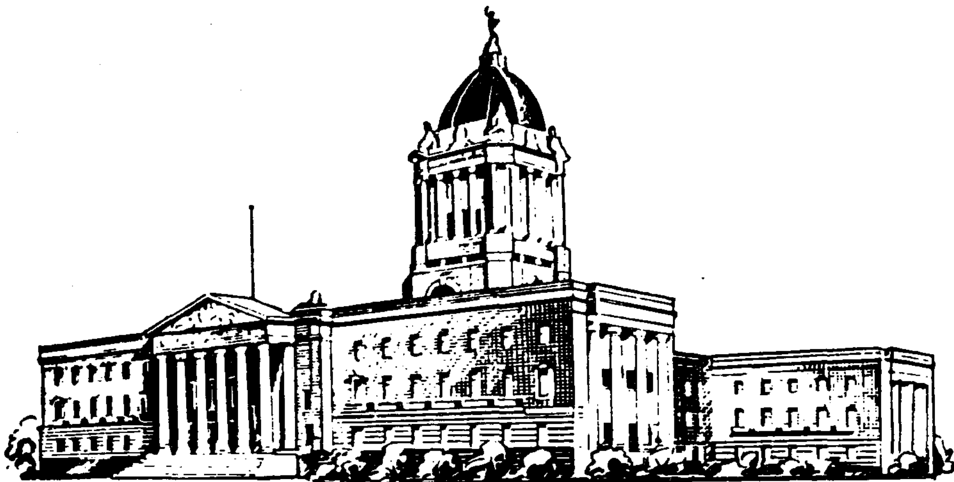
Legislative Assembly of Manitoba

HEARING OF THE STANDING COMMITTEE ON STATUTORY REGULATIONS AND ORDERS

Chairman

Mr. D. James Walding
Constituency of St. Vital



WEDNESDAY, June 1, 1977, 8:00 p.m.

Printed by P.N. Crosbie — Queen's Printer for the Province of Manitoba

TIME: 8:00 p.m.

CHAIRMAN: Mr. D. James Walding.

MR. CHAIRMAN: Order please. We have a quorum, gentlemen. The committee will come to order. This meeting of the committee of Statutory Regulations and Orders is called to consider three bills:

Bill 60, the Family Maintenance Act

Bill 61, the Marital Property Act

Bill 72, an Act to Amend Various Acts Relating to Marital Property.

Mr. Axworthy.

MR. AXWORTHY: Mr. Chairman, I wanted to speak to a point of order on the committee. We had distributed in the House this afternoon two very weighty series of amendments on the Marital Property and Family Maintenance Acts, and in my quick digest of those over the dinner hour, I concluded that it substantially alters the bills in many ways, and I'm just wondering whether these hearings are really proper under the circumstances. We have a number of people prepared to present briefs based upon the original bills, and considering the major alteration that takes place as a result of the amendments, I think that the ability of those who want to make public representation would be very much diminished. I'm wondering, Mr. Chairman, if we should not, as a committee, undertake to change our orders of procedure to ensure that either the amendments are distributed to those who want to make representations, and that the committee hearings be held off for an appropriate time so that they can be properly digested, and we can therefore hear the representations based upon an accurate understanding of what the bills now contain as a result of the amendments. Otherwise, I think that, frankly we would be wasting our time and the time of those making representation, because they would be speaking to a series of amendments of which they have no, or very little, knowledge. I think the importance of them really requires a proper digest.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: Mr. Walding, first I would like to say to Mr. Axworthy that the amendments distributed do not deal with the principle of the bill. There are a number of amendments which are, in the main, of a technical or legal nature. There is one important amendment, and that amendment deals with existing separation or judicial orders, agreements, etc., and insofar as that amendment is concerned, certainly that is an important one, but there was advance notice that we intended to introduce that amendment.

The other amendments are of a legal nature and we could have, as we do with most other bills before the House, awaited the distribution of the amendments until after the briefs, but I do not think that the submission of briefs will be interfered with, to any great extent, by the amendments that have been distributed. I trust, Mr. Chairman, that those amendments have been distributed already to all those who intend to present briefs. But there is only one quite important, quite basic amendment that is included there that was not in the original bill before the House.

The other amendments are of such a nature that I doubt very very much whether they would influence the submissions in the main that are to be presented this evening.

MR. CHAIRMAN: Mr. Graham to the same point.

MR. GRAHAM: Mr. Chairman, dealing with that same point, I think I ought to point out to the Member for Fort Rouge that if we, in committee, do raise too much of an issue of this, that we could very well find ourselves in the same position we found ourselves in several years ago with the Farm Machinery Act, where the amendments became far more dangerous than the bill that was before us.

MR. CHAIRMAN: Mr. Axworthy.

