrs. Bernadette Smith (Point Douglas): I want to thank you for your presentation. I want to uplift you for your courage in sharing your story.

I just have one question for you: Do you feel that there's enough mental health supports out there now?

I do get a lot of constituents that contact my office personally that are struggling with being pushed out of places when they are suicidal and don't have anywhere else to go.

So if you could maybe elaborate on some of the services that are out there and if you feel that there should be more services provided to people living with mental health.

Mr. Kovacs: Thank you for the question.

The services that I've relied on primarily here in the province are the Klinic Crisis Line and the walk-in counselling that they have periodically available at their clinics, as well as the crisis resource centre near Health Sciences Centre.

I attended a course on some cognitive behavioural therapy there which got me started on the admittedly very long road towards recovery. My experience, though, has been that there's–there was–it was very difficult for me to find anything as an adult until I hit the point of crisis and I was directly confronting suicidality.

While I'm not sure that it's directly–that it's something that would best be dealt with as an amendment to Bill 5, I believe that there's tremendous opportunity to do more in preventative mental health care in the province and that, in the long term, the best thing that could be done would be to provide people with supports and the help that they need long before it reaches a crisis.

Mr. Chairperson: Thank you, Mr. Kovacs–*[interjection]*–oh, we're over the five minutes.

Does it–a will of the committee to ask another–one more question? *[Agreed]*

Mrs. Smith: Do you feel that there's enough supports to, you know, support people who are suicidal in this province?

Mr. Kovacs: When I became suicidal again, I feel that the support that I received at the crisis resource centre was excellent. They–the–Dr. Mota, who I dealt with there, was very skilled, very caring, very

compassionate. I have no complaints about the care that I received from her.

But I'm also aware that my story is only one out of many thousands in the province. I don't feel qualified to speak to whether there's enough to go around. I only know that when I needed it, there was enough for me personally.

Mr. Chairperson: Thank you, Mr. Kovacs. Thank you very much for coming in to present today to–this evening, and we appreciate you answering questions and thank you very much.

Okay, thank you. Okay, we'll go on to–well, actually, the next person that was–actually had a written submission. So–it was No. 2.

So we'll go to No. 3 on the list and it's James Beddome. James–is he in today? I don't see him, so we'll put him down to the bottom of the list.

And now we'll move on to Bonnie Brecker–Brecker? Bricker? Bricker–*[interjection]*–Bricker–Bricker; sorry about that–and private citizen.

Ms. Bricker, do you–Bricker, do you have any materials that you want to hand out?

Ms. Bonnie Bricker (Private Citizen): No, I don't.

Mr. Chairperson: Okay, you go ahead with your presentation now.

Ms. Bricker: I think my story is quite well known.

I want to state right away that Bill 5 is not intended to take a person's control or power or disregard their own choices, nor does it give carte blanche to any medical health professional or person deemed a trustee to disclose personal information or breach that person's privacy.

Bill 5 needs to stand as an opportunity for the medical health professional to have a chance at building the transitional discharge support for the patient who is at risk of harming themselves or someone else. Bill 5 reduces the PHIA-phobia for the medical professional, allowing them to tap into further support for the person at need, rather than regret that they followed a protocol that they fear may have tragic results.

The trustee will be able to respond in a positive, timely way without the consent of the person who is not stable or–preferably with direction.

***** (18:40)

So what I mean by direction is that in a way, Bill 5 actually creates a new choice for the patient to have support on board. That person can have previously designated individual or circle-of-care persons, one person, whoever they choose, and they can put that in writing in a letter of consent so that when they're not feeling well, when they're not stable and can't make mindful choices for themselves, that medical health professional can have that on record. It can be filed at every hospital, every emergency department, every mental health care facility, and I encourage people to make 12 copies and keep them with people that they trust themselves.

That directive then provides the information to follow. So it's a guideline for them to follow when that person can't–is in emergent crisis and unable to make choices for themselves, good choices for themselves because we all know that choosing suicide is not a good choice. Support can be from anyone in the circle of care; it can be friend or family, medical health professional, a lawyer, a friend, a counsellor, anyone that that person has designated. If a letter of consent or direction is not available, medical health professional can collect collateral information from people in the circle of care and then make an evidence-based decision as to whom to contact for continued support of that person in need.

Bill 5 addresses suicide, not excluding other presenting psychiatric concerns but specifically the risk of harm. The result of this type of support provides a window of opportunity to think of hope for another day, a day that might provide the path to recovery. It will give the person's loved ones another chance to provide support and create hope. It sends a true message of caring to the person who is in such pain that they feel that the only solution open to them is off the planet.

I want to also say that currently the wording of both The Mental Health Act and the personal health act actually gives consent to those medical health professionals; it gives a sense if you need to, if you deem this a serious and immediate threat, you can contact someone without consent. It actually states that right now. Our intention with Bill 5–our, the royal we, sorry about that–the intention of Bill 5 is to eliminate serious and immediate because if you have been sitting in an emergency ward, or the crisis response centre, for five hours, you are likely not as in an escalated emergent crisis as when you first came in. So that immediate threat might be off the table; it might not seem as serious five hours later.

We all know that is a very difficult decision for the medical health professional to make; it is not going to be an easy situation and there has to be a lot of education supporting this bill. Can't just randomly be passed. There's other steps that will need to be taken to support that: educating public, a commitment from the WRHA and, indeed, all levels of government to support this.

The change, the wording is risk of serious harm, which means it's–doesn't necessarily mean immediate. As you well know, my son was in three different emergency wards in 10 days, two in the same day. How is that not deemed an immediate and serious risk? I think that Bill 5 will give that medical health professional a chance to pause and take a different direction. Not just say, well, I have followed the protocol; I have checked all my boxes; and, even though my gut says to me, this is a serious risk if I let this person walk out the door, I am going to do it, because I have no choice. The punitive actions of PHIA, the results of breaching a person's privacy or not taking the not consent into consideration are tremendously horrible. A person's life can be ruined, and we have listened to two gentlemen tonight who have had their lives impacted by poor government, legal, medical decisions.

So Bill 5 cannot just stand alone on its own platform. It needs a lot of support. And I know that–I have spoken to the Minister of Health and his team, and I know that there are education plans in the process, in the works right now.

So, yes, I do support Bill 5, but not as a sweep of the brush and it covers everybody in every single situation. That's impossible. We couldn't possibly, in good conscience, pass a bill that states that. This is specifically directed to those who wish to harm themselves, are in aggressive state that could harm themselves, and maybe not even an aggressive state.

Reid presented as a very calm, respectful, intelligent individual and he hoodwinked many professionals, including several police officers who contacted me afterwards and said we misjudged this person. We underestimated this person. We've never encountered a situation like this before. It makes us look at other people differently.

Bill 5, I hope, will give those medical health professionals a chance to look at that person and not just say, this is patient 101 in emergency tonight and I have 300 more waiting for me, but rather, to look at them and say, this could be my son.

This fine gentleman, it could be their son or their brother or their spouse, and how would they want that person treated. It could be themselves. How would they want to be treated? Certainly, to give a lot of serious attention to that person.

I know that there was a question before asking whether there was enough support. You can imagine if you present at an emergency department with suicidal ideation or significant mental health stress concerns, the 20 minutes or half an hour that you might get from a doctor on call there are–or if you're lucky, a psychiatric emergency nurse or a psychiatrist that might be on call that you can reach is pretty slim.

And 20 minutes doesn’t–20, half an hour, an hour–you can't make a proper psychiatric assessment. So, no, there's not enough support. And that's why we talk about peer support, which is a whole 'nother issue, maybe a whole 'nother bill. I won't address it tonight, unless you ask me to.

But, anyway, those are my comments. I want to absolutely stress that this Bill 5 is not to give carte blanche to any medical health professional or any trustee to take that person's life or their privacy away from them.

I'm done.

Mr. Chairperson: Oh, is there any question from the committee?

Mr. Friesen: Ms. Bricker, thank you for being here. I've learned a lot speaking with you. You have a story to tell that you never wanted to tell, but you've given a lot of Manitobans hope and I thank you for the way that you've been a powerful advocate in some of these issues, even for a relatively new Minister of Health in this portfolio.

I think you made a number of important points tonight. The fact that this bill seeks to isolate in on a very specific, particular instance at a very–at a moment of great importance that can sometimes occur. You were the one who taught me that term, PHIA-phobia. And you're right: it's not that anyone has a lack of concern who is acting in the system, but rather, they're perplexed by what the rules suggest about their role.

And I think it's for that reason that we've sought, in this bill, to rebalance that right of the individual to their privacy against that overall concern that we should share, for their well-being, in those times when they could present harm to themselves–not

necessarily an immediate harm, but that observation of a potential intent to harm either themselves or others.

And, like you said, there's really no perfect road map to this. And there's much work that will have to occur and is–would already be occurring now to train those trustees in systems to know what this could look like in practice.

So I just want to thank you for the important points that you raised. I think you and I have other conversations that we will still have on subjects like peer support that we are interested in as a government, but I do thank you for your advocacy on this bill. I thank you for the teacher that you have been to myself and so many others.

***** (18:50)

Mr. Chairperson: Ms. Bricker, do you have any response to the comment?

Ms. Bricker: I just appreciate your providing this opportunity to speak.

I want to ask you, how many red flags does a person's file at a hospital have to have before we think that this is a serious risk? This gentleman has shared with us an absolutely tragic journey of parent abuse. Certainly, the story that he gave over and over and over again was consistent enough for someone to step in and protect this individual. And the fact that it wasn't done and wasn't done 'significly' is a tragedy and a horrific error.

But we are human. And so when you speak of educating the trustee, several of them will tell you that they know the section of PHIA that's punitive, but they don't know the balance of the document because it's extremely unwieldly. It's a giant document, and it would be impossible for a human being to memorize every single facet of that. But they could certainly learn the ones that are pertinent to somebody presenting with suicidal ideation.

Mr. Chairperson: We have another question from Ms. Smith.

Mrs. Smith: I just have a few comments. So, I had actually–we started Drag the Red, and we started Drag the Red because of Tina Fontaine, but also we started early because a woman named Sandra Pangman, she had gone to St. Boniface Hospital for mental health issues. She wasn't on her medication. She was brought there by the police. She was released without notifying family. She left there. She went down to the river. She folded her clothes neatly, put herself in the river.

So, you know, I know how important it is to, you know, let people know that people are struggling with mental health issues. But I also know how important it is for families who don't know how to deal with people who are struggling with mental health issues to also have those supports to help their family members. So I just want to thank you for your comments tonight, and just know that you're doing some great work and allowing that conversation to happen, so, miigwech.

Mr. Chairperson: Ms. Bricker, do you want to add to that?

Ms. Bricker: Yes, just very quickly. There are some very robust programs that exist in the province currently today that support parents, they support teens, they support families. And there are some really good programs–CMHA, Mood Disorders, Klinic–that support this. But they're silos, and our biggest resource–our least expensive and our biggest resource–are you, are humans. And we're not tapping into that resource. You speak to me with your heart and with your ideas and you know what's right and wrong, but we all need to step forward. It's not my job. I'm only one person and I can throw that rock in the pond and create those ripples, but it's up to every single Manitoban to stand up and be accounted and know what to do. So there's mental health emergency first aid course. There's robynpriest.com living your truth courses, online courses; you don't have to leave the safety, the sanctity of your home. You don't have to identify yourself. And you can learn how to talk to your loved one. You can learn how to advocate for them.

So all these things are available and we just need to keep spreading that word.

Mr. Chairperson: Well, thank you very much for your presentation, Ms. Bricker, and thanks for coming out and answering questions and thank you very much.

Okay? Okay, now we'll go on to–*[interjection]* Oh. Oh, we're going to have–just want to let everyone know that on Bill 5, we have another person who has signed up for a–be a presenter, and it's Cassidy Allison. So we're going to add her to the bottom of the list, after No. 5, No. 6.

Okay, next person on the list is Kristen Valeri. Is Kristen in the audience? So if Kristen's not–oh, there she is. Okay, she's coming up.

Do you have–Kristen, do you have anything to hand out to the members?

Ms. Kristen Valeri (Health Sciences Centre): No, I don't.

Mr. Chairperson: No, okay. Ms. Valeri, you can continue with your presentation.

Ms. Valeri: So thank you for the opportunity to speak with Bill 5, amendment to The Mental Health Act. I won't be speaking from–I won't probably take the whole 10 minutes.

My name is Kristen Valeri. I'm the director of patient services for mental health services at the HSC Winnipeg. Sort of, what I've done here is received some feedback regarding the amendment to The Mental Health Act.

Acknowledgement exists that the intent of the change in legislation is to align The Mental Health Act and The Personal Health Information Act and allow disclosure of personal health information in cases of risk of serious harm, removing the reference to immediate or imminent risk.

Feedback received suggested that further definition of serious harm, whether it's in the act or within regulations that support the act, was to support clinicians in upholding the intent of the amendment to the act. The clinicians will be required to navigate for the requirements of the PHIA and requests by individuals for their privacy with the amended language within the act. Supporting regulations may support the clinicians.

So, basically, we're asking for, you know, some regulations be developed to help support clinicians through implementing this.

Thank you again. That's really all I have to say. That's the feedback we've received. We support the intent of this change in the legislation in supporting–removing some barriers to the engagement of families.

Mr. Chairperson: Thank you for your presentation, Ms. Valeri.

And now we're going–ask–going through the members for questioning, and we have Minister Friesen to ask you one question.

Mr. Friesen: Thank you, Ms. Valeri, for being here this evening.

You referred to feedback that you had received. Can you tell me how you canvassed for feedback and who you canvassed for feedback and what that looked like?

I thank you for your interest in the bill, and I've made note of some of the things that you've said.

Ms. Valeri: So the feedback went through the managers who work for me, in discussion with staff, just to have–get some of their feedback, and also through some our medical team, and then some information through our regional people as well.

Mr. Chairperson: Okay, we have–next question from Ms. Lathlin.

Ms. Amanda Lathlin (The Pas): Thank you for being here today.

Today in the Chamber I presented a private member's resolution to provide more resources for mental health for our youth in northern Manitoba. Four times I've been medevac'd here, either to meet my child by plane or in the plane with my child, or one time in the back of a RCMP police cruiser.

What about our folks that are from out of town, with this notification of next of kin, when usually they only have very few family members here and their family members' about 800 to 600 kilometres away. How would that be effective for our families that are already separated from their support systems, and how would that help?

