



Third Session - Thirty-Fifth Legislature
of the
Legislative Assembly of Manitoba

STANDING COMMITTEE

on

INDUSTRIAL RELATIONS

39-40 Elizabeth II

*Chairperson
Mrs. Louise Dacquay
Constituency of Seine River*



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MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Fifth Legislature

Members, Constituencies and Political Affiliation

| NAME | CONSTITUENCY | PARTY |
|----------------------------|---------------------|--------------|
| ALCOCK, Reg | Osborne | Liberal |
| ASHTON, Steve | Thompson | NDP |
| BARRETT, Becky | Wellington | NDP |
| CARSTAIRS, Sharon | River Heights | Liberal |
| CERILLI, Marianne | Racisson | NDP |
| CHEEMA, Gulzar | The Maples | Liberal |
| CHOMIAK, Dave | Kildonan | NDP |
| CONNERY, Edward | Portage la Prairie | PC |
| CUMMINGS, Glen, Hon. | Ste. Rose | PC |
| DACQUAY, Louise | Seine River | PC |
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| DOER, Gary | Concordia | NDP |
| DOWNEY, James, Hon. | Arthur-Virden | PC |
| DRIEDGER, Albert, Hon. | Steinbach | PC |
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| EVANS, Leonard S. | Brandon East | NDP |
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| McCRAE, James, Hon. | Brandon West | PC |
| McINTOSH, Linda, Hon. | Assiniboia | PC |
| MITCHELSON, Bonnie, Hon. | River East | PC |
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**LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON INDUSTRIAL RELATIONS**

Friday, June 19, 1992

TIME – 1 p.m.

LOCATION – Winnipeg, Manitoba

CHAIRPERSON – Mrs. Louise Dacquay (Seine River)

ATTENDANCE - 9 – QUORUM - 6

Members of the Committee present:

Hon. Messrs. Ducharme, Ernst, Hon. Mrs. McIntosh, Hon. Mrs. Mitchelson, Hon. Mr. Praznik

Ms. Barrett, Mrs. Dacquay, Mrs. Render

Substitutions:

Mrs. Carstairs for Mr. Edwards

WITNESSES:

Bill 100—The Pension Plan Acts Amendment Act

Terry Clifford - Manitoba Teachers' Society

Bill 76—The Pension Benefits Amendment Act

Susan Cormack - Private Citizen

Bev Hindle - Private Citizen

Susan Hart-Kulbaba - Manitoba Federation of Labour

Irene Giesbrecht - Manitoba Nurses' Union

Marilyn Gault - Manitoba Advisory Council on the Status of Women

Jean Minish - Private Citizen

Jeri Bjornson - Charter of Rights Coalition

Cynthia Devine - Manitoba Association of Women and the Law

Terry Clifford - Manitoba Teachers' Society

Written Presentations Submitted:

Christine Merritt - Private Citizen

Gisele Rouillard - Private Citizen

Arlene Wilson - Private Citizen

Doris Alarie - Private Citizen

Lynn Chwartacki - Private Citizen

Ed Legary - Private Citizen

Andrew J. Dawson, Frank R. Ryplanski, Wayne K. Byron - Manitoba Health Organizations

MATTERS UNDER DISCUSSION:

Bill 76—The Pension Benefits Amendment Act

Bill 100—The Pension Plan Acts Amendment Act

* * *

Clerk of Committees (Ms. Bonnie Greschuk): Will this committee please come to order. We must proceed to elect a Chairperson for the Standing Committee on Industrial Relations. Are there any nominations?

Mrs. Shirley Render (St. Vital): I move that the honourable member for Seine River, Mrs. Louise Dacquay, be Chair.

Madam Clerk: Mrs. Dacquay has been nominated. Are there any further nominations? Since there are no further nominations, will Mrs. Dacquay please take the Chair.

Madam Chairperson: Will the committee please come to order.

Committee Substitution

Mrs. Render: Madam Chairperson, I move, with the leave of the committee, that the honourable member for River Heights (Mrs. Carstairs) replace the honourable member for St. James (Mr. Edwards) as the member for the Standing Committee on Industrial Relations effective today's date, June 19, with the understanding that the same substitution will be moved in the House to be properly recorded in the official record of the House.

Madam Chairperson: Agreed? Agreed and so ordered.

Will the committee on Industrial Relations please come to order. Prior to calling the private citizens and others who wish to make public representation,

I would like to determine what the will of the committee is relative to hearing the representation.

* (1320)

Hon. Darren Praznik (Minister of Labour): Madam Chairperson, I believe we have one presenter on Bill 100, and we have 14 or so with respect to The Pension Benefits Act.

I would ask, since our intention usually is to hear all the presenters first before dealing with bills, if we could hear the one presenter on Bill 100 first and then move onto the list for The Pension Benefits Act.

Madam Chairperson: What is the will of the committee? Agreed and so ordered.

Mr. Terry Clifford from the Manitoba Teachers' Society, would you please come forward and make your representation on Bill 100.

At this time, I would also ask any members in the committee who have not previously registered, if you would indicate your intention to speak to either of the bills this afternoon, if you would speak to the Clerk in attendance.

Bill 100—The Pension Plan Acts Amendment Act

Madam Chairperson: Good afternoon. You may proceed.

Mr. Terry Clifford (Manitoba Teachers' Society): Madam Chairperson, you have the brief and I do intend to read it, because it is short.

The Manitoba Teachers' Society is the professional association of 13,000 active public school teachers in Manitoba. The society also represents the interests of 4,700 pensioners and beneficiaries under The Teachers' Pensions Act.

The society appears to address Part 3 of The Pension Plan Acts Amendment Act, amending The Teachers' Pensions Act.

The society commends the government for introducing the package of proposed changes to The Teachers' Pensions Act as mutually agreed by the society and the representatives of the province on the task force on pensions.

The society encourages this all-party committee to support the legislation on third reading.

The society is disappointed, however, that the task force and the Minister of Education and Training (Mrs. Vodrey) did not include in the proposed amendments a provision that would

permit persons on parental leave to purchase periods of parental leave as may be defined as pensionable service under provisions consistent with other public teacher pension jurisdictions in Canada.

The society will pursue this and other desired changes to the benefits, funding and administrative arrangements under The Teachers' Pensions Act in the coming year.

Madam Chairperson: Thank you, Mr. Clifford. There may be questions of committee members.

Hon. Darren Praznik (Minister of Labour): I just have a comment. Mr. Clifford, thank you for coming here today. I understand that this one particular issue is still under negotiation and discussion, and I can assure you if agreement is reached, then we would certainly consider making the appropriate amendment. I look forward to the continuation and the resolution of those discussions, and I thank you for being here today.

Mr. Clifford: Thank you.

Madam Chairperson: Thank you for your presentation, Mr. Clifford.

Prior to commencing hearing individuals make representation on Bill 76, is there anyone else present this afternoon who wishes to speak on Bill 100 who may not have previously registered? Is there anyone else wishing to speak on Bill 100?

Bill 76—The Pension Benefits Amendment Act

Madam Chairperson: I will now read the list of individuals who previously indicated their intention to speak to Bill 76, The Pension Benefits Amendment Act. 1) Susan Cormack, Private Citizen; 2) Bev Hindle, Private Citizen; 3) Al Rieger, Private Citizen; 4) Susan Hart-Kulbaba, Manitoba Federation of Labour; 5) Irene Giesbrecht, Manitoba Nurses' Union; 6) T. MacDonald, Manitoba Action Committee on the Status of Women; 7) Marilyn Gault, Manitoba Advisory Council on the Status of Women; 8) Ron Youngston, Turnbull and Turnbull; 9) Jean Minish, Private Citizen; 10) Mr. Stan Hutton, Private Citizen; 11) Jerry Blumenschein, Private Citizen; 12) Jeri Bjornson, Charter of Rights Coalition; 13) Cynthia Devine, Manitoba Association of Women and the Law; and we have—Mr. Clifford, you wish to speak on this bill as well?

Mr. Terry Clifford (Manitoba Teachers' Society): Yes, Madam Chairperson.

Madam Chairperson: —Terry Clifford, Manitoba Teachers' Society.

Additionally, we have received written submissions from Christine Merritt, Private Citizen; Gisele Rouillard, Private Citizen; Arlene Wilson, Private Citizen; Doris Alarie, Private Citizen, Lynn Chwartacki, Private Citizen.

I have also been informed that additional written presentations that have subsequently been received that are not on the typewritten lists, but they have been distributed, are: Mr. Ed Legary, Private Citizen; Mr. Andrew Dawson, Vice-President, Manitoba Health Organizations.

Would Ms. Susan Cormack please step forward. I believe committee members should have already received a copy of her presentation. Please proceed.

Ms. Susan Cormack (Private Citizen): I would like to speak in favour of the proposed amendments contained in Bill 76, The Pension Benefits Amendment Act, subsections 31(6) to 31(8).

There is no doubt when it was originally proposed the idea of compulsory credit splitting was to ensure equitable treatment of partners under the act. I believe that the present provisions are fundamentally flawed because:

1) They deny individuals involved the right to self-determination and they deny separating parties the ability to do what is in the best interests of themselves or their families.

I would like to digress from what is in the bill, but I think that we are in an age where more and more vulnerable individuals are being given more and more rights to make decisions on their own. I really feel, on a personal basis, that this act, the one that is currently in effect, really does impose the will of the state on individuals more than look after their interest.

2) It suggests that this one asset, a pension, is more valuable than any other in the breakdown of a relationship. Do we as a society value our pensions before custody of our children?

3) Currently in Manitoba, less than 50 percent of employed, paid workers are covered by employer pension plans, which means the legislation does not apply to more than 50 percent of employed individuals within the province. Individuals covered

by group RRSPs are not subject to this legislation, nor are employees of the federal government.

4) Manitoba is the only province in Canada which does not allow individuals to come to mutual agreement in regard to their pensions. I believe that this has caused a great deal of problems for insurance companies and other individuals who administer pension plans as well, and causes difficulty for people who are moving from one province to another.

The proposed amendments allow individuals the right to self-determination provided that they can come up with a satisfactory agreement and that each individual has received independent legal advice. It brings Manitoba in line with legislation in the other provinces throughout Canada. It deals with the inequities between federal employees and others covered by pensions within the province of Manitoba.

The amendments offer these options while still protecting individuals who are unable to come to a mutual agreement by providing for a mandatory credit splitting in these cases.

I would like to thank you for the opportunity of doing this presentation. This really is a subject very close to my heart. If any of you have any questions, I would be more than willing to address them.

Madam Chairperson: Thank you, Ms. Cormack. There may be questions from members of the committee.

Mrs. Sharon Carstairs (Leader of the Second Opposition): Yes, I would like to ask you about your statement No. 2, which is that it is just one asset that is more valuable than the other. Do you not think, however, that it is a different asset than any other asset and, in recognition of that, for example, the federal government has special rules with regard to monies which are put into pensions which it does not have for any other asset which is able to be assessed?

Ms. Cormack: Okay, but I would like to suggest to you that over the last number of years and particularly this year, the federal government has allowed people who have RRSPs per se to take advantage of a home ownership option, which people who are covered by pensions are not able to do. It seems to me that people who are under pension plans are being discriminated against by both governments.

* (1330)

I would like to suggest that the ability of someone who is in the process of a marriage breakdown is very difficult and that whether you are self-employed and have your own RRSPs or whether you are covered by a pension plan, it should not negate your ability to make what I consider to be reasonable decisions in regard to what is in the best interests of both yourself, your ex-spouse and your children.

I find the present bill very paternalistic. In my estimation, it is written with the underlying philosophy that women are unable to make adequate decisions in regard to their own well-being and that all men are not to be trusted.

Madam Chairperson: Are there further questions? If not, I would like to thank you very much for your presentation.

Ms. Bev Hindle, private citizen. Just one moment please, Ms. Hindle. The Clerk has just asked me for clarification as to whether this will be an individual presentation or whether it is a dual presentation.

Ms. Bev Hindle (Private Citizen): It is a joint presentation.

Madam Chairperson: It is a joint presentation, because your prepared document indicates that. However, our listing lists you as individual presenters.