MR. AXWORTHY: Mr.Chairman, I'm not too sure of the point of the last intervention, but I would say, in speaking to the point of order of the Attorney-General that I agree with him fully, that these amendments are legal. That's what I thought the whole operation was about, to discuss changing thelaw. When he says that we are here to discuss basic principle, I disagree with him. We discuss basic principle on second reading. The point of this committee is to do examination of the details of the law. Frankly, I wouldn't want to make an argument with the Attorney-General. He obviously knows what is contained in these amendments much better than I, but my quick reading of them suggests that they are far more than technical in nature, that they substantially alter many aspects of the bill. Obviously the government is going to proceed, but I really think that the importance of this bill and of these amendments really require a much more careful examination. I have no intention of unduly holding up proceedings, but I am more interested in hearing representations based upon — I would suggest that this is almost a new bill that we have before us rather than the old one, and that therefore the representations should be based upon a real, full comprehension of what they represent, and then we can hear the representations based upon that.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Chairman, I appreciate Mr. Axworthy's point, but my own view would be precisely the opposite. In our opinion, the proposed legislation that's in front of us is extremely

serious, with extremely serious ramifications. I think we've made that point. I think that we would like to hear from the general public so that we can determine whether the amendments to be proposed by the Attorney-General have any merit or not. Until we get the views of the general public, I think that the bills are unacceptable and I have no doubt that, in my view, many of the amendments would be unacceptable too. Once we've had those representations from the public, we'll be able to form that judgment.

MR. CHAIRMAN: Mr. Spivak.

MR. SPIVAK: Mr. Chairman, I think there's a compromise that can be reached here. It's probably unprecedented as far as our committee system is concerned but it may very well be that the legislative counsel should take each amendment and simply explain it so that in effect we will know — by that I don't mean in terms of the specific detail — we will know whether in fact it alters or changes the specific sections involved in the Act, and in what way, so that we understand it. The people who are presenting the briefs will understand it, and then at least they will know, in dealing with it, whether the matter has already been dealt with or not.

MR. CHAIRMAN: If there are no further points of order, may we proceed, gentlemen. Names I have on the list of indicated speakers to the committee are as follows: Mrs. Norma McCormick, Mrs. Millicent Laird, Mona Brown, Carol Perch, Ruth Browne, Perry Schulman, Linda Taylor, Mrs. Wyrzykowski

MR. PAWLEY: Mr. Chairman, I believe some are trying to take down names. Maybe you should go a little slower.

MR. CHAIRMAN: If you wish to take down the names, there are 42 of them. I'd be very pleased to let the honourable member have the list after it's been read. I have reached Jill Oliver, Mrs. Jean Carson, Mrs. Bernice Mayne, Mrs. Joyce Brazer, Ruth Browne, Georgie CorGeorgia Cordes, Sara Berger, Laurie Allen, Marilyn McGonigle The Bishops of Manitoba, Bishop Hacault, Robert Carr, Murray Smith, Ray Taylor, Mrs. Goodwin, Margaret Johnson, Terry Gray, Mr. Goodwin, Aleda Turnbull, Janet Paxton, Alice Steinbart, Ken Houston, Ms Bowman, Mr. Arthur Rich, B. Hilton, Jill Oliver, Ruth Pear, Leigh Halparin, Charles Huband, Mary-Jo Quarry, Sam Malamud, Jim Stoffman, Norman Coghlan and Arnold Gardner. Are there any other members of the public present wishing to address the committee? If so, would you come forward to the microphone and give your name.

If there is no one else present wishing to speak to the committee, I would call on Alice Steinbart to come forward please.

MS. ALICE STEINBART: I'm Alice Steinbart and I'm speaking for the Coalition on Family Law. There is a written presentation which is being handed out to you now.

The Coalition on Family Law is composed of a variety of organizations and individuals committed to the reform of Family Law. Our recommendations have been endorsed by the following groups: The Council of Self-Help Groups; The Manitoba Association of Women and the Law; The Manitoba Action Committee on the Status of Women; Women's Place, Women's Liberation; The NDP Status of Women Committee; The Voice of Women; Congress of Canadian Women; United Nations Association; The Fort Garry Family Law Reform Action Committee; The Manitoba Teachers Society and the Manitoba Librarians Association.

The response that the Coalition has received is overwhelming. The family law must be changed. There is no evidence that Manitobans want this reform delayed, nor would there be any reason for delay. The reform is long overdue. It has been studied for over two years by the Law Reform Commission, by this committee during its intersessional meetings, and by the public during two different sets of public hearings. And now again, this committee and the public is studying this matter. To advocate further delay is incredible.

This legislation is excellent. No longer will one spouse be in a superior position to the other. No longer will one have more rights than the other, or greater protection. Instead, there will be equality between the spouses. This is an excellent piece of legislation, with one proviso.

There are four major gaps in the bill, and a number of drafting errors. The basic principle of these bills is that marriage is an equal partnership, but the Marital Property Act legislates only partial equality. Only property which is non-income producing is to be shared during the marriage. Property which produces income would only be shared on separation. Why is full sharing, full equality given only on separation? Why not during the marriage? Why draw back from the principle of full equality? It cannot be because instant community of property is unworkable or creates too many problems. It does work. In several American states, including California, the wheels of commerce have not ground to a halt there. A number of examples have been given to show how the system could not possibly work.

One example deals with the following situation: Betty and John are married, and own a number of assets, including a lawnmower, which John wants to sell, and a third party wants to buy. Does third party have to get Betty's consent as well? No. The marriage partnership would operate very much like other partnerships. Under Manitoba partnership laws, one partner can act for the other. A third party does not need the consent of every partner in that partnership. So too it would be for Betty and John.

If Betty does not agree to John selling the lawnmower, then that would be between Betty and John, and not the third party.

