



ISSN 1710-9477

Legislative Assembly
of Ontario

First Session, 39th Parliament

Assemblée législative
de l'Ontario

Première session, 39^e législature

Official Report of Debates (Hansard)

Monday 6 April 2009

Journal des débats (Hansard)

Lundi 6 avril 2009

**Standing Committee on
Social Policy**

Family Statute Law
Amendment Act, 2009

**Comité permanent de
la politique sociale**

Loi de 2009 modifiant des lois
en ce qui concerne
le droit de la famille

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Room 500, West Wing, Legislative Building
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Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario



Service du Journal des débats et d'interprétation
Salle 500, aile ouest, Édifice du Parlement
111, rue Wellesley ouest, Queen's Park
Toronto ON M7A 1A2
Téléphone, 416-325-7400; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON
SOCIAL POLICY**

**COMITÉ PERMANENT DE
LA POLITIQUE SOCIALE**

Monday 6 April 2009

Lundi 6 avril 2009

The committee met at 1405 in committee room 1.

**FAMILY STATUTE LAW
AMENDMENT ACT, 2009
LOI DE 2009 MODIFIANT DES LOIS
EN CE QUI CONCERNE
LE DROIT DE LA FAMILLE**

Consideration of Bill 133, An Act to amend various Acts in relation to certain family law matters and to repeal the Domestic Violence Protection Act, 2000 / Projet de loi 133, Loi modifiant diverses lois en ce qui concerne des questions de droit de la famille et abrogeant la Loi de 2000 sur la protection contre la violence familiale.

The Vice-Chair (Mr. Vic Dhillon): Good afternoon, committee members and guests. We're here today to discuss the clause-by-clause consideration of Bill 133, An Act to amend various Acts in relation to certain family law matters and to repeal the Domestic Violence Protection Act, 2000.

First of all, are there any comments before we start? Mrs. Elliott?

Mrs. Christine Elliott: I would like to make a few general comments before we start with specific amendments. When this issue went through second reading in the Legislature, I did have some concerns about it that I expressed at that time, but I was prepared to support it in principle because of the fact of its dealing with some significant issues that are outstanding in family law, including child custody applications, domestic violence and pension splitting. But regrettably, the flaws in Bill 133 became apparent as soon as the various presenters came before us in committee. I did want to make just a few comments about that.

First, with respect to child custody and protection matters, we heard from numerous presenters that the amendments to the Children's Law Reform Act that were proposed by Bill 133 are unworkable, place judges in an untenable position and may in fact work against the child's best interests in some cases. We heard from a number of experts on this issue, including from individual family law practitioners, the Family Lawyers Association and, most notably, a letter that was written to the committee by 12 family court judges. This is quite remarkable in itself. I've never heard of this happening in committee before, where the judges have actually been in

touch directly with the committee. But they did raise some serious concerns, and I would just like to read a couple of their comments on the record.

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"Unfortunately, in our view, the legislation in its current form will have significant and unintended negative consequences for the administration of justice in our courts.

"We wish to specifically address clauses 6 to 10 of the bill, the clauses relating to custody applications in our courts. In our view, these sections will be difficult, expensive and burdensome to implement, if they can be implemented at all. If they are implemented, we believe custody applications will become so complicated that many applications will be delayed, deferred or withdrawn. Applying for a custody order in a family court will be more onerous, and the process of adjudicating family law cases will be more cumbersome. Our greatest concern is that, in the end, the family law process will be less accessible to the people of this province. In our view, such an outcome, while not intended, will be contrary to the best interests of the children involved in custody applications."

It goes on to discuss some of the specific concerns that they have. They basically recommended—both the Family Lawyers Association and the Family Court justices—that the fitness of an applicant for a custody application be reviewed by the Office of the Children's Lawyer. This is something that I believe is going to be a more elegant and cost-effective solution, that will certainly ensure that children are kept safely and custody applications are only granted in the children's best interests.

The other point, just in this context, that I would like to raise is that one wonders who was consulted in the course of drafting Bill 133, if the family law lawyers, almost to a person, who presented indicated that they were concerned and this concern was also expressed by the judges.

With respect to our preferred choices and the amendments that we've put forward, we would prefer to see the Office of the Children's Lawyer be prepared to do the investigations in this process and present a report to the judge. The additional amendments that we have proffered really relate to a second alternative, which is to deal with what we have and try and make that stronger. Certainly, the preferred course would be to have the Office of the Children's Lawyer involved.

With respect to the issue of domestic violence, I certainly do commend the government and the committee for taking on the issue of criminalizing the breach of restraining orders. This is certainly commendable and something that is needed in order to prevent people being involved in domestic violence, predominantly women and children. However, the one thing I wasn't really able to understand in committee and I didn't really get a cogent reason from any of the witnesses about was why it was also necessary to repeal the Domestic Violence Protection Act. To my mind, they're complementary provisions and certainly not mutually exclusive. So I would certainly advocate retaining the Domestic Violence Protection Act in addition to the other changes that are being made.

With respect to the issue of pension splitting, we certainly heard a wide divergence in opinion between the actuaries who presented and the pension administrators. There really seems to be a concern about fairness for the non-pension-holding spouse and the concern that one shouldn't just use the one pension valuation when determining net family property for equalization purposes. The suggestion was made by the actuaries—and in fact was a recommendation by the Law Commission of Ontario—that two pension values be used: one for the vested amount which would be included as the transfer amount; the second one being the non-vested or contingent value, which would be used for the calculation of net family property for equalization purposes. So again, I would certainly suggest that would be an amendment that we should well consider doing to make sure that the non-pension-holding spouse is fairly dealt with in the equalization process.

So those are the types of amendments that we would prefer to see in this legislation. With that, I will conclude.

The Chair (Mr. Shafiq Qaadri): Thank you, Mrs. Elliott. Before we move to consideration of clauses, the floor is still open for any general comments. Mr. Kormos?

Mr. Peter Kormos: Thank you, Chair. I just want to outline where our concerns are. I don't expect that this matter will take a whole lot of time this afternoon. I spoke with Mr. Zimmer earlier, and with Mrs. Elliott.

First of all, I do want to thank the people who came to the committee to make presentations. By and large, they were extremely helpful. I was disappointed in a couple. One was the YWCA of Toronto, Amanda Dale and Pamela Cross. They seemed to be leading the charge to defend, however belatedly, the repeal of the Domestic Violence Protection Act. Part of their submission said, "We urge the committee to set aside partisan point-scoring to hear what we have to say from our considerable expertise in the area." I say that this committee has conducted itself around Bill 133 in a very non-partisan way. We've all had a common interest in addressing all of the issues in the bill.

They go on to suggest that somehow, while women's advocates initially supported this legislation—that is, the Domestic Violence Protection Act—"it quickly became

apparent, as the regulations were being developed, that it was essentially unworkable and not helpful to women." Well, this is the first time I've heard of that, the first time anybody's heard of it. Quite frankly, it smacks of something that's been concocted in an effort to justify the repeal of Bill 133.

I recall, as an opposition member, being critical of the Domestic Violence Protection Act in terms of what was going to be needed to make it work: amongst other things, a whole new slew of JPs, especially JPs who were specially trained in areas of domestic violence. Everybody acknowledged that at the time. It was even more disturbing when I heard Carol Barkwell from Luke's Place parrot some of the very same language. It's a good thing plagiarism isn't an offence in the committee process, or else Ms. Barkwell would find herself receiving a fail mark for plagiarism.

In any event, I think the evidence and commentary provided by any number of actuaries was particularly valuable. Jamie Jocsak, a young actuary who I think impressed all of us, and David Wolgelerenter, another young actuary who impressed all of us, along with other, more senior people in their profession—as well as Barry Corbin; he was here. He's a very established estates law lawyer. In addition, I think the final submission, that of Jason Howie from Windsor—you'll recall that family lawyer who, by God, actually understands the art of speaking in plain language. I suspect he's a particularly effective lawyer because of his ability to do that.

So the areas of concern of concern are these: As has been commented upon in the extraordinary letter by the 12 Family Court judges—and these are Family Court judges in probably the busiest Family Courts in the province, who talk about the unsuitability of clauses 6 to 10 of the bill. These are the areas relating to child custody. I join them, and I'll be making further reference to their letter when we address those clauses. I'm going to tell you I'm going to be voting against those clauses, in agreement with the judges and in support of the proposition that we need individual investigations. The judges proposed the Office of the Children's Lawyer, and that was one of the options that I had contemplated and considered during second reading debate.

The other issue of contention, of course, is the issue of the repeal of the Domestic Violence Protection Act. Research was very valuable in providing us with a list of the jurisdictions that have that broad-based, stand-alone legislation, and I still believe it's important that we have that. Nobody disputes the importance of this bill's creation of a court order that can be criminally prosecuted. All of us, in our professional lives, in our social lives or in our family lives, have probably had to deal with a scenario where police arrive at a scene and say, "No, this is a civil matter. It's a divorce action. It's a separation action. I'm not going to touch that with a 10-foot pole." And I understand the police officers—police officers enforce criminal law; I understand that. They don't want to get involved in it. So that's the second area.

The issue around the pensions is of great concern. I see a number of amendments, and Mr. Zimmer, I'm sure, is going to explain the rationale behind those amendments and what he believes they will do. We support and praise the government, as have others, for designing a formula—it's something that lawyers have sought for many years—whereby the payout of the spouse's share of the pension can come from the pension plan itself. Everybody agrees, I think, that that's a desirable thing. However, we've still got a stumbling point here in the contradictory observations by actuaries and family lawyers and other family lawyers and pension plan administrators about (1) the pension plan administrator doing the evaluation, and (2) the methodology.

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Mr. Zimmer will undoubtedly argue that the methodology will be addressed in regulation. That's too bad, so sad for so many of us, because we have no control over regulation. Even my colleagues on the government benches don't have any control over regulation. They'll be told about it the same time opposition members will—maybe even after opposition members find out about it.

This is what's going to help us streamline the process: We can move through the various areas that are rather benign, in my view, rather quickly, but then we've got the child custody issues, the repeal of the Domestic Violence Protection Act and the pension issues. Others may come up during the course of clause-by-clause, but those are the primary areas. We remain concerned about what this bill is going to look like when it appears before the House for third reading.

The Chair (Mr. Shafiq Qaadri): Are there any further comments of a general nature? Mr. Zimmer?

Mr. David Zimmer: No.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Zimmer. We'll now proceed to the clause-by-clause consideration. Just for reference to the committee, I'll invite block consideration of sections 1 through 5, inclusive, since we've received no amendments to date. Is that the will of the committee?

Mr. Peter Kormos: Just hold on, Chair. As I say, we've got to be careful because we want to expedite this, but not to the point of ignoring important discussions. I trust you're dealing with the Change of Name Act and the Child and Family Services Act up to, but not including, section 4?

The Chair (Mr. Shafiq Qaadri): Sections 1 to 5 have no amendments that have so far been submitted.

Mr. Peter Kormos: That may well be. That doesn't mean we deal with them as a block. I'm prepared to deal with sections 1 through 4 as a block, and we'll be supporting those sections.

The Chair (Mr. Shafiq Qaadri): Fair enough. Is that the will of the committee? Great. So those in favour of adopting sections 1 through 4—is that correct, Mr. Kormos?

Mr. Peter Kormos: Yes, sir. Thank you.

The Chair (Mr. Shafiq Qaadri): —sections 1 through 4, inclusive? Those opposed? Sections 1 through 4 carried.

We'll now proceed to consider section 5. The floor is open. Mr. Kormos?

Mr. Peter Kormos: No, sir. Thank you.

The Chair (Mr. Shafiq Qaadri): We'll proceed to consider the vote then. Those in favour of section 5? Those opposed? Section 5 carried.

Section 6, for which we have the first amendment—I'll offer the floor now to Ms. Elliott.

Mrs. Christine Elliott: I move that clause 21(2)(b) of the Children's Law Reform Act, as set out in section 6 of the bill, be struck out and the following substituted:

“(b) information respecting the person's current or previous involvement as a party in any family proceeding, including a proceeding under part III of the Child and Family Services Act (child protection), or as an accused in any criminal proceeding if the proceeding resulted in a finding of guilt or is ongoing; and”

The purpose of submitting this application, Chair, is to limit and focus the information that's needed to be presented to the court, in order to respond to some of the concerns expressed by presenters that this was too open-ended a section before.

The Chair (Mr. Shafiq Qaadri): Thank you, Mrs. Elliott. Any further questions, comments?

Mr. Peter Kormos: I don't oppose the amendment, but once again this addresses the concerns people had about relying upon a criminal record. The existence of a criminal record is, in and of itself, not a signal that somebody is going to be a bad custodial parent, and the absence of a criminal record is surely not, in and of itself, any indication of whether or not a person is going to be a bad custodial parent, which is why we are opting for the proposal of the 12 judges—if I may refer to them as that—and that is, that we have individual investigations; but we'll be supporting Ms. Elliott's motion.

The Chair (Mr. Shafiq Qaadri): Any further comments? We'll proceed to the vote.

Those in favour of PC motion 1? Those opposed? I declare PC motion 1 to have been defeated.

Seeing no further submissions for section 6, we'll consider section 6. Shall section 6—

Mr. Peter Kormos: If I may, Chair, this might be a little unusual, but can we deal with—I identified 6 to 10 as being the contentious sections. I'm prepared to deal with them as a block once all of the amendments have been made. Is that suitable? Because you can put, “Shall sections 6 to 10, as amended, carry?”

Interjection.

The Chair (Mr. Shafiq Qaadri): I'm informed by my ever-alert clerk that we will need to consider each section individually since we do have amendments coming forward. It's only when we have no amendments that we do the block consideration. The Chair commends your desire to expedite the process, though.

Mr. Peter Kormos: And I don't even smoke anymore, so it's not because I want to sneak outside.

The Chair (Mr. Shafiq Qaadri): That's also very worthy.

Shall section 6 carry—

Mr. Peter Kormos: Chair?

The Chair (Mr. Shafiq Qaadri): Yes, Mr. Kormos.

Mr. Peter Kormos: If I may, I'm opposed to section 6. I'll address 6 to 10 in their totality when we reach section 10.

The Chair (Mr. Shafiq Qaadri): We look forward to it.

Mr. Peter Kormos: So I ask for a recorded vote, please.

The Chair (Mr. Shafiq Qaadri): Section 6, a recorded vote.

Ayes

Dhillon, Jaczek, Johnson, Ramal, Zimmer.

Nays

Elliott, Kormos.

The Chair (Mr. Shafiq Qaadri): Section 6 is carried. We'll now proceed to section 7, PC motion 2.

Mrs. Christine Elliott: I move that subsection 21.1(1) of the Children's Law Reform Act, as set out in section 7 of the bill, be amended by striking out "Every person who applies under section 21 for custody of a child and who is not a parent of the child" at the beginning and substituting "Every person who applies under section 21 for custody of or access to a child."

The purpose of this amendment is to expand with respect to custody and access and to apply to the child's biological parent or anyone who's applying for custody, if it's the child's best interests that are paramount, which is the case.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Elliott. Mr. Kormos?

Mr. Peter Kormos: I'm going to support the amendment because it creates consistency, because custody and access are very similar in terms of putting a child who's all alone with no other adult supervision with that other adult, whether it's for a day, a weekend or, in the case of custody, for weeks at a time.

I'm going to repeat once again: We're all familiar with grandparents who have great hurdles to overcome in getting access to children sometimes, especially when there are hostile matrimonial circumstances. Does the fact that grandpa may have an old drunk-driving conviction—what does it mean? What does it say? I'm not sure it means or says anything. We don't submit parents on a regular basis to police record checks; we don't require them to be licensed for having children either. We don't require de facto natural parents to undergo these sorts of things.

We assume that a child has a right, and in fact, the law and all of the literature talks about the rights of children to know their parents, to have relationships with their

parents, so this is part of the crazy scenario that we've developed here, or rather—I shouldn't be so generous—that the government has developed with all this records check, because children have a right to a parent. Even if that parent's a bank robber, children have a right to know their mother and father. So we're creating, in my view, crazy, bizarre scenarios that don't recognize, at the end of the day, the best interests of the child.