Ms. Hindle: Yes, we noticed that.

Madam Chairperson: Okay, that is quite all right. You may proceed.

Ms. Hindle: I am Bev Hindle and this is Al Rieger, my ex-husband. We are jointly making this presentation on Bill 76, addressing our comments in particular to subsections 31(6) and 31(8) only, as those are the subsections that deal with the splitting of pensions on marriage breakdown.

We made a similar presentation together in March of 1990. Our situation is this: We were married for 15 years and separated in March of 1986. We made decisions respecting division of our assets and agreed neither would make any claim on the pension of the other. We both feel we do not need nor want any portion of the other's pension.

The Pension Benefits Act, as it is today, will not permit this. Because Al works for the federal government, which is not regulated by the act, his pension will remain totally intact for him alone in his pension years, that is, not split by subsection 31(2). My pension, however, would be split, so that he gets

half of it. As a result, Al will have a pension and a half, and I will have half.

I guess we consider it simply outrageous that any law could manipulate or control personal assets, categorically blocking input from the owners of these assets, who are ourselves. My experience is in consumer protection and, even in the legislation that deals with companies who, for lack of a better word, rip people off, there is still provision for appeal in that legislation.

In 1990, we requested provision be made in the act for appeal to subsection 31(2) so that we could be excused from this inequity at minimal expense. This was not to be, however.

I have continued to request that provision for appeal be added to The Pension Benefits Act, as we see it as the best solution to this and similar dilemmas. Both Al and I believe in the principles of pension splitting. Personally, I wrestle with all possible solutions from a true justice standpoint. I really fear any change which would be enabling to manipulators of people and, unfortunately, they are a reality of today.

Usually, in a single-pension household, a full-time homemaker does need some protection. In our case, though, we know that each of us has an adequate pension, and being excused from the mandatory pension splitting will correct the wrong done by the act as it is and free us to make independent long-range plans for retirement without having to take into account the choices being made in the other's family. Through appeal, each situation could be assessed on its own merits and assurance could be given that both parties agree to waive mandatory pension splitting with full knowledge of the value of the pension involved. We felt that was important.

However, we are dealing here with Bill 76 and, after reviewing Bill 76, we would be agreeable to the implementation of subsections 31(6) to 31(8) therein, with minor changes to the second line of subsection 31(6) as indicated below, substituting that line with the following—if you would not mind turning to that part of the bill in subsection 31(6).

If we could change that second line to read "applicable to a pension plan or plans in the case of either or both persons" and then continuing on and allowing the possibility of corresponding plurals of administrator, plan and so on as these words occur in the subsequent text of the subsection; then

concluding 31 (6)(b) by substituting the phrase "if the subsection remained applicable" with "if all pension credits were split", which seems to make a little bit more sense given the possibility of one more pension being involved. This would provide for disclosure of more than one pension if that situation were applicable.

I want to add that most couples, after divorce, discovering themselves in a situation such as ours, would find the task of efforts to have the law changed or the alternative a tremendous emotional and financial strain. That says nothing of the windfall for lawyers who indeed may have erred in giving the advice on pensions or not giving the advice in the first instance.

I have to say that this legislation has created a financial disaster for me and my pension. The only reason I have been saved from it is that this man standing here is an honourable and trustworthy person, and he has not done anything about what the law allows him to do.

We are lucky that we are still friends. Not many have that lucky situation before them because, at any time in the last six years, on as much as a whim, Al could have written a letter to the Superannuation Board and split my pension. He has not done that, and I know he will not. I guess not everybody has the luxury of that trust.

We urge you, therefore, to proceed through careful and serious consideration without further delay. We would both be happy to answer any questions if there are any.

Madam Chairperson: Thank you, Ms. Hindle. I believe there are questions from committee members.

Mrs. Carstairs: My question has to do with regard to advice. You mentioned the fact that you might not get legal advice which would be appropriate. Do you think it would be appropriate that, if this was to come into effect, that not only would the claimants require legal advice, but they would also require pension advice from somebody with knowledge in the pension field?

Ms. Hindle: Yes, because certainly I have done a lot of work on pensions in the last five years. As I began it, it is not as if I was a young person, I guess I was 38, and I knew nothing about pensions. So, yes, there would certainly be some cause to get information from a pension expert or an actuary.

Madam Chairperson: Are there further questions? If not, I would like to thank you for your presentation.

Ms. Hindle: Thank you for this opportunity.

Madam Chairperson: The next presenter is Susan Hart-Kulbaba, Manitoba Federation of Labour. I believe all committee members should have a copy of the presentation. Please proceed, Ms. Hart-Kulbaba.

Ms. Susan Hart-Kulbaba (Manitoba Federation of Labour): Madam Chairperson, honourable minister and members of the committee, the Manitoba Federation of Labour, like all central labour organizations and unions, has a deep concern about both the promotion of defined benefit pension plans in our province's workplaces and the financial security of working people in their retirement years.

Generally speaking, the labour movement promotes the defined benefit model of pension plans because of its overall quality. Workers know from the outset what they are buying into. They have a measure of certainty about how much or how little pension income they will have in retirement.

For this reason, we tend not to support or encourage the promotion of other pension plan models as much. We believe, as attractive as some of their features are, that they tend to undermine the defined benefit model and ultimately will lead to less financial security for retired people, not more.

Many of the alternative pension planning models provide, with various penalties, access to retirement funds before retirement occurs. In tough economic times, the temptation is to withdraw funds that are earmarked for retirement income with the intention of replacing them at some future date. All too often, this future date never arrives and, in spite of their best intentions, poverty in retirement or not retiring at all becomes their choice at age 65.

* (1340)

For this reason, we will not argue the relative merits of non-defined benefit pension models in this brief other than to draw attention to particular problems.

The MFL's gravest concern with Bill 76's amendment is the refusal of the government of Manitoba and its Pension Commission to acknowledge the ownership of all pension plan

funds, including surplus funds, by the plan members.

Working people who have negotiated the establishment and terms of their pension plans know full well that they are not enjoying the security of a pension plan because of their employer's generosity. This benefit comes about as the result of some hard-nosed bargaining, giving up wages and other benefits in order to win again their pension plans. Pension funds are deferred wages. Let there be no mistake about our position on that.

The amendments contained in Bill 76 may indeed be an honest attempt by its drafters to bring some order to the debate about surplus pension funds and their ownership. Nevertheless, they are based on the faulty assumption that there is a legitimate question involved. There is not. Pension plan members own that money and amendments, no matter how well intentioned, that treat them in any other manner are unacceptable to working people.

Further, the amendments contained in Bill 76 may mean fewer workers will be covered by defined benefit plans, the type of plan where surpluses accrue, in future years. The expectation that employers and employees will bridge the gulf that separates them on the ownership issue is extremely optimistic. The danger is that rather than resolve the debate, the employer will simply refuse to enter into a defined benefit pension plan and either walk away from the discussion entirely or be sidetracked into a less beneficial form of pension planning.

Certainly that issue, if I can digress for a moment from the brief, comes to mind when I think of the workers at CKND, who have recently undergone a long and bitter strike in order to gain a pension, just to get a pension plan implemented. To work in the future on improving the benefits of that plan is something that they will do year over year in the next sets of collective bargaining. If they had had to decide who owned any surpluses before that plan would have been implemented, I guarantee you they would still be on the streets. That plan would never be registered. They would still be out walking.

Credit Splitting—generally speaking, the MFL considers the existing Manitoba legislation that requires pension credit splitting between spouses upon marital breakup to be a good example of progressive legislation that demonstrates our leadership for the rest of the country.

However, we are sensitive to the reality that a case can be made, within narrow parameters, for exceptions to this rule.

For example, when both spouses hold pension credits that are relatively equal, then a case can be made for an exception. Even in those circumstances where we are concerned about potential for coercive negotiating, one spouse using other issues to force agreement, not to split pension credits.

In many cases, the balance of power in a marital dissolution is skewed. I have been there, trust me. We fear that many women, for emotional or financial reasons, will be unable to maintain their portion of a pension that is meant to save them from poverty in their senior years.

We have this concern in spite of the requirement that independent legal counsel and written consent are required by this legislation. If the provincial government makes pension credit splitting negotiable in all marital dissolution cases, a severe injustice will be forced on some of our citizens. It is an ill-advised course of action that puts many people at risk in order to make it possible for a relatively small number of people to benefit from the amendment.

Further, we believe that independent legal advice is insufficient, for many lawyers who practise family law have given bad advice re pensions only out of a lack of expertise. We believe that people should have independent actuarial advice and, yet, we are concerned about the costs of obtaining that advice and would like any legislation to address that issue as well.

We know that far fewer women than men have pensions, and we also know that many women, with longer life expectancies, are impoverished as they age. We believe it is not the Pension Commission's mandate to assist in the distribution of other marital assets, but it is the commission's mandate to promote pensions and work toward fewer elderly Manitobans living in poverty.

If this committee is unable to devise an amendment to Bill 76 to address these concerns, then we recommend that you forget about it until one that reflects both fairness and equity for all Manitobans can be drafted.

On reciprocal agreements, while we are sensitive to the general need to identify and reduce expenditures when it does not impair services or

result in layoffs and firings, we have a concern about the initiative to enter into reciprocal agreements with other jurisdictions as described in 11(2) of Bill 76. We would urge the government to approach these amendments with the prime objective being the negotiation of agreement that brings all Manitoba workers under Manitoba's legislation.

The MFL is committed to the proposition that residents of Manitoba should benefit from legislation passed by the governments they elect, whether or not the pension plan they are members of is registered in another province.

As I said at the outset of this presentation, the organized labour movement is committed to the defined benefit model of pension plans, and we do not support other models generally. Having said that, there are some aspects of the amendments in Section 7 of Bill 76 that we would like to draw your attention to.

It is proposed that Section 21(13.1) of the existing act be amended to permit the withdrawal of funds from defined benefit plans to invest in other pension models. This option, if exercised by enough plan members, will threaten the defined benefit plan from which the funds are withdrawn. We would urge this committee to remove this threat to defined benefit plans, which is the superior model, in labour's view.

Section 7(7) of Bill 76 proposes that a retired worker who returns to the workplace after pension benefits commence be relieved of the obligation to resume pension contributions. We oppose this amendment on the grounds that the viability of our pension plans is dependent upon participation in them. If a retiree returns to the workplace to earn a salary while collecting pension benefits at the expense of an unemployed worker, and we have plenty of those in this province, then we see no valid reason why that worker should not be obligated to resume pension contributions.

Section 16 of Bill 76 proposes that the rate of interest that define benefit pension funds accrue be set by regulation instead of being described in the act. We are puzzled as to why this is thought to be necessary. We are not convinced that this is a proposal that will benefit working people in the long run.

As it stands now, changes to the interest rate require an act of the Legislature, complete with the requirement for public hearings such as this one. By providing for regulatory changes, it is

conceivable that the interest rate would be changed without an opportunity for stakeholders to air their views on the matter.

Unless there is a compelling reason for this change that is not apparent to me at the moment, we recommend that this proposal be withdrawn by the committee.

Generally speaking, the MFL supports the expansion of multiunit or multiemployer pension plans as a means of making it possible for more workers to be covered by pension plans, preferably defined benefit pension plans.

However, some of the provisions outlined in Clause 12 of Bill 76 do give rise to some concern.

Section 26.1(4) does not address the issue of how members of the board of trustees are appointed. In order to ensure that there is no confusion on this point, we recommend that this committee amend this to stipulate that both management and the union are responsible for naming their representatives.

In 26.1(1) there is reference to the termination of membership in a multiemployer pension plan after 24 months if no contributions have passed. In our view, this means that all members who have not had contributions made to the plan on their behalf in the 24 months preceding the effective date of Bill 76 could immediately request a termination. Obviously, this could be extremely damaging to the viability of a pension plan.

In addition, this amendment could also result in it being necessary for the plan administrator to notify members of their right to terminate, even if the pension plan has a more generous break-in-service rule, for example 36 months. In this circumstance, a worker may be considered an active member under the MEPP while at the same time they are receiving notice of their right to request a termination benefit.