The same applies if the property is a commercial asset. If John is a manufacturer's agent and wants to sign up a new line, the third party does not need Betty's consent. If the proposed legislation is not clear on that point, then change the drafting, not the principle of equal sharing.

Another problem mentioned in respect to income sharing, is the income tax implication. Under the Federal Income Tax Act there's provision that if one spouse transfers the property to the other, then the income, including capital gains, is still considered to be the income of the first spouse. It is arguable, from the wording of the Tax Act, that this attribution rule does not apply to sharing imposed by the Legislature. However, even if this tax rule does apply, then the answer is to have the Federal Government change the Tax Act to recognize equality in marriage, and not to deny this equality because of income tax questions.

It has been said that if instant community of property comes into effect it would void the estate planning that some couples have entered into. That is simply not so. If couples have planned their estates so that one holds all or some of the property then they have the right to continue this by bilaterally opting out for the standard matter regime. The list of problems raised by those opposed to instant sharing goes on, but the problems, for the most part, are illusionary. The problems either do not exist, except in some people's minds, or they can be solved quite simply. The key point is that the system of instant community of property does work. It is working in several American states. Our partnership laws in Manitoba give us some idea of how it would work in Manitoba. The wheels of commerce would not be ground to a halt; it would not cause innumerable problems; it is not undue meddling in private affairs; it is not a bonanza to lawyers. It is equality, and it does work.

Instant community of property, in addition to protecting each spouse's property rights, also gives each spouse the emotional and psychological protection of knowing that they are fully equal in all respects, now, during the marriage, and not just after. You had a woman appear before you at your last public hearing who told you that she and her husband had worked together for the 17 years of their marriage in the family business, and so long as everything went well the business was, as she said, "ours," and as soon as problems began to develop then suddenly it was all "his". That woman had the right to the emotional and the psychological protection of knowing that that property is still "ours" during the marriage.

The equality that instant community of property will give is not just receiving your share on separation, but knowing that during the marriage you are a full partner, not a silent one.

The legislation makes no special provision for family-run farms and family-run businesses. Since these are considered commercial assets they are shared only on separation, and yet, since they are family-run these couples are operating an instant community of property system, except in the eyes of the law. Why not recognize what these couples are themselves practising? Family-run farms and businesses should be subject to instant, not deferred, sharing.

Now, this paragraph has to be changed somewhat because of the amendments, but it still applies, to a certain extent.

The legislation, with the amendments, states that income or salary will be shared only on separation. That means it's deferred sharing. There will be no instant sharing of family income during the marriage. To make matters worse there's not even a declaration in the Family Maintenance Act, that each party has the right to participate in deciding how the family income is spent. There are many Manitobans who do not own a home, cannot afford a car, and so on, and whose only asset is their pay cheque. These people are excluded from the protection of these bills. Salaries should be a family asset and shareable as such. Under no circumstances must this legislation be passed without closing this major loophole.

At the very least each party must have a right to participate in deciding how to spend the family income. Now, if family income is only to be shared on separation, there really is no income there to be shared. There may be one salary pay cheque coming in at the time of the separation and that's it. It means that the husband, if he's the one who's out working and the wife is the one who's staying home, it means the husband will be the one who decides what happens to that family pay cheque. And you've made no provision in either of these two bills for the woman to have some say in the income of that family. And that is a major gap, because for some Manitobans that's the only asset they have.

This legislation does not provide for sharing on death. The principles that each party shares equally in the assets acquired during the marriage is ignored. There is no recognition that the wife, for example, owns half of the property by right. Instead, the whole property goes into the husband's estate on his death. The wife will inherit at least half of the property due to the amendments in the Devolution of Estates Act and the Dower Act, but in effect, she is only receiving her share, and really inherits nothing from her husband.

There has been no change in this legislation in respect to the enforcement of maintenance orders. The present law provides a number of ways, such as garnisheeing wages to enforce an order, but it is up to the person who holds the order, usually the wife, to find the husband, to go back to court,

sometimes again and again, to get the money and so forth. Unless you have been through this situation it is difficult to describe the delays, the frustrations, and the obstacles that occur. As a result of these delays, frustrations, obstacles and so forth, all too often the woman simply gives up.

Seventy-five percent of all maintenance orders are uncollected and unenforced. That's not much of a system. The system is obviously not working and yet there is nothing in this legislation to change the system. The law is left the same.

There are a number of ways to improve it. The Coalition has suggested one method. If this solution is not acceptable, there are others. And yet you have made no attempt to find a better system. You are aware that if maintenance is not paid, then very often a woman and her children must go on welfare. This legislation must be amended to provide a better system.

With these amendments and apart from some drafting revisions, this legislation is very good. In particular, you must be commended for the no-fault provision. This legislation is also commendable in that it allows bilateral, not unilateral opting out. It allows those who do not want this regime to apply to them to opt out bilaterally and it protects the Irene Murdochs of Manitoba from the James Murdochs. Those who favour unilateral opting out have argued that this legislation changes the rules of the game, and that people who are presently married are now going to have something imposed on them that they did not anticipate when they got married. That is quite simply not so.