Ms. Valeri: How would the amendment to the act help notification of families in rural and northern Manitoba, that's the question?

Mr. Chairperson: Ms. Lathlin. Yes, go ahead.

Ms. Lathlin: Especially when we're separated and medevac'd out, and usually that communication may already not be there.

Ms. Valeri: I think that that's something that would have to be explored and, sort of, processes and protocols in place in order to, sort of, determine how that would work.

I mean, currently there's Telehealth in place and Telehealth is much expanded. And although that isn't the face-to-face, you know, you can't put your arms around the person, but you can have that conversation and that dialogue sometimes through Telehealth, through the telephone.

And hopefully, providing care in areas where maybe people don't need to come out of their communities all the time–is there an opportunity to provide care within communities. So–but there's lots

to be worked out in terms of how that would actually look.

Mr. Chairperson: Any further questions from the committee?

Thank you, Ms. Valeri, for your presentation and your answering the questions. Thank you for coming out tonight.

Okay, we'll continue on Bill 5, and we'll call on number–the sixth presenter, Cassidy Allison.

Hi, Ms. Allison. I just want to know if you have any materials that you want to hand out to the members–

Ms. Cassidy Allison (Private Citizen): No.

Mr. Chairperson: –the committee?

Okay.

Ms. Allison: Sorry.

Mr. Chairperson: Ms. Allison.

***** (19:00)

Ms. Allison: I want to start by saying that I am a proud autistic woman who has depression and anxiety and that I can go nonverbal when I'm under extreme stress, though public speaking is my No. 1 skill, so hopefully that won't occur. I have a text-to-speech app in case that happens, so you don't get surprised when I start sounding like a robot and pull out my phone.

I want to paint a picture for you about my mental health journey. When I first left high school, I was unable to cope without all of the supports I had built in in the school environment; without having an EA to keep me on task and keep me moving forward through the stuff that I really wanted to do but just wasn't quite able to do without just someone by my side; without constant access to a therapist to be able to–just–if I'm in a certain situation, know exactly what steps I could follow to alleviate the problem.

That was unavailable to me as an adult. And it was at that point, when I was homeless and couch-hopping, unable to hold a job, that I first desperately tried to reach out for mental health care in the city of Winnipeg.

And the problem that I came across was, well, I wasn't quite disabled enough–at that point, I was labeled under Asperger's, which is no longer a working term–because people with that disability, or that perceived variation of an autism spectrum disorder, weren't quite disabled enough.

And I was advised by many other people who had gone through this system before, that, oh, they will not take your care seriously. They will not help you unless you tell them that you're suicidal. And that–not only did you have to tell them that you were suicidal, they wouldn't take you seriously if you weren't immediately able to give them a plan.

That's something you go through a lot when you go through the mental health system is, you'll say, oh, I've been feeling suicidal, and they'll go, okay, do you have a plan? Because the second you don't have a specific plan, they just kind of brush you off. Because well, you're not quite there yet.

So, as an autistic woman, I had to come up with a suicide plan in order to attempt to get mental health care. And the thing with being autistic is that, even if you're not–even if it's just something you came up with, we have repetitive thoughts. A lot of it is, just–even as I was trying to sit and think about what I was going to say, all I could think of was, I really want to compliment this gentleman's hair. That was just warring in my head, and I'm trying to focus on this thing.

Advocacy is largely what I do, with both the queer and disabled communities in the city. And I still couldn't quite fully focus. So, I have these repetitive thoughts. And that's how I ended up being suicidal, was this distrust with the mental health care system in the city. And if this bill goes forward, the way that it is right now, without added provisions to make sure that the person in question has consented to some form of rules around who gets told about what, it'll be the difference between me not telling my doctor that I'm thinking about jumping off of a bridge, or telling them and trying to get help.

Sorry, I need some water.

My friend Mr. Kovacs went up, and I knew I had to speak when I heard them hesitate, as–they–when they were asked, you know, were you provided adequate care, because I knew that they had that moment of remembering what I've been through.

The first time I went to the crisis centre in the city to get help, I was left in a room in–with a chair overnight in a tiny, little blanket–I was freezing. Then was woken up early in the morning and going, go, go, you have to go see the psychiatrist, they're in now and you have to see them right now and then leave.

I spoke to the psychiatrist for 10 minutes and then was recommended for a program that would get me a community mental health worker to, like, help me even just do things like go grocery shopping because I struggled to leave the house. I struggled to remember to eat or to do my laundry. It's crippling.

But then I was given a call back from that organization saying, oh, we don't provide services for people with Asperger's. We don't provide services for people with autism.

So if you want to know how to help curtail suicide before it even starts, other disabilities like autism can very often lead to things like depression and anxiety because we don't have a method of coping and support networks.

I think that's all I have to say.

Thank you.

Mr. Chairperson: Well, thanks, Ms. Allison, for your presentation. And we're going to questions from the committee, and the honourable Minister Friesen has a comment and questions.

Mr. Friesen: Ms. Allison, I just want to thank you for having the courage to speak to us tonight, to come to the table and to share your own journey with mental health and these issues. Thank you for your comments on this legislation and I appreciate you being here.

Ms. Allison: Thank you for saying that.

Like I said, public speaking is what I do. I recently gave a lecture at the University of Manitoba on asexuality. And I remember, I was at the crisis unit a week before and I was non-verbal. So I'm typing out on my phone and I am telling this doctor that, oh, well, I have a lecture coming up and I'm–that I'm giving, and they were very confused because they had not heard me speak and I'm like, believe me, I can.

But a lot of disabled people do not have–or, I should rather say, people with disabilities–generally most people with disabilities prefer person-first language, though for me I can get it mixed up because the autistic community prefers autism-first language. I am a autistic woman, not a woman with autism.

Just as a cool learning moment, because there is no me without my autism, that's just–that's down to the bone, but there is a me without my anxiety and depression. And I hope, with further involvement by people like you, that I can find that person without the depression and the anxiety.

So thank you.

Ms. Nahanni Fontaine (St. Johns): I'm sure, on behalf of everyone that is around the room this evening and everybody at the committee, I think that we just really want to lift you up and commend you for coming to speak to the committee and for sharing your story and your expertise. And I just want to say miigwech for the work that you do for advocating, as you shared with us.

In respect to Bill 5, I'm curious if you see any potential amendments or how to strengthen Bill 5, given some of the concerns that you have relayed with us this evening?

***** (19:10)

Ms. Allison: I do think that the idea of having the person in question, beforehand, write–when they are in a good place of mind–to give consent as to who they could–the doctor could reach out to. I find that would be very well. Because in my case, for example, I would list as my point of contact that I would want my doctor to communicate with would be Mr. Kovacs.

They have helped me with my own mental health journey and to be frank, right now, as much as I have a repairing relationship with my own blood family, they're not in a place to help me. And I am more aware of who can be that support in my life better than any just mental health professional.

Ms. Lathlin: Thank you for sharing your story, very courageous of you.

Again, today, with the private member's resolution put forward, you exactly nailed it when I talked about not getting proper assessments: the 10 minutes; spending all night sleeping on a couch; you let the baby sleep on the couch and you on a chair; a little thing like blankets–none for mom; one time an RCMP officer in the room; very awkward.

And I really agree with you that 10 minutes is not enough. It's not a proper assessment. And if our representative is here–still here from the Health Sciences Centre, with patient services, with mental health–we deserve more time. We deserve for the child to get rest. Especially when you've been up all night, and traumatized and medevac'd out.

So I just want to thank you for emphasizing that and sharing your story, and that really needs to be

changed. We need to get proper assessments when children or ourselves are in a good place to actually share and get the actual attention, the services that we need.

Ms. Allison: You actually just reminded me of a point I wanted to make. Recently, I got a new doctor who's been fantastic in getting me connected. So I haven't just been jumping from wait-list to wait-list as I have for many years of my life.

And I almost immediately was sent to a psychiatrist. Who, after two sessions, sent me to a community health worker, as they were trying to get me to go back to college. Which I went to, and subsequently dropped out of, after reaching an all-time low in terms of my health.

And they very much wanted me to get back out there, but as I explained that my housing has been–as–ever since I was 18, my housing has been completely shaky. They said, oh, well, let me know when you have good housing. And then I never saw that psychiatrist again. I never saw that worker again. Because I cannot find housing on a disability budget in Winnipeg.

There is nowhere to live besides in a single room in someone's basement all the way out by the U of M, because it's meant for a student studying. Which, if anyone's ever had to drive out there, you can tell that there is quite nothing around there, and it's very hard to take care of yourself when you're a disabled woman who struggles to–or woman with disability who struggles to get about.

There's no way–there is nowhere for me to live. I've been–I've lived on Mr. Kovacs' couch. I've lived in a friend's basement on their futon. I once lived in a building and every couple of months, the supervisor said, oh well, actually, I'm going to move you out in two months because I want to have a whole group move in, or oh, no, I'm going to have you live longer.

I–most of the time, I've never unpacked my boxes. I haven't fully unpacked my belongings since I was 18. So the fact that so much mental health care in the city is limited when you do not have stable housing because you get afraid to even tell the government, like, oh, hey, I've moved again, because you know you're going to have to go through the rigmarole of having your worker changed, your EIA worker changed and your folder moved, and then you have to go through a whole new waiting list because things have changed, you don't have the right information.

And it's–kills you inside after a while.

Mr. Chairperson: Well, thank you, Ms. Allison, for your presentation and answering questions. It was amazing for–your courage to come up here, and you did a great job, and thank you very much.

Okay. We'll move on to Bill 8. There's one presenter and–again, James Beddome, is he in tonight? So he–James will be moved down to the bottom of the list for Bill 8.

Bill 9–The Family Law Modernization Act
(Continued)

Mr. Chairperson: So now we'll move down to Bill 9, The Family Law Modernization Act, and the first person on the list is Ronald Bewski.

Is Ronald Brewski *[phonetic]* in the–in attendance? And Ronald's from the family meditation Manitoba.

Mr. Ronald Bewski (Family Mediation Manitoba): Family Mediation Manitoba, yes.

Mr. Chairperson: Meditation Manitoba. Do you have anything–any materials to hand out?

Mr. Bewski: I do.

Mr. Chairperson: Sorry for that. Mr. Bewski, do you–you can start your presentation now. Thank you.

Mr. Bewski: Good. Thank you.

I'd like to start by thanking you for this opportunity on behalf of Family Mediation Manitoba, as well as another organization, The Alternative Dispute Resolution Institute of Manitoba. And we'd like to commend the government department of Justice for embarking on a modernization plan that we hope will help to streamline and re-engineer court processes on behalf of separating parents and families in Manitoba.

Briefly, just to fill you in a little bit about Family Mediation Manitoba, we're a non-profit organization; been operating since about 1986. This organization was formed by family mediators and family law lawyers in the province to advance family mediation, as well provide education, information and support to the public, as well as practicing mediators.

It's the only organization, currently, in the province that represents family mediators. The FMM, which is the acronym, provides membership training certification services to those practicing family mediation, and the certification services are indirectly provided by a national body, which is

Family Mediation Canada. We're currently working on developing a provincial certification program for family mediators.

The Alternative Dispute Resolution Institute of Manitoba, known as ADRIM, currently provides membership training and certification services to those practicing mediation at arbitration within Manitoba. There are two levels of certification which are recognized provincially and nationally.

In Manitoba, ADRIM does not offer family mediation certification specifically at this point in time, but there are discussions between ADRIM, FMM, and a national institute which is called ADRIC and Family Mediation Canada, so we're looking at developing a consistent certification system across a number of provinces. We believe that's both good for the profession and the families who required specialized mediation services.

This presentation is an opportunity for us to highlight the fact that family mediation is a sub-speciality in the practice of mediation, and is usually and specifically aimed at addressing issues related to custody access disputes. That's why we're quite interested in Bill 9 and how it's been written up.

There are, for example, also family mediators who provide parent, teen, or elder mediation. However, custody access is typically the main focus of family mediators.

Mediators who practise family mediation are typically trained in a number of areas in the social sciences and have expertise or working knowledge regarding issues in child development, family and couple dynamics, domestic violence, child abuse, interactional patterns within the family, family dysfunction, family systems practice. They provide cycle–social assessment skills along with their developed mediation skills.

Family Mediation Canada, for example, has had a long history of a focus on training mediators for work in the arena of separation divorce dispute resolution, and this includes addressing financial matters within the scope of comprehensive co-mediation.

***** (19:20)

In 1998, for example, mediators were able to complete training provided by Family Mediation Canada in comprehensive mediation, which included a focus on financial issues, such as the child support guidelines that were coming out around that time.

As you may be aware, even from your own experience in your own families, family dynamics can be fairly complicated. And this can significantly impact parents who are separating and conflicted over custody access issues.

One of the main roles of family mediators is to ensure that we adhere to the principle of the best interests of the child when dealing with families, specifically in custody access disputes. There's an appendix to our presentation that provides more information on this principle.

This principle recognizes the vulnerability of children caught in the middle of their parents' conflict and is fairly robust in its focus on the needs of children and the obligation of professionals and practitioners to ensure this focus is not lost when dealing with legal matters.

It's very easy to get derailed by a stringent focus on addressing legal intricacies between parents and inadvertently leave the children's needs as either a secondary consideration, or displacing certain aspects of their needs because of being locked onto an objective of settlement or resolution due to other external pressures.

In Manitoba, there have been a small number of family mediators who've received family mediation certification to deal with financial matters in a co-mediation model with a lawyer mediator. An example would be the family mediators in family conciliation who work with a lawyer mediator to deal with various financial matters and focus on developing a parenting plan that can then be shared with legal counsel of each parent.

Mediators do not provide legal advice, but do provide education or information related to family law issues within their social contexts. As mediators in the community, there is some concern that the resolution officers and adjudicators that are named in Bill 9 may be positioned to focus on family law aspects of presenting disputes, and may, in effect, disconnect from the larger family systems issues that require attention due to the complexities associated with separating families and children involved.

This is especially a concern if you're looking at a pilot project that's looking to enhance and be more efficient and just looking at numbers and processing people through a system. If a pilot project focuses on the instrumental needs of current court system

processes to manage cases more efficiently, it may pay less attention to the needs of the children who are caught in the middle of their parents' conflict.

A main focus for our presentation today is to inform members that what remains essential in mediation of custody access matters is that the needs of the children remain paramount.