Section 26.1(9) provides that the pension credit of a member whose whereabouts is unknown for two years after the last contribution was made reverts to the fund if the credit is less than 2 percent of the member's yearly maximum pensionable earnings. While this account may be small in terms of the number of dollars, it seems overly hasty and may result in a worker or a spouse not receiving entitled pension payments.

The title of last year's discussion paper circulated by the Manitoba Pension Commission included the words "the promotion of private pension plans in

Manitoba". Clearly, we have a long way to go to reach the objective of adequate pensions for all Manitobans.

* (1350)

Instead of making it possible for pension plan members to lose the benefit of the surpluses their pension funds accrue, perhaps the commission and the government should devote more time and resources to educating the public, particularly young people, about the necessity for a financially secure retirement. It is obvious that taxpayer-based pensions such as CPP and OAS are not adequate to ensure an acceptable standard of living for retired people. We have to find a way to ensure that employers and employees in Manitoba have a clear vision of the importance of adequate pension income.

Organized labour devotes substantial amounts of funding and human resources to promoting the negotiation of pensions in collective agreements. We develop language for our negotiators. We hold regular schools to educate members about how to promote pension plans in their workplaces and within their union, how to negotiate with their employers to create a pension plan and how to help administer the plan once it is in place.

It is time employers and governments took up the challenge by raising pension awareness through multimedia promotion campaigns and education programs both in the school system and in the workplace.

Thank you very much for the opportunity to present.

Madam Chairperson: Would you be prepared to answer questions?

Ms. Hart-Kulbaba: Certainly, if I can. My technical advisers, I am afraid, are busy, but I will do my best.

Ms. Becky Barrett (Wellington): I have no technical advisers here either. Actually a comment and then more of a general question—it seems to me that in much of what you are saying here in your responses to various of the sections in Bill 76, in particular with the sections that deal with the knotty issue of pension splitting, that there is an underlying concern on the part of the MFL about protecting as far as possible people and, in reality, women, from poverty. Am I correct in that assumption?

Ms. Hart-Kulbaba: Yes, that is very correct. We have been able to gather statistics, and we are finding that four out of five new union members are women. One of the reasons that women are organizing in greater numbers than men right now is the issue of benefits.

Most unions have negotiated at some point a pension plan for the people that they cover. You are finding that is not necessarily the case in the service sector, where a large number of women have been employed traditionally. That is starting to turn around, but it is not without its problems, trying to gain those benefits for women.

Certainly, we have been able to track through numbers and through our membership back that a lot of women are finding themselves still without pensions and that they feel vulnerable, not in a very good bargaining position at marital dissolution.

As we stated in our brief, we have no objection to being able to waive pension credit splitting if in fact the two people involved in that are within, say, 20 percent actuarially. Then, if a woman is in fact in a less than favourable bargaining position and decides to waive splitting of the pension, she obviously already has a fairly decent job, she has a pension there—most women do not—so that is not so bad, and she is already within 20 percent of her spouse's pension actuarially. It does not leave her in the same position 20 years down the road of being impoverished because she has given away something 20 years before.

We have a lot of women who have been very concerned, especially people who have children, who have said that upon dissolution, they have been threatened with lengthy custody battles, which the other spouse has no opportunity to win, but which would cost them a great deal of money that they do not have if they are not prepared to waive their pension, et cetera. It is used as a negative bargaining chip at marital dissolution. We have some concern about that.

We also are aware of the issue raised by one of the previous presenters about the problem with federal pensions not having to be split and provincial pensions being split. There is a terrible inequity there, and it is my understanding that if Bill C-55 passes, that will be addressed, that federal pensions will be splittable, credits will be splittable.

I do not think that would have ever come to pass without pressure. If we did not have progressive

legislation here in this province that forced that issue, I do not think you would be seeing that come forward at the federal level for federal employees and people who work under federal jurisdictions. I think we have gone a long way to lead the way, and it is coming back now.

I think even if C-55 does not pass that that is a legitimate issue that needs to be addressed. I do not think, however, that this amendment does it, and I am not prepared at this point to say that we should throw the baby out with the bath water. I think there are other options available that we can try and work on.

Ms. Barrett: Madam Chairperson, just one other question. One of the issues that was addressed in 1990 before the hearings on Bill 57 and in the debate in the House and in presentations today is the issue of pensions as a different kind of asset from other assets that are dealt with in marital breakdown. I am wondering if you can elucidate your position on pensions as a similar or a different kind of asset.

Ms. Hart-Kulbaba: I think that, in fact, we do. They are certainly an asset that is gained through your workplace, so they can be treated differently from other assets which are not directly gained from your workplace.

I think that if we did not feel that they were treated differently, we would not be here today. I think that society ends up being responsible, as a whole, for those people who are impoverished in their older years and that we have a responsibility to try and avoid that burden on the state and address that in a different way than we address other marital assets.

Mrs. Carstairs: I would like to make reference to page 5 of your presentation with regard to the retiree who returns to the workplace to earn a salary while collecting pension benefits at the expense of an unemployed worker.

We see no valid reason why that worker should not be obligated to resume pension contributions, but he or she would not be eligible to collect additional benefits. Is it appropriate to be paying into a pension plan for which you can receive no benefit?

Ms. Hart-Kulbaba: I think you will have to understand that our position is that we have always been opposed to a lack of mandatory retirement. We believe in mandatory retirement at 65. This is simply tied into that principle, and we believe that based on our concern about younger workers not

having an opportunity for employment, but we have always recognized that times have changed, and the economic situation people are finding themselves in at the age of 65 is not very good.

That is why we have not been creating a huge furor about people who insist upon working past that age. Many of them do it for financial reasons. We do not believe that they should be able to make a living that was fine for them for 40-some-odd years prior to that and then be able to gain their salaries and their pension. We would prefer that they did not collect their pension benefits while they were on the job, to be frank with you.

Mrs. Carstairs: Well, I too find it somewhat inequitable that somebody retires and then goes back to work for the same company and denies somebody else the opportunity, but I also think it is inequitable for somebody who cannot collect a pension to have to pay into a pension. Perhaps it would be more appropriate for the employer to have to put that money into the pension plan, but not necessarily the employee.

Ms. Hart-Kulbaba: We always work to try and negotiate that, in fact, there is less and less contribution on behalf of the employee and the employer puts in more. It simply comes out of our wage package. Whatever they would have offered us, it comes off the top, basically. We would like to get to the position where in fact it is simply completely employer funded and that it is there in the name of the employee.

We are a long way off from that, though it does exist in some plans now. That is part of the evolution of negotiating pensions. You get what you get at the front end, and you keep trying to improve that later.

I do agree with you that it would be inequitable to have someone pay into a pension and not have them be able to collect it. I also believe it is inequitable to have someone continuing to gain their salary and their pension.

Madam Chairperson: Irene Giesbrecht, representing the Manitoba Nurses' Union. Committee members should have already received a copy of the presentation.

Ms. Irene Giesbrecht (Manitoba Nurses' Union): Good afternoon, Madam Chair, members of the committee and honourable minister.

The Manitoba Nurses' Union represents more than 11,000 unionized nurses in 103 locals across

the province. Our union continues to lobby for appropriate pension reform.

In May of 1991, we responded to the proposed pension reform changes from the Pension Commission, which we have attached as Appendix A, and now we appreciate the opportunity to respond on the proposed Bill 76.

* (1400)

The key areas of concern of the Manitoba Nurses' Union then and now involve pension ownership, surplus and joint union-employer trusteeship of pension plans. The assurance of continuing security and growth of pension plans for our members is a sacred trust. This must be in place to provide a healthy and comfortable retirement for plan members.

The following are the Manitoba Nurses' Union comments on proposed changes under Bill 76.

First of all, regarding surplus, in subsection 18(2.1)(a) and (b), we feel that the bill is not clear enough in this area. Our union believes that members of pension plans are the owners of the pension plan surplus, as they are contributors and pension benefits are deferred wages. Pension plans must specifically indicate the ownership of surplus and any surpluses to a pension plan must be used exclusively for the members of the plan. Any use of surplus in an ongoing plan, including contribution holidays, other than for the benefit of the members of the plan should be prohibited.

If, however, there are discussions on plan wind-up, plan members and their union must make the decision as to the use of the surplus to maximize the benefit to the plan members.

Subsection 18(2.1)(c). It is positive that there is a mechanism for resolving pension disputes should they arise. However, this proposal is vague and needs expansion in our opinion.

The St. Boniface General Hospital Union's jointly trustee pension plan clearly outlines the process that should be taken, and we have attached that excerpt under Appendix B. Similar to the St. Boniface plan, the act should set out a clear means of arbitration to resolve disputes.

Pension Plan Wind-up, subsection 21(2.2). The overriding concern must be to ensure past and future benefits to plan members on pension plan wind-up. Surpluses must be used to benefit the members of the plan and there must be joint

decision making about the use of surpluses with the union and the members of the plan. Should a plan be terminated, all parties must be clearly informed of the long-term ramifications of decisions and use of surplus to continue the pension benefits.

Regarding restrictions on payments out of the plan, subsection 26(2), as previously stated, we are opposed to surpluses reverting to the employer. Surpluses must be used to benefit the members of the pension plan. This is also the case for any other funds or contribution holidays. Our union is vehemently opposed to contribution holidays, as they are inevitably shortsighted and can put a plan in severe financial risk very quickly. There should never be a need for a contribution holiday if trustees are managing a pension plan properly.

Subsection 26(2.1)—currently it is our union's understanding that there is a moratorium on the use of surplus on an ongoing basis by the employer. Our union supports that this continued moratorium be in the act for ongoing plans. Governments should clearly be warned that if plan members have their pensions and surpluses eroded through a shortsighted approach today, the chances will increase of these same members having to access social programs like Canada Pension, Old Age Security Supplement and welfare at a later date.

If under proposed subsection 26(2.1) employers access surpluses on plan wind-up, there must be absolute and full disclosure and agreement of plan members and their union. If there is no agreement of the union and plan members, the surpluses must be distributed to the plan members according to the terms of the plan.

We feel that it is not sufficient under subsection 26(2.1)(a), (b) and (c) that the Pension Commission be the determining body as to the distribution of surplus to plan members. Without disclosure and agreement, plan members would not have an effective voice in the determination of their pension plan surplus.

The only valid reason our union could see allowing an employer access to any surplus on plan wind-up is if there were a termination package negotiated that was financially better than the pension component the surplus would buy. This would probably be a rarity.

Termination of membership, subsection 26.1(1)(b)—members of pension plans should not be terminated from the plan if they are disabled or in

receipt of workers compensation, even after 24 months. Our current health care pension plans allow for continued service recognition while disabled. Protection of pension membership and benefits for the disabled should be clearly indicated in the act.

Regarding multiunit pension plans, subsection 26.1(2), the Manitoba Nurses' Union supports the initiatives toward joint trusteeship of pension plans. We believe that a pension is really a deferred wage and, therefore, it is vital that the pension be treated as a sacred trust, as we said earlier.

In order to prevent the past vagaries of golden handshakes and secret deals unknown to plan members, it is essential that a clear mechanism of joint union-employer trusteeship be in place.

Article 26.1(4) indicates a board must be in place to make decisions about the plan. Our union believes the board should be composed of 50 percent union trustees and 50 percent employer trustees. Nonunion plan members should be represented by the employer trustees. We say this because the nonunion plan members have no constituency, no accountability or viable method to communicate to the other nonunion members and would be best represented by the employer.

Retirees of the plan could be represented by their former union, and it would be very easy to have them contact the union for pension information. A problem arises, similarly, to the nonunion group for retirees in that communication accountability and constituency becomes a problem and could then impede the effective operation of the pension plan.

Regarding the liability of the employer, subsection 26.1(10), we feel that it is important that the employer's liability for funding benefits be limited to their contributions. Clearly the employer and the union have a vested interest in the ongoing health and security of pension benefits to plan members.

Subsection 26.1(11)—the statements in 26.1(11) we feel are too general and need detailed expansion and clarification in the act.

Regarding (a), it is vital that there be a clear procedure in the act on how a trustee pension plan must be set up, including ownership of assets, surplus and procedures in the case of plan difficulties or insolvency.