First, couples have the right to bilaterally opt out. Second, if couples thought about property at all when they got married, then they most likely considered that they would be sharing everything. To them, marriage was, as they said in the ceremony, "To have and to hold, for better, for worse, for richer, for poorer, in sickness and in health." Couples felt that they were entering into a life together, sharing their lives and their fortunes. So how is this legislation changing the rules of the game? Just what game did couples think they were playing, that what's mine is mine, and I owe you nothing? Can it really be thought that when people got married, they felt that this was what marriage was all about?

However, even assuming that the law is being applied retroactively does that make it unfair? Generally of necessity Family Law legislation has been retroactive. The Married Women's Property Act, the Dower Act, the Divorce Act are all retroactive to some extent. Those who favour unilateral opting out have concentrated on retroactivity as it affects property sharing. However, the Family Maintenance Act is retroactive in respect to maintenance.

The new bill proposes that wives will now be responsible for supporting their husbands during marriage and on separation. Up to now when women got married they had no obligation to support their husbands. They are changing the law. This bill now changes the rules of the game for women and yet there has not been one word of protest. Nothing has been said about unilaterally opting out of this provision, or even bilaterally opting out. Women are willing to assume this responsibility to become self-supporting, to attempt to become self-supporting on separation, but the reciprocal right to sharing of property, is that to be denied them?

The legislation does recognize the reciprocal rights and obligations of the couple and attempts to establish equality, fairness and justice in the marriage and provided that the major loopholes are closed and some drafting errors corrected this will be excellent legislation.

Now, I also have some drafting details that the Coalition wants to present. Some of them may be outdated now because of the amendments. I haven't had a chance to read all the amendments. Starting off with the Marital Property Act, Section 1 (a) Definition of Asset. That's Bill 61.

In the Definition of "asset" a number of things are listed, personal property, real property, chose in action money or an interest in any of the foregoing. There's a problem that if you start listing what is included in the terms of "asset" beyond real and personal property you may not have a comprehensive list. Real and personal property is probably sufficient to describe the term of "asset" if you start saying chose in action and money then it seems to suggest to the court or to the judge that there's more to it than real and personal property, it includes more than that and the list is not comprehensive.

In the Definition Section 1(g), Definition of Spouse. Definition of "spouse" is those people who are married to each other. This does not deal with a null and void marriage. If there's a null and void marriage, they are not married. It's as simple as that. If there's going to be people who are in a void marriage such as — well I'll give you an example. If there is a bigamy situation where the husband is married and then remarries before he has divorced the first woman, that marriage is null. In those types of cases the woman or the spouse would not be protected because that's not what the definition section says. They would not be married. I think you do intend to protect that particularly in view of the fact that in Section 34 (1) there's a mention there of decree of nullity. After one year after a decree of divorce or decree of nullity a spouse may apply for division of property. Well, if there is a null situation or a void marriage there is no spouse.

Section 16(1)(b), this deals with Family Assets, Definition of Family Assets. A family asset which is not in Manitoba will not be caught within the definition of family asset unless, and then there's two exceptions. This is in subsection (b). Unless that asset was acquired within Manitoba or had been brought into Manitoba by a spouse while habitually resident in Manitoba. I don't understand why

there is that exception there. If you feel you have jurisdiction over property outside the province, and this paragraph seems to indicate that you do, then why does it have to be either property that's acquired in Manitoba or is in Manitoba or has been brought into Manitoba by a spouse which is habitually resident there.

Let me give you an example. Take the old example of Betty and John. John being a truck driver goes to Saskatchewan and decides to buy an antique there and leave it with his mother at his mother's house in Regina. He doesn't bring it into the province. Now an antique would be a family asset if it was in the province but he never brings it into the province. Now that is an exclusion. It probably wouldn't happen too often. It's a minor detail but I don't understand why it's there.

Section 21 deals with the events authorizing inclusion of assets and accounting of assets, like evaluation date. There's a number of possibilities set out there. There's nothing to state what would happen if a couple falls in say two of these possibilities. For example, there has been a case of say dissipation and then they have made an application for an order for separation, which date will apply? Will it be the earlier of the two? There's nothing on the law that states that.

Now, under the Family Maintenance Act, Section 4, subsections (2) and (3), dealing with when a spouse becomes financially independent and it says, after the expiry of three years. There's nothing to say whether this three year period must be continuous or whether it can be broken up into smaller periods. Is it a total three year period or does it have to be a continuous three year period.

There is also nothing stating what you mean by financially independent. Does financially independent mean a minimum wage level? Does it mean a standard of living that the couple had before the separation or what? This is the Family Maintenance Act, Section 4, subsection(2) and (3).

Section 6, subsection (1), Family Maintenance Act. This is the provision where one spouse has the right to know what the other spouse is earning or to know the debts and the assets of the other spouse. Now, there is an enforcement provision to know what the earnings of the other spouse are but there's nothing to provide the spouse with an enforcing mechanism to know what the debts and the assets are of the other spouse. For example if a spouse has, say a loan out with one of the loan companies, and the wife knows that the husband has got this loan but she doesn't know the amount and the husband won't tell her. How is she going to find out? She should have the right to make an application to get that information from the loan company.