Let's cut to the chase. We're talking about records for sexual offences against children. Let's not be so subtle here. We're talking about records of violence against children, but we all know, based on our professional or social experience, that most pedophiles are only caught after their sixth, seventh, eighth, ninth, 10th attack on a child. That's the nature of the beast. So once again, the absence of a criminal record doesn't safeguard any children, does it?

I'm going to support the amendment because it underscores, in many respects, the whole problem that we have with this legislation.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Kormos. Any further comments on PC motion 2? Seeing none, we'll proceed to the vote. Recorded, Mr. Kormos?

Interjection.

The Chair (Mr. Shafiq Qaadri): Not recorded.

Section 7: Those in favour of PC motion 2? Those opposed? I declare PC motion 2 to have been defeated.

We'll now proceed to consider the section. Shall section 7 carry?

Mr. Peter Kormos: Recorded vote, please.

The Chair (Mr. Shafiq Qaadri): This is a recorded vote. Section 7—

Mr. Peter Kormos: We could have debated it before we voted on it, but I have no further comments to make.

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The Chair (Mr. Shafiq Qaadri): Gratifyingly. Those in favour of section 7?

Ayes

Dhillon, Jaczek, Johnson, Ramal, Zimmer.

Nays

Elliott, Kormos.

The Chair (Mr. Shafiq Qaadri): Section 7 is carried.

I will now proceed to section 8. PC motion 3, Ms. Elliott.

Mrs. Christine Elliott: I move that subsection 21.2(2) of the Children's Law Reform Act, as set out in section 8 of the bill, be amended by striking out "Every person who applies under section 21 for custody of a child and who is not a parent of the child" at the beginning and substituting "Every person who applies under section 21 for custody of or access to a child."

It's for the reasons stated with respect to the previous amendment.

The Chair (Mr. Shafiq Qaadri): Any further comments on PC motion 3? Seeing none, we'll proceed now to the vote. Those in favour of PC motion 3? Those opposed? PC motion 3 is defeated.

Government motion 4, Mr. Zimmer.

Mr. David Zimmer: I move that subsection 21.2(2) of the Children's Law Reform Act, as set out in section 8 of the bill, be struck out and the following substituted:

"Request for report

"(2) Every person who applies under section 21 for custody of a child and who is not a parent of the child shall submit a request, in the form provided by the Ministry of the Attorney General, to every society or other body or person prescribed by the regulations, for a report as to,

"(a) whether a society has records relating to the person applying for custody; and

"(b) if there are records and the records indicate that one or more files relating to the person have been opened, the date on which each file was opened and, if the file was closed, the date on which the file was closed."

The Chair (Mr. Shafiq Qaadri): Are there any comments? Ms. Elliott?

Mrs. Christine Elliott: I just had a question, Mr. Zimmer, as to the reason for the changes. Specifically what "or other body or person" would you be referring to there?

Mr. David Zimmer: There are 53 separate children's aid societies in Ontario. The idea here is to make sure that we are able to create a process that reflects the realities of record-keeping systems at the different CASs.

Mrs. Christine Elliott: So it's really just the total number of CASs you're referring to? Thank you.

The Chair (Mr. Shafiq Qaadri): Mr. Kormos?

Mr. Peter Kormos: You heard comments from children's aid societies about how unworkable this is. You've got children's aid societies, you've got Catholic ones, you've got Jewish ones and you've got aboriginal children's aid societies. They are separate entities because this government persists in maintaining a Victorian model of a transfer payment agency rather than the state assuming responsibility for protection of our children. This is a dog's breakfast. This is a horror show.

I just wish it weren't going to be the case, but mark my words that within the next six years there will be custody granted to somebody for whom it was believed an exhaustive check had been done. It will be after the fact, when something—hopefully it's only unpleasant—happens that all of a sudden it will appear that there was a children's aid society somewhere in Ontario, or perhaps not in Ontario, that had a horrendous intervention with that person or with his or her previous spouse and their stepchildren or what have you. That's part of the problem. This is a bureaucratic nightmare. Children's aid societies aren't going to come here and say that, because of course they like the transfer payment money. That's why the YWCA comes here and supports the government's repeal of the Domestic Violence Protection Act;

they don't want to tick off the ministry when it comes to any funding they might be eligible for.

I appreciate what you're trying to do here, Mr. Zimmer, and I know you didn't write the legislation. I'm not holding you accountable. You're here to do your best to defend this dog's breakfast. I respect the work that you do in that regard. All I can say is: Man oh man, we are courting disaster here, in my view.

The Chair (Mr. Shafiq Qaadri): Any further comments? Seeing none, we'll proceed to the vote. Those in favour of government motion 4? Those opposed? Motion 4 is carried.

Government motion 5, Mr. Zimmer.

Mr. David Zimmer: I move that subsection 21.2(4) of the Children's Law Reform Act, as set out in section 8 of the bill, be amended by,

(a) striking out "a society shall send to the court in which the application was filed a report" and substituting "a society or other body or person shall provide the court in which the application was filed with a report"; and

(b) striking out "and provide a copy" and substituting "and shall provide a copy".

The Chair (Mr. Shafiq Qaadri): Further comments? Seeing none, we'll proceed to the vote. All those in favour of government motion 5? Those opposed? Motion 5 is carried.

Motion 6.

Mr. David Zimmer: I move that subsection 21.2(5) of the Children's Law Reform Act, as set out in section 8 of the bill, be amended by striking out "if the report of a society indicates that the society has records" in the portion before clause (a) and substituting "if the report indicates that there are records".

The Chair (Mr. Shafiq Qaadri): Any further comments? Seeing none, all those in favour of government motion 6? Those opposed? Government motion 6 is carried.

Government motion 7.

Mr. David Zimmer: I move that subsection 21.2(6) of the Children's Law Reform Act, as set out in section 8 of the bill, be struck out and the following substituted:

"Exception

"(6) The court may, on motion by the requesting party, order,

"(a) that the time period referred to in subsection (5) be lengthened; or

"(b) that all or part of the report be sealed in the court file and not disclosed if,

"(i) the court determines that some or all of the information contained in the report is not relevant to the application, or

"(ii) the party withdraws the application."

The Chair (Mr. Shafiq Qaadri): Further comments? Ms. Elliott.

Mrs. Christine Elliott: I do have some concerns with this because of the expressions by some of the parties presenting that these new provisions are going to lengthen the time already, and then if there's a further

extension of time, this could very well act against the best interest of the child.

Secondly, it also poses the problem, what is the court to do with all of this information if you're requiring the court to be the record-keeper? It would be a far more expeditious and simple arrangement to have this investigation being conducted by someone other than the judge. It really puts the judge in an untenable position and puts information in the file that arguably should not be there.

The Chair (Mr. Shafiq Qaadri): Any further comments? Seeing none, we'll proceed to the vote. All those in favour of government motion 7? Those opposed? Motion 7 is carried.

Motion 8.

Mr. David Zimmer: I move that clauses 21.2(10)(a) and (b) of the Children's Law Reform Act, as set out in section 8 of the bill, be struck out and the following substituted:

"(a) specifying one or more societies or other bodies or persons to whom a request must be submitted;

"(b) governing the manner and scope of the search required to be undertaken in response to a request;"

The Chair (Mr. Shafiq Qaadri): Further comments? Mr. Kormos.

Mr. Peter Kormos: Here we are, we've got a bizarre, complex, complicated, unwieldy process as being more bizarre, more complex, more unwieldy. Here it is, Easter time, Passover—it's like the search for the Holy Grail. There's going to be this endless, endless, endless protracted search.

Mr. Zimmer knows, as does Ms. Elliott, that all the judges in this province are even-tempered; they're patient; they don't feel burdened by silly motions and silly exercises that are going to be imposed on them. But sure as God made little apples, I can see some judge just saying, "Look, for Pete's sake, let's get this done with. I'm going to sign an order waiving—I don't care what the bill says." Because, you see, nobody's going to be there arguing the statute, do you understand what I'm saying? It's just like Katelynn Sampson: Even when you've got lawyers, they will welcome a judge saying, "I'm going to waive this provision," because there's nobody to say, "No, you can't, Judge." The kid can't say that. You don't have an independent, third party who's going to be there in your design, in your scheme. So the judge is going to get frustrated. You've got unrepresented people, because the vast majority of family court litigants are unrepresented. They haven't got a snowball's chance in hell of tracking down all this information. There's nobody in the courthouse to help them. Duty counsel can't fill out forms for them—duty counsel can't even fill out forms—so duty counsel can't help them. Lord thundering Jesus, Mr. Zimmer, what are you creating here?

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All we're asking for is to let a judge have the power to say, "This doesn't pass the sniff test. I want the Office of the Children's Lawyer involved to conduct an investigation into the appropriateness of a custody order." It

addresses all of this, because even the current legislation allows an investigator, whether it's a children's-aid-type worker, a social worker or the Office of the Children's Lawyer, to say to the proposed custodial parent, "Here, I want you to sign this release of information for the Niagara children's aid society to find out whether there's any information." They currently have that power.

What are you doing here? Those courts are a mess already. So when one of those even-tempered, ever-patient judges, whom you've known so many of—and you, Mrs. Elliott—finally loses his or her cool, I don't want them phoning me. If they phone my office, I'm going to give them your direct line number.

The Chair (Mr. Shafiq Qaadri): Are there any further comments? Those in favour of government motion 8? Those opposed? Government motion 8 is carried.

We'll proceed to the vote. Shall section 8, as amended, carry?

Mr. Peter Kormos: Recorded vote.

Ayes

Dhillon, Jaczek, Johnson, Ramal, Zimmer.

Nays

Elliott, Kormos.

The Chair (Mr. Shafiq Qaadri): Section 8, as amended, has carried.

We'll now proceed to section 9, a PC motion. Mrs. Elliott.

Mrs. Christine Elliott: I move that subsections 21.3(1) and (2) of the Children's Law Reform Act, as set out in section 9 of the bill, be struck out and the following substituted:

"Other proceedings

"Application by non-parent

"21.3(1) Where an application for custody of a child is made by a person who is not a parent of the child, the clerk of the court shall provide to the court and to the parties information in writing respecting any current or previous family proceeding in which the child or any person who is a party to the application is or was involved as a party.

"Same

"(2) Where an application for custody of a child is made by a person who is not a parent of the child, the court may require the clerk of the court to provide to the court and to the parties information in writing respecting any current or previous criminal proceeding in which any person who is a party to the application and who is not a parent of the child is or was involved as an accused, if the proceeding resulted in a finding of guilt or is ongoing."

This amendment is made simply to limit the information that would be coming forward, just to be more specific, that it needs to be a family proceeding in which they were a party and if there was a finding of guilt found in a criminal proceeding.

The Chair (Mr. Shafiq Qadri): Thank you. Mr. Kormos.

Mr. Peter Kormos: Once again, I say to the government side, the clerks of these courts—again, go down to Jarvis Street, go down to 311 Jarvis. The clerks' office has got files piled all over it. Every once in a while, there's a slide and you've got to put the pieces back together. They've got people requesting to look at this file and that file. These clerks—and you know them—are harried; they're bouncing off the walls. You don't have time frames here. You've got the prospect of files that are supposed to be there but that aren't there being misplaced, and you've got proceedings—where? In that courthouse alone? That's naive. You can't rely on that. Is it within a 100-kilometre range? It's just nuts.

You're talking about Superior Court as well as Family Court. Parties: If part of the parenting plan involves, let's say, grandparents, many people seeking custody will say, "Look, I've got my parents to help me take care of the child because I'm working." That's a common experience, to try to expand or build a stronger foundation for their application. So then do you do the grandparents? Do you do the grandparents' other children, to wit, the siblings who may be visiting the grandparents from time to time while the child is there?

You know I've been pretty hard-line on the best interests of the child being paramount; the law says that. I've been pretty tough on one judge in particular, and I still am, but I don't think this is the solution. It just creates impossible standards, which at the end of the day don't do much. You've got a judge—oh, yeah, I can just see this judge, him or her, with a pile of dusty old case folders and just roaring at the poor clerk, saying, "But this involved a dispute over child support payments that was resolved. What are you doing making me read through this file? Look, we've got a line up there—look at the lineup—and you're making me read this stuff about a dispute over support payments that was resolved, even on consent?" Because that's what you're talking about, isn't it? I think so. We shall see, won't we, Chair?

The Chair (Mr. Shafiq Qadri): Thank you. Are there any further comments? Seeing none, we'll now proceed to the vote. Those in favour of PC motion 9? Those opposed? PC motion 9, defeated.

We'll consider now the section. Shall section 9—

Mr. Peter Kormos: There being no further debate on section 9, I'm going to ask you for a recorded vote.

The Chair (Mr. Shafiq Qadri): Yes. No further debate on section 9, we'll now have a recorded vote.

Mr. Peter Kormos: As amended—or not amended, rather.

The Chair (Mr. Shafiq Qadri): I'm informed that's a new section, so we'll move to section 9.1 Shall section 9 carry?

Ayes

Dhillon, Jaczek, Johnson, Ramal, Zimmer.

Nays

Elliott, Kormos.

The Chair (Mr. Shafiq Qadri): Section 9, carried.

We'll now proceed to consider PC motion 10, section 9.1, new section. Ms. Elliott?

Mrs. Christine Elliott: I move that the bill be amended by adding the following section:

"9.1 The act is amended by adding the following section:

"Children's Lawyer

"21.4(1) Despite subsection 21(2) and sections 21.1, 21.2 and 21.3, documents and information required to be provided to or filed with the court under any of those provisions in respect of an application for custody or access shall instead be provided to the Children's Lawyer if any of the following circumstances apply:

"1. The application is unopposed.

"2. Any party to the application is unrepresented.

"3. The court determines that it is in the best interests of the child.

"Investigation and report

"(2) If the Children's Lawyer receives documents or information under subsection (1) in respect of an application for custody or access, the Children's Lawyer shall cause an investigation into the matter to be made under section 112 of the Courts of Justice Act and shall report and make recommendations to the court in accordance with that section.

"Powers of court

"(3) Upon receipt of the report of the Children's Lawyer, the court may,

"(a) require the Children's Lawyer to provide to it any of the documents or information that the Children's Lawyer received under subsection (1); or

"(b) require any person or body to provide such additional documents or information in relation to the application as the court directs."

This amendment is in response to the letter sent to the committee by the Family Court justices, the Family Lawyers Association and numerous private practitioners, that the system, as proposed by Bill 133, for investigating the custody of children is unwieldy, unworkable and unlikely to achieve the purpose intended, which is to protect children.

This addresses the concerns that the unrepresented parties will have no reasonable means of working their way through the applications and the various submissions that they need to be making, and it also requires self-reporting, which, according to one of the presenters, was not something that you should base your premise on; it's something that you just rely on their honesty in bringing some of this information forward; plus the fact that these documents, especially with respect to a parenting plan, are going to be very difficult for unrepresented applicants to prepare on their own.

Since there's no indication that there's going to be extensive support for legal aid in the future or someone to

help the people complete these documents, I would submit that the preparation of a report following an investigation by the Children's Lawyer is the most cost-effective and easiest way to make sure that children are protected. Certainly, that has been advocated by the courts, which, again, are being placed in a very difficult position of having piles of material placed before them, as Mr. Kormos has indicated, most of which may be irrelevant in the course of determining the whole issue. In order to save court time, to not put the judge in the position of an investigator and to assist the unrepresented parties to the action, I would submit that to have the Office of the Children's Lawyer submit an investigation report would be the best way to handle the situation.

The Chair (Mr. Shafiq Qaadri): Thank you, Mrs. Elliott. Further comments? Seeing none—

Mr. Peter Kormos: I just recalled old Judge Don Wallace, who died, oh, a year and a half ago. Although not everybody was a fan of his, I was. He was a curmudgeonly judge who I had a great deal of affection for, and fought vigorously with, openly. But you just made me recall Don Wallace ripping his eyeglasses off, throwing them across the bench, scowling and saying, "What is this crap?" Don Wallace is dead now and God rest his soul, but I suspect that there are more than a few Don Wallace genes floating out there in the pool of our judiciary.