For (b) to (f), there must be clear information and disclosure of the obligations and risks of members,

unions and employers, where applicable, as they participate or withdraw from a pension plan.

Under (g), our union would maintain that trustees be chosen 50 percent from the employer and 50 percent from the unions, as previously indicated.

In conclusion, the Manitoba Nurses' Union supports the concept of pension reform. Clearly, the members of the plan who are the owners should take a much larger role in the decision making and ownership of their pension plan, which will provide for their retirement.

Surpluses are for plan members and contribution holidays should be prohibited. Our union supports the initiative toward joint trusteeship.

Canada is a world leader in providing security to retiring workers, unlike many European countries and the United States, where retirement is unfortunately becoming synonymous with drastically reduced income and, in many cases, poverty. We must be vigilant in continuing to maintain our leadership role through the support and enhancement of our pension system to ensure the protection of our aging population.

Our pension plans are a sacred trust. We are obligated to ensure they do not fall victim to shortsighted decisions which result in long-term erosion of the benefits they were intended to provide.

Thank you very much, and I would be willing to try and answer any questions you might have.

Madam Chairperson: Thank you for your presentation.

Ms. Barrett: Again, not on a technical level, I will have to go back and compare your comments with the bill itself. It does seem in a general way that you are talking in many of your suggestions and recommendations for amendments to the bill that communication, clarity and partnership are concepts that perhaps might be a little missing in the legislation as it is drafted and that you would be recommending changes that would make those kinds of things clearer, particularly to the pension plan members' rights and responsibilities. Is that an accurate statement of what you are saying?

* (1410)

Ms. Giesbrecht: Yes, really, we have highlighted the key concerns of our membership. That has been based on many surveys that we have taken, discussions we have held with our membership.

The key area that we always come back to and actually was a major, major issue in our negotiations and strike last year was the issue of joint trusteeship of pension plans.

We feel very strongly, our members feel very, very strongly that there is an ownership question here, and there should be joint trusteeship and involvement, full disclosure, full information. I think our presentation makes reference to some examples where in the past, that has not been the case, and it has caused a great deal of concern to our members.

We are highlighting certain areas that are of concern to our members, and we are asking for clarification, because sometimes it has to be spelled out in the act and not just be left to regulations either.

Ms. Barrett: Thank you, one more quick question. In the Manitoba Federation of Labour brief, at the end of that brief, Ms. Hart-Kulbaba talked about the suggestion about a multimedia promotion campaign and education programs in the school system and the workplace. It seemed to me that this would fit in your general concerns about making sure that pension plan members are knowledgeable and aware of the issues in their pensions and in setting them up.

Would you be in favour of that kind of thing, particularly for working groups that perhaps have not had the "opportunity" to go through a strike like the nurses did and get educated in a very difficult way?

Ms. Giesbrecht: I am glad you put opportunity in quotes. It is certainly a very high priority of our union and has been for many years that we help educate working people, especially our members obviously, about pension issues.

I am glad to be able to say that it is a high priority for our members, who are 98 percent women. These are issues that I think everybody in the general public should take very seriously too in terms of pension and retirement income for our future.

Certainly we support a lot of education. We actually conduct a lot of educational sessions within our members. For the general working populace, we would support that.

Hon. Darren Praznik (Minister of Labour): Madam Chairperson, just a comment that follows from the question of the member for Wellington—I would like to say to Ms. Giesbrecht and I know Ms.

Hart-Kulbaba, who is here, I know from time to time there are differences of opinion on some detail, but I offer my compliment because both the Manitoba Nurses' Union and the Manitoba Federation of Labour and their affiliates have been very strong promoters of pension plans in Manitoba.

I know in particular the union which Ms. Hart-Kulbaba comes out of, United Food and Commercial Workers, has done a great deal of work in promoting pensions and multiunit—the concept of having pensions in smaller workplaces. I know the MNU is pioneering, to some degree, the multi type of employer pension plan in the health care field, and both should be congratulated for their efforts.

I know from time to time we disagree on issues, but I thought I would put that on the record today, that in terms of promoting pensions in Manitoba both organizations certainly play a big role, and I know that will continue. Thank you.

Madam Chairperson: Thank you for your presentation, Ms. Giesbrecht.

T. MacDonald, Manitoba Action Committee on the Status of Women.

Marilyn Gault, Manitoba Advisory Council on the Status of Women. Do you have a written presentation this afternoon, Marilyn?

Ms. Marilyn Gault (Manitoba Advisory Council on the Status of Women): No, Madam Chairperson, I do not have a written presentation, but I have a very brief presentation with regard to one section.

Madam Chairperson: Thank you very much. You may proceed.

Ms. Gault: Madam Chairperson, ministers and members of the committee, with regard to The Pension Benefits Amendment Act, Bill 76, I wish to speak to one section only, Section 31 (6).

The concern of the advisory council is, of course, with the poverty of women and children in Canada and most particularly the poverty of older women. The bottom line for the advisory council is that women must have the ability to make their own choices, and those choices must be informed choices.

We do not oppose the opting-out measure of the bill, but the trade-offs that might be made in opting out must be of a monetary nature for the woman.

We are very concerned that other issues do not come to the front, such as the custody of children or

visiting privileges for children or other kinds of issues where the woman is at a distinct disadvantage.

We want it clearly spelled out in the legislation the responsibility of the lawyer to ensure the above, that the woman has the proper information to be able to make an informed decision, to clearly point out to lawyers that it is their responsibility to provide actuarial projections of the benefits or losses that the woman might accrue by opting out of the pension splitting.

We believe that it is, therefore, incumbent upon the legislators of this province to ensure that this advanced kind of information is made available to the woman. For example, lawyers are not necessarily that well versed in the benefits of pensions and so the information must come either from the pension board or from an independent actuary, the cost of which should be borne by the partner maintaining the full pension or the larger portions of pension benefits that will be left.

We strongly believe that that must be encompassed within either the bill or the regulations attached to the bill to ensure that if a woman is unable to pay for this kind of information that it is provided for her. Thank you.

Madam Chairperson: Thank you, Marilyn. Would you be prepared to answer questions?

Ms. Gault: Yes, I would.

Mrs. Carstairs: Madam Chairperson, I particularly like the situation of putting the onus of responsibility for paying for this actuarial advice on the individual who will still hold the bulk of the pension.

One of the suggestions that I have made to the minister and, to be fair to the minister, he has not yet responded and, hopefully, he will respond later on this afternoon, is that I requested that if there was to be some form of document prepared that an individual would say, I have given away my right to participate in this pension, it could also say in that document that no undue pressure for assets or custody issues or alternative issues have been broached to me with regard to this, so that we would recognize not only that the woman had given away her right to this, but had done so without the kinds of pressure that you are talking about. Would that be a satisfactory position for the Manitoba Advisory Council on the Status of Women?

Ms. Gault: Yes, indeed, that would appear to cover the waterfront. I think that we must look to the

minority, as well, that some women may still not understand, even after having signed that kind of a statement. That certainly enhances what I have proposed, because it puts it in black and white.

I would still have some concern, and I think that this committee needs to have concern, for women who may be illiterate, women who do not speak English, English not being their first language, to ensure that they fully understand what they are agreeing to and, certainly, to ensure that this kind of bargaining cannot include custody or visitation or other kinds of agreements that must be come to through separation and divorce.

Ms. Barrett: Thank you, Marilyn, for your presentation. Two questions—one is on your comments that you stated that the lawyers have responsibility for making sure that their clients understand all the ramifications of the issues around pensions and that they do not necessarily have the expert knowledge necessary to make those determinations or give that advice as—and I think a couple of the presentations, certainly in the hearings in March 1990, made that fairly clear.

You then talk about having a requirement for independent actuarial advice with the cost borne by the partner with the largest amount of resources in the pension. Do you also see the necessity for some sort of penalty, if that is the right word to use, for lawyers who do not give their clients the information on the act and do not provide them with information about actuarial advice? Would that be acceptable to you, that lawyers also have a responsibility to learn the legislation as much as they can and then, as well, send their clients to actuaries for additional information?

* (1420)

Ms. Gault: Yes, that is precisely what I mean. I do not wish the lawyers to be giving the pension advice to women. I wish the lawyers to be responsible. They are being paid to advise the woman. I wish that it should be very clearly written within the regulations or the act itself that it is their responsibility to provide full and extended information, future projections as to what the woman is giving out.

Certainly if the lawyer does not do that, he or she should be answerable to a higher power to defend why they did not do that and, certainly, should reopen the decisions made surrounding that one

case so that the woman is not suffering for lack of adequate and good advice.

Ms. Barrett: My understanding, and perhaps the minister can correct me if I am wrong, is that currently clients do have general access to the Law Society or, as one of the presenters in 1990 stated, they could sue for not having been given the appropriate or complete advice.

Again, I believe that is putting the onus far too much on the client. I would like to see, and I am wondering if you would share with me, the act amended to put some teeth into the responsibility section so that there might be a penalty for lawyers not providing that kind of advice rather than the client having to access the Law Society or suing.

Ms. Gault: I agree. The onus should not be on the client to take further actions and spend further money to ensure that the lawyers do the job that they were paid to do in the first place. That is precisely what I meant by having it in the regulation or within the law that they would clearly be in breach of the law. They would also be in breach of the trust and have to answer to the Law Society without the woman having to spend more money, which she probably does not have anyway, to pursue the matter.

Ms. Barrett: For me, one of the most difficult parts of this whole part of the legislation is again the issue of choice, as you mentioned in the first part of your presentation. That issue of choice, which I feel in most cases very strongly about, comes up against another principle that has formed pension legislation since its virtual beginning.

That is that it is deferred wages, and it is an understanding that there will be income for an individual in their later years or when they are no longer able to work productively. It seems to me, in this case, there is a possibility for those two areas to conflict in some ways.

This is the only part of the pension legislation that I am aware of, with the pension splitting upon marriage breakdown, where the principle that pension monies are vested and are not accessible, at least in the pension plans, not in the RRSP part, but in the pensions, that you cannot access those because legislators have said that we feel it is more important in this case to take away a right to have access to your own money and feel that it is more important to help you to have money and income when you retire.

Again, that is a paternalistic or maternalistic decision that is made. In no other part of the pension field, other than this one, are we saying that is not an overbearing good. You cannot access your pension plan if your business goes bankrupt or if you declare bankruptcy, or if you have an enormous financial problem only because of the deferred assistance. There is no choice involved there.

There is that choice in the proposed amendments to the act dealing with marriage breakdown. I am wondering how you see that.

Ms. Gault: I think you have gone beyond the scope of the conversations and the deliberations of the council itself in asking for a personal opinion, and I would decline to answer that for that reason.

Madam Chairperson: Are there further questions? If not, I would like to thank you for your presentation, Ms. Gault.

Ron Youngston, Turnbull and Turnbull.

Jean Minish, private citizen. Do you have copies?

Ms. Jean Minish (Private Citizen): I am sorry. I do not. I can provide a final copy after.

Madam Chairperson: No, it is quite all right. Please proceed.

Ms. Minish: Madam Chairperson, honourable minister and committee members, thank you for the opportunity of providing comments to Bill 76, and certainly I am providing them as a private citizen.

However, I have experience both with pension plans as a former plan administrator and as a previous member of the Pension Commission when the 1984 act was amended and then later as Superintendent of Pensions. I have maintained more than a passing interest in the legislative progress as it has gone on.

I hope that my comments, while general in some areas, will be construed as constructive because, in some areas, I have gone into some detail that may be considered to be not constructive.

My first comment is on Section 3, amending Section 8, the inspection powers of the superintendent. The current provision for inspection is insufficient, and the authority of the superintendent to redress any breach is weak. The proposed amendments for Sections 8(2) and 8(3) provide the superintendent with the ability to administer the act with a certain amount of power to

order and enforce. These amendments also reinforce the role of the commission as being a quasi-judicial body with appropriate mechanisms for plan sponsors to appeal decisions. I see that as a very progressive move by this proposed amendment.

In Section 4 of Bill 76, amending Section 10, duties of the commission, one of the greatest concerns I have had in the past is the difficulty in delineating and understanding the roles between the superintendent and the commission. The office of the superintendent has evolved to assume a more technical and administrative role, with the commission assuming policy-oriented and certain quasi-judicial functions.