Section 8, same Act. This is with the amendments. There is nothing in that amended Section 8 which gives the applicant the right to obtain an order. In other words the judge may if he . wishes grant the order. Presumably he has the discretion to say no, there'll be no order. That doesn't make sense because the Act itself seems to indicate that a person who does not want to live with the other spouse, if they want a separation should have the right to a separation, that it's automatic. And surely that should be in there as "shall" mandatory. The judge must grant an order of separation if the one spouse wants it.

Section 9, subsection 2, the right of a judge to postpone the sale of the marital home. Now this is not anything to do with drafting. I just wanted to point out that this is a very good section. It's a change in the law and it can be useful to some people depending on the circumstances.

Section 11 deals with common-law situations. Again it has changed the law in that there is no time limit for common-law spouses to live together and that is a good reform. One point, it states there "man and wife." That I think is an archaic term. It should be "husband and wife."

I think those are the only problems that we have with the drafting of both bills.

MR. CHAIRMAN: There may be some questions. Order please. (Applause) Under our rules expressions of opinion from the gallery are not permitted. Are there any questions of Mrs. Steinbart? Mr. Axworthy.

MR. AXWORTHY: Mr. Chairman, I'd just like to ask some questions. I was interested just in some of your final remarks and in particular about this question of financial independence when you said it's not defined. How would you define it?

MS. STEINBART: The Coalition has not really taken a stand on that. We think that there should be a definition to make it clear.

MR. AXWORTHY: Okay, so you're throwing it back at us to make a definition.

MS. STEINBART: Yes.

MR. AXWORTHY: Okay. Now just on the point that you made at the beginning of your remarks where you seem to be advocating a full community property sharing system. Without reopening a lot of the debates, it seems to me that a lot of the assessment made by the Law Reform Commission here and in the Canadian Law Reform Commission indicated that while there were certain advantages there was also major difficulties in application enforcement of this and it led to a lot of problems in terms of liabilities and how to separate out different kinds of property holdings and so on.

Have you resolved those difficulties in terms of taking a look at how it would actually work and how the enforcement of it would be reasonably simple?

MS. STEINBART: You're right, there are people who hav have raised questions about the difficulty of this system. The key point that I've been trying to make is that it works. If there are any

difficulties I think mostly they may be illusionary, something that you can say on paper it sounds good. Yes, it sounds like a difficulty but when it works out in practice, it's just fine. It works in several American States. It's working in California. A closer example that we have here in Manitoba would be the law of a Partnership. And even though some people say there are problems of the problems are either , illusionary or they can be solved quite simply.

MR. AXWORTHY: Mr. Chairman, I'd just like to ask, when you say that it has worked, I made some effort to try and get some evidence as to how it has worked in the American jurisdiction and it's difficult to come by. I wasn't able to put my hands on anything where there has been a fairly objective assessment of its working. Do you have that kind of evidence? Can you make it available so that we can see what in fact the impact of these community property sharing regimes have been?

MS. STEINBART: There have been people who have done studies on it in the States and I think some people will be giving presentations on that and I'm sure we can make the evidence available to you.

MR. AXWORTHY: Okay, thank you. Just one further question, Mr. Chairman. You also seem to take some real exception to the lack of inclusion of salaries. Would you care to elaborate a word or two upon that. You hit it and then sort of went away from it. How wouldyou bring that in as part of the assets and how would that be defined as part of this bill.

MS. STEINBART: There are two ways in which it can be done. You can say either salary as a family asset and shareable as a family asset or if you don't want to go that far you can make a declaration in the Family Maintenance Act to the effect that each spouse has the right to participate in deciding how the family income is spent. Now if you leave out salaries from being a family asset, then it becomes a commercial asset. It will be shared only on separation. Well what salary is there on separation? There might be one pay cheque, that's it. And that is a major asset for many Manitobans and you're leaving out a major asset from being covered by this bill.

MR. AXWORTHY: Thank you, Mr. Chairman.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: Ms. Steinbart, in connection with the question of financial independence, I note that you have difficulty defining it and certainly we have too. Under those circumstances is it not just as well to leave that to the discretion of the court for it to determine within the circumstances provided to it just when a person becomes financially independent?

MS. STEINBART: Well, the court may come up with a definition that's unacceptable.

MR. PAWLEY: But who might it be unacceptable to?

MS. STEINBART: It may be unacceptable to you. It depends on what definition they come up with. Is it sufficient to say that if a woman can now earn a minimum wage and she has come out of a marriage, say where the husband may be working and earning $30,000 a year and she has maybe two children to take care of, will she be considered financially independent after that type of situation? Maybe she will, but would this be considered fair? I think you should consider this.

MR. PAWLEY: Well' I would like to just pose a question pertaining to the 75 percent of all maintenance orders that are uncollected and unenforced. I wonder if you could indicate to me the source of those statistics. Are those relating to Manitoba or to Canada as a whole?

MS. STEINBART: To Canada as a whole.

MR. PAWLEY: You haven't obtained statistics in connection with Manitoba have you?

MS. STEINBART: No, we do not.