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The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Kormos.

Mr. Peter Kormos: Think nothing of it, Chair. Just the reminiscences of a middle-aged man.

The Chair (Mr. Shafiq Qaadri): Which we respect greatly.

Any further comments on PC motion 10? Seeing none, we'll proceed to the vote. Those in favour of PC motion 10? Those opposed? PC motion 10, defeated. Thus, section 9.1, which would have been a new section, is also defeated.

May it be the will of the committee to consider sections 10 to 14, inclusive, as we have so far not received any amendments.

Mr. Peter Kormos: If I may, let's just be careful as we go through—10 to 14, inclusive? Yes, sir.

The Chair (Mr. Shafiq Qaadri): Thank you.

Those in favour of sections 10 to 14, inclusive? Those opposed? Sections 10 to 14, carried.

We'll now proceed to consider section 15, PC motion 11. Ms. Elliott?

Mrs. Christine Elliott: I move that subsection 35(2) of the Children's Law Reform Act, as set out in section 15 of the bill, be struck out.

I would submit that this section is unnecessary, that the restraining orders already provide for these types of restrictions.

The Chair (Mr. Shafiq Qaadri): Further comments? Seeing none, those in favour of PC motion 11? Those opposed? PC motion 11, defeated.

Government motion 12.

Mr. David Zimmer: I move that paragraph 1 of subsection 35(2) of the Children's Law Reform Act, as set out in section 15 of the bill, be amended by striking out "the applicant and any child" and substituting "the applicant or any child."

Mr. Peter Kormos: Can you explain that one please, Mr. Zimmer?

Mr. David Zimmer: The idea of the amendment is to clarify the wording that you find in paragraph 1 of subsection 35(2). The revised wording of "the applicant or any child" better reflects the current wording of the restraining order provision in the Children's Law Reform Act.

Further, an order could still be made to apply to an applicant or a child, but legislative counsel has advised independently that this wording is better.

Mr. Peter Kormos: You know you're provoking debate over the conjunctive "or" versus the exegetical "or." You know that, don't you, Mr. Zimmer?

Mr. David Zimmer: I'm not joining the debate, Peter.

Mr. Peter Kormos: I regret that.

Mr. David Zimmer: But I know what you're commenting on.

The Chair (Mr. Shafiq Qaadri): Thank you. Any further comments or questions? Seeing none, we'll proceed to the vote. Those in favour of government motion 12? Those opposed? Motion 12, carried.

Shall section 15, as amended, carry? Recorded vote, Mr. Kormos?

Mr. Peter Kormos: No, sir.

The Chair (Mr. Shafiq Qaadri): No, not recorded. Shall section 15, as amended, carry? Those in favour? Those opposed? Carried.

May it be the will of the committee to consider sections 16 and 17, inclusive, seeing as no amendments have been received?

Mr. Peter Kormos: Yes, sir.

The Chair (Mr. Shafiq Qaadri): Those in favour of sections 16 and 17? Those opposed? Carried.

Section 18, PC motion 13. Ms. Elliott.

Mrs. Christine Elliott: I move that subsection 70(3) of the Children's Law Reform Act, as set out in section 18 of the Bill, be amended by adding "with notice to the parties to the application referred to in that subsection" at the end.

This is simply to ensure that notice is given of this application.

The Chair (Mr. Shafiq Qaadri): Any further comments on PC motion 13? Those in favour of PC motion 13? Those opposed? Defeated.

PC motion 14. Ms. Elliott?

Mrs. Christine Elliott: I move that section 70 of the Children's Law Reform Act, as set out in section 18 of the bill, be amended by adding the following subsection:

"Offence

"(5) Every person who contravenes an order made under subsection (1) is guilty of an offence and on conviction is liable to a fine of not more than \$25,000."

It just simply adds significant penalties for non-compliance.

The Chair (Mr. Shafiq Qaadri): Comments? Those in favour of PC motion 14? Those opposed? PC motion 14 is defeated.

Shall section 18 carry? Carried.

May it be the will of the committee to consider sections 19 to 21, inclusive, seeing as no amendments—yes, Mr. Kormos?

Mr. Peter Kormos: No; 19 and 20, please.

The Chair (Mr. Shafiq Qaadri): Fair enough. Sections 19 and 20: Those in favour? Those opposed? Sections 19 and 20, carried.

Section 21: There are no amendments received, but the floor is open. Mr. Kormos?

Mr. Peter Kormos: Again, this has been the subject matter of a whole lot of conversation and discussion, indeed debate. I was here and I recall being on committee when the Domestic Violence Protection Act went through the committee process.

The single most important part of that bill is the opportunity for a partner who is the victim of direct, indirect or feared violence against person or property to appear before a justice of the peace without any other process and get an ex parte restraining order against the other party. Everybody supports the amendments contained in this bill that permit a court order to be enforced by the police as a breach of the Criminal Code, but the process has to be initiated before you can even get an interim order.

First, you've got to go to the court and get the forms. The court staff won't fill out the forms for you, and I don't blame them because that's not their job; they're doing other things. Duty counsel won't fill out the forms for you. If a lawyer fills out the forms for you, you not only have to pay, but it's going to take several days to get into a lawyer's office. Otherwise you're walking around with these forms. Staff in our constituency offices, of course, can't assist people in litigation, but some staff, I think, are quite within their rights to explain to people what the forms say. I say bless them for doing that. If, from time to time, they assist them in a spelling error or perhaps a little bit with lexicon, again, I applaud them for doing that. But even for our constituency staff, that's a time-consuming process. It probably takes, I'd say, a good hour, or at least half an hour, to fill out these forms. That's with a reasonably skilled person.

First of all, most people can't get the forms filled out. Then you've got to file the forms. Then the proper service has to be done on the respondent, on the other party. Then you've got to get a date in front of a judge.

Go to some of these courtrooms. You've got hallways packed with young offenders, because the young offender courts are inevitably in the same building, so you've got kids with tattoos and earrings and swastikas on their foreheads and the whole nine yards wandering around. You've got women with their spouses glaring at them across the hallway, just glaring at them—the daggers, right, mouthing the inevitable threats. They're sitting

there in these stained, stinky, dusty, crowded hallways where there's not enough seating for all the people, so people are standing. They're waiting for their names to be called, and then by 4:30 in the afternoon, you've got a judge who says, "Okay, bring them in. We've got to adjourn the rest of the list because there just isn't time to do it." They've got court staff who have been working since 8 a.m. You've got a judge who's starting to lose his or her mind—

Interjection.

Mr. Peter Kormos: Well, seriously, who just can't think clearly anymore, and to his or her credit says, "No, I don't trust myself to go any further." Some push themselves, and that's when, sadly, sometimes mistakes are made.

So you've got the possibility of not just days but weeks before a victim gets in front of a judge and is able to tender enough affidavit evidence or otherwise to get the judge to sign a restraining order. This isn't a perfunctory process like you have in some of the Superior Court processes where the clerk can sign an order, right? There are some functions that the clerk can perform. That's, quite frankly, pretty close to the DVPA, where a JP can perform it.

This is good. It creates a restraining order that the police can enforce, but the DVPA allows—I'm going to say "woman" here, but it doesn't have to be women; heck, obviously with same-sex marriages now you're going to have, and you do have, domestic violence in gay marriages, woman-woman, man-man and so on, not just marriages but relationships—the party, if they fear for themselves or their property, to go at 2 in the morning to the JP on duty and say, "I fear that so-and-so is out there." Look, "I fear" is a far different cry than "I know."

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I just think that it's a shame to abandon the DVPA. It hasn't been proclaimed, God bless, and maybe we'll never get around to proclaiming it, because maybe we'll never have the structure in place to deal with it. But I agree that it was fundamentally sound, because those ex parte orders were available only in very limited circumstances, and the types of things that could be ordered were very limited as well. You needed an order on notice with both parties present arguing the case before they had the expanded list of conditions that a JP could put in an order.

I support the restraining order part of this legislation, the New Democrats support it, but why you're getting rid of the DVPA beats me. I, quite frankly, simply don't believe the presenters from the YWCA and Luke's Place. I believe that's a hackneyed phrase, that "we soon learn that it's impossible to enforce." I've got a feeling I think I know where that language came from. It's just a feeling, Mr. Zimmer. It's my intuitive side taking over. My intuition tells me that that was a phrase that was somehow scripted.

So I've got to vote against this. I encourage government members to please reconsider it. Eliminating this from the bill doesn't change the substance of the bill

whatsoever, does it? It doesn't change it one iota, but it gives this government or subsequent governments a chance to work on the DVPA.

Not to belabour the point, but look, in cabinet, when ministries develop policy positions, like Bill 133—and with Bill 133, a lot of this stuff was floating around long before the bill was written, because it was policy that had been drafted, the pension stuff and so on had been drafted and been worked on. What prompted this was the Katelynn Sampson furor. Make no mistake about it. That's what prompted this. That's what ratcheted this up into the top of the line. Cabinet ministers fight with the Premier's office to get bills into the House, and then they fight with the Premier's office as to which bill is going to be called. And you've got any number of considerations: "Well, Minister So-and-So has had three bills this year; I've not had any and I want one." So you've got these considerations. You've got the Premier's office as a gatekeeper. You've got any number of cabinet committees that vet these things and try to second-guess the policy drafters. So you don't get domestic violence bills before the House every year. It doesn't happen. It's once every 10 years—correct me if I'm wrong; you know the history of family law legislation in this province.

So I'm begging you folks: Give your government or any subsequent government something to work with when it comes to the DVPA. We learned about all the other jurisdictions that have it. I think this is a real shame. This is perhaps the saddest part of this legislation, because I remember the enthusiasm about the DVPA, the enthusiasm by women's groups and advocates for women and people involved in the domestic violence struggle. I'll be voting against the repeal of the DVPA, obviously.

The Chair (Mr. Shafiq Qadri): Thank you. Ms. Elliott, further comments on section 21?

Mrs. Christine Elliott: I just have a brief comment, and that is, I'm on the record as indicating that, in my view, we need to have a separate domestic violence protection statute. However, I do commend the government for dealing with the restraining orders part of this, but I still can't understand, as Mr. Kormos has indicated, why it's necessary to repeal the Domestic Violence Protection Act. It really adds another tool to the arsenal to protect both men and women who are involved in domestic violence situations. So I'd really urge the government to reconsider.

The Chair (Mr. Shafiq Qadri): Thank you, Ms. Elliott. Mr. Zimmer.

Mr. David Zimmer: I just want to go on record as pointing out that some very, very distinguished and long-time advocates who have spent their professional careers and life dealing with and combatting across the board all of the issues involving violence against women—a couple of names spring to mind: Pam Cross and Amanda Dale from the YWCA, and Carol Barkwell from Luke's Place. These advocates, these knowledgeable women who have spent their careers combatting violence against women, support the repeal of the Domestic Violence Protection Act. They are the experts in the area. They are

the front-line workers. They know what they're talking about. They support this repeal.

Mr. Peter Kormos: Oh, please, Mr. Zimmer. Three people out of hundreds, at least, if not thousands. Come on, now. Stop that. You know better than that.

The Chair (Mr. Shafiq Qadri): Any further comments on section 21?

Mr. Peter Kormos: Recorded vote, please.

Ayes

Dhillon, Jaczek, Johnson, Ramal, Zimmer.

Nays

Elliott, Kormos.

The Chair (Mr. Shafiq Qadri): Section 21 is carried.

PC motion 15, Ms. Elliott.

Mrs. Christine Elliott: I move that the bill be amended by adding the following section after the heading "Family Law Act":

"21.1 The Family Law Act is amended by adding the following section:

"Orders regarding conduct

"2.1 In making any order under this act, the court may also make an interim order prohibiting, in whole or in part, a party from directly or indirectly contacting or communicating with another party, if the court determines that the order is necessary to ensure that an application under this act is dealt with justly."

This is a housekeeping amendment, essentially, because this was repeated in three sections of the bill—27, 29 and 36—so this simplifies by adding this provision to be applicable to the entire act.

The Chair (Mr. Shafiq Qadri): Thank you, Ms. Elliott. Any further comments? Those in favour of PC motion 15? Those opposed? PC motion 15 is defeated.

We will now consider section 22. Government motion 16, Mr. Zimmer.

Mr. David Zimmer: I move that section 22 of the bill be amended by adding the following subsection:

"(0.1) Clause (a) of the definition of 'net family property' in subsection 4(1) of the Family Law Act is repealed and the following substituted:

"(a) the spouse's debts and other liabilities, including, for greater certainty, any contingent tax liabilities in respect of the property, and"

The Chair (Mr. Shafiq Qadri): Thank you. Further comments? Seeing none, we'll proceed to the vote. Those in favour of government motion 16? Those opposed? Motion 16 is carried.

PC motion 17, Ms. Elliott.

Mrs. Christine Elliott: I move that clause (c) of the definition of "property" in subsection 4(1) of the Family Law Act, as set out in subsection 22(3) of the bill, be struck out and the following substituted:

“(c) in the case of a spouse’s rights under a pension plan that have vested or that may vest or be granted in the future, the net family law value of the spouse’s interest in the plan, as determined in accordance with section 10.1, for the period beginning with the date of the marriage and ending on the valuation date; (‘bien’)”

This amendment has been suggested to deal with the significant unfairness, expressed to us by several presenters, to the non-pension-holding spouse if one uses only one value for equalization purposes. This just indicates that it would include, for a pension purpose, the rights that have already vested or that may be vesting in the future, the so-called contingent rights.

The Chair (Mr. Shafiq Qaadri): Further comments? We’ll proceed to the vote. Those in favour of PC motion 17? Those opposed? PC motion 17 is defeated.

Government motion 18, Mr. Zimmer.

Mr. David Zimmer: I move that clause (c) of the definition of “property” in subsection 4(1) of the Family Law Act, as set out in subsection 22(3) of the bill, be amended by striking out “the net family law value of the spouse’s interest” and substituting “the imputed value, for family law purposes, of the spouse’s interest.”

The Chair (Mr. Shafiq Qaadri): Further comments?

Mrs. Christine Elliott: I was wondering if Mr. Zimmer could explain to us what “the imputed value” is and what the purpose is behind this amendment.

Mr. David Zimmer: The value of the pension entitlement has been renamed “the imputed value, for family law purposes, of the spouse’s interest” to avoid confusion between the name in the bill, “net family law value,” and the well-established family law concept of net family property.

Mrs. Christine Elliott: But what would the imputed value constitute?

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Mr. David Zimmer: Just a second. I have one of the ministry experts who can tackle that question.

Mr. Peter Kormos: Quick, before eyes glaze over entirely.

Mr. David Zimmer: Mr. John Gregory.

Mr. John Gregory: Thank you, Mr. Chairman. John Gregory, general counsel of the policy division, Ministry of the Attorney General. With me is Cynthia Crysler, who is the pension specialist for the Ministry of Finance, as well.

In response to Ms. Elliott’s question, the content of the imputed value for family law purposes will be prescribed by regulation. It’s dealt with in the Pension Benefits Act. Section 67.2 of the Pension Benefits Act, which, of course, will be before the committee shortly, deals with how you find that. At present, we’re doing it with the Family Law Act and we’re plugging that value into the Family Law Act for those purposes, but what the content is in the Pension Benefits Act. But much of the content is, in fact, to be prescribed by regulation.

Mrs. Christine Elliott: I guess my question would be, will you be taking into account both the vested and non-

vested part of the pension, as recommended by the actuaries who presented to the committee?

Mr. John Gregory: That’s the intention, Ms. Elliott. There is nothing in the wording of the act that restricts the benefits to vested benefits. There’s nothing in the bill here that would restrict that to vested benefits. It’s the intention to cover, for example, early retirement benefits, which is one of the principal issues that were discussed during the submissions from the public.

Mrs. Christine Elliott: I’m sorry—so you do intend to cover that in the regulations, that that will be included for equalization purposes?

Ms. Cynthia Crysler: In the previous version and the original version of the FLA, the definition of “property” said “vested pension benefits.” Bill 133, as it is originally, took the “vested” out, which meant that it would now be pension property, not just vested, but vested and unvested. So a further amendment is not required to make it clear that pension property includes unvested.