The delegation of authority to the superintendent is one manner of delineating the roles so that pension practitioners know whether they are going to appeal to the commission or appeal to the superintendent. I see this as progressive and consistent with other jurisdictions.

* (1430)

It would be preferable in my personal opinion to specify in the act exactly those roles which have been delegated. For example, in Section 10, all of the subsections could be delegated to the superintendent, with the exception I think of subsection 10(d), dealing with the registration of pension plans. This clarification, I think, being put in the act would clarify for those of us in the pension practitioner area just exactly who is responsible for what, and it would clearly delineate the roles of the two bodies.

On Section 6, amending Section 18, surplus, I see this amendment not as the total answer. It is consistent with other jurisdictions across Canada and on surface will resolve the issue of new plans about the disposition of surplus, and there comes a however after this. The requirement for informed employee consent at the beginning will be very cumbersome and very cost ineffective to the planned sponsor.

Certainly, even if the consent is obtained, there is a risk that the employees may feel coerced, so it is a practical situation. The issue of disposition of surplus is much more pervasive and complex than simply having a statement in the plan document.

I am not sure whether this amendment was intended to do so, but it may well deter because of the practical considerations for informed consent. It

may deter the implementation of defined benefit pension plans. Yes, defined benefit pension plans are the Cadillac, if you will, of pensions.

Legislation is meant to set minimum standards, and I am wondering if this is an opportunity to somehow select a minimum standard for the disposition of surplus and put it in the act, and then from that position, if the surplus is not to be distributed according to that minimum standard, to go through the quasi-judicial process, to have it distributed in a manner different from the act.

Again, there is no magical solution to that, but it seems to me that in Canada, there has been an acknowledgement, to a large extent, of the concept of pensions being deferred compensation. As such then a minimum standard could be, for example, to distribute the surplus when it arises, proration it between the employee and the employer rate of contributions.

For example, let us say we have a \$2.2-million surplus. If the employer has contributed 120 percent of what employees have contributed, it stands to mathematical reason that 55 percent of the surplus could be attributed to the employer, with the remaining 45 percent being distributed as enhanced benefits to the plan beneficiaries.

Secondly, there are some circumstances where the total distribution of surplus to the employer is justifiable to the employees. That is, where the surplus is needed, take again, \$2.2 million in a pension fund to a small to medium employer, that the use of that surplus by the employer could keep the firm afloat, in which case, it is in the employees' best interest to agree. That does not guarantee continuing operation of the firm, but at least the employees will have made a significant contribution to the continuing operation. I have no magic, Mr. Minister, for a solution.

Section 7(4), amendments to Section 21(2) and 21(2.3)—clarification of the status of plan members benefits on plan wind-up is a welcome and good amendment. Sometimes, because the previous legislation was a bit ambiguous, it was difficult to suggest that on wind-up employees should be considered vested. This is a good amendment. The exemption of benefits in excess of the Revenue Canada maximum from lock-in is also a welcome amendment.

Section 7(5) amending Section 21(4)(c)—again, this is a good amendment, consistent with the

direction of other jurisdictions, and will eliminate the costly record keeping for very small pensions. Plan administration costs are very much a concern from the overall operation of the pension fund.

Again, on another perspective, from a social perspective, the receipt of a very small pension by an individual at retirement serves only to eliminate or offset other federal or provincial government plans which provide retirement income.

Section 7(6)—this is the amendment to 21(13.1), the LIF. The concept of the LIF is a good one. The retired plan member maintains some vestige of control and opportunity for additional capital appreciation over part of the accrued pension benefit while maintaining a constant income from the annuity portion of the LIF.

I am concerned, however, that the amendment appears to be mandatory for all pension plans to provide a LIF option, rather than retirement. That is the way it reads now.

Not all plans will welcome the option of a LIF, especially if they happen to have an unfunded liability. Again, if that particular section could be clarified to indicate that it was not a mandatory plan provision, but rather an option which could be provided in the plan, it would be very helpful.

The down side of the LIF is that the member's LIF portion, if you will, could depreciate in value. Therefore, before a member transfers his accumulated pension assets to a LIF, again, you should have informed choice and the member should be aware of the risks of possible capital depreciation, especially when you see the current economic climate.

Section 7(7), amendment to subsection 21(20), the post-retirement employment—I honestly do not believe that the original 1984 legislation was ever intended to have employees who return to employment on a part- or full-time basis to mandatorily become eligible for pension membership.

Again, the conflict that has arisen over the years with this particular provision is that Revenue Canada does not permit a person to contribute to a pension plan while receiving benefits from the same plan. The removal of this mandatory membership for this sector will be welcomed by plan administrators and, in most cases, it has been my experience that post-retirement employment is

part-time or casual in nature and is geared to supplementing pension income.

Section 11, the amendment to Section 26(2)—again, on surplus withdrawal, I am not sure that this amendment will resolve the issue. The amendment does provide for opportunity for employee participation in the disposition but does not address any philosophical, quality or ownership issues.

I think it is important for the committee to recognize that the disposition of surplus may, in fact, require a formal revocation of trust in order for surplus to be withdrawn from the plan. I think it is very important that we tread very carefully in the disposition area. Again, if The Pension Benefits Act is a minimum standard legislation, it may be appropriate to consider a minimum standard for the amount that may be withdrawn by employers and what part is distributed to employees.

The responsibilities of the commission, as stated in Sections 26(2), 26(2.1), are powers which in my opinion should not be delegated to the superintendent. This appears to be a quasi-judicial process and, as implied in Section 10(d), this responsibility should well rest with the commission.

Section 13, amendment to Section 31(2), credit splitting. This is perhaps the most controversial area that The Pension Benefits Act currently has. I have heard more comments against the section than for it, so my comments are based on experiential rather than personal feelings one way or another.

The original intent of the legislation, as I understand it, was to protect spouses who had not been labour force participants but who had contributed to the family through unpaid home and childbearing responsibilities. The original intent was conceived in an environment where the legal community had very little knowledge of the value of pensions and where older spouses, with little or no labour force participation, were unable to obtain any future value from a spouse's pension.

* (1440)

From the previous speakers, Madam Chairperson, I am not sure that the legal community has yet become totally in tune with the concept of credit splitting.

The frequency of divorce has increased remarkably over the last decade in the 35-to-45 age group, and it is this group who have lost opportunity in the area of credit splitting. For this age group,

where there is a female spouse who must split her pension, there is opportunity to seek and continue employment and accrue pension benefits in one's own right and, therefore, the mandatory credit splitting may often disadvantage people either through the custody controversies that we have heard about previously today or through having to equalize the assets through sale of the family home to get the equity out of it. I think we have heard many of those situations.

The concept of equal sharing of assets acquired by a couple during marriage, including common-law, should include an appropriate value for accrued pension benefits. I think that is the first objective of the legislation, to provide a mechanism for valuing that pension.

The mandatory division is not consistent with other marital property provisions, and it forces plan administrators to actually play credit-splitting police. In many instances, a plan administrator is the one who informs the plan member that, oh, well, you have changed your beneficiary from your spouse to your children, making them aware of the preretirement death benefit being mandated to the spouse and finding out that they no longer have a spouse. Pension administrators have also had to act as police and social workers and counsellors in talking to plan members about credit splitting. It has made the administration of that particular section of the legislation very difficult.

There are many horror stories which we have heard about and, for every spouse who may have been advantaged by the mandatory credit splitting, there are many who have been disadvantaged. Certainly the issues, as I see them, regarding credit splitting not being mandatory is that clear and simple informed choice and consent.

As a woman in the work force, I personally am offended by legislation which deems me incapable of managing my own marriage breakup and the financial arrangements surrounding it and, secondly, to accrue for the future something with respect to retirement. Certainly, the flexibility for the total valuation of all accrued joint assets, including pensions, is progressive. I think the very area of concern of informed choice is probably the most important.

The proposed legislation on credit splitting does require the same degree of administrative work by a pension plan administrator. In other words, the

pension has to be calculated. One of the suggestions that I have that would protect the parties to the marriage breakup and the pension trust is that a joint waiver be executed.

Number one, you are providing the amount of pension so that third-party, either actuarial or legal or both, advice can be obtained, and both parties will be seeking this advice. So to add to it a signed waiver that the plan members have determined that they will not divide the pension credits is simply just adding another step that can be done at the same time, but you are protecting the trust fund from future claim in the event something goes sour. That is my suggestion, I suppose. If this nonmandatory credit splitting goes through, I think it would probably enhance the administration of that section of the act.

The other matter on the credit splitting is the matter of retroactivity. It does not appear to be addressed in the act other than the date of enactment. For those people who have had a marriage breakup but have not yet started the proceedings to divide pension credits, is this section going to be applicable, or the old section?—just a question. [interjection] Yes.

Madam Chairperson: Mr. Minister, I believe, wants to respond. You were posing a question, I believe.

Mr. Praznik: I think she is finished.

Ms. Minish: Madam Chairperson, thank you, I am prepared to wrap up and I will answer questions.

Mrs. Carstairs: This was a very complex brief. She seems to have a typed or a written out copy. If we could have copies of that, I think it would be extremely valuable.

Ms. Minish: I will prepare final copies and deliver them Monday.

Madam Chairperson: If you just would like to give your copy to the Clerk we could—

Ms. Minish: It is all written on.

Mrs. Carstairs: Unfortunately, I suspect we are going to proceed with this bill today and, if we do not have the copies, it will be too late by Monday.

Mr. Praznik: Ms. Minish, first of all, thank you for your very extensive presentation. You posed a couple of questions, and I think it only fair for committee members to provide you with answers to them, because they are certainly valid points.

With respect to the life income fund, my understanding of the scheme is, in regulation, would

spell out that the option of going to a life income fund would not be mandatory for defined benefit plans by way of regulation, and that would be our proposal, and mandatory for defined contribution plans. That is the recommendation of the commission as a proposal for regulation. I think that may address some of the concern, and I do not have a problem of putting it on the record today.

I understand, as well, from my staff that upon this bill becoming law that it would be applicable to any agreement that is signed when it becomes law so, even if agreements are being negotiated currently, this legislation would allow them to have the benefit of these provisions.

I am particularly interested in your comment on the waiver. I know Mrs. Carstairs has made suggestions of that kind of provision. I take it if we were to include an amendment that would allow the Lieutenant-Governor-in Council by way of regulation to prescribe an appropriate form that that would satisfy the request and give us an opportunity to see how that works. Would that be a suggestion you would concur with?

Ms. Minish: Yes, Mr. Minister. The idea of the waiver came from consultation with a few of my peers. The acceptability of the waiver form where a couple does not take a joint and survivor pension has been very well accepted and has been in place since 1984. While dealing with a different element, a similar waiver for credit splitting I think would respond to some of the ongoing concerns.

Mrs. Carstairs: I do not have the document in front of me, hopefully I soon will, but it seems to me we are talking perhaps two waivers here. We are talking about one for the couple or one for the person who is going to agree to pension splitting, and we are also talking about a waiver for the trustee of the pension fund.

Ms. Minish: Yes, the waiver would form very multiple purposes. Number one, if it formed part of the separation or divorce agreement, it would form part of the total package that each gets when decree is granted; and secondly, it would serve the purpose of protecting the plan, the plan trust, the plan administrator from future claims if something was inadequately documented in the separation or divorce agreement.

Mrs. Carstairs: All right.

* (1450)

Madam Chairperson: Are there further questions? If not, I would like to thank you for your presentation.

Mr. Stan Hutton. Jerry Blumenschein.

Jeri Bjornson, Charter of Rights Coalition. Members of the committee should have already received a copy of the presentation. Please proceed.

Ms. Jeri Bjornson (Charter of Rights Coalition): Madam Chairperson, Mr. Minister and members of the committee, I am here to speak on Section 13(4) of Bill 76. That is a section to amend by adding a new Section 31(6) to The Pension Benefits Act.

I am here representing the Charter of Rights Coalition. Some of you will have seen us before in front of this committee on this very bill and other amendments.