For example, when we look at the legislation in the province, we see the best interests of the children principle is included in its entirety in the The Child and Family Services Act, the family violence stalking act, Family Maintenance Act and is referenced in the Court of Queen's Bench Rules.

One of the admissions–apparently, or appears to us in Bill 9–is the child–best-interests-of-the-child principle. In reviewing the proposed bill, children are referenced only twice, and indirectly in clauses 3–3(c)(i) and (ii) and in 4(b), where it cites the need to consider the impact on the child.

We believe that the resolution officer and adjudicator interventions are very critical for children caught up in their parents' dispute. We know that the bill is aimed at expediting custody disputes and reaching resolution either by mediation, negotiation or adjudication. In the French version, in fact, in the bill the term mediator is used. In the English version, it's the resolution officer. We believe that the best-interests-of-the-child principle, in full, should be included in this bill.

One of the limits of mediation, when children are involved, is that it is easy to consider the parents as a conflicting unit because they are actively involved in attempting to resolve their differences, and that unit becomes the main focus within a legal context. Their concerns and needs, as it pertains to legal requirements and development of a parenting plan from the standpoint of that lens, can easily take precedence over what may be impacting on the children in a familial or family systems way. The unit in conflict is, in fact, a representation of the dynamics of the whole family.

And we've heard some of the citizens who've presented today, as you got a little bit of some of their personal histories, especially in those where there–maybe there had been abuse or family dysfunction, we can see how children get caught in those situations very easily and they are often the passive recipients of the overflow of stress associated with the couple conflict.

That also applies to a poorly developed separation or parenting plan. Children are often conflicted themselves around what the separation of their parents means about to them and to the two people that they love.

Family mediators attempt to remain cognizant of the reality that they're working not with the couple independently of its systemic association with other members of that family and extended family, but they are working with the representatives of the conflict that impacts the entire family system and other subsystems connected with the family.

The family mediator recognizes that reaching an agreement with the parents must have in focus the needs of the family members without a voice of their own, which is the children. Each parent is providing their interpretation as best they can of the voice of their children. In some cases, the children's voices remain silent as the parents vie for control or domination or the instinct to win. They may attempt to use mediation as an attempt to right wrongs they felt have occurred or as a strategy to get the best deal for themselves or they may remain adversarial out of revenge or anger.

The family mediator's skill is to ensure the voice of the child–

Mr. Chairperson: Mr. Bewski, Mr. Bewski, your time is over by 10 minute–*[interjection]*–yes, the 10 minutes is over.

Is it will of the–to the committee to have Mr. Bewski continue?

Do you have–are you have much more time to present, or how much?

Mr. Bewski: No, I can go to a highlight and just indicate–

Mr. Chairperson: Okay, let's–we can do the highlights then.

Mr. Bewski: Yes, that it's important, I think, when you're developing a bill like Bill 9 to include the best interest principle. We think that's missing.

As organizations, we represent 79 professionals in mediation in Manitoba and we do have feedback on concerns when bills like this are developed that they–that the court processes may focus in–on expediting matters on processing things through court, but forget to deal with what the issues are in terms of a family systems approach.

And we've learned over the year–I mean, the court's in trouble now in many ways because many of these factors aren't always have been considered. The relationship of the parents continues way after a court order is produced. The relationship of the parents continues, you know, for many, many years, many decades depending on the age of the children and the parents. So when services are developed, they have to take that into consideration.

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

Now we'll turn it to the–Minister Cullen for a comment.

Hon. Cliff Cullen (Minister of Justice and Attorney General): Thank you, Mr. Bewski, for coming tonight and sharing your views and thank you for the good work that your membership does throughout the community. We do appreciate that work and it is important work, for sure.

And thanks for focusing on the family and especially children. That's why we're journeying down this road that no one else has. It does get a little complicated and sometimes we lose sight of some of the small things we're actually trying to accomplish, without actually putting it in legislation.

So I appreciate your words of advice and I'll certainly take that under advisement. Thank you.

Ms. Nahanni Fontaine (St. Johns): Miigwech for your presentation tonight and I appreciate all of the work that you do at family mediation services. I had the opportunity of meeting several people over the years. I used to work at–or not work, I was on the board of directors for Onashowewin and so I know that there was many good partnerships and discussions there as well.

So I just really want to acknowledge the work that you do and say miigwech.

Mr. Bewski: I think hopefully that the term alternative dispute resolution with change to be dispute resolution and the alternative moniker will only refer to court in the future, because it's important to start with dispute resolution before going down that road.

Thank you.

Mr. Chairperson: Any further questions from the committee?

Mr. Bewski, thank you very much for your presentation and answering questions tonight. Thank you.

***** (19:30)

Okay, next person on the–as a presenter is Robynne Kazina. Did I pronounce it right?

Ms. Robynne Kazina (Family Law, Manitoba Bar Association): Yes, you did.

Mr. Chairperson: Okay, thanks.

Ms. Kazina, do you have any materials that you want to hand out?

Ms. Kazina: I do not.

Mr. Chairperson: Okay. Ms. Kazina, you can proceed with your presentation.

Ms. Kazina: Well, thank you very much for this opportunity. I'm the chair of the family section of the Manitoba Bar Association, which is a branch of the Canadian Bar Association. The MBA represents just over 1,500 lawyers, judges, academics, articling students and law students in the province of Manitoba.

The family section is supportive of many components of Bill 9–the ones that simplify the child support processes; expand the administrative authority of the Maintenance Enforcement Program; and, of course, the use of private arbitration in family law matters, which the Bar Association was involved in advocating for, which we do see as improving matters for Manitobans experiencing separation and divorce.

The feedback that I've received from my membership–and the membership includes also family lawyers in a wide variety of practices, so that's Legal Aid lawyers, lawyers that work in private firms–so practitioners that represent a vast array of Manitobans experiencing separation and divorce who have, really, the front-line experience of working in this issue on a day-to-day basis.

And most of the feedback I have received is–revolves around the Family Dispute Resolution Pilot Project, which my comments will mostly focus on. Our membership–and I believe, most family lawyers you'll speak to–certainly agree that the adversarial system should be the last resort for families and that the pilot project would be a good resource for many Manitoba families.

However, we also want to assure that it is a fair process, in addition to the other objectives of the pilot project, as set out in the legislation, of being less expensive, informal and expeditious. One of the major concerns or issues that our membership has raised is the fact that the pilot project is mandatory.

We believe that this pilot project is a great option for many, many families. However, that it would better serve Manitobans if it was not mandatory, for mainly two reasons: the first being, of course, that it can only apply to matters under The Family Maintenance Act, which means that there is–creates a distinction between how individuals are treated if they have matters on the Divorce Act–meaning they were married–meaning that matters that proceed under The Family Maintenance Act must proceed through this pilot project, whereas matters that can proceed under the Divorce Act for spouses that are married can access a court more quickly.

And, of course, the question is, well, court is bad. And, of course, many people have very damaging experiences through the court, but in some cases, court is necessary and is a very important resource for families to have to actually provide them with a just and expeditious result, especially in custody matters.

And family law is very much about children, as Mr. Bewski highlighted, and about the best interests of a child. And for–individuals who are not having access to their children may not fall under the exceptions to the pilot project and would not have access to a court order allowing them to have access to their children, whereas if it was a matter under the Divorce Act, and you were spouses, you were.

So we are concerned about the distinction and the constitutional issues that that raises to treat spouses that are married different than spouses are not married.

Also, the pilot project will be great for, as I said, many families who need an affordable and expeditious result. But in terms of the numbers, we know that Legal Aid, based on the report last year, handled 4,700 family law matters, of which 3,000 were common-law spouses. Meaning, how can we–and I understand that the pilot project's intended to be cost-neutral–provide the adequate service to those individuals who really do need these types of services? And mostly the individuals who fall within the bracket of potentially not qualifying for Legal Aid but, again, not being able to afford a lawyer?

So we believe by not having the project be mandatory, but an option, another option for people to resolve their matters–in addition to the other options that are available such as collaborative law, negotiation through counsel, family conciliation mediation–would be a better approach.

Now, most of my comments, then, will result–will flow from the impact and suggested changes that–if the program remains mandatory. And I first want to set out the exceptions to individuals that would not fall within the pilot project. And, of course, that's–there are exceptions in section 3(3) which mirror, basically, the emerging cases under the current family courts system.

The first comment is one of the emergent situations includes a move from within–sorry–a move outside of Manitoba. We see many people where we're contacted by parents or their spouses looking to relocate from Winnipeg to Swan River, which means essentially their involvement in their child's life is negatively impacted. So we believe that that definition should be expanded to a move within Manitoba. We see most families that are relocating within Manitoba, as I said, Winnipeg to Swan River, Brandon to Winnipeg, which can significantly affect and become a real urgent issue for a parent needing their matter resolved before their spouse moves with their child, which negatively can affect their relationship.

Also the ability of parties participating in the pilot project to access a court if needed is limited to section 8(3). And family law is evolving; it's complex. Emergent issues or urgent issues arrive at different points in the life of a file. So our suggestion is under section 8(3) that another section should be added for some discretion for the adjudicator or the family resolution officer or a judge to determine that this family actually needs a court order because there is an important and urgent issue that–such as access or a move within Manitoba or very various other resource–reasons.

Another concern that we would like to address is to ensure that there's adequate funding and legal representation for legal aid clients. Of course, to have a–to measure the success of the pilot project, well, one measure of success can be, of course, families that go through the process that are happy with the results and you don't see them back in six months to a year, saying, I–this didn't–doesn't fit my situation; I need now to re-evaluated; I didn't know, really, what I agreed to. And so we feel that people

really need an understanding of their legal rights and entitlements, which could be provided and protected in a few ways.

First, is ensuring that the family resolution officer is a lawyer mediator. Of course, if it's simply parenting issues and parenting plans, a social worker could absolutely be more appropriate and skilled in dealing with those issues. However, we believe it's important for the family resolution officer in financial matters and support issues to also have the legal education in addition to the social work education.

The second is to ensure that there's no power imbalances, that the Manitobans that would otherwise qualify for legal aid are still going to have representation through the system to understand their legal rights. Often with separating spouses, there's a power imbalance but not usually on an equal footing, not usually on an equal financial footing. It's avid concern that to fund the pilot project that some funds may taken away 'fom' legal aid, and we believe that it's important for the parties who wish to have a lawyer and wish to qualify for legal aid to still have that representation.

And, of course, family conciliation, also we would hope that continues to receive the funding that it does; that's an excellent program that serves Manitobans by providing assessments and brief consultations, which is an important service to Manitobans.

Two last points; I'm not sure how much time I have left, but two last points. In terms of what happens when a family moves through the family resolution phase and moves to adjudication, either they have the option of accepting the adjudicator's award or not accepting it and moving to a confirmation hearing in front of a judge. The–we do believe that it's extremely important for the adjudicator to also have a specific direction in the legislation in addition to section 25(1) which sets out that they have to apply the law, but they also have to consider best interests; best interests, again, we think is 'under-representated' in the legislation in that it should set out at the forefront that it's the best interests of the child that should be considered by both the family resolution officer and the adjudicator.

Secondly we believe there may be some Manitobans who go through the system, may or may not have a lawyer or have ever consulted or understand their rights, may or not–may or may not have, we're not sure, a legal aid lawyer, and not oppose the order. And we believe that there should be a wider discretion to a judge rather than simply what's currently provided for in the legislation. It is very narrow, the ability of a judge to review that order. It's only if there's an error in principle or they exceeded their jurisdiction or the adjudicator significantly misapprehended the evidence.

***** (19:40)

What if someone goes through the system and didn't provide the right evidence? What if they provided the wrong evidence? We believe that there should be the ability of Manitobans to at least access to a judge and let the judge decide if there should be new evidence adduced or should–there should be a review of the matter, or let the judge look at that case on a case-specific basis. Family law is not a cookie-cutter area of law.

Mr. Chairperson: Ms. Kazina, your time is up for the 10 minutes, and now we'll go on to questions. Thank you very much for your presentation.

So we're moving on to Minister Cullen for a question.

Mr. Cullen: Right. Thank you very much for your presentation tonight, and appreciate the work you've done reviewing this legislation and the consultation you've done.

So in terms of exemptions, right, there is exemptions in the legislation. Some issues may arise that are needed to be dealt with expeditiously. We may run into a case of a domestic situation as well, domestic violence. And of course, if we're going through the federal Divorce Act, of course, that's really a different channel.

So, our view is–and I'll talk about the legal aid context–it's never our view to take away any of the legal aid or those types of resources. We want to make sure that those still are available to Manitobans as they work through the process.

We're optimistic, you know, if people go through the resolution process, hopefully some of those cases will be resolved right away. If not, obviously, we have the adjudication process. And then again, as you say, it still could become before the courts and be adjudicated that way.

But we hope, as they go through the process, we–they've addressed a lot of the outstanding issues. At least then they've created a framework, at least,

that can be–you know, the judge could deal with as well. So, hopefully, the process will prove effective.

We realize that it's not going to be the be-all and end-all, and that's part of the reason that we've gone into a pilot project. We're optimistic. We'll learn as we go through this and we'll–hopefully, we'll be able to correct mistakes and learn from lessons.

But, at the same time, I do appreciate the work you've done and we'll certainly take your advice. Thank you.

Mr. Chairperson: Ms. Kazina, do you have comments?

Okay, Ms. Fontaine, on a question.

Ms. Fontaine: Miigwech for your presentation and your submission tonight. I am curious–you did note–ever so quickly, it is only a short period of time, so I know that there's a lot to share, but in your expertise, do you–what would you see as, in respect of financial support and infrastructure, for a pilot project like this to be successful, that the government would have to ensure and commit to?

Ms. Kazina: Well, I believe that they should–that–I mean that was one of the submissions of why we believe it should not be mandatory, so they can properly service the, really, subset of Manitobans that really need this service.

So whatever that financially looks like, it would–they would need to only be able to serve a certain amount of people that they can actually properly serve. So, I mean–I'm not–are you–maybe can I clarify your question, in terms of what you're asking, what financial supports would be necessary?

Ms. Fontaine: I just think that when a government proposes a pilot project, there needs to be the infrastructure so–in respect of those supports. So, Legal Aid, whatever those other supports that we know aren't necessarily always being fully supported with government dollars and cutbacks and stuff like that.

So, in respect of a pilot project like this being successful, what would you see that the government would have to commit to, to ensure that that infrastructure was in place?