Mrs. Christine Elliott: But now “imputed” is being substituted as a different expression of—

Ms. Cynthia Crysler: It’s just a label; it’s just a new label to avoid confusion with “net family property.” That actually doesn’t change any of the substance of the act. It’s just a different name so that we don’t have confusion between two names that were quite similar.

The Chair (Mr. Shafiq Qaadri): Mr. Kormos.

Mr. Peter Kormos: I know what “imputed” means, just in general. What does “imputed value” mean when you’re talking about a pension value?

Ms. Cynthia Crysler: It would mean what the regulations say it means. It is a defined term.

Mr. Peter Kormos: Okay.

Ms. Cynthia Crysler: It’s not necessarily going to mean what the dictionary definition means. It’s going to have to be given meaning.

Mr. John Gregory: The same as “net family property value” had no meaning either. It is an expression to indicate a new concept which is a value, because it hasn’t been possible in the past to assign parts of the pension plan to the non-member spouse. So we needed a concept, which in the bill is “net family property value.” People said, “Well, that sounds really like ‘net family property’ that we deal with in equalization.” So we said, “Okay, we’ll call it something else so we don’t have to remember, ‘Oh, that’s the pension’s’”—

Mr. Peter Kormos: Were there other words that were options—did you have a list to pick from?

Ms. Cynthia Crysler: Legislative counsel came up with that.

Mr. Peter Kormos: Okay, but help us put this in context. I don’t think this is unfair. We all tend to agree about the legislation of alternative ways of a spouse getting his or her share of a spouse’s pension, right? The controversy was around two issues. One was the pension plan administrator evaluating. We set that aside because that’s a totally separate issue. Then the second controversial issue was the methodology of determining the value, right?

Mr. John Gregory: Yes.

Mr. Peter Kormos: We were constantly being told that that's going to be dealt with by regulation also. I know we're moving a bit—but I want to understand this in the context of the whole debate here. Is that a correct observation?

Mr. John Gregory: Yes. There was a discussion among the people submitting to the committee about what is in that valuation for family law purposes. That valuation for family law purposes, which is what's covered by this expression "imputed value for family law purposes" will be prescribed by regulation, but it includes the provisions that are set out in subsections 67.2(1) and (2), which are essentially the commuted value plus ancillary benefits to be prescribed, but the actual regulation is not before the committee.

Mr. Peter Kormos: Gotcha. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you. Are there any further questions on government motion 18?

Mr. Peter Kormos: Mr. Ramal, surely you have something to—

Mr. Khalil Ramal: No, I'm convinced by what he said.

Mr. Peter Kormos: You're convinced of what?

Mr. Khalil Ramal: His statement, the explanation.

The Chair (Mr. Shafiq Qaadri): Thank you. Are there any further comments? Seeing none, we'll proceed to the vote. Those in favour of—yes?

Mr. Peter Kormos: Chair, should these people perhaps just stay here because I think we're going to—

Mr. David Zimmer: I'll call them as needed.

Mr. Peter Kormos: Okay, but then they're up and down like jack-in-the-boxes.

The Chair (Mr. Shafiq Qaadri): Thank you. Those in favour of government motion 18?

Mr. Peter Kormos: Hold on. Here we are, government motion.

The Chair (Mr. Shafiq Qaadri): Those in favour of government motion 18? Those opposed? Government motion 18 carried.

Shall section 22, as amended, carry?

Mr. Peter Kormos: Recorded vote. Well, let's have some debate on this first.

The Chair (Mr. Shafiq Qaadri): We are here to do precisely that.

Mr. Peter Kormos: Thank you. Just very quickly, look, this is the whole problem. I don't even know if they make thermometers anymore with mercury in them, but if you break one of those and try to pick it up, it's all over the place. This is the problem here.

I have no quarrel with, again, the language of imputed value except that "imputed value" implies certain things to me. It implies to me a little sense of what the regulation is going to look like. Do you understand what I'm saying?

I'm not going to support this because this is part of the real dog's breakfast. This the ugliest—look, you know the old line about two things you don't want to watch being made: sausage and legislation? This is the best pos-

sible example of it. You've got people on this committee voting on stuff, and they have no bloody idea what it means, with all due respect, no damned idea of what they're voting on or what they're supporting.

Look, I understand faith. Save it for the Easter Sunday service. We need more than faith here. There is great controversy around these provisions, and with all due respect—well, I don't want to speak for everybody. Maybe Mr. Ramal has his head around this, he's got a handle on it, and he could do a one-hour lecture on it standing on his head, or Mr. Dhillon. I know I can't. It's still just so vague, so amorphous, so hard to get a grasp on. I think this is a very dangerous exercise, and it's a very unsettling one to see legislators—that's us—voting on stuff when we haven't got the slightest bloody idea what we're voting on. I find that troublesome. I'm voting against it because I just don't think we're ready to start passing this kind of stuff.

Mr. David Zimmer: Well, maybe you should find one of your colleagues to substitute for you on the committee.

Mr. Peter Kormos: Well, we've got a few minutes. Perhaps you could explain in more detail the provisions here, Mr. Zimmer. Mr. Zimmer? I didn't think so.

The Chair (Mr. Shafiq Qaadri): Mrs. Elliott.

Mrs. Christine Elliott: Thank you, Chair; just a brief comment. I am very concerned about this, too, to substitute a word that's going to be defined in the regulations. I know we were clearly warned against this by not one but several of the actuaries who appeared before us who said that this very clearly has to be dealt with in the act itself; it can't be something that's left to regulations. I agree that it is a very amorphous concept. I don't understand the whole rationale behind these amendments, and until I do, I can't vote for it either.

The Chair (Mr. Shafiq Qaadri): Thank you, Mrs. Elliott. Are there any further comments on section 22?

Mr. Peter Kormos: Recorded vote, please.

Ayes

Dhillon, Jaczek, Johnson, Ramal, Zimmer.

Nays

Elliott, Kormos.

The Chair (Mr. Shafiq Qaadri): I declare section 22, as amended, to have been carried.

We'll proceed now to section 23, government motion 19, Mr. Zimmer.

Mr. David Zimmer: I move that clause 6(6)(c) of the Family Law Act, as set out in section 23 of the bill, be struck out and the following substituted:

"(c) the recipient of property or a portion of property to which the surviving spouse becomes entitled by right of survivorship or otherwise on the death of the deceased spouse."

1520

The Chair (Mr. Shafiq Qaadri): Further comments?

Mr. David Zimmer: I'd just like to speak to it. The proposed amendment is based on recommendations that were made to this committee by estates lawyer Mr. Barry Corbin. The amendments are also supported by other members of the family and estate bar. The intention of the amendment is to include property, other than just property held in a joint tenancy, in the credit to a deceased spouse's estate against the equalization payment that is owed to the surviving spouse.

I have to say that, having heard from Mr. Corbin at this committee, it shows indeed the value of having these committee hearings. Mr. Corbin took the time, in a very articulate and thoughtful way, to organize his thoughts, and this is the result of it.

The Chair (Mr. Shafiq Qaadri): Further comments? Seeing none, we'll proceed to consider government motion 19. Those in favour? Those opposed? Motion 19 is carried.

Government motion 20.

Mr. David Zimmer: I move that paragraph 1 of subsection 6(7) of the Family Law Act, as set out in section 23 of the bill, be struck out and the following substituted:

"1. The amount of every payment and the value of every property or portion of property described in that subsection, less any contingent tax liability in respect of the payment, property or portion of property, shall be credited against the surviving spouse's entitlement under section 5."

The Chair (Mr. Shafiq Qaadri): Further comments on government motion 20?

Mr. David Zimmer: I should say that my comments that I made earlier, having heard from Mr. Barry Corbin and others, apply to this amendment also.

The Chair (Mr. Shafiq Qaadri): Any further comments? Seeing none, we'll proceed to the vote. Those in favour of government motion 20? Those opposed? Government motion 20, carried.

Government motion 21.

Mr. David Zimmer: I move that paragraph 3 of subsection 6(7) of the Family Law Act, as set out in section 23 of the bill, be struck out and the following substituted:

"3. Paragraphs 1 and 2 do not apply in respect of a payment, property or portion of property if,

"i. the deceased spouse provided in a written designation, will or other written instrument, as the case may be, that the surviving spouse shall receive the payment, property or portion of property in addition to the entitlement under section 5, or

"ii. in the case of property or a portion of property referred to in clause (6)(c), if the surviving spouse's entitlement to the property or portion of property was established by or on behalf of a third person, either the deceased spouse or the third person provided in a will or other written instrument that the surviving spouse shall receive the property or portion of property in addition to the entitlement under section 5."

The Chair (Mr. Shafiq Qaadri): Further comments? Seeing none, we'll proceed to the vote. Those in favour of government motion 21? Those opposed? Government motion 21, carried.

Shall section 23, as amended, carry? Carried.

If it's the will of the committee, we'll consider sections 24 and 25, inclusive. Shall sections 24 and 25, inclusive, carry? Carried.

Section 26, government motion 22.

Mr. David Zimmer: I move that subsections 10.1(1) and (2) of the Family Law Act, as set out in section 26 of the bill, be amended by striking out "The net family law value of a spouse's interest" wherever it appears and substituting in each case "The imputed value, for family law purposes, of a spouse's interest".

The Chair (Mr. Shafiq Qaadri): Comments? Seeing none, those in favour of government motion 22? Those opposed? Government motion 22 carried.

Government motion 23, Mr. Zimmer.

Mr. David Zimmer: I move that subsection 10.1(4) of the Family Law Act, as set out in section 26 of the bill, be struck out and the following substituted:

"Same

"(4) In determining whether to order the immediate transfer of a lump sum out of a pension plan and in determining the amount to be transferred, the court may consider the following matters and such other matters as the court considers appropriate:

"1. The nature of the assets available to each spouse at the time of the hearing.

"2. The proportion of a spouse's net family property that consists of the imputed value, for family law purposes, of his or her interest in the pension plan.

"3. The liquidity of the lump sum in the hands of the spouse to whom it would be transferred.

"4. Any contingent tax liabilities in respect of the lump sum that would be transferred.

"5. The resources available to each spouse to meet his or her needs in retirement and the desirability of maintaining those resources."

The Chair (Mr. Shafiq Qaadri): Further comments?

Mr. Peter Kormos: I'm looking very carefully. This replaces the A times B over C formula, yes?

Mr. David Zimmer: Yes.

Mr. Peter Kormos: Why? Because I have a suspicion about what the goal is.

Mr. David Zimmer: Mr. Gregory?

Mr. John Gregory: The old subsection (4) of new section 10.1 dealing with the splitting of pensions was a formula that was aimed at limiting the amount that the non-member spouse could be forced to take out of a pension plan in equalization, the idea being that what you get out of the pension plan is locked in—it goes to an RSP—so it's not as good as cash, where normally with equalization you get cash, though you may get it over 10 years, depending on how much is available. The idea was, all right, the member can satisfy the equalization debt by giving the non-member spouse some part of the pension plan, but it shouldn't be more than the proportion of the

plan, the value of the plan to his total assets. Now, they could agree to take it all in pension, but if the spouse said, “No, wait a minute, I don’t want it to be locked in,” there was a limit there to protect a non-member spouse.

As it turned out, nobody wanted that. We talked to the family bar, including people who act for the non-member spouses as much as for the member spouses. They said, “This is not helpful. Let’s just put in some provisions that let the court decide why you should do this.” One of the factors of the five that are mentioned for the court to take into consideration in the amendment is in fact the liquidity of the lump sum—can you get at it, or is it not as good as cash? Is it locked in?—among other things, including the tax consequences, including private parties likely to need the money for retirement—is it better to lock it in than hand it out in cash?—and a couple of other things. So there are a number of factors that were not in the original bill that responded, essentially, to the Ontario Bar Association.

The Chair (Mr. Shafiq Qaadri): Mr. Kormos.

Mr. Peter Kormos: You recall that, yes, it was the OBA that wanted to overcome the 50% rule, the maximum 50%.

Mr. John Gregory: No, this does not do that.

Mr. Peter Kormos: This does not address that?

Mr. John Gregory: It does not address that. The next—well, there’s another amendment that we’ll come to on that, but in fact the 50% rule is in place; it is not overridden. The amendments do not do what the bar association wanted on that 50% rule.

Mr. Peter Kormos: Fair enough. Because I’m reading, “An order made ... shall not provide for the immediate transfer” in excess of—in the existing subsection (4). Subsection (4) puts a cap.

Mr. John Gregory: Yes, but that cap dealt with the value of the pension compared to the value of the total net family property as a member spouse and has nothing to do with the amount proportionate to the amount of the pension plan. That limit is in subsection (6) of 10.1, which is the 50% cap. In fact, it pushes you back to the Pension Benefits Act, but it’s very clear that it says no more than half. No more than half of what is one of the other points that was debated by the actuaries, but the 50% cap rather than, “Oh, they should be able to give 100% in the right case”—the amendments do not go to that submission.

Mr. Peter Kormos: Thank you kindly.

The Chair (Mr. Shafiq Qaadri): Are there any further comments or queries on government motion 23? We’ll now proceed to the vote. Those in favour of government motion 23? Those opposed? Government motion 23 is carried.

Government motion 24, Mr. Zimmer.

Mr. David Zimmer: Mr. Chair, could we have a three-minute adjournment?

Mr. Peter Kormos: I’m agreeing because I have to go, too.

The Chair (Mr. Shafiq Qaadri): We’ll recess—not adjourn, recess—for five minutes.

The committee recessed from 1527 to 1533.

The Chair (Mr. Shafiq Qaadri): As we have quorum, we’ll resume committee proceedings. We are now considering government motion 24, which needs to be entered into the record. Mr. Zimmer.

Mr. David Zimmer: I move that section 10.1 of the Family Law Act, as set out in section 26 of the bill, be amended by adding the following subsection:

“Same

“(5.1) Subsections 9(2) and (4) do not apply with respect to an order made under section 9 or 10 that provides for the division of pension payments.”

The Chair (Mr. Shafiq Qaadri): Thank you. Comments?

Seeing none, we’ll proceed to the vote. Those in favour of government motion 24? Those opposed? Government motion 24 carried.

Government motion 25, Mr. Zimmer.

Mr. David Zimmer: I move that subsection 10.1(7) of the Family Law Act, as set out in section 26 of the bill, be struck out and the following substituted:

“Transition, valuation date

“(7) This section applies whether the valuation date is before, on or after the date on which this section comes into force.

“Transition, previous orders

“(8) This section does not apply to an order made before the date on which this section comes into force that requires one spouse to pay to the other spouse the amount to which that spouse is entitled under section 5.”

The Chair (Mr. Shafiq Qaadri): Thank you. Comments? Seeing none, we’ll proceed to the vote. Those in favour of government—

Mr. Peter Kormos: One moment.

The Chair (Mr. Shafiq Qaadri): Okay.

Mr. Peter Kormos: This is the beginning of the axis of evil on the part of the government.

Mr. Khalil Ramal: Why is that?

Mr. Peter Kormos: Because you’ve got to remember that subsection 10.1(1) talks about “determined in accordance with section 67.2.” Of course that’s a new section, 67.2, of the Pension Benefits Act. That’s the one that, among other things, provides that it’s the plan administrator who will be determining value. As I say, this is the beginning of the evil part, and I’m going to want a recorded vote. Of course, we’ll be voting against it.

The Chair (Mr. Shafiq Qaadri): Thank you. Further comments?

Mr. Peter Kormos: Recorded vote, please.

The Chair (Mr. Shafiq Qaadri): Recorded vote on government motion—shall section 26, as amended, carry?

Ayes

Dhillon, Jaczek, Johnson, Ramal, Zimmer.

Nays

Elliott, Kormos.

The Chair (Mr. Shafiq Qaadri): Section 26, as amended, has carried.

May it be the will of the committee to consider sections 27 to 34, inclusive, seeing as we had no amendments? Those in favour of said sections, 27 to 34? Those opposed? Said sections carried.

Section 35: PC motion 26. Ms. Elliott.