The Charter of Rights Coalition has been working since 1985 on ensuring that Manitoba's legislation complies with the sex equality guarantees of the Charter. In 1985, with the publication of our first statute audit, we took the position that mandatory equalization of pension credits at the time of marriage breakdown be maintained in Manitoba's legislation. We, like many of you, have been lobbied long and hard with regard to our position in this case. We have thought and rethought our position, and it remains the same.

We have been aware for a long time of the administrative difficulties with this legislation, and we are pleased to appear in support of what has become known as the 20 percent rule in 1980. We have also included in our activities lobbying of the federal government to ensure that what we have called the offending pensions—those are those pensions which could not be split—would be changed.

We were pleased when we saw the Pension Commission's discussion paper on promotion of private pension plans and their attempt to address the administrative mechanisms. While stating that, it should be noted, however, that the commission is unwilling to consider any recommendation which undermines in any way the fundamental principle of mandatory splitting of pension credits.

Well, imagine our surprise in reading Bill 76, Section 13(4) with the addition of a new Section 13(6). There are no provisions regarding administrative mechanisms, and the principle of

mandatory splitting of pension credits is seriously compromised, in our opinion.

We are of the opinion that Section 31(6) "Married and common-law - opting out" should be deleted from Bill 76 with the corresponding necessary changes to the following subsections.

CORC's position with regard to mandatory equalization with no provision for opting out or trade-offs at the time of marriage breakdown is based on two basic principles.

One is that marriage is a partnership of equals and that assets acquired during marriage should be assumed to have been acquired through the efforts of both; and second, that pensions are a special type of asset which is set aside for future benefit as a matter of public policy and must be treated as such.

The first principle is enshrined in Manitoba's law, and logic leads us to the conclusion that pension benefits earned by either or both partners during marriage must be shared equally at the time of marriage breakdown.

Most of the discussion with regard to mandatory splitting has revolved around our second principle. The philosophy of all public policy related to pensions is that they are a special type of asset and that governments not only have the right but also the responsibility to regulate them.

The Pension Benefits Act outlines the basic principles and regulations for the administration of private pension plans. The pension legislation is basically paternalistic legislation. Individual self-determination is not an issue with private pension plans. It is legislation formulated to ensure for savings for the future and to protect the viability of plans. This principle seems to be forgotten in much of the debate with regard to pension splitting.

Unlike other assets, the regulations related to the disposition of money contributed to pension plans is treated as a special and future asset. As a rule, provisions of pension legislation do not allow that funds be withdrawn after vested. They can neither be pledged nor seized. The law contemplates that the only use for pension contributions is for income after retirement.

The mandatory splitting provisions of The Pension Benefits Act were enacted with these principles in mind. They were also enacted in a recognition of the fact that the face of poverty in this country is the face of women. Many of those faces are the faces of older women.

The poor elderly are a growing segment of our population. One major contributing factor to this shameful reality is the inadequacy of pension income for elderly women. Income from federal programs is inadequate, homemakers have no pensions, women's wages are lower than men's, therefore, even those women who have pensions are more likely to have lower pensions than are their spouses. Women are less likely to have private pensions, and women frequently lose their claim to pension credits accrued by their spouses at the time of marriage breakdown.

Mandatory splitting of pension credits for those covered under The Manitoba Pension Benefits Act has been one way to ensure that women are not as likely, as they would have been, to fall below the poverty line after the age of 65. It not only affords that protection, but it must be noted that it also provides protection to the public purse. For each individual who has access to adequate income, there is one less individual dependent upon the public purse for the maintenance of adequate income.

There seems to be a myth about that there are very few women or just one or two lobby groups which support provisions for mandatory splitting of pension credits at the time of marriage breakdown. The response paper to the discussion paper noted that. Well, CORC contends that this is not true.

We would like to start with the federal government and credit splitting under the Canada Pension Plan.

According to the Income Security Programs branch of National Health and Welfare dated February 1991, residents of Manitoba do not have the right to waive the division of CPP credits: The right to waive the division of pension credits as contained in any spousal agreement entered into after June 4, 1986, would not be recognized unless the terms of such agreement explicitly referred to CPP credits and were expressly allowed by provincial law. Manitoba has no such provincial law.

The National Action Committee on the Status of Women, recognized as Canada's largest women's group and an umbrella group for several hundred women's groups, supports and lobbies for the mandatory and automatic equalization of all pension credits and RRSPs between spouses for their years of cohabitation.

The National Council on Welfare, a citizen's advisory group to the Minister of Health and Welfare, in Pension Reform, dated February 1990, recommends that federal and provincial governments require credit splitting in occupational pension plans upon marriage breakdown. Exemptions should be permitted only in cases where the spouses have earned pension credits during the course of their marriage which are of approximately equal value. This recommendation reflects the present provisions of Manitoba's Pension Benefits Act.

The Older Women's Union, a network of groups and individuals in the United States, which works for legislation which will enhance the status and well-being of older women, uses Manitoba's legislation on credit splitting as their model in all of their lobbying efforts.

With the enactment of credit splitting, we are of the opinion that Manitoba was once again on the cutting edge in family law legislation. The rest of the country and the continent is just beginning to catch up, and what are we doing here today? We are debating provisions of a bill which we believe would be a setback.

It makes no sense to CORC to compromise the integrity of mandatory credit splitting because of administrative problems or what has been seen by some family law practitioners as difficulties in reaching agreements.

Some of those practising law, and their clients, have been lobbying for the elimination of mandatory credit splitting based primarily on two issues. One has been the difficulty in reaching financial agreements where one spouse has had a federal government pension which could not be split; the other being the present needs of separating spouses.

To make a change in The Manitoba Pension Benefits Act because of difficulties with federal government pensions is premature. At the present time, legislation is before the House of Commons to allow for the division of these offending pensions. Passage of this bill is expected within the next few days.

* (1500)

The argument that women receive more benefit from receiving immediate cash settlement or another asset, most often the family home, rather than a right to share equally in a former spouse's

pensions is at best shortsighted and, at worst, may leave her in serious financial difficulty when she gets to retirement age.

The National Council on Welfare notes: Allowing pension credits to be traded off in a separation or divorce can work to the particular detriment to women. A young woman might waive her right to \$10,000 of equity in pension credits for \$10,000 equity in a family home. That may be appealing in the short term but may leave her in financial difficulty when she gets to retirement age.

This is especially true in Manitoba where our real estate market remains virtually stable.

In the case of a family home, there are other provisions which the court can impose if it decided that remaining in the family home was in the best interests of a woman and her child. In those cases where one plan comes under The Manitoba Pension Benefits Act and another does not or in cases where there is no plan for one spouse, there are provisions under The Marital Property Act to deal with these cases and to negotiate payoffs.

There is no provision in the proposed legislation which would deter trade-offs. To depend on independent legal advice coupled with a statement of the commuted value or amount of payment under the pension plan is not, we believe, enough. The reality is that few lawyers are financial experts. They are not trained nor expected to be conversant in the fine points of long-term financial counselling or the implications of trading off pension credits for other assets.

This raises the question of informed consent. CORC is of the opinion that the provisions proposed in this legislation do not meet what we would consider the normal requirements of informed consent. If this amendment is to be accepted by this Legislature, it should reflect a need for actuarial and financial advice as well as legal advice.

CORC would therefore recommend as one possible amendment inserting after the semicolon in Section 31(6)(b) an "and", and adding a new subsection (c) which would read, "independent, actuarial and financial advice". We too have had some concerns about the cost of this advice but have not discussed among ourselves how we would recommend that they be covered.

CORC is also very fearful of the possibility that pension credits will become bargaining tools in relation to other issues in divorce, especially in

relation to custody. This is a situation which has been raised by at least one woman in every presentation we have made on mandatory pension splitting, and it has been the experience of members of the CORC Steering Committee.

This concern was raised in the minister's briefing notes, in the quote: "Some concern has been raised about the form this written agreement will take in practice and whether it could be a focal point for coercion by one of the spouses."

Having recognized the problem, the analysis seems to brush it off: The issue of affording protection against coercion was given serious consideration, and considerable protection has been built into the proposed legislation.

What is this considerable protection? In the opinion of the minister, it is subsections (a) and (b) that constitute considerable protection. With all due respect to you, sir, CORC is not of this opinion. The only foolproof way to provide protection from coercion is to eliminate the possibility by maintaining mandatory credit splitting at the time of marriage breakdown as it exists presently in the legislation.

The fact that the legislation allows for opting out without valuable consideration increases, in our estimation, the possibility of coercion. We have heard that by presenters this afternoon. The threat of a custody battle is enough for most women to waive their claim to pension credits while endangering their future retirement income and also receiving nothing in return.

Although, as outlined above, CORC Manitoba does not favour trade-offs with regard to pension credits, we would consider it an improvement if the proposed legislation included a provision for valuable consideration. Ideally, we believe that consideration would be in the form of retirement income.

Therefore, we would suggest another possible amendment, which is, that adding after the new subsection (c) as proposed above, a new subsection (d) would be added which would read, "adequate valuable consideration", and by adding a new subsection which would read:

Terminating agreement to opt out

The court may, on application of either party, make an order terminating the agreement to opt out if the court is satisfied that (a) the agreement to opt out was a result of coercion, or (b) the agreement to

co-opt was given without adequate valuable consideration.

CORC is concerned that the legislation does not include a mandated form for written agreement. We understand sometimes there is difficulty with written agreement and mandated forms where there is no legal advice, but we feel that in this case, where there must be legal advice, that it would be wise to include provisions for information necessary in a written agreement.

CORC would recommend that one way of amending this bill to ensure that would be by inserting after the words "shall not be divided between them." at the end of Section 31(6) the words: "This agreement will include a form signed by each party and his or her legal counsel and will include the information required under subsection (b); a statement attesting to the fact that each party received independent legal advice and independent actuarial and financial advice; and that no coercion was involved in coming to this agreement; and that adequate valuable consideration was received".

CORC is of the opinion that Section 31(6) should be deleted from Bill 76. It seems to us that this compromise of the principle of mandatory credit splitting at the time of marriage breakdown is too big a price to pay for what is essentially problems of an administrative nature.

We also believe that the efficacy of the 20 percent rule is not known and that the proposed federal pension amendments will eliminate many of the problems presently experienced in coming to just agreements.

We are of the opinion that the proposed amendments, if left as they are drafted in Bill 76, will result in the loss of pension credits and retirement income for a large majority of Manitoba women. In effect, we believe that they amount to, in reality, what existed before the enactment of mandatory credit-splitting provisions of The Manitoba Pension Benefits Act.

Madam Chairperson: There may be questions of committee members.

Ms. Barrett: Thank you for your presentation. Am I correct to assume, given the fact that Bill C-55 is currently before the House of Commons, which would allow for the division of the, as you so colourfully put it, offending pensions, that you would recommend that perhaps this whole, if not the deletion of this section of the bill, that the whole

amendment be held off until we find out what the federal disposition is of Bill C-55 and also, in light of the fact that you say we have not had a long enough time to see what the impact is of the 20 percent rule? Would those be recommendations that you would be prepared to make?

Ms. Bjornson: As I said in the brief, we recommend that this amendment, as outlined in Bill 76, be deleted from the bill. Certainly part of our thinking would be related to not only the disposition of Bill C-55, but also the efficacy of that bill once it has been passed, as well as the 20 percent rule. The 20 percent rule has been in place for around 18 months. We have no way of knowing whether that will eliminate some of the administrative difficulties that have existed. We are sure that if C-55 passes that in those federal pensions that one could not have split that that will eliminate a number of problems.

We also recognize that in the administration of this act that one of the problems has been in cases where people do not want to split their pensions and want to trade off. We do not favour trading off. We also do not think that legislation should be written in order to make it easier for family law practitioners to come to agreements, but that basic principles need to be in place.

* (1510)

Madam Chairperson: Thank you for your presentation.

Ms. Cynthia Devine. Please proceed. Members of the committee should have already received a copy of your presentation as well.

Ms. Cynthia Devine (Manitoba Association of Women and the Law): Madam Chairperson, I am presenting this brief on behalf of Mona Brown, who is cochair of the Manitoba Association of Women and the Law. She was unable to be here today because she is in court.