MR. PAWLEY: Another area I'd like to deal with is the question of unilateral versus mutual opting out. As you know rather than any favouring unilateral opting out *per se,* there is the proposal that there should be unilateral opting out for only the first six month period in order to deal with those that find themselves dealing with a standard marital regime that they might not have anticipated and providing for the courts to deal with the division of assets upon an equitable basis in the event that the couple do find themselves before the court after a unilateral opting out. Do you see any instances or cases that would cause you concern if we did not proceed to unilateral opting out as recommended where there might be situations where people would find themselves in a situation that would be unjust and inequitable and very difficult for us to sustain, particularly when we're imposing, at this point, a law upon people that they wouldn't have anticipated.

MS. STEINBART: Yes, there's two problems with unilateral opting out. First of all, unilateral opting out leaves a gap, a wide gap in this legislation. The Coalition has always maintained that if this legislation is good legislation then it should apply to all marriages and there should be no exceptions except where the couple themselves want it. One spouse should not decide for the other.

Then this proposal that you are suggesting allows for judicial discretion. If there is judicial discretion that seems to recognize the concept that maybe unilateral opting out is not right and we should close it off. But why allow judicial discretion? If you allow judicial discretion you are getting a judge's biases in there and judges' biases may not be favourable. I think that the Murdoch case is an example of that. That was a fact-finding situation. The judge could have found as a fact either way. Under the facts of that situation, the judge could have found either way, but he did not because I

believe it was his personal bias that somehow or other Irene Murdoch did not contribute sufficiently to that marriage because she was just a housewife.

MR. PAWLEY: I'd like to pose to you an example that was given to me the other day on a program which I participated in. A lady called who indicated that she had been married for 20 years and during that 20 year period she said that her husband had been quite irresponsible. She said that he was an alcoholic that she had skimped and saved and had put aside a little bit of money in the bank. She had paid for all the necessities in the home. She had paid for the special lessons for children one way or another and she then said to me on the program that here I am coming along with this law, and I am forcing her now to divide her meagre savings, her meagre assets, with her husband, who, she said, had been very, very irresponsible during all this period of time that she was living with him.

Now I would just like to present that example to you to hear your reaction to that because I am sure we will hear examples posed to us of that nature later.

MR. STEINBART: There is no doubt there are some hardship situations. That kind of situation could occur after the bill, even if you do not allow unilateral opting out. Two years dowm the line a woman can coe up and ssy, "I've had an allcohlic husband; I have done everything and he has done nothing." HoW can you protect these kinds of people? You cannot have legislation that covers everything. There are going to be some hardship cases' and it is just a fact of life. It would not be correct to allow this large gap of unilateral opting out, or whatever kind of measure you want to take to help these kinds of alcoholic situations or typical situations like that. If you allow this kind of loophole so that you could protect these people, you are going to get other situations in there, such as the Murdoch case, which should not have gone through that kind of loophole.

MR. PAWLEY: Or the next type of situation that might be presented to you would be the wife in the same situation who would say, "My husband is an invalid; he has been in a wheelchair the entire 20 years and hasn't contributed towards the marriage." That could be the next type of example that would be posed to you.

MS. STEINBART: There are always going to be hardship situations. If she felt during those 20 years that she didn't want to go on with it, she could have separated at that time. She cannot come after 20 years and say, "Look, I have been with him for 20 years and now I want to break up, and I want to change the whole thing. I don't want to share anything with him." If you are going to allow that kind of argument, that you are not going to share on the breakup, then that can apply to every single situation. You can have men coming in saying, "Well, we are not compatible any more and I want to change the rules and I don't want to share anymore, and we are not going to share."

At some point you have got to have a cutoff line, and there are going to be hardship situations, but you cannot cover them all.

MR. CHAIRMAN: Mr. Jenkins.

MR. JENKINS: Thank you, Mr. Chairman, through you to Ms. Steinbart. Dealing with the unilateral opting-out section which you are opposed to, we have had it said to us in debate that if we adopt the mutual opting out, we are going to cause more marriage break-ups than what we are trying to cure in this type of legislation, trying to make it more equitable. Is it the opinion of the Coalition of Women that this would happen?

MS. STEINBART: No.

MR. JENKINS: Another question I would like to ask you, I am not quite too sure just what your objection was to in The Marital Property Act under the definition of spouse. You mentioned something about a bigamous marriage, and I don't know . . .

MS. STEINBART: Your question is rather technical there.

MR. JENKINS: . . . what kind of trinity was involved and who was a spouse or who was not a spouse. Can you explain that again for me, please?

MS. STEINBART: In a void marriage the people who thought they were married to each other are not married. They are considered not spouses. Now, the definition of spouse here would not include a situation where there is a void marriage. This doesn't happen very often, but there are occasions.

MR. JENKINS: How about the first marriage? Would they still not be spouses?

MS. STEINBART: You are talking about a bigamous marriage?

MR. JENKINS: Yes.

MS. STEINBART: Yes, they would be.

MR. JENKINS: You were talking about a bigamous marraige marriage.

MS. STEINBART: Yes. In a bigamous marriage, the first wife and husband are married, the second "wife" and husband are not married.

MR. JENKINS: They would be common law.

MS. STEINBART: That's right. And there is no protection of common law relationships in respect to property. There is something on maintenance rights, but there is nothing on property rights.

MR. JENKINS: And the other point that you raised that I am interested in is on maintenance. You feel that we have not come up with a sufficient tightening up of the maintenance. And I know some of

the suggestions that were put forward by the delegations when we heard hearings, but how would you like us to tighten up even more than what is in the Act on maintenance?