Mrs. Christine Elliott: I move that subsection 46(3) of the Family Law Act, as set out in section 35 of the bill, be struck out.

This has been proposed, Mr. Chair, because it's redundant. The restraining orders can already provide for the orders that are set out in this section.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Elliott. Comments? Those in favour of PC motion 26? Those opposed? PC motion 26, defeated.

Government motion 27, Mr. Zimmer.

Mr. David Zimmer: I move that paragraph 1 of subsection 46(3) of the Family Law Act, as set out in section 35 of the bill, be amended by striking out "the applicant and any child" and substituting "the applicant or any child."

The Chair (Mr. Shafiq Qaadri): Thank you. Comments? Those in favour of government motion 27? Those opposed? Government motion 27, carried.

We'll proceed to consider the section vote. Shall section 35, as amended, carry? Recorded vote, Mr. Kormos? **1540**

Mr. Peter Kormos: We've got to debate these things.

The Chair (Mr. Shafiq Qaadri): Pardon me?

Mr. Peter Kormos: We've got to debate these sections, as amended.

The Chair (Mr. Shafiq Qaadri): Please proceed.

Mr. Peter Kormos: No, thank you.

The Chair (Mr. Shafiq Qaadri): Thank you.

Shall section 35, as amended, carry? Carried.

Section 36: There are no amendments so far received, so unless there's commentary, we'll consider the vote. Shall section 36 carry? Carried.

Section 37, PC motion 28. Ms. Elliott?

Mrs. Christine Elliott: I move that section 56.1 of the Family Law Act, as set out in section 37 of the bill, be amended by adding the following subsection:

"Transition

"(2) This section applies whether the valuation date is before, on or after the date on which this section comes into force but it does not apply to a domestic contract made before the date on which this section comes into force."

Simply a transition provision, Mr. Chair, to make sure that it's consistent throughout.

The Chair (Mr. Shafiq Qaadri): Any further comments? Those in favour of PC motion 28? Those opposed? I declare PC motion 28 to have been defeated.

Government motion 29. Mr. Zimmer?

Mr. David Zimmer: I move that section 56.1 of the Family Law Act, as set out in section 37 of the bill, be struck out and the following substituted:

"Provisions re pension plan

"Family law valuation date

"56.1(1) In this section,

"family law valuation date' means, with respect to the parties to a domestic contract,

"(a) the valuation date under part I (family property) that applies in respect of the parties, or

"(b) for parties to whom part I does not apply, the date on which they separate and there is no reasonable prospect that they will resume cohabitation.

"Immediate transfer of lump sum

"(2) A domestic contract may provide for the immediate transfer of a lump sum out of a pension plan, but, except as permitted under subsection (3), not for any other division of a party's interest in the plan.

"Division of pension payments

"(3) If payment of the first instalment of a party's pension under a pension plan is due on or before the family law valuation date, the domestic contract may provide for the division of pension payments, but not for any other division of the party's interest in the plan."

The Chair (Mr. Shafiq Qaadri): There is page 2, Mr. Zimmer.

Mr. David Zimmer: Oh, I'm sorry.

"Restrictions re certain pension plans

"(4) If the Pension Benefits Act applies to the pension plan, the restrictions under sections 67.3 and 67.4 of that act apply with respect to the division of the party's interest in the plan under a domestic contract.

"Valuation

"(5) Subsections 10.1(1) and (2) apply, with necessary modifications, with respect to the valuation of a party's interest in a pension plan.

"Transition, family law valuation date

"(6) This section applies whether the family law valuation date is before, on or after the date on which this section comes into force.

"Transition, previous domestic contracts

"(7) This section does not apply to a domestic contract that provided, before the date on which this section comes into force, for the division of a party's interest in a pension plan."

The Chair (Mr. Shafiq Qaadri): Are there any further questions or comments? We'll proceed then to the vote. Those in favour of government motion 29? Those opposed? I declare government motion 29 to have been carried.

Shall section 37—

Mr. Peter Kormos: One moment, please, Chair. If I can beg your indulgence.

The Chair (Mr. Shafiq Qaadri): Yes, please continue.

Interjections.

Mr. Peter Kormos: Sorry, Chair.

The Chair (Mr. Shafiq Qaadri): Thank you. We proceed now to consider section 37, as amended. Shall it carry? Those opposed? Carried.

Section 38: To date we have not received any amendments, so we can proceed directly to the vote unless there are any comments. Shall section 38 carry? Carried.

Section 38.1, new section. Government motion 30. Mr. Zimmer?

Mr. David Zimmer: Government motion 30?

The Chair (Mr. Shafiq Qaadri): Government motion 30.

Mr. David Zimmer: Just a second.

I move that the bill be amended by adding the following section:

“38.1 The act is amended by adding the following section:

“Award re pension plan

“Family law valuation date

“59.4.1(1) In this section,

““family law valuation date” means, with respect to the parties to an arbitration,

“(a) the valuation date under part I (family property) that applies in respect of the parties, or

“(b) for parties to whom part I does not apply, the date on which they separate and there is no reasonable prospect that they will resume cohabitation.

“Immediate transfer of lump sum

“(2) A family arbitration award may provide for the immediate transfer of a lump sum out of a pension plan, but, except as permitted under subsection (3), not for any other division of a party’s interest in the plan.

“Division of pension payments

“(3) If payment of the first instalment of a party’s pension under a pension plan is due on or before the family law valuation date, the family arbitration award may provide for the division of pension payments, but not for any other division of the party’s interest in the plan.

“Restrictions re certain pension plans

“(4) If the Pension Benefits Act applies to the pension plan, the restrictions under sections 67.3 and 67.4 of that act apply with respect to the division of the party’s interest in the plan under a” domestic contract.

“Valuation

“(5) Subsections 10.1(1) and (2) apply, with necessary modifications, with respect to the valuation of a party’s interest in a pension plan.

“Transition, family law valuation date

“(6) This section applies whether the family law valuation date is before, on or after the date on which this section comes into force.

“Transition, previous” domestic contracts

“(7) This section does not apply to a” domestic contract that provided, before the date on which this section comes into force, for the division of a party’s interest in a pension plan.

The Chair (Mr. Shafiq Qaadri): Comments on government motion 30? Mr. Kormos?

Mr. Peter Kormos: I’m just curious as to the need for this, because how would there be retroactivity?

Mr. David Zimmer: The new section does for family law arbitration awards what the earlier section 10.1 did for the court orders and 56.1 did for domestic contracts; that is, it sets out the valuation principles for pension assets and says how they can be split between the parties. Since the family equalization payments may arise under any of those three documents, the act should deal with all three.

Mr. Peter Kormos: I hear you, but you’ve got an arbitration award that predates the enactment of this legislation. How would this legislate—it makes it clear that there is no retroactivity, I believe. This is more just a matter of curiosity. I agree that there shouldn’t be retroactivity, but why do we need this? Would it otherwise be retroactive?

Mr. David Zimmer: Mr. Gregory?

Mr. John Gregory: I think the idea is, because the general provisions of the beginning of that section essentially say that any family arbitration award may—it says “a family arbitration” in subsection (2) of the motion: “A family arbitration award may provide for the immediate transfer of a lump sum....” So the question is, what about ones already made? For greater certainty, at any rate, it’s nailing it down the same as when it says “a court order.” All three of the transition provisions in 10.1(8) and in 56.1 and in here are intended for the same purpose, which is to say that this doesn’t mean that you can go back and try to get in under the new section. You can’t go to the administrator and ask for a valuation and you can’t split the pension. If your rights are settled, they’re settled.

Could you otherwise? Well, you might say, “I have an award that says I have to pay equalization, but it doesn’t say anything about pensions, so I want to split the pension because otherwise, I have trouble funding it.” The answer is no. We had some debate and discussion with stakeholder groups about transition and when do you open it and when do you not open it, but the idea is, once this comes into force, you can’t come back and reopen the old awards.

Mr. Peter Kormos: I understand. But this was more an abundance of caution?

Mr. John Gregory: It’s really for greater certainty, that’s right.

Mr. Peter Kormos: Thank you.

The Chair (Mr. Shafiq Qaadri): Are there any further comments?

Mr. David Zimmer: Chair, can we just recess for about 60 seconds?

Mr. Peter Kormos: Sure.

Mr. David Zimmer: I’m not going to go anywhere. Thank you.

Turning to my colleague, I thought perhaps there was something—

Mr. Peter Kormos: It’s happened from time to time, hasn’t it, Mr. Zimmer?

1550

The Chair (Mr. Shafiq Qaadri): Are there any further questions, comments or additions on government motion 30? Seeing none, we'll proceed with the vote. Those in favour of government motion 30? Those opposed? Government motion 30 carries.

Shall section 38.1, as amended, carry? Carried.

Section 39, PC motion 31.

Mrs. Christine Elliott: I move that section 39 of the bill be amended by adding the following subsection:

“(0.1) Section 69 of the act is amended by adding the following subsection:

“(1.1) The Lieutenant Governor in Council may make regulations prescribing the meaning of “relating to the acquisition or significant improvement of a matrimonial home” for the purposes of clause (b) of the definition of “net family property” in subsection 4(1).”

This amendment was proposed in response to some concerns expressed by presenters that there were other considerations to be brought to bear, this being one of them, in the determination of net family property.

The Chair (Mr. Shafiq Qaadri): Further comments? Seeing none, we'll proceed with the vote. Those in favour of PC motion 31? Those opposed? PC motion 31 is defeated.

Shall section 39—

Mr. Peter Kormos: One moment, please.

The Chair (Mr. Shafiq Qaadri): Please.

Mr. Peter Kormos: Thank you.

So little has changed since Shelley Martel broke into the FRO office back in 1996 with a video camera. Seriously, so little has changed. It remains among the top five or six of the problems we deal with in our constituency offices. We have lawyers calling us asking us to access the FRO for them, because family lawyers get stonewalled. Money by payers, deducted from their paycheques, still disappears into black holes. It is still a bureaucratic nightmare. The computer systems—and Lord knows how many millions upon millions of taxpayers' dollars have been spent on them—still seem to be incapable of coping. We still can't, through our constituency offices—we can provide the name, address, SIN number and employment place of a defaulting payer, and it's like talking to a brick wall. We've got payers whose drivers' licences are suspended when they've got all the documentation in the world, including the paycheque stubs showing the deductions. It is a horror show; it remains one.

In general in family law, the easy cases, the cases where parties are co-operative—heck, they don't need the family law. They work things out. People take care of their custody issues and take care of their access issues and everybody acts relatively maturely. The FRO has great expertise at collecting the easy ones, but it remains totally incapable of dealing with the difficult ones. We don't need the FRO to collect the easy ones; we need the FRO to collect the defaulters, and Lord knows we need the FRO to stop screwing payers whose paycheques are getting deductions, yet whose spouses are calling them

saying, “I'm not getting a cheque.” They both come into my office. They've been through nasty divorces, but they've got a common problem. They'll come into the office together just holding their heads, and our staff spend far too much time with FRO.

So here you've got the LG in Council making regulations relating to child support obligations, including the obligation to advise of your new income. I don't know; it's pretty ambitious. Lord knows creating yet a second bureaucracy is fraught with potholes—we were talking about potholes earlier today—and using the existing FRO, which can't handle the work that it's got before it, without addressing that seems to be so incredibly problematic. That operation has been bungled ever since the 11 regional offices were dissembled and so-called integrated up at the MTO area in—is that Willowdale?

Interjection.

Mr. Peter Kormos: Downsview. Keele and the 401.

The Chair (Mr. Shafiq Qaadri): Further comments? Seeing none, we'll proceed with the vote. Those in favour of section 39? Those opposed? Section 39 is carried.

We'll now proceed to the next section, section 40. Government motion 32, Mr. Zimmer.

Mr. David Zimmer: I move that section 40 of the bill be amended by adding the following subsection:

“(1.1) Subsection 1(1) of the act is amended by adding the following definition:

““family arbitration award” means a family arbitration award made under the Arbitration Act, 1991; (“sentence d'arbitrage familial”)”

The Chair (Mr. Shafiq Qaadri): Are there any further comments on motion 32? Seeing none, we'll proceed to the vote. Those in favour of government motion 32? Those opposed? Motion 32 is carried.

We'll proceed now to consider the section. Shall section 40, as amended, carry? Those opposed? Carried.

May it be the will of the committee to consider sections 41 and 42, inclusive, seeing as we've not received any amendments? Those in favour of sections 41 and 42? Those opposed? Carried.

Section 43. Government motion 33, Mr. Zimmer.

Mr. David Zimmer: I move that section 43 of the bill be struck out and the following substituted:

“43. Subsection 48(13) of the act is repealed and the following substituted:

““Restriction on entitlement

“(13) An entitlement to a benefit under this section is subject to any right to or interest in the benefit set out in an order made under part I (family property) of the Family Law Act, a family arbitration award or a domestic contract.”

The Chair (Mr. Shafiq Qaadri): Thank you. Any further comments on government motion 33? There are none. We'll consider the vote. Those in favour of government motion 33? Those opposed? Motion 33 is carried.

If there are no further comments, we'll consider the section vote. Those in favour of section 43, as amended? Carried.

We'll proceed directly to the vote, unless there are comments, on section 44, as we have not received any amendments. Those in favour of section 44? Those opposed? Carried.

Section 45. Government motion 34, Mr. Zimmer.

Mr. David Zimmer: I move that subsection 45(2) of the bill be struck out and the following substituted:

“(2) Subsection 65(3) of the act is repealed and the following substituted:

“Exemptions

“(3) Subsections (1) and (2) do not apply to prevent the assignment of an interest in money payable under a pension plan or money payable as a result of a purchase or transfer under section 42, 43, clause 48(1)(b), sections 67.3 or 67.4 or subsection 73(2) by an order under the Family Law Act, by a family arbitration award or by a domestic contract.”

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Zimmer. Any comments on government motion 34? Seeing none, we'll proceed to the vote. Those in favour of government motion 34? Those opposed? Motion 34 is carried.

Shall section 45, as amended, carry? Carried.

May it be the will of the committee to consider sections 46 and 47, inclusive, seeing as we've not received any amendments to date? Yes. Those in favour of sections 46 and 47? Those opposed? Carried.

Section 48. Government motion 35, Mr. Zimmer.

Mr. David Zimmer: I move that the definition of “family arbitration award” in subsection 67.1(1) of the Pension Benefits Act, as set out in section 48 of the bill, be struck out.

The Chair (Mr. Shafiq Qaadri): Comments?

Vote: Those in favour of government motion 35? Those opposed? Motion 35 is carried.

Motion 36, Mr. Zimmer.

Mr. David Zimmer: I move that subsection 67.2(1) of the Pension Benefits Act, as set out in section 48 of the bill, be struck out and the following substituted:

“Valuation for family law purposes

“Preliminary valuation, member or former member

“67.2(1) The preliminary value of a member's pension benefits or a former member's deferred pension or pension under a pension plan, before apportionment for family law purposes, is determined by the administrator in accordance with the regulations and as of the family law valuation date of the member or former member and his or her spouse.

“Same, spouse

“(1.1) The preliminary value of the pension benefits or pension of the spouse of a member or former member under a pension plan, before apportionment for family law purposes, is determined by the administrator in accordance with the regulations and as of the family law valuation date of the spouse and the member or former member.”

The Chair (Mr. Shafiq Qaadri): Thank you. Comments, government motion 36?

Vote: Those in favour of government motion 36? Those opposed? Motion 36 is carried.

PC motion 37, Ms. Elliott.

1600

Mrs. Christine Elliott: I move that subsections 67.2(2) and (3) of the Pension Benefits Act be amended by striking out “ancillary benefits” wherever it appears and substituting in each case “additional non-vested benefits”—simply to conform with the wording that was used by the actuaries with respect to vested and non-vested or contingent benefits.

The Chair (Mr. Shafiq Qaadri): Thank you. Further comments on PC motion 37?

Those in favour of PC motion 37? Those opposed? PC motion 37 is defeated.

PC motion 38: Ms. Elliott?