Ms. Kazina: Well, funding for Legal Aid and Family Conciliation, as I mentioned, would need to be continued because it is invaluable for families that are going through separation and divorce. And especially for individuals going through the system that otherwise would qualify for Legal Aid, should still have the benefit of counsel.

Mr. Chairperson: Is there any other questions from the committee?

Ms. Kazina, thank you very much for your presentation and answering questions tonight, and thank you very much.

Okay, we'll move on to the next presenter. Is there Lawrence Pinsky in–Mr. Pinsky, do you have any materials that you want someone to hand out?

Mr. Lawrence Pinsky (FAMLI Mediation and Arbitration): No, my presentation is oral, Mr. Chair.

Mr. Chairperson: Mr. Pinsky, you can continue with your presentation.

Mr. Pinsky: Thank you very much for the opportunity to speak to you this evening–the night of the Raptors Game 6, I hasten to add. You look at me; you're thinking, basketball? I know.

I'm appearing today both on behalf of the–of an arbitration organization comprised of lawyers and service providers, social workers and a psychologist called Family Arbitration Mediation Legal Institute, or FAMLI, that's our acronym, and it's a new organization. I'm also appearing on my own behalf, having practised family law for almost 26 years now, and having had extensive training and experience in litigation, having trained and worked in mediation, arbitration, and collaborative law, and as Mr. Bewski talked about, the mediation co-internship project back in 2000, I was the first participant–one of the first participants of that, as well.

I am also the past chair of the National Family Law Section of the Canadian Bar Association. I was invited to and did speak to the human rights and justice committee in Ottawa about Bill C-78, which is a bill to amend the Divorce Act, that's through the Senate Committee now; and I've made several presentations on that bill. I've lectured extensively in Manitoba; nationally, on family-related issues; spoken at Northwestern University in Chicago, though largely on human rights material, as I am one of the human rights adjudicators for the province.

So I have–I'm apparently–I feel I'm a man who needs an introduction. But I wanted to tell you that I've worked with different levels of government, federal and provincial, in–of every stripe. I've worked on law reform and family law, and on court committees also dealing with reform of the family law. I worked closely with my friends in the last

federal Conservative government on family law matters, the current folks in Ottawa on Bill C-78, and of course, my friends in the NDP who formed the last provincial government here in Manitoba on Bill 33, which was excellent and cutting-edge in its time. And I used to refer to the Manitoba miracle: an ability to speak with each other, with the minister, with the court–everyone working together–other people with stakes in the system, to try to improve justice for Manitobans and Canadians.

And, as you know, change in family law's not only good, it's essential. As society evolves, so must family law. You all know, I'm sure, that family law's one of the critical gateway points for Canadians and Manitobans with the legal system. The other one is criminal law. So it's important here that we get it right.

Now, getting it right shouldn't be an activity that's partisan. It has to be a non-partisan activity, and in my experience, it's always been that way. And that's a good thing. It needs to be based on social science. There's been remarkable consensus and one of the issues that always has had consensus, is focusing on the best interests of children. As Mr. Bewski said, as Ms. Kazina said and as I say, it's important that that's clear. And it's alluded to in Bill 9, but perhaps it could be stated clearly that in Bill 9, again, a fundamental principle is best interest of the children.

I don't intend to address everything in Bill 9. I want to commend the government to trying to move forward with an evolution of the system, and I want to tell them, I want to tell you all that the changes to the Maintenance Enforcement Program are positive; they foster autonomy and flexibility while strengthening enforcement for Manitobans, rather than focusing on inflexibility and a rigidity that has been the case 'til now.

On the amendment to The Arbitration Act, I want to share with you that I've worked quite a bit on that issue, we've studied models in other jurisdictions and I've been on a panel talking about this with people–experts from Alberta and Ontario, and elsewhere.

In our organization, FAMLI, we've worked with and have coordinated with a trainer to develop a domestic violence screening model. We're working with other people to ensure that there's education and putting on a conference, which we hope to have in June, to train arbitrators in a family violence screening that will involve experts from outside our jurisdiction, including John Hopkins University, someone who developed a particular screening model to deal with family violence for indigenous women, other groups, recent immigrants and various other folks.

It's important to know that in arbitration, you're generally–we generally will be dealing with people who have counsel; who've selected someone with expertise in arbitration; who has dealt with that, where people will have autonomy to choose their own model. It'll be self-funded, they'll choose their process, and they'll have all of that. So I say that in the context of a problem I see and we see with the bill. The third subsection of 5.1 dealing with the arbitration amendments, and in generally–we commended the government for doing an amendment to The Arbitration Act, it's a good thing–but here, you have a section that seems to suggest that once an arbitration–an agreement to arbitrate is reached, a party, at any point, can say, I want to set aside that arbitration agreement–that's agreement to arbitrate–that first stage, claiming that party took improper advantage of the other party's–their vulnerability, including ignorance, need or distress, or they didn't understand the nature and consequence of the agreement.

***** (19:50)

In the context where you have–everyone has counsel, which will be the case, generally, where the arbitrator is a trained lawyer with at least 10 years of experience, the idea of opening this up so that years down the road somebody could come back, have a challenge to the court and say, I know you've done this arbitration process. You now have an arbitral award. Now, I want to open it up because I'm disgruntled with the decision and go back to court and drag you all through this again, is inconsistent with the theme of the bill, generally, and it's inconsistent with the pilot project.

Interestingly, in the pilot project, you say that the court can only deal with a confirmation process. In here–and that's where we don't–we probably will have self-represented parties, certainly more so, there's been an arbitration–properly, and in there, the court's jurisdiction is narrow.

Here, where there's experts, where everyone–perhaps you add a provision in the regulations that talk about having a certificate of independent legal advice where these items are checked off, but here, the way it's drafted now, it's a wider discretion. No time limit, either, and that's potentially a problem.

You want–we've all said, the government has said, restrict courts; courts aren't the place for families, at least initially. The way this is drafted is potentially a problem with that, and if you compare and contrast that with what you've done in the pilot project, it's potentially a problem.

Other than that, it's a great step forward. A lot of jurisdictions have something like this. We're trying to create a made-in-Manitoba solution to some of the training issues, and that's all very positive.

I do want to move on for whatever time I have left to talk about the pilot project, and I want to make you aware of some problems, and I'm going to refer you to a Supreme Court of Canada decision called Trial Lawyers Association of BC against the Attorney General of BC, a 2014 Supreme Court of Canada decision.

Don't believe me about what might be a problem. This is what the Chief Justice of Canada said, supported by, I believe, six of her colleagues. She said the historic task of the superior courts is to resolve disputes between individuals and decide questions of private and public law. Measures that prevent people from coming to the courts to have those issues resolved are at odds with this basic judicial function.

The resolution of these disputes and resulting determination of issues of private and public law viewed in the institutional context of the Canadian justice system, are central to what the superior courts do. Indeed, It is their very book of business.

To prevent this business being done strikes at the core of the jurisdiction of the superior courts protected by section 96 of the Constitution Act 1987. That was a case dealing with family law fees. The Supreme Court said that's unconstitutional. They said it's the book of business Canadian citizens have a right to access the courts.

Now, I don't know how a court is going to deal with a challenge to the constitutionality of the pilot project. I can tell you it's likely, I suspect, that there will eventually be a challenge; so, bear that in mind, and if you're–if the government is hearing from their constitutional experts that there may be a problem, perhaps some thought should be given to how–what that will look like and what to do.

I was going to say, as well, funding is integral. I was also going to say measuring metrics of success, and I think that Ms. Fontaine addressed this earlier with Ms. Kazina, but measuring the metrics of success are key. What would that mean? Does poverty increase? What's the timeframe from the beginning of a file to resolution? How are children functioning? Is there recidivism? Are people coming back and saying, oh my God, I need to vary. Is there funding for an agency to question six months or a year down the road how is the system work for you as Manitobans? So, a number of issues that need to be addressed.

I do want to say, as well, that I concur otherwise with what Mr. Bewski said and what Ms. Kazina said, and I really want to thank you for the opportunity and I hope that you do, as the minister has said, make sure that there's funding for family mediation, for–and also for legal aid. I can tell you that when I'm on these committees and I'm–

Mr. Chairperson: Mr. Pinsky your time is–your 10 minutes is up.

Mr. Pinsky: Can I just finish my sentence? Is that okay?

Mr. Chairperson: Sure.

Mr. Pinsky: When I'm on that scene people are envious of family–I said family mediation–family conciliation. They're envious in other provinces of what we have here. Don't take that away. Continue that. Manitoba's been a leader in family law. You're still trying to do that, which is really commendable. Let's continue with that.

Thank you for the opportunity.

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

Now we'll go on to questions and Mr.–Minister Cullen has a question for you.

Mr. Cullen: I thank you, Mr. Pinsky for bringing your advice to the table, and clearly you've done a lot of research in this field and we appreciate the advice.

Obviously, when we approach this, we had the best outcomes for families in mind. And as we went through the process too–and it's an evolution, and I expect we're going to learn from this and probably encounter some pitfalls along the way and hopefully we can get over those.

But the other thing too is we're always interest in how we view the outcomes and how we monitor success, as you said. And, you know, that's something that, as we go forward, we're going to have to make sure we fully understand, if we're achieving the goals that we set out and what are

repercussions of this particular pilot project, in this case.

And obviously we'll keep an eye on some of the other legislation we're doing, going forward.

And certainly, in terms of the arbitration role, certainly I'll have a look at that specific piece.

And I thank you for your advice.

Mr. Pinsky: I appreciate your comments. I would also say this. I hope you keep the Manitoba miracle going, keep the door open. We'd love to have a dialogue as it goes forward.

And I wanted to also say at the beginning there was a citizen who spoke–you bifurcated, he spoke and then left. The reality of family law, as difficult as it is to hear this, is that it's–whatever system's in place is only as good as the dysfunction, as the personality disorders of the people involved. That's not only the parties, but that includes everyone who has a piece of this, the lawyers, even the court. Only as good as that. So, whatever system, as the minister said, is going to have pitfalls, and the idea is to do the best we can. Keep that dialogue open so that we can try to craft the best system possible.

So, thank you, Mr. Minister.

Ms. Fontaine: Miigwech for your presentation. It was very informative and I appreciate you coming out this evening.

I am curious, as we move forward with this new bill and changes to family law in Manitoba–and I really do appreciate that, you know, fundamentally, the principle of what's in the best interest of the child should be adhered to at every opportunity that we can.

Moving forward with this, though, before–if there are some issues that we potentially see might come down. In particular, a challenge, as you've indicated. Is there any amendments that we could pursue, right now, to strengthen the bill, that potentially–and I agree with the minister that this is–those, you know–and what you're saying as well–is that family law always changes as we evolve as a society, all of that always changes. So, and I agree with the minister that there is, you know, the potential that we'll have to come back or whatever.

But in the meantime, right now, are there amendments that we can do to strengthen the bill?

Mr. Pinsky: Thank you, Mr. Chair, Ms. Fontaine.

Yes, is the short answer to that question. And I read with curiosity your comments–in Hansard, actually, talking about your experience–and I thank you for sharing that so that we could read it–you had a case conference, and you found–as I read it, you found that to be helpful. That's because we, the second jurisdiction in Canada to have a Unified Family Court, we have an expert judge. We have judges sitting over–wherever they are, over there is it? There? I'm disoriented–Mr. Filmon looking at me.

So, we have experts over there. You–judges of the Unified Family Court who bring that expertise. Who are these people going to be, who are going to be these deciders, these adjudicators, these mediators? Where are the lawyers?

How is it–we have a deficit in Manitoba and we have a government that's very keen, to their credit, on eliminating it and making Manitoba a have province, to their credit.

Where, though, is the money going to come from to pay for these people when the federal government is paying for federal–for judges to sit and do this work, who are specialists in this area?

It's difficult for me to understand where that money is going to come from. That's a question the government's going to have to answer. How is it that a Conservative government–as I wear blue, and I've worked with–how is it possible that the idea of choice is removed, which is the constitutional question that I referenced before. If you made the system open to say people can choose it and for some people it will be a boon, but respect choice. It's weird to me that I would have to tell my friends on the Conservative government side: respect choice. That's their brand. Should be. I think it is; in my experience it is.

***** (20:00)

And so to respect choice, to say, okay, couple, family, if you choose to go in the system, great, we'll provide it for you, it's there, it's another resource. That would be the envy of Canada, to say to people that if you're married you have one system of justice through the court, but if you're not married you must go to this other system? I think the Chief Justice of Canada spoke to that issue and I think that's a question.

So how can you improve it? I would say make there be choice, which is the brand of, I think, of many–and you may disagree and I respect that as well, but that's I think the choice. Where people have

private sector opportunities, enable that too, because again, in the pure-arbitration model–not the government model–people will be paying for it.

And in the legislation and the pilot project they talk about people also paying on a sliding scale. So does that mean that a working class family who can't afford the legal system, are they not going to have counsel? Are they going to have counsel? Is one going to have counsel? Is there going to be an imbalance? Are they paying for now a decision maker, an adjudicator and their own counsel? How is it going to work? Where is the money coming from?

I don't know, but if you put in choice I think it answers the question.

Mr. Chairperson: Mr. Pinsky, thank you very much, your time of–with, well–above the five minutes there, so I'm going to thank you very much for your presentation and your answering these questions in the committee here. Thank you very much.

Now we'll go on to the next presenter, Allan Fineblit.

Mr. Fineblit, do you have any materials that you want to hand out?

Mr. Allan Fineblit (Private Citizen): No, I don't, thanks.

Mr. Chairperson: Mr. Fineblit, you can continue with your presentation.

Mr. Fineblit: Yes, so, thanks very much. I really just have one message that I wanted to give you and that has to do with the first speaker that you heard on this bill.

I chaired a committee of judges, lawyers and citizens who looked at family law in Manitoba and made recommendations, many of which found their way into this bill, and we decided not to hold hearings.

This problem–the problem with family law has been studied, studied to death, and everybody comes to the same conclusion: it's not working. You've heard people describe the system and it's a great system. If it were working it would be a wonderful system. People cannot afford the system. Everybody has found out the same thing who studied it: too expensive, too slow, too adversarial.

What happened though, when we had this committee was people started calling us, they started emailing us, they started writing us, they started coming to see us and–now, this is not scientific because they, obviously the people who came, a hundred per cent of them had bad experiences and I'm sure there are many people who have good experiences.