MS. STEINBART: I am not quite sure I understand the question.

MR. JENKINS: Well, you stated at some point during your brief while there was some tightening up of maintenance . . . .

MS. STEINBART: Oh, the enforcement.

MR. JENKINS: The enforcement. You said that your group and other groups have put forward some ideas on the tightening up of this, and I was quite interested, I might say, about six weeks ago watching the Ombudsman on CBC the problem that — that, I believe, was in British Columbia, I don't know if you saw the program, but it was very pertinent to what we had heard before this Committee.

MS. STEINBART: Yes. The Coalition put forward the recommendation at the last hearing that there would be an agency set up which would have a central registry to have all the maintenance orders filed at the central registry, and the agency would then pay out maintenance on these maintenance orders — these were child maintenance orders only — would pay up to a reasonable level of support. The agency would then collect the maintenance from usually the husband or the father and if there was any other moneys over and above the reasonable level of support which they had collected, then they would pay that out. That was the Coalition's suggestion. If that suggestion is not acceptable, for whatever reason, there are other alternative solutions, and the Coalition's point is that there has been nothing said about these other solutions. It does not appear that they have even been investigated. Surely there must have been some desire on the part of this Committee to look into other solutions to this problem.

MR. JENKINS: Would you not agree, though, that the enforcement of maintenance orders is in many respects beyond the capability of the Provincial Government, that it should be something that we should be working together toward with the Federal Government for enforcement of maintenance orders?

MS. STEINBART: It would be a much better enforcement system if the other provinces and the Federal Government were involved, but that is not a reason for you not to get involved now. You can do the enforcement of maintenance orders in the province. If there are maintenance orders here to be enforced outside the province, then, yes, it is better for the other provinces to become involved, but that is no reason to write off what is in the province now.

MR. JENKINS: But would that be just up to what we would be paying to, say, orphan children of one or the other of the spouses? Because we then get into the predicament of a family or a wife whose husband has died and is receiving social assistance, and they can be living next door to each other, and in one case we would be paying out, hopefully to collect, more than what the other was receiving.

MS. STEINBART: That is correct. That was one of the problems raised, but the point is if the solution the Coalition presented was not acceptable, there are other solutions and they have not been looked into and they should be.

MR. JENKINS: Well, if we were to pay to the amount that social assistance would pay, and if we could collect more than that from the husband or wife, whichever the case may be, if we could collect more, then that would be payable, but if we couldn't, and in many cases it is no easier for the province to catch up to this spouse who is taking off, jumping from hither and yon . . . .

MS. STEINBART: The province has the greater resources, it has got the greater ability, to chase after the husband than the wife does.

MR. JENKINS: That may be true, but I . . . I don't want to argue. Thank you very much.

MR. CHAIRMAN: Mr. Spivak.

MR. SPIVAK: On Page 2 of your brief, you mentioned — and I don't want to quote the whole paragraph, but I just want to refer to the paragraph and ask questions — another problem mentioned in respect to instant sharing is the income tax implications, and you point out, you say it is arguable that the wording of the Tax Act — you were referring to the Federal Tax Act — that this attribution rule does not apply to sharing imposed by the Legislature. But that is still a question for the courts to decide at the very best and that judgment may be wrong. You say that some of the problems are illusionary, but I want to now deal specifically with the problems. If in fact there is a transfer of property and the capital gain aspect, as well as any recapture that would be involved, I guess, if it was a depreciable asset that was in fact transferred, would in fact become the income of the first spouse. Are you prepared to acknowledge that what the wife should receive is the net amount, half of the net amount, as opposed to half of the gross amount, of the assets that are being equalized and being either paid out or upon which the payment is being made?

MS. STEINBART: We are not necessarily prepared to operate under the same rules as the Tax Act. If the Tax Act is unfair or unequal, then change the Act.

MR. SPIVAK: Well, the problem here, though, is that the Act you are talking about is a federal Act.

MS. STEINBART: That's correct.

MR. SPIVAK: Let's be realistic about it. The Act we are talking about is a federal Act that may not be changed.

MS. STEINBART: Not by you, but it can be changed by the Federal Government.

MR. SPIVAK: Well, maybe somebody would issue a request, but at this point the assumption would be that this Act would go in force probably before any change would occur within the federal Act, and the federal Act may never be changed. So I am asking whether in principle, arguing on the basis of equity, which is the provision that you have been arguing here before us on all other matters, whether you are prepared to accept that in dealing with this, it realistically should be half of the net assets rather than half of the gross assets, recognizing that the tax implications are very much a part of this.

MS. STEINBART: Well, I am not a tax lawyer. I am not sure I understand completely what you mean by net and gross and what the difference . . . what would they lose exactly?

MR. SPIVAK: What I am simply saying is if the one spouse who is transferring because of the provisions of this Act is liable for the tax consequences of the capital gains aspect and the recoverable portion of the depreciation, that in effect in equalizing the figures and arriving at the amounts to be in fact apportioned, it should be on the basis of a 50-50 after tax, recognizing the tax obligation, unless the federal income tax is changed, are in fact to be borne by the one spouse who is transferring.

MS. STEINBART: It does sound fair, but I have to say that the Coalition did not look at that problem, and if you ask me for an answer, it would be my personal answer and not the Coalition's answer.