The Manitoba Association of Women and the Law, MAWL, is one of 27 caucuses of the National Association of Women and the Law. MAWL was formed in 1974 with the aim of furthering women's rights to equality with a particular emphasis on legal issues as they affect women. Membership in our organization consists primarily of women lawyers and law students, although we do have some male members and some members from related professions and the public at large. We appreciate

the opportunity to provide MAWL's views to you today.

It is MAWL's belief that the basic philosophy of The Pension Benefits Act and the pension legislation generally in Canada is to encourage and/or in some instances to force people to save for their retirement. Pensions are treated as a special type of asset. Most private pension plans require mandatory participation.

As well, our pension legislation is such that once dollars have been contributed into a plan, we do not just allow the funds to be withdrawn. Funds can be withdrawn up to a 25 percent interest in pension accumulated prior to January 1, 1985. These requirements under The Pension Benefits Act reflect the fact that we treat pensions as a very special type of asset. Indeed, we take a somewhat paternalistic view to pensions by forcing members of plans to save for their retirement.

It is, for instance, possible that a member of a plan with mandatory contributions could become in financial difficulty and as such be forced to sell their marital home or experience a foreclosure and therefore lose their marital home or business and, yet, such a person would have no option to withdraw the accumulated pension assets, with the exception, of course, of the commuted 25 percent as I earlier delineated to prevent the sale or foreclosure occurring.

As well, Section 31(1) of the act prohibits the pledging of pension assets or the seizure of them. Again, this section reflects our special treatment of pensions in society generally.

MAWL is strongly opposed to Section 13 of Bill 76, that which would amend Section 31 of the current act, which would allow the trading of pension credits. Cash refunds or trade-off against other family assets do not contribute toward development of pension security. The rationale for mandatory credit splitting and lock-in was to recognize the vital need for both spouses to continue to develop pensions in their own right following marriage breakdown.

Why, MAWL asks, would government allow the public to trade credits upon separation or divorce? Statistics show the terrible plight of single-parent-headed families.

I am just going to digress from the brief for a moment here. I am doing some research for MAWL on another matter and looking at particularly child

custody in Canada and in Manitoba, but generally at the situation of poverty facing many women and children in this province.

In 1975, the widely authoritative study done by Lenore Weitzman in the U.S. found that men experience a 40 percent increase in their standard of living at the time of divorce or separation, whereas women and children experience a 73 percent decrease in their standard of living.

Of course, we wondered whether these statistics would be applicable to Canada or if they were in some way unique to the United States. Well, in 1990, the federal Department of Justice completed their evaluation of the federal Divorce Act and those statistics are very similar. We find that with support from their spouses, 67 percent of women are living below the poverty line in this country. With support, that is only marginally increased. Seventy-four percent would be living below the poverty line if they did not receive support. It is clear that upon marriage breakdown, women and their children are in a very precarious position financially.

Separated and divorced persons are in even greater need of long-term financial security due to the instability caused by the breakdown of the marriage. Marriage breakdown is an extremely stressful and emotional time. There is a multitude of short-term problems that must be decided on short notice. It is not the time to force the parties into decisions on long-term financial planning. People sometimes do not make the best decisions under such stress.

Allowing spouses to trade credits or other assets will encourage bargaining and duress in the form of threatened custody battles if the spouse does not sign off. This legislation, if enacted, will result in the impoverishment in retirement of many elderly women. The end result is that government and, ultimately, the taxpayers will bear a burden they should not and need not be asked to bear in supporting these individuals.

I am sure you are all aware of the statistics on the poverty of elderly women and single-parent families headed by women. The solution is not to give these single-parent women an option of access to short-term monies by trading off a right to pension credits and thereby sacrificing long-term financial security. The answer is to encourage these women to seek the appropriate maintenance and child support that they are legitimately entitled to.

Proponents of this legislation raise a number of fallacious arguments, the first being that they suggest Manitoba is the only jurisdiction that prohibits the trading of credits. This is incorrect. The federal Canada Pension Plan allows for the splitting of pension credits upon separation or divorce. This legislation specifically prohibits the trading of credits unless the province where the applicant lives has specifically passed legislation allowing the trading of pension benefits. To date, the only province that has done this is Saskatchewan, and Quebec under the Quebec Pension Plan. For all other Canadians, CPP benefits cannot be traded.

The second argument—they suggest that many women have complained that the current mandatory credit splitting is paternalistic and assumes women cannot make their own decisions. MAWL submits that if you ask most members of plans whether they would like to be able to opt out of their pension scheme or have more flexibility with respect to their private pensions, most would answer in the affirmative.

The nature of government's treatment of pensions legislation is paternalistic. We force people to save for their retirement through The Pension Benefits Act. Mandatory credit splitting applies to both spouses. Statistics suggest that only 42.5 percent of private pensions are owned by women. However, there will obviously be some incidents where mandatory splitting will be detrimental to women.

Madam Chairperson: Order, please. Would you quickly finish your presentation. We have been summoned for a vote in the House.

Ms. Devine: Okay. The problem is that the majority of women who have benefitted from the mandatory credit splitting do not write the Pension Commission or the Legislature thanking them for the protection of mandatory credit splitting.

The third argument is that they suggest that other federal pensions are not divisible and this creates unfairness for Manitoba plan members, but we are aware of recent federal legislation that will make the balance of federal pension plans divisible.

We submit that the arguments in favour of the legislation are weak and should not be given credence by members of the Legislative Assembly. We are opposed to this section, this amendment, also as it deals with common-law unions. We would

hold that the way the federal Income Tax Act has proposed that common-law spouses be treated be also replicated in our provincial legislation and, finally, if the Legislative Assembly feels that this bill should be passed, MAWL would submit that we would hold that the amendments proposed by Ms. Bjornson for CORC be supported by this committee. Thank you.

Madam Chairperson: Thank you for your presentation. I would ask your co-operation in perhaps just waiting. We should not be terribly long, if all committee members would just remain, but the committee now will be recessed to afford all members present on committee to return to the Chamber to vote on a bill. I anticipate a 10- to 15-minute recess, so I will suggest that the committee will reconvene at 3:35 p.m. Thank you.

* (1520)

The committee took recess at 3:20 p.m.

After Recess

The committee resumed at 3:41 p.m.

Madam Chairperson: Will the committee please reconvene. Ms. Devine had finished her presentation. Are there questions of the presenter, committee?

Ms. Barrett: I do not have a question so much as a brief comment. I just wanted to thank you and Ms. Brown for the presentation, which answered some questions that I had and clarified some issues. I find it has been very useful. Please convey my positive response to Mona Brown. Thanks.

Madam Chairperson: Are there further questions? If not, I would like to thank you for your presentation.

Mr. Terry Clifford, the Manitoba Teachers' Society. Committee members should have already received also a copy of the prepared brief. Please proceed, Mr. Clifford.

Mr. Terry Clifford (Manitoba Teachers' Society): It is my intention, Madam Chairperson, not to read the entire document, but I will highlight certain points, and I will give you a lead so that you can pick up where I am.

The Manitoba Teachers' Society is pleased to have an opportunity to comment on Bill 76, The Pension Benefits Amendment Act, both as it affects the interests of 13,000 public school teachers in

Manitoba and as it affects other Manitoba employee groups, including employees of the society itself.

The society supports in principle any initiatives among pension regulatory jurisdiction toward, first, achieving uniformity of pension regulatory standards in Canada; promoting the establishment, extension and improvement of pension plans in Manitoba and elsewhere in Canada; reducing administrative burdens that may serve as disincentives to the establishment, extension and improvement of pension plans; and finally, protecting the rights of pension plan members.

However, these goals should be pursued not by downgrading or dismantling the existing public sector defined benefit plans; rather, they should be pursued by initiatives toward extending and upgrading pension plans for all workers.

Now, if I could go to page 2, about halfway down the page, under Sections 6 and 11, the society is disappointed that the commission has backed away from addressing member rights to benefit enhancements from surplus employee contributions as originally proposed in The promotion of Private Pension Plans in Manitoba: Recommendations of The Pension Commission of Manitoba, of November, 1991.

I shall, Madam Chairperson, be referring to those recommendations when I deal with Section 13. The quotation is: (d) all vested pension plans have received an increase in benefits utilizing, as a minimum, an amount of surplus proportionate to employee contributions.

At the bottom of the same page, with reference to subsection 7(6) to do with life income fund option, the society supports in principle the concept of the life income fund, modelled after the Quebec Supplementary Pension Plans Act, as an appropriate alternative to the life annuity, as the only settlement option at the precise moment of retirement under defined contribution pension plans and locked-in Registered Retirement Savings Plans.

This will give the individuals more control and flexibility over where the funds are invested and how much is consumed in any one year of retirement. It will allow an individual to buy a life annuity between ages 55 and 80 to try to take advantage of changing annuity rates. This is consistent with the defined contribution pension plans and RRSPs where the individual takes the investment risk during one's

working lifetime and the annuity interest rate risk at the time of retirement. Defined contribution pension plans, by their nature, cannot have an unfunded liability.

However, the extension of the life income option to a defined benefit pension plan like the teachers' pension is inappropriate. The Quebec model, for example, specifically excludes defined benefit plans from the LIF option. The defined benefit plan collectively takes the investment risk before and after retirement. A defined benefit plan could have an unfunded liability at the time of retirement of any given member.

The amount of indexing of the pension under a plan like the teachers' plan is indeterminate in advance since in any year the amount is limited by the availability of funds in the pension adjustment account. Accordingly, the financial solvency and actuarial stability of such a defined benefit plan could be jeopardized by permitting members thereof to transfer defined benefits to a LIF.

Subsection 21(13) and the proposed subsection 21(13.1) do not preclude a member of a defined benefit plan who has become entitled to a pension benefit under the plan from replacing that pension benefit with a life income fund or other arrangement that may be prescribed in subsequent regulations.

That is, there is an anomaly in the wording of subsection 21(13). This subsection otherwise purports to prevent a defined benefit plan member, upon termination of employment or upon termination of plan membership in the pension plan, whether termination results in the commencement of payment of a pension forthwith, from transferring the commuted value. However, a member can circumvent the legislation by terminating employment at an age eligible for an immediate pension, but without commencing the payment of the pension and transferring the commuted value to the accrued benefit under the plan.

Therefore, subsection 21(13) and/or 21(13.1) should be amended to apply only to members of defined contribution pension plans and locked-in Registered Retirement Savings Plans as stated in the background paper distributed with Bill 76.

Alternatively, the subsection should expressly not apply to members of defined benefit pension plans and, alternatively, a definition of retirement should be incorporated into the act as it is in other jurisdictions to clearly distinguish between

retirement and termination of employment or termination of the plan membership.

The minister did pose the question to a previous presenter as to whether or not changes should be made in regulation or in the act. It is the opinion of the society that given a choice of the two, it should be in the act, not in regulations.

If I may turn to page 4, Section 13, about a third of the way down the page, amending Section 31, in 1983 the society supported a division of pension credits on the grounds that these credits were acquired by forgoing family income and, accordingly, that each of the parties to a marital relationship had an equal claim on them. The society also supported the view that such credits must be used to provide pension income.

* (1550)

The society still believes that these goals are laudable, but has become aware that many hardships and unintentioned consequences have resulted from strict application of the current legislation from 1984 to date. Accordingly, on balance, the society now supports a proposed amendment whereby both spouses, by mutual agreement and having demonstrated receiving competent counsel, may exempt themselves from mandatory splitting and treat the pension asset on marital breakup like any other marital asset under The Marital Property Act.

Plan administrators would be better protected if there was a requirement to provide the plan administrator with an appropriate declaration to this effect signed by both spouses.

The society also supported the recommendations to which I referred earlier when the mandatory credit splitting requirements remain applicable. The regulation should permit a transfer of the net difference, where both spouses are members of the same plan and the plan so permits, the transfer of RRSP monies to the spouse in lieu of RPP assets, providing these are transferred to a locked-in RRSP; a Manitoba registered plan member to opt out of mandatory credit splitting where their former spouse is a member of a federally regulated plan which does not permit the splitting of pension credits.

The society is concerned these provisions for greater flexibility and fairness, where mandatory splitting will still apply, have been seemingly abandoned by the government. The society urges

the government to proceed with the regulations to give effect to the aforesaid.