Mr. Vice-Chairperson in the Chair

But we heard, I'm going to say hundreds because it was more than 100 people and more than 200 people, all of whom told remarkable stories that were very similar to the story you heard now. I got into the system because I needed to resolve important issues, the most important issues in a person's life: the custody and access of children, how our life savings are going to be divided up, where I'm going to live. I got into it, I spent everything I had, I borrowed money, I maxed out my credit cards, it took forever, I did not get a satisfactory resolution.

So I'm not suggesting this is everybody's experience. I'm positive it's not. I'm positive many people have excellent experiences, but somehow you have to fix the system so those people can get the help they need to deal with the most important issues any of us will ever deal with in our lives. This may not be a perfect bill, this may have some flaws, there may be some things wrong with it, but it has the potential to give access to legal services to these people.

Mr. Pinsky spoke to you about the constitutionality and about what the Supreme Court said. He's a way better lawyer than I am. I just want to tell you that the Supreme Court also said something else and I'm going to read to you from a case, 2014 Supreme Court's court case called Hryniak and Mauldin and here's what it said. It said: Meaningful access to justice is now the greatest challenge to the rule of law in Canada today. The balance between procedure and access struck by our justice system must reflect modern reality and recognize that new models of adjudication can be fair and just.

This is what I think this bill does. And I encourage you to move forward, bring about change, give the people who need access to the help they need to resolve their family disputes in a non-adversarial way an opportunity to get some help.

Thanks very much. I'm happy to answer your questions.

Mr. Vice-Chairperson: Thank you very much, Mr. Fineblit.

We'll open the floor to any questions.

Mr. Cullen: Thank you, Mr. Fineblit, for your presentation tonight and thank you and your committee for all the background work that provided recommendations to government. We do appreciate that.

I will be honest with you. In terms of the choice issue, that was a very lengthy discussion, and I think you're right in terms of trying to find that balance, and our view is about–we're trying to accomplish access to justice for Manitobans. That's our goal in whatever side it is and especially on the family law side. So we may be sticking our neck out here a little bit. But we think it's the right thing to do for families. We'll see what recourse there is following that. But that's the approach we're taking.

And you're right. So many people–and we hear about the bad experiences; we don't always hear about the good experiences. And we appreciate the concept that you brought forward. This being a pilot project, we're sure that we're not going to get it right. It's not an easy challenge. If it was, some other province would've been down this road. But we're going to try and tackle this for the best interests of Manitobans.

I thank you for your comments tonight and your work previous, on this file.

Mr. Fineblit: I'd just say on the issue of choice that we've thought about that a lot. We talked about it with the committee members and with others. And the reason that we thought this had to be mandatory is because there was a strong belief that if you made it a matter of choice, people would abuse it, that people would be–wouldn't consent because they had more resources and they had a power imbalance, that they would influence to keep people out, that people would be advised not to go into the system by those whose interest it was in them not going in the system. We thought if you want to make this–I mean, everybody we talked to who gave us advice on this said, if you're going to make this work, you have to make it mandatory and that it–that mediation, the mediation-type model, can and does work, even if people go in there unwillingly.

We thought about that a lot. We talked to experts in the field and that's what they told us, and that's why we recommended it. So that's just an explanation of why we thought it was necessary.

Ms. Fontaine: Well, if you know anything about me, you know that I love talking about choice, particularly today, as there are many, many, anti-choice rallies across the country. So I'm actually pleased to talk about the concept of choice.

The Minister of Justice (Mr. Cullen) just said right now that they're trying to do the right thing for Manitoba families in Bill 9, which is actually taking away choice from families. And I understand that you were very involved in this bill. And I think I may be wrong, and you can correct me when it's your time to answer, I think you were involved in even drafting this bill, if I understand correctly? No? Okay, then that was not right.

But when we talk about mediation and we talk about–you know, when you talk about, from your perspective and from the folks that, you know, you met with and spoke with, that this would only work if it was mandatory. But actually, when we talk about mediation within, let's say, restorative justice–actually, restorative justice only works when there is choice: yes, as a victim or, yes, as a person in conflict with the law, I want to fully participate in restorative justice. It actually only works when there's choice.

***** (20:10)

So I'm really trying to wrap my head around how we can take choice away from families on what stream they want to participate in. And I believe that it was Mr. Pinksdy–pinks–Pinksky *[phonetic]*–sorry, I'm a little sick–in respect of, actually, probably some of the most important thing that we could ever go to court for, our children.

So, like I said, I could talk for hours and hours about choice in a wide range of topics. So I am curious how we can marry this idea that, you know, take away choice for Manitoba families, make it mandatory, but in other contexts you have to have choice, you have to have that buy-in.

Mr. Vice-Chairperson: Mr. Fineblit, we're out of time, but we're going to allow you to please answer–feel free to answer the question.

Mr. Fineblit: Okay, thank you. I'll try and be quick.

Yes, so, in my view, that sort of assumes that you have a choice right now. And the problem is that the system right now, most people can't access it; they can't afford to get the help they need, and so they access it without any options, and you heard directly from somebody who described their experience.

Here you have vulnerable people who, you know, what if one person chooses to go in, one person chooses not to go in? How do you manage that? So the advice we had was that this will and can be successful if people have to go into mediation.

Mr. Chairperson in the Chair

Forcing people into mediation sounds crazy, but every expert we talked to said it actually does work, so that's why we tried it.

Mr. Chairperson: Thank you very much, Mr. Finebilit *[phonetic]*–Fineblit. Thank you very much for your presentation and answering questions, and thank you.

Okay, we'll go on to next presenter, is No. 6, is Christine Ens.

Ms. Ens, do you have any materials that you want to hand to the members?

Ms. Christine Ens (Mediation Services): No.

Mr. Chairperson: Okay, you can proceed with your presentation.

Ms. Ens: Thanks for having me here today. Thank you.

I'm going to start by saying this is my first experience presenting to a committee. I'm not very familiar with moving a bill to law. I'm not a lawyer and I'm not a mediator. I tend to think in practical terms versus policy terms, so that's what I come to you with.

I'm Christine. I'm the executive director at Mediation Services. We are a community resource for conflict resolution. We're a not-for-profit organization, and we're committed to facilitating peaceful interactions to transform relationships.

We work with victims and offenders. We work with families. We work with workplaces, neighbours and other groups to support conversations around harms done or conflict, and to work towards better outcomes and more positive relationships. We also offer training and certification to individuals and groups around conflict resolution and incident-based mediation. We have 40 years of experience working in conflict resolution.

With regard to Bill 9, I sort of thought about how I could talk about what–our thoughts around Bill 9 and the family law modernization, and so I'm going to talk just a little bit about the things that we feel like we support and the things that we might offer as recommendations for consideration.

So we support addressing the challenge that our current system is costly, is adversarial, is difficult to navigate and slow. We support the innovative approach to modernization that our government has taken, using design thinking with using empathy, defining the problem, generating ideas, prototyping, testing and refining.

We're excited to see the speed at which the design team and civil service is working at taking action on modernizing the system. We like the participatory approach, that it's collaborative and it includes folks with lived experience.

We support the movement to mediation and alternative dispute resolution before legal–before taking legal action and involving the legal experts.

We think that this is an approach that speaks to the government's increased desire to use restorative justice. Restorative justice promotes restored relationships, and in family separation, the relationship between parents must remain somewhat intact for children to be supported and for all to learn how to handle conflict. Restorative justice involves people in outcomes that will impact them, and restorative justice puts people and relationships first.

We support easier navigation of moving through the process of family reorganization. We support the shift from a winners and losers mentality to supporting people moving through reorganization together. We support training for parents and training for children.

We recommend a standard or certification for family mediators, as you've already heard here tonight. We'd like to see the potential for government to support, or maybe incent, folks to become educated as mediators and certified.

We support putting the best interest of children first.

And I think that concludes my presentation.

Mr. Chairperson: Ms. Ens, we run–thank you for your presentation.

Now, we'll go on to questions, and Minister Cullen has a question for you.

Mr. Cullen: Yes, thanks Ms. Ens for your presentation tonight. Thanks for joining us.

And that's one piece of this whole thing that I think I–even people around the table probably don't realize, all the work that's going on by the–we'll call that the design team, in terms of the implementation strategy here.

We're really engaging Manitobans–and this is part of an ongoing consultation program. How we can bring technology into the piece of family law? It's a novel concept. It's really interesting, from my perspective. How can we use modern advices and technology to engage people and help them through this process? So I'm excited about it. And I think those within the system, who are working on designing it, are really interested in the system.

And that's going to take a little bit of time to get there. We recognize we can't–we're not going to jump into this because we're not ready for that pilot project yet. But we're certainly excited about that, and we're going through the consultation process on that as well.

But, again, I want to go back and thank you for your comments on the mediation side and we'll certainly take your comments under advisement.

Thank you.

Mr. Chairperson: Ms. Ens, any to add?

Ms. Ens: No.

Mr. Chairperson: Okay.

Ms. Fontaine: Miigwech for your presentation today. You did amazing for your first presentation. Hopefully we'll get lots of opportunities to hear you again.

I do also just want to acknowledge the work that you do at Mediation Services and all of the amazing folks that work at Mediation Services. You certainly do really, really good and important work, and transformative work, in the lives of Manitobans. So I lift you up for that.

So, similar to–in the same vein that I've asked many of the presenters tonight, you know, moving forward and, you know–tonight we have the opportunity, and at another point in this whole kind of bill process–but certainly, tonight, there is the opportunity to suggest and make amendments on how to strengthen the bill.

And, in your expertise, would you–would there be anything that you would suggest tonight, with the minister sitting here, and all of the Manitoba legislative legal counsel? Would there be anything that could strengthen the current Bill 9?

Ms. Ens: Again, I'm not one hundred per cent sure about all of the things that are required to go into a bill. I have heard a few suggestions here tonight, already, around some standards of practice for mediation workers, people who work in that field, which we absolutely would support; as well as putting the needs of children at the top of the list. So however that need–would need to be expanded within the bill, I think, would be important.

Mr. Chairperson: Any further questions from the committee?

Ms. Ens, thank you very much for your presentation and answering questions, and thank you for coming out tonight.

Bill 20–The Courts Modernization Act (Various Acts Amended)

Mr. Chairperson: Okay, we'll go on to next–the next bill. Standards–and it's Bill 20, The Courts Modernization Act, and the first presenter we have is Susan Dawes.

Ms. Dawes, do you have any material that you want to hand out?

Ms. Susan Dawes (Provincial Judges Association of Manitoba): I do not.

Mr. Chairperson: Okay, Ms. Dawes. Go ahead.

Ms. Dawes: Thanks very much.

I am counsel for the Provincial Judges Association of Manitoba. So, on behalf of the association I want to thank you for the opportunity to speak this evening in respect of Bill 20, The Courts Modernization Act.

***** (20:20)

The association has concerns about two specific parts of the bill: firstly, the unilateral introduction of mandatory retirement at age 75 for both judges and senior judges; and secondly, the changes to the appointment process for judges. So I'll address each point in turn.

Firstly, mandatory retirement for judges at age 75 is in section 10 of the bill. Section 17 offers essentially six months of notice to judges who are over 75 when the bill comes into effect. It's not at all clear why the change is proposed.

There has never been a mandatory retirement age for judges of the Provincial Court of Manitoba and judges have always enjoyed security of tenure until they choose to retire, voluntarily resign or are removed from the bench through the Judicial Council process set out in The Provincial Court Act.

It's the position of the association that the unilateral introduction of mandatory retirement at age 75 constitutes an interference with judicial independence, not only the security of tenure aspect of judicial independence but the financial security aspect.

Judicial compensation as a whole, including particularly the judicial pension provisions, is currently designed and structured around there being no mandatory retirement age.

It's the association's position that if the government wishes to introduce mandatory retirement for judges, it must make a proposal to do so before a judicial compensation committee, a JCC, as they're known. And I note that another JCC will be appointed in the year 2020, and it ought to be and can be raised there.

And the governing principles that support the association's position in this regard are very clear and come from a decision of the Supreme Court of Canada in a case called Mackin v. New Brunswick, among other cases.

Now, we understand that the government may be contemplating amending the bill to provide that these provisions would come into effect only upon proclamation, as distinct from coming into effect upon royal assent.

And I would want to be very clear that in making such an amendment and proceeding to pass the bill, the government would still be passing a law that is unconstitutional in this key respect. It remains a violation of judicial independence.

We also understand that there may be a preparedness not to proclaim the bill until the matter has made its way through the Judicial Compensation Committee process and again, the 20-to-20–sorry, the 2020 JCC would be making its recommendations in the face of this law having been passed, even if not proclaimed.

And so if that is the route that the government chooses, we seek the confirmation that the government is prepared to advise the 2020 JCC that the legislation should have no impact whatsoever on its consideration of the mandatory retirement issue, and secondly, that the government would be prepared to respect the recommendations of the Judicial Compensation Committee, regardless of whether that requires an amendment to the legislation that would have been passed at that point.

So I don't propose tonight to be addressing or providing you with the association's position, in respect of the merits of the proposal, whether there should be retirement at age 75.

The issue for this evening is very much one of principle and the proper procedure that must be adhered to if government is to put forward such a change in a manner that respects judicial independence. The merits would be addressed by the association at the 2020 JCC, which is the proper forum to consider such a change.

The second concern with the bill is–relates to the changes that are proposed to the judicial appointment process, and those are to put in place a judicial nominating committee, most members of which would have a three-year term.

The Provincial Court of Manitoba is viewed as a court of excellence by other provincial courts across the country and the rigorous process that is in place right now, in terms of the appointment process, is viewed with envy by courts across Canada who consider it to be an excellent one. Many of those courts have a process similar to what's now proposed and they would prefer Manitoba's existing process.

So it's not clear at all to the association why the changes are proposed but, more fundamentally perhaps, the association takes very seriously the need for the Provincial Court of Manitoba and its member judges to be accepted by the communities that they serve.

And this is important for each of the judicial centres–there are six: Winnipeg, Portage, Brandon, Dauphin, The Pas and Thompson–and for the multitude of small communities that are visited by the court.

The likelihood of a given community supporting and having confidence in the work of the court is greatly enhanced by the involvement of persons from the region who reflect the diversity of that region in the judicial nominating process, and that key element of the existing process will be lost by the amendments contained in section 8 of the bill.