Mrs. Christine Elliott: I move that subsection 67.2(5) of the Pension Benefits Act, as set out in section 48 of the bill, be amended by adding “or to an actuary” after “to the administrator of the pension plan”—to allow for the valuation by actuaries in addition to pension plan administrators.

The Chair (Mr. Shafiq Qaadri): Thank you, Mrs. Elliott. Mr. Kormos?

Mr. Peter Kormos: I think this is an important effort on the part Mrs. Elliott to try to mitigate some of the error of the government in this regard. We didn't have a very full discussion at this committee, did we, Mrs. Elliott, about the problems around pension plan administrators valuing pensions?

The discussion becomes all that much more significant in these volatile times, when we've seen pension funds eroded to the tune of 30% and 40%. We talked about the inclination of a pension plan administrator—first of all, not being an actuary; secondly, using a formula, a methodology, that purports to be a one-size-fits-all; and thirdly, being disinclined to undermine the stability of that pension plan. The money is being paid out, for instance, at a time when the value of that pension plan's investments is minimal because of the equity interests that it holds. As everybody knows, that's precisely the wrong time to sell, because you automatically lose.

I buy the argument from the actuaries that a pension plan administrator inherently—because we heard about the fiduciary duty. The fiduciary duty isn't to any given member, as I understand it—and please, Mr. Zimmer, call your folks if I'm wrong—the fiduciary duty is to the plan itself; it's to the broader plan. There's a fiduciary duty, obviously, to members, but it seems to me that the greater fiduciary duty is to the broader plan. That could impact on how a pension plan administrator values a particular pension. And I'm not saying he or she is going to be motivated by anything less than integrity, but in fact could be motivated by his or her fiduciary duty to the plan.

What Mrs. Elliott is proposing here is that parties be given some choice about whether they use the pension plan administrator, who's going to charge a fee in any event. And you'll recall this whole committee process

started with this myth—it seemed to me that the parliamentary assistant was reading a tale out of Grimm’s Fairy Tales, because it started with the myth of duelling actuaries, didn’t it? The impression that the government wanted to create was that these actuaries are hired guns who go in there and cost the parties thousands of dollars because you have a plaintiff’s actuary and a defendant’s actuary—a petitioner’s actuary; I think that’s better language, isn’t it?—and they fight and fight, and the judge has to make rulings. What we found out is that it’s a myth, the myth of duelling actuaries.

The government tried to sell this proposal on the basis of, it’ll simplify things. What we learned is that most actuaries do their actuarial process based on a consideration of all of the facts: ages of people, their inclinations to retire early, what the pension plan provided for by way of early retirement; and, I presume, amongst other things, their net assets. Obviously, if somebody has substantial net assets, they’re more inclined to take an earlier retirement than somebody who doesn’t—and whether or not you’ve got three kids in post-secondary school. Boy, down where I come from, that’s a really persuasive argument about whether or not you retire early. If you’ve still got a job, you don’t retire early when you’ve got three kids in post-secondary—you don’t. It’s a simple matter of fact.

These are the sorts of things that it was suggested to me an actuary would take into consideration in performing their tailor-made evaluation. The pension plan administrator isn’t going to be given that opportunity. First of all, we heard from a pension plan administrator, the one who, with pride, said he’s not an actuary, nor is he a lawyer. I congratulated him at the very least on not being a lawyer, except I found the actuaries very bright and persuasive people.

I’m going to support this amendment because, although I’m still unsure about whether the administrator of the pension plan should be the person doing the evaluations, I’m not convinced it’s going to be any cheaper for anybody. Why can’t a party challenge the evaluation of the pension plan administrator? Why can’t a party challenge? Why can’t a party appeal to the court to say that this pension plan administrator, although he or she purports to use the formula, has fundamentally reached a flawed number?

Ms. Cynthia Crysler: Any fault of an administrator can be challenged at the Financial Services Commission of Ontario. They deal with pension administrators on a continuing basis and they speak to administrators about corrections before it becomes a court proceeding. If there’s no correction and they believe that there has been an error, then they issue a decision.

Mr. Peter Kormos: I know, and I’ve dealt with FSCO on a whole lot of issues and I have a lot of respect for the folks there. But I’ve also had to deal with a whole lot of pension windups down in my community, factories that have shut down, and had to deal with FSCO around those, too. But to be fair, they contract the work out, right, so it’s not FSCO that does the windups.

Why couldn’t a party—never mind agreeing that FSCO has this oversight role—to a matrimonial action say, “Hooey, this valuation is a load of—it’s just not accurate and does my party an injustice?”

Ms. Cynthia Crysler: The bill would allow a statement with the imputed value to also include other information by which an independent actuary outside of the organization could check the accuracy of the calculation.

Mr. Peter Kormos: Exactly. You see, this doesn’t create any certainty at all, because you’re still going to have people challenging the pension plan administrator’s valuation.

Ms. Cynthia Crysler: Could I just say that in addition—

Mr. Peter Kormos: I was being hyperbolic, but that’s okay. I got carried away.

Ms. Cynthia Crysler: The administrator does hire an actuary for these calculations. These calculations will be done by an actuary.

Mr. Peter Kormos: But wait a minute: So actuaries are still going to be called upon, but they’re going to be hired by the pension plan administrator, not by the parties.

Ms. Cynthia Crysler: Yes. So they’ll be subject to the fiduciary duties that the administrator is subject to.

Mr. Peter Kormos: So to the extent that anybody in the era of duelling actuaries—remember Gene Autry and that stuff, Mr. Zimmer? Roy Rogers and Gene Autry duelling outside the opening to the mine? So, if there ever is any duelling, is it going to be diminished? Actuaries have said it doesn’t happen that much, but to the extent that it does exist, it will still persist, won’t it? Why wouldn’t it?

Ms. Cynthia Crysler: Right now, there are no regulations indicating how these calculations should be made. There is a standard promulgated by the Canadian Institute of Actuaries which leaves a lot of questions open to the judgment of the actuaries. If some of those judgments or all of those judgment measures are prescribed, then there will be far less room for debate about what the numbers should be.

Mr. Peter Kormos: No, I know, but you heard the actuaries say that that debate may be a good thing because it is as much—I’m putting words. They didn’t call it as much an art as a science. But it seems to me it’s like doctoring and lawyering and so many of the other professions. It is as much an art as a science from the actuary’s perspective.

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Mr. John Gregory: The other thing is that the actuaries, as they told the committee, say, “We come up with a range rather than a single number.” Well, that just pushes the duelling off to after the actuary at that point. I mean, the point of the bill is to reduce the amount of duelling to the maximum, and that may be not to zero, because some people will fight about anything, but the idea is that there will be a regulation that will come up with a single number and it will be as fair as possible.

Any number saying what is a value of something that will kick in in 25 years is not going to be 100% accurate, except by—

Mr. Peter Kormos: Chair, can I refer to the bell curve? That means that a certain number—and again, we did talk about Grimm’s Fairy Tales: “The porridge is too hot; the porridge is too cold.” The government does that all the time. In their polemic, they say, “Well, if the Conservatives oppose it from the right and the NDP oppose it from the left, we’re like the porridge that tastes just right.” So they use that rather fallacious argument all the time, that we’re right down the middle, but when you’re right down the middle, there are some losers—and I don’t know how steep this bell curve is. I agree that you’re going to capture some people bang on, but you’re also suggesting, and the others have, that there are some people who are going to be at the downturn of the bell curve. Right?

Ms. Cynthia Cryslar: There are now.

Mr. Peter Kormos: Yeah.

Ms. Cynthia Cryslar: The actuaries aren’t correct now. It depends on what the formula is, which we have already discussed with the CIA, in consultations with them, as well as with other groups, on the regulations.

Mr. Peter Kormos: But at least now if you have a dispute, a judge makes a determination between variances in actuaries. Right?

Ms. Cynthia Cryslar: They often make orders that are unenforceable under the Pension Benefits Act because they don’t understand the pension rules, which is part of the reason why having prescribed rules may help the situation.

Mr. Peter Kormos: So you’re creating new rules?

Ms. Cynthia Cryslar: Yes. But clearer.

Mr. Peter Kormos: Thank you very much, but it just seems to me that the choice provided by Ms. Elliott is a preferable one. If people want to use their plan administrator, God bless. If, instead, they want to hire their own actuary, I say God bless twice. There may be any number of reasons why a person may not—I don’t want to argue with you folks, because you’re not the bad guys; you’re the good guys. These are the bad guys over here. But don’t tell me that plan administrators don’t screw up. Ask Mr. Sabia and his new employers, or at least the dissenting faction, over at the Caisse de dépôt. Somebody screwed up. That was some plan administration. Smooth move, guys—and gals, I suppose.

Thank you, Chair. I’m not going to flog this one to death, but I just wanted to—

Mr. David Zimmer: You already have.

Mr. Peter Kormos: We’ve still got third reading, Zimmer.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Kormos.

Are there any further comments on PC motion 38? Seeing none, we’ll proceed to the vote. Those in favour—

Mr. Peter Kormos: Recorded vote, please.

Ayes

Elliott, Kormos.

Nays

Dhillon, Jaczek, Johnson, Ramal, Zimmer.

The Chair (Mr. Shafiq Qaadri): PC motion 38 is defeated.

Government motion 39.

Mr. David Zimmer: I move that subsections 67.2(4) and (5) of the Pension Benefits Act, as set out in section 48 of the bill, be struck out and the following substituted:

“Imputed value for family law purposes

“(4) The imputed value, for family law purposes, of each spouse’s pension benefits, deferred pension or pension, as the case may be, is that portion of the preliminary value that is attributed by the administrator, in accordance with the regulations,

“(a) to the period beginning with the date of the spouses’ marriage and ending on their family law valuation date, for the purposes of an order under part I (family property) of the Family Law Act; or

“(b) to the period beginning with the date determined in accordance with the regulations and ending on the spouses’ family law valuation date, for the purposes of a family arbitration award or domestic contract.

“Application for statement of imputed value

“(5) The following persons may apply to the administrator of the pension plan, in accordance with the regulations, for a statement of the imputed value, for family law purposes, of each spouse’s pension benefits, deferred pension or pension, as the case may be:

“1. In the case of spouses to whom part I of the Family Law Act applies, either spouse.

“2. In the case of spouses to whom part I of the Family Law Act does not apply, the member or former member.”

The Chair (Mr. Shafiq Qaadri): Comments on government motion 39? Mr. Kormos?

Mr. Peter Kormos: I trust this is just importation of the word “imputed”?

Mr. David Zimmer: The amendment changes the phrase “net family law value” to “imputed value, for family law purposes”.

Mr. Peter Kormos: This is consistent with your other amendments that create this new beast.

Mr. David Zimmer: Yes, this is consistent.

Mr. Peter Kormos: This is like genetic engineering.

The Chair (Mr. Shafiq Qaadri): Any further comments to government motion 39? Seeing none, we’ll proceed to the vote. Those in favour of government motion 39? Those opposed? Government motion 39, carried.

The committee thanks Mrs. Elliott for withdrawing PC motion 40, which was out of order given the defeat of PC motion 38. We’ll proceed directly to government motion 41. Mr. Zimmer?

Mr. David Zimmer: I move that subsections 67.2(7), (8) and (9) of the Pension Benefits Act, as set out in

section 48 of the bill, be struck out and the following substituted:

“Duty to determine imputed value

“(7) Once the application is complete, the administrator shall determine the imputed value, for family law purposes, of each spouse’s pension benefits, deferred pension or pension, as the case may be.

“Duty to provide statement

“(8) The administrator shall give a statement containing the prescribed information to both spouses within the prescribed period.

“Transition

“(9) Neither spouse is eligible to apply under paragraph 1 of subsection (5) for the statement if an order made under part I of the Family Law Act before the day on which this section comes into force requires one spouse to pay to the other spouse the amount to which the other spouse is entitled under section 5 (equalization of net family properties) of that act.”

The Chair (Mr. Shafiq Qaadri): Thank you. Mr. Kormos?

Mr. Peter Kormos: In the existing subsection (7)—and I understand you’re again importing the word “imputed” instead of “net family law value,” but it says, “net family law value (or values)”, suggesting that there could be more than one number. You have “imputed value” but you don’t have “(or values)”, so I’m just wondering—

Mr. David Zimmer: Are you just wondering, or do you want an answer?

Mr. Peter Kormos: No, I’m wondering; I wonder about these things.

Mr. David Zimmer: Well, wonder on.

Mr. Peter Kormos: Go ahead: You’re obviously not going to answer it, are you, Mr. Zimmer?

Mr. David Zimmer: Would you like an answer?

Mr. Peter Kormos: Get the staff up here.

Mr. David Zimmer: I wasn’t sure if you were just wondering or asking a question.

Mr. Peter Kormos: I was trying to be sensitive to other people.

Ms. Cynthia Crysler: I believe in the original Bill 133 “value (or values)” was a drafting error.

Mr. Peter Kormos: There you go.

Mr. John Gregory: The Legislation Act, 2006, already says, as did the Interpretation Act before it, that a singular includes a plural and vice versa. So you don’t have to say “A” and plural “As” every time, including this one.

Mr. Peter Kormos: I think Mr. Zimmer should explain how we screwed that one up, sitting at your word processor, “net family value (or values)”; huh?

The Chair (Mr. Shafiq Qaadri): Are there any further questions, comments or wonderments on this particular motion? Seeing none, we’ll proceed now to consider government motion 41. Those in favour? Those opposed? Government motion 41, carried.

Government motion 42. Mr. Zimmer?

Mr. David Zimmer: I move that paragraph 2 of subsection 67.3(1) of the Pension Benefits Act, as set out in

section 48 of the bill, be amended by striking out “No payment of” at the beginning and substituting “No payment of an instalment of”.

Mr. Peter Kormos: I should indicate I’m going to support that.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Kormos. Are there any further comments? Seeing none, those in favour of government motion 42? Those opposed? Government motion 42, carried.

Government motion 43. Mr. Zimmer?

Mr. David Zimmer: I move that subsection 67.3(1) of the Pension Benefits Act, as set out in section 48 of the bill, be amended by adding the following paragraph:

“2.1 A statement of the imputed value, for family law purposes, of the member’s pension benefits or the former member’s deferred pension has been obtained from the administrator under section 67.2.”

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The Chair (Mr. Shafiq Qaadri): Thank you. Comments? Seeing none, for government motion 43, those in favour? Those opposed? Government motion 43 is carried.

Government motion 44. Mr. Zimmer?

Mr. David Zimmer: I move that paragraph 4 of subsection 67.3(1) of the Pension Benefits Act, as set out in section 48 of the bill, be struck out and the following substituted:

“4. In the order, family arbitration award or domestic contract, the amount to be transferred as a lump sum is expressed,

“i. as a specified amount, or

“ii. as a proportion of the imputed value, for family law purposes, of the member’s pension benefits or the former member’s deferred pension.”

The Chair (Mr. Shafiq Qaadri): Thank you. Comments? Seeing none, we’ll proceed. Government motion 44, those in favour? Those opposed? Government motion 44 is carried.

Government motion 45. Mr. Zimmer?

Mr. David Zimmer: I move that section 67.3 of the Pension Benefits Act, as set out in section 48 of the bill, be amended by adding the following subsection:

“Transfer to eligible spouse’s estate

“(4.1) If the lump sum is not transferred under subsection (4) before the death of the eligible spouse, the lump sum is payable instead to the eligible spouse’s estate or as otherwise permitted by regulation.”

The Chair (Mr. Shafiq Qaadri): Thank you. Are there any further—Mr. Kormos?

Mr. Peter Kormos: I’m wondering again, what would happen if this subsection weren’t enacted?

Ms. Cynthia Crysler: Pardon me?

Mr. Peter Kormos: What would happen if this subsection weren’t enacted, weren’t part of the legislation?

Ms. Cynthia Crysler: Without this section, if the spouse dies after making an application—so they’ve got an agreement or order for equalization of property, they’ve made the application for the pension, and they die—then their RRSP is closed. Most people will end up

transferring the money to a locked-in RSP, so there would be nowhere for the money to go. If that was what they had selected under the list, the pension plan administrator would not be able to deposit the money anywhere, and they would have to unravel it, reverse it.