Finally, Madam Chairperson, the society thanks the committee for receiving and considering this submission.

Madam Chairperson: Thank you for your presentation, Mr. Clifford. Are you prepared to answer questions?

Mr. Clifford: Madam Chairperson, if I find myself not able to, if I may call on one of the staff officers of the society to respond.

Madam Chairperson: Certainly.

Mr. Praznik: First of all, thank you for your very detailed presentation. I understand that the committee will actually be getting into the clause-by-clause consideration of the bill Monday, which is fortunate, because it will give our staff a chance to review some of the details of yours and some other very extensive and complex presentations.

I only have one question for you. I understand there was a resolution put to your convention some time ago dealing with issues like the credit splitting and others. There was a particular note in that resolution dealing with where we had an individual who was in a Manitoba plan who had a spouse who was in a non-Manitoba plan in which The Pension Benefits Act applied, the federal plan, that there be some provision where they were not allowed in their federal pension to split their credits, that the provincial spouse could opt out, which is one of the places that has been brought to my attention and we have not accommodated in our bill.

I am wondering if that resolution passed your convention—I assume it has—and, secondly, is that what this is trying to get at, because it is an amendment I think we would be prepared to consider.

Mr. Clifford: Yes and yes, I am told to respond.

Mr. Praznik: Good. Thank you.

Madam Chairperson: Thank you. Are there further questions of Mr. Clifford? If not, I would like to thank you for your presentation.

Mr. Clifford: Madam Chairperson, at the beginning of the meeting, this committee was thoughtful enough to reverse the order so that I could do the presentation to Bill 100. On behalf of myself and the associates, I thank the committee for that consideration.

Madam Chairperson: At this time, I would just quickly recall four individuals who were listed on the previous listing of individuals wishing to make a presentation who were not here when I called their names initially: T. MacDonald, Ron Youngston, Jerry Blumenschein.

Mr. Stan Hutton, for the benefit of committee members, appears on your list and indicated he could not be here prior to 4:30 p.m. The Clerk now has called Mr. Hutton and suggested that he reappear on Monday, because this bill has been transferred to this committee for consideration clause by clause on Monday.

Now at this point, I would like to know what the will of the committee is in addressing further presentations and in dealing with the names of the individuals who appeared on this list, but were not present today.

Mr. Praznik: Madam Chairperson, if I may suggest if the committee could arrange to hear these four particular presenters, if they are available to be heard at the beginning of our committee meeting on Monday, which is scheduled. We have gone through the list. I understand these are the individuals, all of them who have indicated a willingness to appear, so if we could agree to hear them if they are available on Monday, and then proceed to clause by clause.

I understand, if you were to canvass the committee, Madam Chairperson, you may find a willingness to complete the clause by clause on Bill 100 today.

Madam Chairperson: Okay, first I will need unanimous consent or agreement that no further public representation be heard other than the four individuals who were unable to attend today, who will be reinvited to appear at Monday's standing committee. Agreed? Agreed and so ordered.

Also, I need on the record the will of the committee relating to written presentations. Is it the will of the committee there be no further submission of written presentations? Okay, written will be permitted.

Is it the will of the committee now to consider Bill 100 clause by clause? For the benefit of members of the audience who have made representation this afternoon on Bill 76, this committee will consider clause by clause on Bill 76 at 2:30 p.m. on Monday, either in this room or in the room down the hall, Room 255.

At this time, we will now proceed to consider Bill 100 clause by clause.

What is the will of the committee? We have another vote—to recess and then return for quick consideration of clause by clause of Bill 100? Agreed.

The committee will recess for approximately 15 minutes and reconvene at approximately 4:15 p.m..

* * *

The committee took recess at 3:58 p.m.

After Recess

The committee resumed at 4:11 p.m.

Madam Chairperson: Order, please. Will the Standing Committee on Industrial Relations please come to order to consider Bill 100 clause by clause, The Pension Plan Acts Amendment Act. Does the honourable minister have an opening statement?

Mr. Praznik: No, I just have two tablings, Madam Chairperson. For the benefit of members of the committee, I would like to just table a letter from the Manitoba Teachers' Society as well as a letter from the Employee Liaison Committee with respect to the Civil Service Superannuation Fund.

I table this simply to indicate the support of those two organizations in the respective amendments to their pension plan that they were concurred in by the appropriate negotiating committees of the two organizations. Hence, those organizations did not make presentations at the committee today.

Madam Chairperson: Does the critic for the official opposition wish to make an opening statement?

Ms. Barrett: No, Madam Chairperson.

Madam Chairperson: Does the critic for the second opposition party wish to make an opening statement?

Mrs. Carstairs: Certainly no longer than an hour and a half—no, I do not.

Madam Chairperson: We will now proceed to give consideration of the bill clause by clause. Prior to commencement, is it the will of the committee that I group some clauses? Agreed. All right.

Clauses 1 and 2—pass; Clauses 3(1) and 3(2)—pass; Clauses 4 and 5—pass; Clauses 6 and 7—pass; Clauses 8, 9 and 10—pass; Clauses 11(1) and 11(2)—pass; Clauses 11(3), 11(4), 12, 13, 14(1) and

14(2)—pass; Clauses 14(3), 14(4), 14(5), 15, 16, and 17(1)—pass; Clauses 17(2) and 17(3)—pass; Clauses 17(4), 18 and 19—pass; Clause 20(1)—pass; Clauses 20(2) and 20(3)—pass; Clauses 20(4) and 21—pass; Clauses 22 and 23—pass; Clauses 24 and 25—pass; Clauses 26 and 27—pass; Clauses 28, 29(1), 29(2) and 29(3)—pass; Clauses 29(4), 29(5), 30 and 31(1)—pass; Clauses 31(2), 31(3), 32, 33 and 34—pass; Clauses 35, 36(1), 36(2), 36(3) and 36(4)—pass; Title—pass; Preamble—pass. Bill be reported.

The hour being 4:17 p.m., committee rise.

COMMITTEE ROSE AT: 4:17 p.m.

WRITTEN SUBMISSIONS PRESENTED BUT NOT READ

To Whom It May Concern:

I would just like to say with regard to Bill 76 that although I cannot be present, on my behalf I do wish that you please read the following pages.

I have been in contact with my MLA, Marcel Laurendeau, my lawyer, Jennifer Copper, Pitblado & Hoskin and my staff benefits manager at the University of Manitoba. All were in agreement that I should voice my thoughts and wishes on Bill 76 in hopes that it might be taken into consideration for me.

Two years ago, I went through a divorce, and at that time my ex-husband received \$3,800 of my pension for the four and one-half years of our marriage. At this time he had no pension that was of shareable money for me. Although he worked, he did not pay into a pension plan. At the time of our divorce, he did not want my pension money, nor did I want him to have it, but the fact of the law stated that he was to receive it.

Within our divorce contract, we agreed that at the time of my retirement he would return the money to me with interest, which I doubt will happen, due to loss of contact, et cetera.

Being the '90s, I knew that eventually a law would be passed soon, such as Bill 76.

The loss of my pension money has been a hardship for me. My ex-husband does not, and will not, need my money due to the wealth in his family, but in years to come I would need this pension money for my retirement years. I did not receive a large sum of money as a settlement due to lawyer cost and wanting out of a marriage of infidelity!! I have not replaced the money that he received, nor

do I have the money to replace it. You are given 90 days to replenish the funds, at which time I did not have the money.

I would like to say on my behalf, I feel very strongly about this bill. I am not a bitter divorced women, but I do see it as the money was mine. I have worked 12 years for that money and it does not seem right that someone should get your money.

I hope you will take my situation into consideration.

I also would like to stress that if Bill 76 is passed sometime soon, I will somehow try to receive my money back before I retire, so the money may work for me, in which I then would like it nontaxed and just switched over in my name. I see this as another issue, and maybe a clause to be put into the bill. The problem would only be for myself at this time, as at the present time I am no longer considered a spouse.

I do hope that you will consider Bill 76, if not for my well-being then for someone else, be it husband or wife.

I thank you for your time.

Yours truly,
Christine Merritt

Attention: Clerk of Committees

I would like to voice my strong support of the proposed amendments to The Pension Benefits Act.

I wholeheartedly agree with the principle of mutual agreement in the splitting of assets. Individuals should be able to make arrangements that they feel are the most beneficial to their families and themselves.

Thank you.

Gisele Rouillard

Clerk of Committees:

I am unable to make a personal submission this afternoon and would appreciate it if you would provide the following to the committee on my behalf.

I fully support Manitoba Bill 76, The Pension Benefits Amendment Act, as it relates to pension credit splitting on marriage breakdown. As I understand it, passage of Bill 76 will mean pension credit splitting on marriage breakdown will no longer

be required. Either spouse will be able to waive their right to half the pension credits earned during the marriage, and negotiate an alternative share of assets, provided they are fully informed of the consequences and have:

received independent legal advice,

received a statement from the administrators of the pension plans showing the value of the pension benefit to which each will be entitled, and

agreed in writing not to divide the pension credits.

When the government of Manitoba implemented mandatory splitting of pension credits on marriage breakdown, they undoubtedly did so to protect nonwage earning, and therefore nonpension earning women from being destitute in their retirement years if they went through a marriage breakdown. This may have been a noble cause, but by making the 50/50 pension split mandatory for all members of pension plans registered in Manitoba, I believe they went too far.

By implementing this mandatory pension splitting, I wonder what percentage of the people the government was trying to assist have really been assisted.

Certainly not the farmer's wife, regardless whether or not she worked outside the home. In fact, if she is a health care worker, teacher, et cetera, she would end up giving her ex-husband 50 percent of her pension with no promise of any pension in return.

Certainly not the wife of a man whose company pension plan falls under federal jurisdiction, PBSA, because there is no mandatory pension splitting under the PBSA.

And certainly not the wife of a man whose employer has no pension plan at all. He may have RRSPs in the million dollar range, but there is no mandatory 50-50 split of those monies.

In conclusion, I believe that Bill 76 recognizes the ability of individuals to determine what is in the best interest of themselves and their families, without compromising either the spirit or the application of The Manitoba Pension Benefits Act and I ask that Bill 76 be passed into law as soon as possible.

Thank you for the opportunity to present this brief.

Arlene Wilson

Attention: Clerk of Committees

Just a note to express my support for the proposed amendments to The Pension Benefits Act.

I am in agreement with the principle of mutual agreement in the event of dividing assets. Individuals should be given the option to come to an agreement which would be most beneficial to the family situation.

Thank you.

Doris Alarie

* * *

Attention: Clerk of Committees

The pension bill should be treated as any other marital agreement. Every individual has the right to choose. Where couples are not mutually agreed to the division of marital assets, the judicial system should equally divide the assets as is now the law. I, therefore, totally support this bill.

Lynn Chwartacki

* * *

Attention: Clerk of Committees

I am in favour of changes to the act as it presently exists. It is discriminatory.

Ed Legary

* * *

Dear Sir/Madam:

Re: Bill 76—The Pension Benefits Amendment Act

The undersigned wish to indicate their support for the sections of this bill that deal specifically with multiunit pension plans.

Health Sciences Centre have entered an agreement with the Manitoba Nurses' Union to implement a jointly trustee pension plan provided that the current legislation is changed to limit the centre's liability to the amount the employers are contractually required to contribute to the plan. Clause 10 of Section 26.1 will facilitate that joint trusteeship.

Manitoba Health Organizations, Health Sciences Centre and St. Boniface General Hospital are studying the concept of creation of a single plan which would be jointly trustee for both unionized and nonunionized workers. The definition of members of the plan under Clause 4 will assist in this regard.

While the undersigned are very seriously considering a move to a multiunit plan, they are pleased that it is the trustees who must initiate such a move.

Clause 9 dealing with the forfeiture of small amounts by people who cannot be located is welcomed by our administration. They do suggest, however, that there be a requirement to try to locate the member before the forfeiture occurs.

We shall not be appearing before the standing committee, but did wish to indicate our support in these areas.

Yours truly,

Andrew J. Dawson, Wayne K. Byron, Frank R. Ryplanski