And the association takes a view that it's not sufficient–or, indeed, appropriate–to consult with folks from the region where the newly appointed judge would be assigned about potential candidates for appointment. The reason being that this creates a lack of confidentiality in the application process that may serve to deter applicants. Further, it simply won't be as effective as involving members on the committee itself from the area in question.

For that reason the association proposes that if the government wants to appoint a judicial nominating committee that will have members in place for a three-year period, it should include members from each of the regions served by each judicial centre. And, for example, if there were to be a vacancy in Thompson, appoint some regional representatives from the Thompson area to work with the other JNC members. Those appointees would then remain in place for–on the committee for any further Thompson vacancies within a three-year period.

Then, if there's a vacancy in Brandon, appoint some representatives from the Brandon region. And again, they would remain available for that three-year period and could deal with any vacancies that arise in Brandon during the term of their appointment. And so on with respect to each judicial centre.

As I indicated from the outset, the existing process is very well regarded. It's efficient. From the association's perspective there's no reason for change. However, to the extent that the government has resolved that that change is necessary or appropriate, this is the way to balance the need for the valuable local input from the communities with the idea of having community members–committee members, rather–serve for a period of three years.

So those are our comments on the bill, and I'm certainly prepared to answer any questions that you might have.

Thank you, Mr. Chairperson.

Mr. Chairperson: Thank you for your presentation, Ms. Dawes.

And now we'll go into questions, and Minister Cullen has a question.

Hon. Cliff Cullen (Minister of Justice and Attorney General): Thanks, Ms. Dawes, for your presentation tonight. I certainly respect your comments in regard to the mandatory 75 that's being proposed and especially in regard to process. So, we respect the process that we have in terms of the compensation committee and we look forward to having a formal discussion about mandatory age 75 through that process.

In terms of the committee that we're proposing in the selection of judges, again, I appreciate your comments there. Certainly the legislation speaks to diversity and we're obviously seeking diversity when we look at selecting judges. And I will just say, yes, we take–we share your caution and we'll certainly take those comments under advisement.

So, thanks for your presentation.

Ms. Dawes: Thank you very much.

Ms. Nahanni Fontaine (St. Johns): Miigwech for your presentation and miigwech for outlining–I–I had to go to the washroom–sorry, so I missed the beginning piece. I certainly will look up Hansard, but I do thank you for laying out what are some serious concerns in respect of appointments, particularly as an indigenous woman. It's–and particularly in the context in which indigenous peoples–you know, not only in Manitoba, but across Canada–make up the vast majority of folks that find themselves in conflict with the law and find themselves going through the judiciary.

So, you know, it is highly problematic and extremely concerning that the system that we do have right now–which, as you've indicated and you've put on the record, is envied across the country–is being, you know, dissolved and tinkered with. For something that, in my mind, is substandard in ensuring that there is proper representation in each of the various geographical areas within Manitoba.

***** (20:30)

I'm wondering if you would comment a little bit more on that, in the sense that, is there–do you see any need to be changing this current regime that we have right now, with what the government is proposing?

Ms. Dawes: Thank you.

I don't–you know, as I said, I don't–the reasons for the change are not entirely clear. And so no, I think the existing process is working well and I don't see the need for change. But if the desire is to have a committee process where there are members appointed for a three-year period, rather than on an ad hoc basis each time there's a vacancy or a set of vacancies, then, you know, we've tried to sort of

present a balanced way of maintaining the good aspects of the current system, with that idea of a three-year appointment process

Ms. Fontaine: I'm just curious and, you know, I'd like to, you know, ensure that it's part of our official record here: you know, what do you see as some of the consequences of–if the government does not do as you are suggesting or looks at what you are suggesting–what are some of the consequences of not having that representative diversity within the court system, in your expertise as a lawyer?

Ms. Dawes: Well, I think the benefit of the current system is really the opportunity for folks from the communities that are served by the newly appointed judge, to really have a say in who's appointed and to have confidence and perhaps added confidence in the court as a result.

So, that's not necessarily going to be lost but that's certainly a risk, I think, of the changes that have been proposed and so we've really emphasized the need to maintain that ability for the different regions to have input on that judicial nominating committee.

Mr. Chairperson: Ms. Dawes, thanks very much for your presentation and in answering questions tonight, and thanks for coming out to present.

Ms. Dawes: Absolutely, my pleasure. Thank you.

Mr. Chairperson: Okay, and we'll go on to the next presenter; is Mark Toews from Manitoba Bar Association.

Mr. Toews, do you have any material that you want to hand out?

Mr. Mark Toews (Manitoba Bar Association): No, I don't, thank you.

Mr. Chairperson: Mr. Toews, go ahead with your presentation.

Mr. Toews: As indicated, my name is Mark Toews. I'm the president of the Manitoba Bar Association. As Ms. Kazina had earlier indicated, the MBA is the Manitoba branch of the Canadian Bar Association which is the voice of the legal profession in Canada. As you heard, we have approximately 1,500 members here in Manitoba. Our membership consists not only of lawyers, but also legal academics, law students and members of the judiciary.

I will say at the outset that the concerns that have been raised by Ms. Dawes, are the–virtually the identical concerns that the Bar Association has. I could complain that Ms. Dawes has stolen my thunder on a lot of the matters, but I think it's important to emphasize the importance of the concerns that she has raised. So I'll try not to repeat any more than what–than necessary, the comments that she has already brought up.

The Bar Association not only advocates for the interests of its members, but there's a number of core principles that it advocates for. And one of those core principles is advocating for the rule of law. It's absolutely critical in any system that respects the rule of law that we have an independent judiciary free of influence from other branches of government. And it's also critical that the public has trust in its judiciary, can trust that not only that its independence, but that it reflects and appreciates the diversity of the public that it serves.

If the judiciary does not reflect the diversity of a community it serves, the public will inevitably lose its trust that the institution can dispense justice with a fairness and understanding that's expected of it. By way of an example, if the judiciary was composed of one demographic, which at one time was the case, those beyond that demographic would feel that the bench as whole would not have an appreciation and understanding of the diversity and the different perspectives that exist in society. Now, each of the appointed judges could be excellent jurists, but the public trust in the body as whole could be undermined if it doesn't reflect the diversity of a community.

So, our concern is that Bill 20 has the effect of potentially interfering with the independence of the judiciary and could potentially undermine the public trust in it.

The two concerns that Ms. Dawes has raised are the same two concerns that the Bar Association has.

Now talking, firstly, about the nomination process: the MBA's of the view that the system we have works well, and you've already heard that we're the envy of the provinces. I can just state anecdotally, as president of the Bar Association, I've had the opportunity to visit a number of provinces, and of course, we exchange our war stories.

And in these war stories, we hear about the nomination process, that it's quite similar to what is being proposed in other provinces. I share about Manitoba's experiences, and the general feedback that I get is one of envy that we have a system that works very well.

Now, why do we think it works well? We are basically–we have a–the ability to look at the candidates at the time that these candidates are needed, at the place where the vacancy has been created, and that is a significant advantage.

So if there's a vacancy in Winnipeg, which many of them are, obviously it would include members of the community in Winnipeg as part of the selection process. And if there's a vacancy in the other judicial centres, as Ms. Dawes has raised, there would be members of that community that would play a significant role, and their role is significant in these processes.

Now, imagine a scenario, you know, where the entire committee is made up of southern Manitobans and would have to select a vacancy for The Pas or Thompson and chooses a Winnipegger to fill that role. That person may be an excellent choice, may be an excellent jurist, but one could imagine that the level of the public trust in that appointment could be undermined. And so to be able to address that it is absolutely necessary that there be regional representation. Now, to be clear, to avoid any misunderstandings, we're not suggesting that the applicants must come from outside the region where the vacancy has been created. There could be and there has been merit in doing just that; however, if there are members of the community that have been involved in recommending those individuals, that should help satisfy the public that the successful applicant would have an understanding and appreciation of the local community that the applicant would be serving.

There is discussion, well, could not the committee engage in a consultation process with the community? And we would have some concerns about that. It would have to be done very carefully as it could harm the confidentiality of the process. The community members that the committee would consult would not be bound by confidentiality, so information could be leaked as to who is applying. Strong individuals may be then less willing to apply, and in some smaller communities where local applicants could be well known in the community, the last thing the applicant wants is to have their name leaked and for it to come out that their lawyer, who's–might be interested in leaving the practice of law to become a judge. No one really wants such private decisions to be aired publicly. That should–that privacy should be respected and–as it's respected for any job applicants for other jobs.

So an expansive community consultation practice also leaves the process more open to abuses of lobbying and interest groups to advance the kinds of individuals they would like to see have on the bench and to pressure members of the committee to recommend their favourite kind of person. And I would suggest that that would be damaging if we wish to maintain the integrity of the judiciary and the appointment process. So one has to be very careful when we're talking about engaging in a community consultation process that goes beyond the committee.

The second concern, and it's the same one that Ms. Dawes has already raised, and that is the issue about the mandatory retirement age, 75. And we understand why this proposal's been put forward in this bill. After all, federally appointed judges are themselves required to resign at that age, so why can't the province, for provincially appointed judges, do the same thing? And as Ms.–what Ms. Dawes has pointed out, the issue isn't whether we're opposed or in favour of mandatory retirement. I can tell you the Bar Association does not have a formal position on that particular issue. The issue is one of process. And, of course, a mandatory retirement can affect the financial circumstances of each judge. We don't know their financial circumstances, and it's none of our business. They have been–they were given a job for life, and they have the right to have those kinds of expectations, and so whenever there's a government, through legislation or otherwise, changes the financial circumstances of the members of the judiciary, they are potentially interfering with the independence of it.

***** (20:40)

An extreme hypothetical: if you can change the financial structure, reduce wages of judges, then whenever you–a judge–you don't like the decisions of the judges, you could just simply reduce their salary.

Now, we all agree that that would be a highly inappropriate step to take, so to guard against that, what's been created is, of course, the Judicial Compensation Committee. That's what makes recommendations to the government to address wages, benefits, in order to preserve the judges' independence.

So, once again, we're not suggesting that there is a problem per se with mandatory retirement but we are significant concerns about the process.

The solution must be that it remains in the hands of the Judicial Compensation Committee, which has been referred as a JCC. They would need to look at the issue, make the necessary recommendations, and only if the JCC recommends it, should the government move to enact this change, in our view.

So, at minimum, though, to–in order to avoid any interference or to give the appearance of interference in the current judiciary, we would suggest that the existing members not be affected by this new–by these changes. And, again, it's none of our business as to what their–what implications it would have on them financially, but to impose any changes on them right now could affect the current members' independence.

So it is our understanding, as I've heard Ms. Dawes say, and what I've heard as well, that this may not be enforced until proclamation, but once again we would hope and expect that whatever recommendations and determinations are made by the JCC ultimately be adopted.

So those are the concerns that the Bar Association has. We really appreciate the time that this committee has to listen to our concerns. We appreciate the attention to this matter, and I'm happy to address any further questions you may have.

Thank you.

Mr. Chairperson: Thank you, Mr. Toews, for your presentation.

And now we'll go on to questions, and Mr. Cullen has a comment and question.

Mr. Cullen: Thank you, Mr. Toews, for your presentation tonight. Thank you and all your members for the great work they provide to the citizens of Manitoba.

In respect of the process regarding judicial selection, I certainly appreciate your comments, and I will say the legislation that we have before us clearly speaks about diversity in selecting judges more succinctly and more clearly than any other legislation before. But having said that, I respect your opinions on that process.

And, secondly, in terms of the mandatory discussion and the JCC process, again, respect your opinion on that and we certainly respect that process.

So thanks again for your time and consideration.

Mr. Toews: Yes, thank you for your comments, and we appreciate the legislation that talks about and puts a mandate on the committee to respect diversity, and that is certainly an element that the Bar Association fully endorses. We do see the lack of community representation to be a hole in this new process, though, that we would be remiss not to address.

Ms. Fontaine: Miigwech, Mr. Toews, for coming to present to us this evening.

And I know that in the similar vein to the questions that I asked previously, I think it's important for the public record to ask the same question to you in respect of, you know, do you see a need to tinker with the present process that we do have in place which you, as well, indicated is the envy of other provinces as well?

I think that's important to put on the record because when people from, you know, a year from now or five years from now, come and look at this committee, and they want to kind of look at the discussions that were going on in respect of why the Pallister government made these changes, I think it's important to put it on the record whether or not, you know, the Manitoba Bar Association sees a need to make these changes, and then, more importantly, again, in the same vein, what are the potential consequences that while there is a vague mention of diversity, in my mind, it's not necessarily mapped out. It's certainly not in any way, shape or form guaranteed in this bill.

You–anybody can just say diversity and maybe what–and, in fact, actually, the Premier of Manitoba (Mr. Pallister) once called his caucus the most diverse caucus in the history of Canada. So clearly, the Premier's definition of what diversity is, is certainly very different than what my understanding of diversity is.

So I think it's important, to put that on the record, what that–what the potential consequences of not respecting different areas of the province–north, south, First Nations, urban, rural–all of these things. What will be the consequence with the trust for Manitoba citizens in our judiciary system?

Mr. Toews: Yes, thank you for the question. These are real challenges.

To answer the first question, is there a need to change? In our view not. You know, we understand that there's pragmatic challenges always striking committee whenever there's a vacancy and I–so I understand where it's coming from. I think that is a challenge that–I don't see that as a major challenge. So, if one weighs the challenge of practicality

creating a new committee every time with the benefit of having a committee that deals with a vacancy where it's at and selecting the right candidates at that time, I do believe that the–that it–that the system that we currently have is the preferable one. And so we don't see any substantive need to tinker with it.

To answer the second question, not only does the judiciary need to have competent individuals to maintain public trust. But if the community that it–where it serves, and where it dispenses with justice, does not have a sense that this judiciary has an understanding of the unique challenges of the community that exists, then trust–by those people that are being serviced by the judiciary–could be undermined. And as soon as the public trust for the judiciary is undermined, that can be–that can undermine the entire–the integrity of the system.

So, to guard against that–and we appreciate that in Manitoba–and this is why we feel it's important to bring this forward–there are unique challenges in various regions in the province. And therefore, to have the public representation there to–who have an appreciation for the uniqueness of their particular communities and then ensure that the judges who have been put forward and recommended have an appreciation of that, is something that should not be underestimated.

Those are my comments. Thank you.

Mr. Chairperson: Thank you, Mr. Toews, for your presentation and answering the questions, tonight. And thanks for coming out for presenting.

Okay, now we'll–that concludes the Bill 20.