Mr. Peter Kormos: I understand. That's right, because when you die your RRSP is functus—right?

Ms. Cynthia Cryslar: Yes.

Mr. Peter Kormos: So you've got no RRSP, it doesn't exist anymore, but somebody still owes you money. Literally, what would happen?

Mr. John Gregory: The short answer is that we really don't know. The bar association said it would be really helpful to say what happens if the spouse dies in the intervening period, so we put it in. Now you have an answer, rather than having a whole lot of lawyers saying, "My god, what happens now," when there's no place to put the money, essentially.

Mr. Peter Kormos: Wouldn't it be far more interesting just to have some test cases?

Mr. John Gregory: The bar association, who are the lawyers who would be fighting them, preferred not to have to have a test.

Mr. Peter Kormos: That is interesting information, good information.

Mr. John Gregory: There would still be an equalization debt, in fact. You'd just have to figure out how to pay it.

Mr. Peter Kormos: Yes.

The Chair (Mr. Shafiq Qadri): Thank you. Further comments on motion 45? Seeing none, those in favour of government motion 45? Those opposed? Motion 45 is carried.

Motion 46, Ms. Elliott, PC motion.

Mrs. Christine Elliott: I move that subsection 67.3(5) of the Pension Benefits Act, as set out in section 48 of the bill, be amended by striking out "net family law value" and substituting "commuted value."

Again, this is to suggest that there may be more than one value that may be applicable in determining the net family law property.

The Chair (Mr. Shafiq Qadri): Thank you, Ms. Elliott. Further comments?

Mr. Peter Kormos: Recorded vote, please.

Ayes

Elliott, Kormos.

Nays

Dhillon, Jaczek, Johnson, Ramal, Zimmer.

The Chair (Mr. Shafiq Qadri): PC motion 46 is defeated.

Government motion 47, Mr. Zimmer.

Mr. David Zimmer: I move that subsection 67.3(5) of the Pension Benefits Act, as set out in section 48 of the bill, be amended by striking out "the applicable net

family law value of the pension benefits or deferred pension, as the case may be" at the end and substituting "the imputed value, for family law purposes, of the pension benefits or deferred pension, as updated for the purposes of this subsection if the regulations require the imputed value to be updated".

The Chair (Mr. Shafiq Qadri): Thank you. Comments on government motion 47? We'll proceed to the vote. Those in favour of government motion 47? Those opposed? Motion 47 is carried.

Motion 48, Mr. Zimmer.

Mr. David Zimmer: I move that subsection 67.3(8) of the Pension Benefits Act, as set out in section 48 of the bill, be struck out and the following substituted:

"Discharge of administrator

"(8) In the absence of actual notice to the contrary, the administrator is entitled to rely upon the information provided by the spouse in the application and is discharged upon making the transfer in accordance with the application and this section and making the adjustments required by subsection (7)."

The Chair (Mr. Shafiq Qadri): Thank you. Comments? We'll proceed to the vote. Those in favour of government motion 48? Those opposed? Motion 48 is carried.

Motion 49, Mr. Zimmer.

Mr. David Zimmer: I move that subsection 67.3(10) of the Pension Benefits Act, as set out in section 48 of the bill, be struck out and the following substituted:

"Orders for support

"(10) This section does not affect any order for support enforceable in Ontario."

The Chair (Mr. Shafiq Qadri): Further comments on government motion 49? Seeing none, we'll proceed to the vote. Those in favour of government motion 49? Those opposed? Motion 49 is carried.

Government motion 50, Mr. Zimmer.

Mr. David Zimmer: I move that section 67.3 of the Pension Benefits Act, as set out in section 48 of the bill, be amended by adding the following subsections:

"Priorities

"(11) An entitlement to a transfer under this section prevails over any other entitlement under this act to a payment from the pension plan in respect of the member or former member.

"Same

"(12) For the purposes of subsection (11), an entitlement to a transfer under this section arises on application under subsection (2) by an eligible spouse."

The Chair (Mr. Shafiq Qadri): Comments? Vote: government motion 50? Those opposed? Motion 50 carried.

Government motion 51, Mr. Zimmer.

Mr. David Zimmer: I move that subsection 67.4(1) of the Pension Benefits Act, as set out in section 48 of the bill, be amended by adding the following paragraph:

"2.2 A statement of the imputed value, for family law purposes, of the former member's pension has been obtained from the administrator under section 67.2."

The Chair (Mr. Shafiq Qaadri): Comments? Vote: Those in favour of government motion 51? Those opposed? Motion 51 is carried.

Motion 52, Mr. Zimmer.

Mr. David Zimmer: I move that paragraph 4 of subsection 67.4(1) of the Pension Benefits Act, as set out in section 48 of the bill, be struck out and the following substituted:

“4. In the order, family arbitration award or domestic contract, the amount of each pension instalment to be paid to the spouse is expressed,

“i. as a specified amount, or

“ii. as a proportion of the instalment otherwise payable to the former member.”

The Chair (Mr. Shafiq Qaadri): Comments? Mr. Kormos.

Mr. Peter Kormos: Let’s slow down. We’ve got an hour and a half. Clause-by-clause is going to be over by 6, and when you do it fast, people make mistakes.

The Chair (Mr. Shafiq Qaadri): Thank you for your caution, Mr. Kormos. Are there any further comments on government motion 52? Seeing none, we shall now proceed to the vote. Those in favour of government motion 52? Those opposed? I declare government motion 52 to have been won.

We’ll now proceed to PC motion 52A. Ms. Elliott.

Mrs. Christine Elliott: I move that subsection 67.4(5) of the Pension Benefits Act, as set out in section 48 of the bill, be amended by striking out “net family law value” and substituting “commuted value”.

This has been added for the same reasons as the previous amendment, to suggest that there may be more than one value that may be applicable here.

The Chair (Mr. Shafiq Qaadri): Thank you. Comments on PC motion 52A? Seeing none, we’ll proceed with the vote. Those in favour of PC motion 52A? Those opposed? PC motion 52A has been defeated.

We’ll proceed now to government motion 53. Mr. Zimmer.

Mr. David Zimmer: I move that subsection 67.4(5) of the Pension Benefits Act, as set out in section 48 of the bill, be amended by striking out “a share of the pension that exceeds 50 per cent of the applicable net family law value of the pension” at the end and substituting “a share that exceeds 50 per cent of the imputed value, for family law purposes, of the pension, as updated for the purposes of this subsection if the regulations require the imputed value to be updated”.

The Chair (Mr. Shafiq Qaadri): Mr. Kormos?

Mr. Peter Kormos: I understand that this is the 50% rule, but I don’t know—is this nothing more than incorporating the words “imputed value”?

Mr. David Zimmer: Just give me a second here.

Mr. Peter Kormos: It makes reference to “if the regulations.” It doesn’t have, in the current subsection—

Mr. David Zimmer: What the amendment does, Mr. Kormos, is change the language of the value and also ensure that the valuation can be updated if a certain time has passed between the date of the original valuation and

the date when payment is requested. The valuation date stays the same, but the value may have changed either up or down.

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Mr. Peter Kormos: It seems to me there was a recent Ontario Court of Appeal decision. There’s a textile manufacturer out around your neck of the woods with a matrimonial dispute. The date of valuation was the date of separation, and in the course of the year and a half or so that it was going through the courts, the value of the business depreciated by almost \$2 million. His wife wanted the previous valuation to prevail. What the court used, what I read, was an extraordinary power, to be applied only under certain circumstances, to actually lower the valuation—because the guy didn’t deplete his resources. He didn’t run the company into the ground; he was just the victim of the economy. Was this sort of process never available before, or are you simply sort of codifying what courts have done from time to time?

Mr. John Gregory: There are two valuations going on. The case that you’re referring to was a case about the equalization. Tami Moscoe, who’s our family lawyer—

Mr. Peter Kormos: I’m right about the case, though, aren’t I?

Mr. John Gregory: Yes. The Kerra case basically said—

Ms. Tami Moscoe: Serra.

Mr. John Gregory: —where the value of the net family property, if the payer collapsed, essentially, so that the equalization payment was his total net worth by the time he was going to come to pay it—there is an unconscionability rule in the Family Law Act that says, “No, you can stop there.” Normal changes in valuation—you value the house and it goes up or down—you leave. It’s the date of separation. But in extraordinary cases, you can do something else.

This provision in front of the committee now is more focused, but it basically aims at protecting the integrity of the pension assets, because the 50% cap is set there. You might do a valuation two years before you get the payment out, and to preserve the integrity of the plan—it isn’t the unconscionability vis-à-vis the member compared to the non-member; it’s the plan. You get 50% of the plan. Is the value still there? If so, yes, you get maybe higher. Start today, and maybe in two years plans will be worth more, so the 50% cap is higher when you do the valuation at the time of payout. But if it’s lower, you’ve got the 50% that’s lower. That doesn’t change the equalization obligation, though. That’s just how much you can get out of the plan.

Mr. Peter Kormos: Again, you understand what happened down where I come from at Atlas Steels, where we had a huge workforce. The company shut down. The workers were paying out—and that was when they had to pay cash, right? They had to pay out cash—50% of the value of their pension plans while they were still working. The value of their plan was based on their defined benefit, yet when the plant shut down, the pension fund was grossly underfunded, so these guys are getting 60%

of the defined benefit. It just rots their socks that the spouse has got the cash on the dash, and they're living with 60% with no hope of ever seeing the rest. But this opportunity to revalue exists only within the time frame of the process?

Ms. Tami Moscoe: And the Family Law Act still requires us to value a spouse's assets at the date of separation. That's the scheme of equalization that we're not purporting to change.

The Serra case was different, because it didn't go directly to the valuation of the asset. What it did was go to the fairness, for lack of a better word, of the equalization payment in that extreme case.

What the cap does is look at the amount to be transferred to satisfy a portion of the equalization payment, and looks to the limit that should be applied at that time.

Mr. Peter Kormos: Can you give us a "for example"?

Ms. Tami Moscoe: Right now, under the Pension Benefits Act, there are regulations that a commuted value payout, if somebody terminates, can be reduced and then the difference paid out over time if the funded ratio of the plan is a certain level. So there are regulations existing that deal with that. Right now, there's nothing to connect a marriage breakdown payout to it, but that is allowed by this authority.

Mr. Peter Kormos: So the focus of this is to protect the pension plan and its interests, not necessarily the interests of a party?

Mr. John Gregory: It's still the party that has the advantage of the other 50%. So if the value of the member's share has declined and then you take 50% out of it, you take less out than you would if it had been higher. So it protects the member from having more than half of whatever the value is at the time of the payout. To that extent it protects the member. It does not protect the member from an equalization payment in the circumstances you were talking about.

Mr. Peter Kormos: Outside of the pension.

Mr. John Gregory: Outside of the pension. There's not much you can do about that, unfortunately. It's like the house that used to be worth half a million—

Mr. Peter Kormos: This is all part of the broad calculation.

Ms. Tami Moscoe: Or the business or any other asset.

Mr. Peter Kormos: It's just the extent to which the pension plan payout is going to be part of his equalization package—

Ms. Tami Moscoe: Correct.

Mr. Peter Kormos: —or her equalization package.

Mr. John Gregory: Right.

Mr. Peter Kormos: Okay. So, yes, I understand that. I think I do. Yes, sure. As a matter of fact, I do.

Interjection: It took three people that time.

The Chair (Mr. Shafiq Qadri): Are there any further comments on government motion 53? We'll proceed to the vote. Those in favour of motion 53? Those opposed? Motion 53, carried.

Government motion 54.

Mr. David Zimmer: I move that subsection 67.4(6) of the Pension Benefits Act, as set out in section 48 of the bill, be amended by striking out "The administrator is discharged" at the beginning and substituting "In the absence of actual notice to the contrary, the administrator is entitled to rely upon the information provided by the spouse in the application and is discharged."

The Chair (Mr. Shafiq Qadri): Comments on government motion—

Mr. Peter Kormos: Excuse me, Chair. What's your little summary on this one, Mr. Zimmer?

Mr. David Zimmer: What the amendment does, Mr. Kormos, is ensure that the administrator can rely on the representations of fact made in the application and is not required to go behind such representations to see if they are true—for example, whether the spouses are actually separated and actually have no prospect of reconciliation.

Mr. Peter Kormos: Okay.

The Chair (Mr. Shafiq Qadri): Any further comments on government motion 54? Seeing none, we'll proceed to the vote. Those in favour of government motion 54? Those opposed? Government motion 54, carried.

Government motion 55.

Mr. David Zimmer: I move that section 67.4 of the Pension Benefits Act, as set out in section 48 of the bill, be amended by adding the following subsection:

"Orders for support

"(7) This section does not affect any order for support enforceable in Ontario."

The Chair (Mr. Shafiq Qadri): Further comments on motion 55? We'll proceed to the vote. Those in favour of government motion 55? Those opposed? Motion 55, carried.

Motion 56.

Mr. David Zimmer: I move that section 67.4 of the Pension Benefits Act, as set out in section 48 of the bill, be amended by adding the following subsections:

"Waiver of joint and survivor pension

"(8) Despite subsection 46(2), the eligible spouse may waive his or her entitlement to a joint and survivor pension after payment of the first instalment of the former member's pension is due and before the pension is divided in accordance with this section.

"No cancellation

"(9) A waiver authorized by subsection (8) cannot be cancelled.

"Special case, combining payments

"(10) The following rules apply if the eligible spouse is entitled to a joint and survivor pension in respect of the former member in addition to being entitled to payment of a share of the former member's pension in accordance with this section:

"1. The eligible spouse may make a written request, in the form approved by the superintendent, to the administrator for payment of a single pension from the pension plan instead of payment of a share of the former member's pension and payment of a joint and survivor pension.

"2. If the pension plan so permits, the administrator may comply with the request.

"3. When the eligible spouse begins to receive the single pension, he or she ceases to be entitled to payment of the share of the former member's pension and to payment of the joint and survivor pension in respect of the former member."

The Chair (Mr. Shafiq Qadri): Comments?

Mr. Peter Kormos: I don't know what your notes say on this—and I noticed that the budget included a provision for payout of 50% of LIRAs, I believe is what they're called. Is this part of the new trend?

Mr. David Zimmer: Yes. The intent here is that the additions allow for the non-member spouse to combine his or her entitlement to share the member's pension payments under this section with his or her separate right to a survivor pension after the member dies and also get a combined pension that does not depend on the life or death of the member. The combination of benefits is already allowed under the PBA for pensions before retirement but the provisions to be added by these amendments are needed so that it can be done in the context of a family equalization transfer. Pension administrators and family lawyers both want this change made.

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Mr. Peter Kormos: So I trust, from what you're saying, this again goes back to having to juggle various components to reach the equalization number. We were just talking about that.

Mr. David Zimmer: Do you want more detail?

Mr. Peter Kormos: Yes, please.

Mr. David Zimmer: Okay.

Ms. Cynthia Cryslar: Right now, when a member retires and has a spouse, that spouse is entitled to a joint and survivor pension. If they did a split of the pension payments, then they would get one stream of payments and then they would start to get the joint and survivor. So through these sections, they can agree, or the spouse can agree, to just collapse that into a single life pension, an actuarially equivalent pension that just starts from the time they make their agreement. So they won't get two different pensions. They won't get part of the member's pension and then a joint and survivor. They'll get those amounts sort of combined into one stream of payments.

Mr. Peter Kormos: That's in lieu of a cash payout plus survivor.

Ms. Cynthia Cryslar: Yes. No, in this case, this is for retired members. There's no lump sum payment if you're already retired. It's a stream of payments. You get to split your stream of payments if you're already retired.

Mr. Peter Kormos: Okay. So the non-member spouse, she—here again, I say "she"; it could be "he"—is entitled, by virtue of being the spouse of the pension plan member, to get their survivor pension, notwithstanding that the pension plan member is still alive.

Ms. Cynthia Cryslar: The survivor pension would start after the plan member died.

Mr. Peter Kormos: Okay, notwithstanding that they were divorced.

Ms. Cynthia Cryslar: Yes.

Mr. Peter Kormos: That's the key here. Okay.