And we'll go back to Bill 5. We had one person we put bottom of the list, was James Beddome.

Is James Beddome in the–in attendance tonight? I guess not. So he'll be removed from Bill 5.

And then, he was also on Bill 8, so we'll also remove him from Bill 8.

That concludes the list of presenters I have before me. Are there any other persons in attendance who wish to make a presentation?

See none, that concludes public presentations.

*** * ***

Mr. Chairperson: In order–in what order does the committee wish to proceed with clause-by-clause consideration for these bills?

An Honourable Member: Numerical.

Mr. Chairperson: Numerical? Okay. That agreed for the committee? *[Agreed]*

During the consideration of bill–of a bill, the preamble and the enacting clause and the title are postponed until all other clauses have been considered in proper order. Also, there is it–if there is agreement that–from the committee, the Chair will call clauses in blocks, from–conform to pages, with the understanding that we will stop at any particular clause or clauses where numbers maybe have comments, questions, amendments or to purpose.

Is that agreed? *[Agreed]*

Bill 5–The Mental Health Amendment and Personal Health Information Amendment Act
(Continued)

Mr. Chairperson: We'll proceed with clause-by-clause with Bill 5.

Does the minister responsible for Bill 5 have an opening statement?

Hon. Cameron Friesen (Minister of Health, Seniors and Active Living): The amendments to The Personal Health Information Act and The Mental Health Act in Bill 5 are very meaningful measures, in our mind, that seek to rebalance provisions in these acts that right now restrict health-care providers from being able to take what we believe are reasonable steps to prevent or lessen a risk of serious harm to an individual.

***** (20:50)

The way the rules, right now, read in Manitoba, personal health information can be disclosed without consent by the trustee of the information if the trustee reasonably believes that the disclosure is necessary to prevent or lessen serious and immediate threat to the health or safety of an adult person or to public health or public safety.

In the case of children, the legislation allows for the disclosure of personal health information if the trustee reasonably believes that the disclosure of the information is necessary to prevent or lessen a risk of harm to the health or safety of a child.

But what it has proven out of practice and respect of the authority to disclose information to protect an adult is that the threshold of serious and immediate is too high, and in Manitoba we know what the consequence of setting that bar so high as a threshold for disclosure has been. In too many cases it has meant that someone has been discharged from

a health-care facility with no call being made to a spouse or a family member or a caregiver or someone in their social circle and advising them of the discharge because that individual was not seen to be presenting an immediate threat of harm to themselves. We know that in Manitoba that has resulted, from time to time, in tragedy.

So the amendments included in Bill 5 will change these rules and permit the disclosure of personal health information without consent by a trustee only if the trustee reasonably believes that the disclosure is necessary to prevent or lessen a risk of serious harm to the health or safety of the adult person or to the public health or public safety.

We believe that these amendments are reasonable. We believe that they strike a balance between the autonomy and privacy of individuals and the need to take steps to prevent serious harm from happening to people who, from time to time, can find themselves in a vulnerable state.

I thank the members of the public who came out this evening to take time to speak to this bill. I would want to also mention that these amendments are consistent with amendments brought in jurisdictions, including Ontario, New Brunswick and Prince Edward Island. And we would also want to signal we were pleased that this bill introduced in December was able to receive agreement from all parties to pass second reading and be here this evening at the committee stage.

So I look forward to the passage of this legislation at this committee stage and I look forward to its third reading in the House.

Mr. Chairperson: We thank the minister.

Does the critic for the official opposition have an opening statement? No? Okay.

Does the critic for the second opposition party have an opening statement?

Clauses 1 and 2–pass; clause 3–pass; enacting clause–pass; title–pass. Bill be reported.

Bill 6–The Statutes Correction and Minor Amendments Act, 2018

Mr. Chairperson: So, now we'll go onto Bill 6. Does the minister responsible for Bill 6 have an opening statement?

Hon. Cliff Cullen (Minister of Justice and Attorney General): And I am pleased to speak on Bill 6, The Statutes Correction and Minor Amendment Act. This bill corrects typographical numbering and minor drafting and translation errors. This bill also contains minor amendments to a variety of acts and repeals two municipal acts that are outdated.

During second reading some opposition members asked about the provisions regarding reporting by the Clean Environment Commission. This provision has a very simple explanation: The amendment repeals a clause that requires the Clean Environment Commission to report, in its annual report, to any joint activities undertaken with the Manitoba Environment Council. This amendment is very minor because the council was eliminated almost 20 years ago, so there are no joint activities to possibly report on.

As members of this committee know, SCAMA is a long-standing tradition of the Manitoba Legislative Assembly. It shows our respect for the rule of law by making sure that legislation is as accurate and up to date as possible.

I look forward to seeing Bill 6 quickly reported to back to the House and I thank our legal counsel staff for the work they're doing on this particular legislation.

Mr. Chairperson: We thank the minister.

Does the critic for the official opposition have an opening statement? No? Okay.

Does the critic for the second opposition party have an opening statement? No?

Clauses 1 and 2–pass; clauses 3 through 5–pass; clauses 6 through 8–pass; clauses 9 through 11–pass; clauses 12 through 15–pass; clauses 16 through 18–pass; clauses 19 and 20–pass; clauses 21 through 23–pass; clauses 24 through 26–pass; clauses 27 through 29–pass; clauses 30 and 31–pass; clauses 32 and 33–pass; clauses 34 and 35–pass; clause 36–pass; enacting clause–pass; title–pass. Bill be reported.

Bill 8–The Referendum Act

Mr. Chairperson: So we'll go on to Bill 8. Does the minister responsible for Bill 8 have an opening statement?

Hon. Cliff Cullen (Minister of Justice and Attorney General): For the last two decades, the chief 'electorial' officer has requested that the government establish a stand-alone referendum law to clearly establish the rules for conducting a referendum. Bill 8, The Referendum Act, shows that

our government is committed to listening to experts like the chief 'electorial' officer and, unlike the previous government, it also shows that we are committed to listening to Manitobans on issues of public importance.

We know that the previous government ignored balanced budget legislation and increased the provincial sales tax on hard-working Manitoba families without ever going to a referendum.

That is why we passed the Fiscal Responsibility and Taxpayer Protection Act, which restored the right of Manitobans to vote on any major tax hike. The Referendum Act sets out the rules for referendums on tax hikes and other matters of public importance for Manitobans.

The act states that referendums are required on a change to the voting process, a major tax hike, the privatization of Manitoba Hydro or Manitoba Public Insurance, and before the Legislative Assembly can authorize an amendment to the Canadian constitution.

Bill 8 also allows for government to frame its own question on a topic not prescribed in the legislation and requires rigorous public consultation on any such question.

The new Referendum Act rules outline the process for conducting a referendum including how a referendum is called, conducted and financed, spending limits on campaigning for referendums for both individuals and political parties, restrictions on government advertising and rules that ensure referendum voting is done in the same manner as a provincial general election.

Our government is committed to improving our democracy and I believe strongly that The Referendum Act will ensure that future referendums are conducted in a way that is fair, accountable, and transparent for all Manitobans.

Thank you, Mr. Chair.

Mr. Chairperson: We thank the minister.

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

Ms. Nahanni Fontaine (St. Johns): In our democracy, rules matter. Rules should not be subject to partisan decision making. Changes to our rules should be made through a consensus of the House whole.

This bill is an attempt by the Pallister government and his PCs to introduce a new rule into House procedures without the prior approval of the House as a whole. This bill will also increase the amount the Pallister–or, the Premier (Mr. Pallister) and his PCs can spend on elections by 25 per cent when a referendum is held without having to document if the 25 per cent is used for the referendum.

***** (21:00)

An extra 25 per cent is hundreds of thousands of dollars. This would essentially price out political parties who represent low-income and marginalized citizens who simply cannot raise the same amount of dollars as PC candidates who are backed by their wealthy friends and donors.

As we move closer to a provincial election, as the Premier decides to break the fixed-date election law, Manitoba voters need to hear how this Pallister government is systematically undermining the integrity and accessibility of our electoral system.

The Pallister government has already brought in legislation that has dismantled and changed the electoral landscape. The Premier has raised the political contribution limit to $5,000, removed the per-vote subsidy and even attempted to get rid of the campaign rebate.

These changes have made our politics less accessible and less representative in Manitoba. It is simply 'presposterous' to think that it’s a fair playing field and not leaning towards the Premier and his PCs, when it comes to people's ability to financially contribute to the political party of their choice.

The Premier is fundamentally trying to price out his competition, by ensuring only those with money will be able to run as candidates and have their voices 'representated' in our Legislature. The Pallister government isn’t interested in representing the vulnerable and marginalized. They are simply interested in maintaining the status quo and representing their wealthy friends.

Make no mistake, that's who these changes are for. And regardless of your political stripes, all Manitobans should be concerned about the dismantling of democracy in Manitoba.

Mr. Chairperson: We thank the member.

Does the critic for the second opposition party have any opening statements? No?

Clause 1–pass; clauses 2 and 3–pass; clause 4–pass; clause 5–pass; clause 6–pass; clause 7–pass; clause 8–pass; clauses 9 and 10–pass; clause 11–pass; clause 12–pass; clause 13–pass; clauses 14 and 15–pass; clause 16–pass; clauses 17 through 19–pass; clauses 20 through 22–pass; clauses 23 and 24–pass; clauses 25 and 26–pass; clauses 27 through 29–pass; clauses 30 and 31–pass; enacting clause–pass; title–pass. Bill be reported.

Bill 9–The Family Law Modernization Act
(Continued)

Mr. Chairperson: So we're–now we're on to Bill 9. Does the minister responsible for Bill 9 have an opening statement?

An Honourable Member: Yes.

Mr. Chairperson: The Honourable Minister Cullen.

Hon. Cliff Cullen (Minister of Justice and Attorney General): Thank you, Mr. Chair.

I'd like to begin by thanking all the presenters who came this evening to express their views on this groundbreaking, first-in-Canada legislation. I would particularly like to thank Allan Fineblit for being here tonight.

Mr. Fineblit has been involved in every stage of the development of The Family Law Modernization Act, including as the chair of our family law reform committee. The committee's report established the foundation for the legislation we are considering tonight. So I'd like to sincerely thank him and all the members of the committee for everything they have done to get us to this point.

I would also like to thank all of the department officials, including those currently involved in our implementation team, for all of their work making this legislation a reality.

Our government recognizes that family breakdown is one of the most difficult things that can happen in the lives of Manitobans. For too long, the current family law system has often made a difficult time considerably worse. The traditional court-based system is adversarial, complex, expensive and often damaging for Manitoba families.

That is why Bill 9, The Family Law Modernization Act, will remove most family disputes out of the traditional court system. It will provide counselling and mediation at the front end while making needed child and spousal support orders easier to obtain and enforce, further reducing our reliance on the courts.

Over the next year we will take incremental action to enact each provision of this legislation. The first phase will provide another tool to support families in resolving their disputes through arbitration and ensure that family arbitration awards are enforceable. It will also expand the powers of the maintenance enforcement program.

The second phase will simplify child support processes so that thousands of matters can be addressed by the child support service outside of court.

And finally, to provide better service and to ensure better outcomes for Manitoba families, our government will launch a new family dispute resolution service pilot project next year.

I am happy to advise the committee that work is ongoing to implement this pilot project with Manitobans helping design the services they need through regular consultation and collaboration. For this purpose our government is working with North Forge Technology Exchange to improve service delivery, including looking at the range of services we already provide to Manitobans going through separation and divorce.

At second reading, the opposition members asked about the status of Legal Aid and family conciliation services as we implement the new family dispute resolution service. I can advise the committee that the entire purpose behind Bill 9 is to provide better and more robust support for Manitobans experiencing family breakdown, not less.

Legal Aid Manitoba and family conciliation services are fully engaged in our work to implement this legislation and both services will play an invaluable role in the development of the family dispute resolution service.

In closing, I would like to once again thank all of the presenters for being here this evening. I look forward to seeing this bill 'come' law so that we can do the work necessary to reduce the harm of family breakdown; 'improume' the lives of Manitoba families and children.

Thank you, Mr. Chair.

Mr. Chairperson: We thank the minister.

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

Ms. Nahanni Fontaine (St. Johns): I just want to take a couple of minutes to thank and say miigwech to all of the presenters who came out tonight to share their expertise and their concerns with Bill 9.

I think it is fitting that tonight we had a brief–ever so brief, because of course presenters and along with ourselves are–operate on a time frame to talk about choice; and I just want to kind of finish with choice again.

As we saw across the country today many Canadians go to their legislatures, including this Legislature, where I had to walk through twice, folks who are attempting to take away choice from women and girls, people trying to take away my right as a woman to have an abortion if I want or to have many abortions if I want.

And here we are, we're talking about the Minister of Justice (Mr. Cullen) taking away choice from Manitoba families: whether or not they want to participate in a mediated process, adjudicated process, or a court process.

And so I guess we could say it's not surprising that the Pallister government is taking away choice. We know that the Pallister government has not done anything in respect of making Mifegymiso free and universal to all Manitoba women and girls–which, in effect, is taking away choice from Manitoba women and girls–and so I guess it bears that they are taking away choice from Manitoba families to participate.

So, you know, I hope that the Minister of Justice heard the phenomenal presentations that we had that I would say were a lot smarter than any of us around the table, in respect of how this will play out within the judiciary and the courts and for families.

***** (21:10)

I hope that they will heed–he will heed their warning and, you know, juxtaposed to how most, if not all, Conservative politicians view the right for women to choose whether or not they want to have an abortion, I hope that in this case, the minister and his PC colleagues will actually give choice to Manitoba families.

Mr. Chairperson: We thank the member.

Does the critic of the second opposition party have an opening statement? No?

Due to the size and structure of this bill, the Chair would like to propose the following order to consideration of the committee consideration. For your reference, we will provide copies of this outline to committee members with the understanding that we may stop at any point where members have questions or wish to propose amendments.

I propose that we call the bill in the following order: schedule A, pages 3 through 30 called in blocks conforming to the five parts of schedule A; schedule B, pages 31 through 43, called in blocks conforming to pages; schedule C, pages 44 through 53, called in blocks conforming to pages; schedule D, pages 54 through 57, called in blocks conforming to pages; schedule E, pages 58 through 74, called in blocks conforming to pages; schedule F, pages 75; the enacting clause, pages 1 and 2; the main enacting clause, page 1; the bill title.

Is it agreed as an appropriate order for consideration of Bill 9? Agreed? *[Agreed]*

We will now begin with the Part 5, part–five parts of the schedule A, pages 3 through 30, parts 1, pages 5 to 11, clauses 1 through 9–pass; part 2, pages 12 to 14, clauses 10 through 14–pass; part 3, pages 15 to 21, clauses 15 through 31–pass; part 4, pages 22 to 24, clauses 32 through 38–pass; part 5, pages 25 and 30, clauses 39 through 49–pass.

We will now consider part B, pages 31 through 43, clause 1–pass; clause 2–pass; clause 3–pass; clauses 4 and 5–pass; clauses 6 and 7–pass, clauses 8 and 9–pass; clause 10–pass, clause 11–pass; clauses 12 through 14–pass.

We will now consider schedule C, pages 44 through 53, clauses 1 and 2–pass; clauses 3 through 5–pass; clauses 6 and 7–pass; clauses 8 and 9–pass; clauses 10 and 11–pass; clauses 12 and 13–pass; clauses 14 through 16–pass; clauses 17 through 19–pass; clauses 20 and 21–pass; clause 22–pass.

We will now consider schedule D, page 54 through 57, clause 1–pass; clause 2–pass; clauses 3 and 4–pass.

We will now consider schedule E, pages 58 through 74, clauses 1 through 6–pass; clauses 7 and 8–pass; clauses 9 and 10–pass; clauses 11 through 13–pass; clauses 14 and 15–pass; clauses 16 through 18–pass; clauses 19 and 20–pass; clause 21–pass; clauses 22 through 24–pass; clauses 25 through 28–pass.

We will now consider schedule F, page 75, clause 1 through 3–pass.

We'll now consider the enacting clause, clause 1 through 4–pass; clauses 5 through 7–pass; enacting clause–pass; title–pass. Bill be reported.

Bill 20–The Courts Modernization Act (Various Acts Amended)
(Continued)

Mr. Chairperson: So now we'll go on to Bill 20, and does the minister responsible for Bill 20 have an opening statement?

Hon. Cliff Cullen (Minister of Justice and Attorney General): I'd like to start by thanking Susan Dawes from the Provincial Judges Association and Mark Toews from the Manitoba Bar Association for being here this evening to present on this important legislation.

Bill 20, The Courts Modernization Act, makes important reforms that reduce court backlogs, increase transparency and improve access to justice for Manitobans.

I was disappointed to see both the NDP and the Liberals vote against this common-sense legislation at second reading. Opposition members expressed concerns about Bill 20 based on a fundamental misunderstanding of what is contained in the legislation.

The opposition attempted to claim that somehow diversity would not be taken into consideration under the new appointment process for provincial court judges, judicial justices of the peace and masters in the Court of Queen's Bench.

The amendments contained in this bill will improve the appointment process by replacing individual nominating committees established through orders-in-council to having a single standing committee receiving applications year round.

Persons interested in becoming a judge, JJP or master will now apply when they are ready to do so, whether or not there is a current vacancy. This revised process for appointments will allow for vacancies to be filled more quickly and establish a more effective application process for candidates.

The new standing committee is also mandated, through this legislation, to ensure that the pool of candidates for appointment reflects the diversity of Manitoba. The legislation also allows the committee to, and I quote, conduct further interviews and make any inquiries that it considers advisable in order to establish the list of recommended candidates. End of quote.

These provisions will ensure that the standing committee recommends candidates to the Attorney General and reflect the diversity of Manitoba and the needs of the local community.

I also want to acknowledge the concerns raised by the Provincial Judges Association this evening about the mandatory retirement age for provincial court judges, JJPs and masters of the Court of Queen's Bench. A mandatory retirement age of 75 would bring Manitoba in line with other provincial jurisdictions and the federally appointed superior courts.

However, I recognize that there are some concerns over the process, and I want to make it clear that our government respects judicial independence. As such, I will be introducing an amendment this evening to have all provisions of Bill 20 come into force on proclamation rather than royal assent. This will give us the time to consult with the Judicial Compensation Committee before formally implementing the mandatory retirement age.

***** (21:20)

In closing, I want to once again thank the presenters for being here tonight. I look forward to seeing Bill 20 pass another stage in the process to improve access to justice in Manitoba. I also want to acknowledge and thank staff within Justice for their work on all this legislation being brought forward tonight–staff within the department and also in terms of legal counsel. Thank you for your dedication and hard work.

Mr. Chairperson: We thank the minister.

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

Ms. Nahanni Fontaine (St. Johns): Like the minister, I want to thank the presenters that came today to share their expertise, and I really do want to acknowledge the concerns–the very real concerns that both the presenters put on the record today.

I think it bears noting again that both of the presenters put on the record that they did not see a need to change the current system that we have in respect of committees in appointing judiciaries; that, in fact, actually, other jurisdictions are the envy–or, we are the envy of other jurisdictions. And other

'jurisditions'–jurisdictions, who have what now the minister is attempting to change, wish that they actually had what we currently have. So I think it bears noting for the official record that they're–both our presenters on Bill 20 said they didn't see a need to change it. They didn't quite understand the desire to change it.

I do want to kind of talk about diversity again, because I know there–you know, diversity is marked in the bill rather briefly with no real definition on what that may mean, and what that–the impact of not having diversity within our judiciaries. And I know that–I think it bears noting again, for the official record that it wasn't too long ago that the Premier of Manitoba (Mr. Pallister) put on the record in question period, I think going on two years ago, that when being questioned about the lack of diversity in the caucus, in particular about the lack of diversity of appointing women caucus members to particular committees, the Premier stood up in the House, very proudly, and said that this–and very dramatically, I must point out as well–that this was the most diverse caucus in the history of the country.

Now, that may seem–I don't know if members remember that. Maybe they're too embarrassed to remember that. But it certainly does bear repeating that the Premier doesn't understand what diversity means. You cannot look at the current composition of the BC–the PC caucus and in any way, shape or form say that that is diversity. If you were to put the PC caucus in a dictionary, you would never have the word diversity associated with that picture.

So, you know, it is concerning and it is highly problematic that when, particularly as an indigenous woman sitting on this committee and as a member of this Legislature, it is particularly concerning that the Minister of Justice (Mr. Cullen) is tinkering with getting rid of a system that is the envy of other jurisdictions, that actually guarantees that other geographical regions in Manitoba will have a say in who participates, who is hired, who participates, who's appointed to execute justice within those communities. And I think it's important to note, again–and I know that the members opposite are having a little chatter–I think that they're very excited about talking about diversity. Maybe we can do a workshop, soon–*[interjection]*

Mr. Chairperson: Order, order.

Ms. Fontaine: –maybe we can all do a workshop and we'll explain to you what actually–what diversity means and what it looks like.

But I think that it is important to know–*[interjection]*

Mr. Chairperson: Order. Come on you guys, it's been a long night. Let's respect each other, when they're speaking.

Ms. Fontaine: Thank you very much. Miigwech. I think it is important–for all the giggles that the members opposite are doing–the lack of diversity within the judiciary–which, again, I will invite members opposite to read the Aboriginal Justice Inquiry, which was born out of the death of Helen Betty Osbourne and J.J. Harper, which I just brought up in the House.

Only two days ago, I brought up Helen Betty Osborne, who was 19 years old, who left her community of Norway House to travel to The Pas to seek education, and who was stabbed 50 times by four white men.

But everybody in the town of The Pas knew who murdered her–who savagely murdered her–and did nothing–did nothing–while four white men got away with murdering–savagely murdering–a 19-year-old student.

And while the Minister of Health can't sit and just listen to what I'm talking about, something that is very important to our community and should be important to all Manitobans, this is why diversity in the judiciary matters.

This is why political representation in this building matters. I'm proud to sit with the member for Point Douglas (Mrs. Smith) and the member for The Pas (Ms. Lathlin) and the member for Logan (Ms. Marcelino). I'm proud to sit in the House with the member for Kewatinook (Ms. Klassen). That is why diversity in this House matters.

And so the fact that the minister is changing the process which–in which communities have a say is highly problematic. I can go on. I know we're all tired, but I think that is–it bears repeating and putting that on the record.

Mr. Chairperson: We thank the member.

Does the critic for the second opposition have an opening statement? Okay.

Clauses 1 and 2–pass; clauses 3 and 4–pass; clause 5–pass; clauses 6 through 8–pass; clauses 9 through 12–pass; clauses 13 and 14–pass; clauses 15 and 16–pass; clauses 17 and 18–pass; clauses 19 through 22–pass; clause 23–pass; clauses 24 through

26–pass; clauses 27 through 29–pass; clause 30–pass; clauses 31 through 34–pass; clauses 35 and 36–pass; clauses 37 and 38–pass; clauses 39 and 40–pass; clause 41–pass.

Shall Clause 42 pass?

An Honourable Member: No.

Mr. Chairperson: I hear a no.

Mr. Cullen: I move

THAT Clause 42 of the Bill be replaced with the following:

Coming into force

42 This Act becomes *into force on a day to be fixed by proclamation.*

Mr. Chairperson: It has been moved by the Honourable Minister Cullen that amendment–

THAT Clause 42 of Bill be replaced with the following:

Coming into force

42 This Act comes in *force on a day to be fixed by proclamation.*

Is it the will of the House to have the amendment recorded as written? *[Agreed]*

THAT Clause 42 of the Bill be replaced with the following:

Coming into force

42 This Act comes into force on a day to be fixed by proclamation.

Mr. Chairperson: The amendment is in order, the floor is open for questions. Any questions?

Mr. Cullen: I just want to make a comment to clarify this amendment. Clearly, the Provincial Judges Association of Manitoba has taken the position that the mandatory retirement provisions in the Court Modernization Act must be first considered by the Judicial Compensation Committee, or JCC, and the failure to allow for that to happen is an interference with judicial independence. This proposed amendment, making the act come into force on proclamation, will give the government time to allow this to happen.

***** (21:30)

The mandatory retirement age will be included as part of the regular JCC process to consider compensation. The most recent JCC report recommended salaries for the 2017-18, 2018-19 and 2019-20 fiscal years. The JCC is a triannual process, so that the compensation is determined for the current fiscal year and the following two fiscal years. The past experience has been that the JCC has not established until well beyond the conclusion of the last fiscal year of the previous JCC, 'triennal'–triennial process, and therefore the compensation that is recommended by the JCC, once implemented, is done so on a retroactive basis.

The report of the JCC is provided to both the judges of the provincial court and the minister in confidence until such time that it is tabled in the Legislature. The minister is to table the report within 15 days of receipt of the same, and if the Assembly is sitting and if the Assembly is not sitting within 15 days after the beginning of the next sitting.

The report is then to be put before a standing committee of the Legislature within 20 days of the tabling of the report–in the past, that committee has been the Legislative Affairs Committee–and the standing committee must complete its report to the Legislative Assembly within 120 days after the report has been referred to it.

The standing committee may accept one or more of the recommendations in the report; reject one or more of the recommendations in the report; or reject one or more of the recommendations and set the salaries or benefits that are to be substituted for the salaries or benefits proposed by the rejected recommendations.

Notably, if the standing committee rejects the recommendation it must provide reasons for each recommendation that is rejected.

Mr. Chair, I believe this amendment deals with the matters of process raised by the committee tonight.

Mr. Chairperson: I thank the minister.

Does anybody else have any questions on the same amendment?

Is the committee ready for the question?

Some Honourable Members: Question.

Mr. Chairperson: The question before the committee is the following amendment:

THAT Clause 42 of the Bill be replaced with the following:

Coming into force

42 This Act comes into force on a day to be fixed by proclamation.

The amendment–pass; clause 42 as amended–pass; the preamble–pass; enacting clause–pass; title–pass. Bill as amended be reported.

The hour being 9:33, shall–the will of the committee to rise?

Some Honourable Members: Rise.

Mr. Chairperson: The committee rise.

COMMITTEE ROSE AT: *9:33 p.m.*

WRITTEN SUBMISSIONS

Re: Bill 5

The College of Physicians & Surgeons of Manitoba is the self-regulating body of the medical profession in Manitoba. It governs the medical profession composed of approximately 2900 physicians, 1000 residents and medical students, and numerous clinical assistants and physician assistants. The College's mandate is to protect the public as consumers of medical care and promote the safe and ethical delivery of quality medical care by physicians in Manitoba.

Under the Regulated Health Professions Act the College must carry out its mandate, duties, and powers and govern its members in a manner that serves and protects the public interest. It is within this framework that the College provides this submission.

Bill 5 was introduced following the tragic death of patient who had been discharged from psychiatric care at a hospital. Under the current legislation, confidential personal health information may only be disclosed by a medical director/trustee without a person's consent to protect their health or safety, or that of others, but only if there is a serious and immediate threat to health or safety of the patient or another person. This creates an extremely high threshold for the disclosure of risk. It also creates a standard that many physician's find difficult to satisfy, especially in the cases of psychiatric care (like the facts giving rise to Bill 5) which, due to its nature, can be more imprecise in its diagnoses and assessments.

Under Bill 5 the medical director/trustee may disclose confidential personal health information to prevent or lessen a risk of serious harm to health or safety of the patient or another person. Though nuanced, this, in essence, creates a slightly lower threshold for the disclosure.

The College is aware that not all members of the medical profession will support this amendment. However, the College supports the Bill 5 amendments.

Bill 5 really addresses the competing objectives of privacy and health/safety - which are crucial for our society and for individuals. In furthering its mandate of promoting the safe and ethical delivery of quality medical care by physicians, the College in this instance will weigh more heavily the objectives of a patient's health and safety over the objective of protecting the privacy of a patient.

In instances similar to the particular death of a patient mentioned above, many physicians, including psychiatrists and Emergency doctors, discharge patients who have a long-standing chronic risk for suicide. Hospitalization in a psychiatric facility or an emergency ward of a hospital unfortunately remains frequently unable to prevent suicide in the long-term. The College considers it to be of utmost importance that the medical director/trustee provide ·the confidential personal health information to another person, such as a family or close friend, who may be very influential in assisting or watching that patient. To have a health care system that can not provide effective long-term care and to discharge such patients without calling family or friends, may only lead to further deaths.

Bill 5 may save lives and the College supports its passage.

Thank you for permitting the College to provide this submission.

Yours sincerely

College of Physicians & Surgeons of Manitoba Per:

Anna M. Ziomek, MD Registrar/CEO
Eric Sigurdson, MD, MSc, FRCPC President