The Chair (Mr. Shafiq Qadri): Thank you for the comments.

Mr. Peter Kormos: You know, Mr. Zimmer, if these people had been around here over the last couple of weeks at the table, this might have been much easier.

Mr. David Zimmer: Things are very easy today.

The Chair (Mr. Shafiq Qadri): Any further comments on government motion 56? We'll proceed to the vote. Those in favour of government motion 56? Those opposed? Government motion 56, carried.

Government motion 57.

Mr. David Zimmer: I move that section 67.5 of the Pension Benefits Act, as set out in section 48 of the bill, be struck out and the following substituted:

"Restriction on other ways of dividing pension benefits, etc.

"67.5(1) An order made under part I (family property) of the Family Law Act, a family arbitration award or a domestic contract is not effective to the extent that it purports to require the administrator of a pension plan to divide the pension benefits, deferred pension or pension, as the case may be, of a member or former member of the plan otherwise than as provided under section 67.3 or 67.4.

"Transition, valuation date

"(2) This section applies whether the family law valuation date for the member or former member and his or her spouse is before, on or after the date on which this section comes into force.

"Transition, previous orders, etc.

"(3) This section does not apply to an order, family arbitration award or domestic contract to which section 67.6 applies."

The Chair (Mr. Shafiq Qadri): Comments? Seeing none, we'll proceed to the vote. Those in favour of government motion 57? Those opposed? Motion 57, carried.

Motion 58. Mr. Zimmer?

Mr. David Zimmer: I move that subsection 67.6(1) of the Pension Benefits Act, as set out in section 48 of the bill, be struck out and the following substituted:

"Other transitional matters

"67.6(1) This section applies to an order under part I (family property) of the Family Law Act, family arbitration award or domestic contract that requires one spouse to pay to the other spouse the amount to which that spouse is entitled under section 5 (equalization of net family properties) of that act, if the order, award or contract was made before the date on which this section comes into force.

"Amendments

"(1.1) The application of this section to an order, family arbitration award or domestic contract described in subsection (1) is not affected by an amendment or variation made on or after the date on which this section comes into force to the order, award or contract, if,

“(a) the order, award or contract provided, before that date, for the division of a party’s interest in a pension plan; and

“(b) the amendment or variation is made in order to facilitate or effect the division of the party’s interest in the pension plan in accordance with the order, award or contract.”

The Chair (Mr. Shafiq Qaadri): Comments on government motion 58? Those in favour? Those opposed? Government motion 58 is carried.

Government motion 59.

Mr. David Zimmer: I move that subsection 67.6(2) of the Pension Benefits Act, as set out in section 48 of the bill, be amended by striking out the portion before clause (a) and substituting the following:

“Timing of payment

“(2) The order, family arbitration award or domestic contract is not effective to require payment of a pension benefit before the earlier of.”

The Chair (Mr. Shafiq Qaadri): Comments on government motion 59? Those in favour? Those opposed? Government motion 59 is carried.

Government motion 60.

Mr. David Zimmer: I move that subsection 67.6(3) of the Pension Benefits Act, as set out in section 48 of the bill, be amended by striking out “The order or domestic contract” at the beginning and substituting “The order, family arbitration award or domestic contract.”

The Chair (Mr. Shafiq Qaadri): Comments on government motion 60? We’ll proceed to the vote. Those in favour of government motion 60? Those opposed? Government motion 60 is carried.

Government motion 61.

Mr. David Zimmer: I move that subsection 67.6(4) of the Pension Benefits Act, as set out in section 48 of the bill, be amended by,

(a) striking out “the order or domestic contract” and substituting “the order, family arbitration award or domestic contract”; and

(b) striking out “the contract or order” at the end and substituting “the order, award or contract.”

The Chair (Mr. Shafiq Qaadri): Comments on government motion 61? We’ll proceed to the vote. Those in favour of government motion 61? Those opposed? Government motion 61 is carried.

Government motion 62.

Mr. David Zimmer: I move that subsection 67.6(5) of the Pension Benefits Act, as set out in section 48 of the bill, be amended by striking out “If the order or domestic contract” at the beginning and substituting “If the order, family arbitration award or domestic contract.”

The Chair (Mr. Shafiq Qaadri): Thank you. Comments on government motion 62? Those in favour? Those opposed? Government motion 62 is carried.

Shall section 48—

Mr. Peter Kormos: Chair?

The Chair (Mr. Shafiq Qaadri): Yes, Mr. Kormos?

Mr. Peter Kormos: I’m voting against this one because I don’t believe that it has received the debate and

the investigation that it should. We know that this bill is a little bit of a policy stew, not a coq au vin, but just the sort of thing you throw together with leftovers from the fridge. That’s not to suggest that the pension part is a leftover; I’m saying it’s been worked on for a long time, but it quite frankly had no business being together in this bill with the child protection stuff. These are two very, very different issues. The pension stuff was the stock, but the child protection stuff was their leftovers in the fridge that were just sort of thrown in here. It’s so transparent.

This is important stuff—I don’t deny that—and it raises interesting things for us to consider. But here we are: We’ve had actuaries before us who have raised concerns, and I don’t think anybody’s suggesting that any of them are lying. We’ve had plan administrators before us who accept this lock, stock and barrel and won’t cede an inch in terms of the argument being made by actuaries. So clearly there’s polarization. It came to the point where, “Oh, well, it’s an actuary; I know where you’re going to stand and the position you’re going to take,” and, “Oh, it’s a plan administrator; I know the position you’re going to take.”

We’ve had family lawyers, like Jason Howie, raise concerns about it. We’ve had the OBA, for all intents and purposes, endorsing it. We’ve also had some pretty consistent concerns about the extent to which these—and I’m talking about the pension proposals—aren’t consistent with the recommendations of—it’s not called the Ontario Law Reform Commission anymore; it’s the Ontario Law Commission.

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It’s frustrating to not have a more intensive dialogue between the advocates and the detractors. It’s frustrating not to see them able to respond to each other and answer the questions raised by one party or another.

You know I find the first part of the bill flawed, the child protection stuff. That warranted a stand-alone committee process, and so did the pension stuff. I’m voting against it because I don’t think we’re ready to vote for it. I think there remains a whole lot of unanswered questions. Again, you don’t get that many kicks at the can. These sorts of bills only come forward every so often, and then people have to live with the consequences. Surely there is room for some of the flexibility that Mrs. Elliott tried to get at in terms of choices, yet the pension portion of the bill doesn’t seem to provide for that. I’m voting against it. I’m voting against it not because I necessarily condemn all of it as being of no use whatsoever, but because I still have serious concerns about the plan administrator and about the methodology that’s going to be prescribed by regulation.

It’s just regrettable that we weren’t prepared to spend a little more time on this and engage the interested parties more thoroughly: plan administrators, who I have no reason to disbelieve; actuaries, who I have no reason to disbelieve; lawyers like Jason Howie, who’s experienced and who raises some very interesting concerns as a practitioner, and he does it in a brilliantly articulate way

with play in language. So I'm going to be asking for a recorded vote.

The Chair (Mr. Shafiq Qaadri): Further comments?

Mr. Khalil Ramal: For the record, of course I respect the democratic process, and I know I listened to my colleague opposite speaking about many different issues. I've been in the committee since the beginning, and I listened to many different people. Just for the record, it doesn't matter what issue you raise, whatever issue we talk about, there are going to be people with and some people against. That's why we want to strike a balanced approach in trying to address the issue. It has been addressed very well in this case by many different people, by the ministry staff and by my colleague, the PA for the minister. I think we're satisfied with the result. That's why I'm voting in support, and I hope my colleague will support me in that matter.

The Chair (Mr. Shafiq Qaadri): Are there any further comments?

Mr. Peter Kormos: Mr. Ramal's exhortation to his colleagues may well have tipped the scales and caused any of those doubters amongst the Liberal benches to, indeed, support the bill. The Premier should be thankful to him. Mr. Ramal should be the parliamentary assistant. He demonstrates persuasive skills that Mr. Zimmer, notwithstanding his best efforts—I don't know if it's because of age, because of culture, because of background—just doesn't seem to be able to match.

The Chair (Mr. Shafiq Qaadri): We proceed now to consider the vote on section 48.

Ayes

Dhillon, Jaczek, Johnson, Ramal, Zimmer.

Nays

Elliott, Kormos.

The Chair (Mr. Shafiq Qaadri): I declare section 48, as amended, to have carried.

The committee thanks Mrs. Elliott for withdrawing amendments 63 and 64, as they're out of order, contingent upon anterior amendments. Therefore, will it be the will of the committee to consider sections 49 through 51, inclusive? Those in favour of sections 49 through 51, inclusive? Those opposed? Those sections are carried.

Section 52, government motion 65.

Mr. David Zimmer: I move that subsection 52(2) of the bill be amended by striking out "39" and substituting "38.1."

The Chair (Mr. Shafiq Qaadri): Comments? Those in favour of government motion 65? Those opposed? Government motion 65, carried.

Shall section 52, as amended, carry? Carried.

Shall section 53 carry? Carried.

Shall the title of the bill carry? Carried.

Mr. David Zimmer: Mr. Chair, on a point of order: Earlier in the afternoon—there was a lot of detail here—I

made two slips of the tongue when I was reading in the amendments. Now I know from the clerk that it's the—

The Chair (Mr. Shafiq Qaadri): Mr. Zimmer, before you proceed further, tongue slips will be remedied.

Mr. David Zimmer: I just want to get it on the record. I know that the clerk takes the official transcripts from the written documents that you have in front of you, the written motion, but I just wanted to note on the record that it was with respect to when I was reading motion 29. I read the wrong words from motion 29 when I was reading in motion 30. And on motion 51, I used the expression 2.2 when it should have been 2.1.

The Chair (Mr. Shafiq Qaadri): Thank you. Duly noted and encoded.

Shall Bill 133, as amended, carry? Carried.

Shall I report the bill, as amended, to the House?

Mr. Peter Kormos: One moment.

The Chair (Mr. Shafiq Qaadri): Yes, Mr. Kormos.

Mr. Peter Kormos: I'm going to have to vote against this, because, once again, I'm not sure it's ready to proceed to third reading. This is the committee process. People have shown a great interest. The committee has listened to a whole lot of stuff and worked hard to comprehend some very complex stuff.

We've got 12 of the busiest and most experienced Family Court judges in the province calling upon the committee, calling upon this government, to please not enact what they call "clauses" 6 to 10—sections 6 to 10, the child custody stuff—saying it's unworkable, and pointing out that the real problem is unrepresented people in the Family Court, the real problem is duty counsel who don't do hearings—never mind that; we understand why they don't have time to prepare—but they don't even help people fill out forms. We've got 12 very experienced Family Court judges explaining that they don't want to be investigators, that having to perform an investigative role may—or not may; I think they argue that it does—interfere with their neutrality. They don't want to be inquisitors. That's why they're recommending that the Office of the Children's Lawyer from the Ministry of the Attorney General play a far more active role in child custody cases. Again, an experienced investigator can decide that the matter needs some very speedy investigation or their antennae go up and they go, "Hmm. This may require some criminal records checks. This may require talking to some children's aid authorities. This may require talking to the neighbours, teachers, or a whole bunch of other things." So the judges are saying that one size doesn't fit all.

The government here, in a knee-jerk reaction to the criticism around the court's handling of Katelynn Sampson—and it was the criticism that the government's responding to, almost as if a criminal record check was some sort of panacea. It's not, and the judges are saying so. Read the letter. This is extraordinary. I've never witnessed, in 21 years, judges making a submission to a committee, least of all on matters that directly impact on them, ever. This is extraordinary, that judges would prepare such a lengthy submission and tell this committee

that it's an unworkable non-solution. That's dealing with that part of it.

Quite frankly, the somewhat scripted commentary by but two submitters that the DVPA has proven itself to be unworkable I find rubbish. Nobody has raised that in the course of the number of years as the DVPA was the subject matter of lengthy committee hearings and when advocates across the province supported it. I'd like to know where that came from. Who in the Ministry of the Attorney General told these particular people that it was unworkable? How did they discover, for the life of me, that it was unworkable? I just find that an incredible statement for them to make. It's sad that we didn't hear from other jurisdictions about their experience with similar dedicated DVPA legislation.

The pension stuff—you've heard my comments on that. I really would like for us to be able to resolve in our own minds the concerns being raised about this proposal by lawyers and actuaries and understand why—you know, it's not a matter of saying, "Oh, we're going down the middle and if everybody's mad at us we're doing it just right." It's a matter of doing it right. I just find it so regrettable that this is going to impact on people's lives.

The rich folks, the Peter Nygårds and those people, in their matrimonial litigation have got money coming out of their ying-yangs. There's an error in a pension? They don't have pensions. They've just got huge investments. A couple of million here, a couple of million there don't matter. What you're talking about, though, is people whose pension valuations could consist of \$50,000, \$100,000, or \$150,000, and increasingly so, as we're seeing people lose the pension jobs. You're talking about women or men who have to live—I mean, and Mrs. Elliott knows this, and Mr. Zimmer, certainly, one of the things that judges tell juries when they're asking for the jury to make an award is, "Look. This is the last payday. We've got to get it right. This is the last kick at the can for this person."

We're talking about kids here, because the people who benefit, by and large, from most of these equalization payments are kids. Spouses do too, and there are spouses who separate and divorce long after the kids are on their own, but it's kids. I use that sort of personal injury lawyer line about this being the last payday. This is the last kick at the can that these people get in very acrimonious—and we all know that—circumstances. These people are counting upon us to get it right—people who we'll never meet, who will never meet us; people who we'll never know, who will never know us. It's going to be people who are going to be impacted, I predict, long after any of us are still in this Legislature, because that's how long it'll be before there's yet another kick at the can in terms of family legislation.

I just wish we were prepared to spend a little more time on both elements of the bill, both of the major elements: the child custody and child protection and on the pension plan.

Thank you, Chair. I'll be voting against referring the matter to the House.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Kormos. Are there any further comments or questions? Ms. Elliott?

Mrs. Christine Elliott: I certainly agree that it would be premature for us to be proceeding to third reading on Bill 133 without investigating some of the very serious concerns that have arisen in the course of the debate and in the course of the clause-by-clause review today.

Certainly, the letter that we've received from the Family Court justices is extraordinary. I haven't been here as long as Mr. Kormos, but it seems to me that it is quite unusual to hear directly from justices of the court about how fundamentally unworkable these provisions are; that it not only puts the judges into an untenable position as investigators, but it's also going to further clog up the Family Courts, allow perhaps extraneous information that shouldn't be presented to be presented to the judges and further lengthen the child custody applications that are presently before the courts.

We certainly heard from the family law lawyers about their concerns about the process becoming unduly complicated, and with the lack of extra resources on the part of legal aid assistance for people to be completing these applications, I would submit that we should really ignore the judges' advice to us at our peril. We want to alleviate the process, not further complicate it.

With respect to the repeal of the Domestic Violence Protection Act, I've already put my comments on the record about that. I still don't understand why it needs to be repealed in order to advance the criminalization of breach of restraining orders, which I totally agree with.

Finally, with respect to the division of pension benefits, we've heard some very stark discrepancies in evidence between the actuaries and the plan administrators. I would agree with Mr. Kormos that we need to really fully understand why that is before we proceed with this. In the absence of that, I'm certainly not prepared to advance this bill further. So I will have to vote against it as well.

The Chair (Mr. Shafiq Qaadri): Are there any further questions, comments, queries, concerns?

Recorded vote, final vote of the day. Shall I report the bill, as amended, to the House?

Ayes

Dhillon, Jaczek, Johnson, Ramal, Zimmer.

Nays

Elliott, Kormos.

The Chair (Mr. Shafiq Qaadri): The bill shall be therefore duly reported to the House.

Is there any further business before this committee?

Just for the committee's notification, we are adjourned until April 20, when we'll consider Bill 152, the Poverty Reduction Act. Committee adjourned.

The committee adjourned at 1701.

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Mr. David Zimmer (Willowdale L)

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Mr. John Gregory, general counsel, Ministry of the Attorney General

Ms. Tami Moscoe, counsel, Ministry of the Attorney General

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