MR. CHAIRMAN: Mr. Enns. You have a question, Mr. Enns?

MR. ENNS: Mr. Chairman, I haven't been a member of the Committee that has listened to many of the briefs up to now, but certainly for anybody that is concerned, he has to express the concern that there is so little said about the children of the marriage. We seem to be arguing so totally about the division of spoils between spouses, one or the other, in the case of marriage breakdown, and what concerns me from what little legal advice I have had is that under present legislation we have specific allowances made for the children of that marriage, under The Dower Act and other Acts that set aside certain divisions of a breakdown in marriage, and I must express a disappointment to you, Ma'am, that in the presentation made, indeed the presentation made and so much of the discussion made about this bill, so little has been said about the children. I would ask you what the Coalition's position is with respect to the division of property in the case of marriage breakdown about the children in a marriage. As we are so hard in our fight about dividing the situation on an even 50-50 basis, what would it leave — 10 percent, 20 percent, or 30 percent — for the children of the marriage that two people who have come together, have procreated children and have raised them, and in my judgment, unlike my socialist friends, still believe the family unit has some responsibility for those . . . .

MS. STEINBART: You are quite correct. The legislation — and unfortunately I think it is because the Law Reform Commission itself concentrated on two areas, maintenance and property — there is really very little about children —(Interjection)— Right.

The Coalition in their last brief — and I didn't repeat it here, but in the last brief — said that one of the things that you should look at would be custody of the children, principles dealing with custody of the children. We have tried to zero in on enforcement of maintenance orders and we meant child maintenance orders. This was made very clear in our last presentation and it is the same this time. There is very poor enforcement of child maintenance orders, and that definitely affects children because so often they end up on welfare. I mean that is very important to the children.

As to property rights The Dower Act and The Devolution of Estates Act belong to Bill 72, which I don't believe is being discussed today.

MR. ENNS: They are being abrogated, they are being out . . . .

MS. STEINBART: I didn't realize that.

Well, as to the property rights of the children, the Coalition's position is that it is the two spouses who have built up the estate, and it is between the two spouses, and not the children. The children have no property rights under the new Devolution of Estates Act. There were some property rights under the old Devolution of Estates Act. The new Devolution of Estates Act with the amendments is quite correct in that there should be sharing only between the spouses. But I am glad to see that you are concerned about children, and maybe then you will take up this enforcement of maintenance orders for child maintenance. That is a very very important area.

MR. ENNS: That's fine, Mr. Chairman. That is my only question. I only wanted to affirm that the Coalition that she represents doesn't have concern about the children.

MS. STEINBART: Well, that's not true.

MR. ENNS: It's certainly not here in your representation.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Pardon, Ms. Steinbart, did I hear you say just now that The Devolution of Estates Act the children get nothing?

MS. STEINBART: Not under the present Act. Under the amendments as I read them, maybe I am

missing that amendment, but it seems to me . . . .

MR. CHERNIACK: That's not the way I read it. But would you say that it is right that children should not be entitled to anything under The Devolution of Estates Act?

MS. STEINBART: The Coalition's position is that the spouses built up the assets and it is the spouses who must share them, not the children.

MR. CHERNIACK: Well, then, may I ask what is the position of the Coalition in the event that a person wishes to make a will? There is no point to it, is there? I mean under your interpretation, the way you report the Coalition, you are saying that there should be no need for a will, that whatever the deceased has left should go automatically and completely to the spouse.

MS. STEINBART: No.

MR. CHERNIACK: If that's the case, then why a will, or why should The Devolution of Estates Act impose the will that it thinks the person should have made, had the person made a will? Isn't that what The Devolution of Estates Act says?

MS. STEINBART: Maybe I didn't make it clear. The Coalition's position as I understand it is that the sharing should be imposed by The Devolution of Estates Act, meaning if there is no will, the spouse inherits the whole thing. If there is a will, obviously it is according to the will, except what The Dower Act says, and The Dower Act as amended will say a half.

MR. CHERNIACK: Why are you saying that a person who leaves a will has the right to decide that one-half of the estate shall go to children or to anyone else, as being, in my interpretation, that half that was not earned by the spouse? That is my interpretation. Why should that be different than The Devolution of Estates Act which all that it does, I think, historically, is say that in the event of the death of a person without a will, that it would be presumed that that person, having all his or her responsibilities in mind, would give a portion (a third up to now, a half after now) to the spouse and the balance amongst the children? Why does the Coalition reject that?

MS. STEINBART: The Devolution of Estates Act is in effect a will. It is imposed if there is no will made by the person.

MR. CHERNIACK: Right. We agree at least that far.

MS. STEINBART: And if the testator decides that this will which is imposed by The Devolution of Estates Act, is not what he or she wants, they have the right to make their own will. But the law presumes that all Manitobans know the law, so the presumption is if a person comes and says, "I don't want a will, therefore I want the will under The Devolution of Estates Act," then that is what the person has. They make that decision by not making a will. They make the decision that they want the The Devolution of Estates Act, which we would like to see all property going to the other spouse, they make that decision by not making a will.

MR. CHERNIACK: Ms. Steinbart, are you suggesting that with your experience that people who do not make a will make a deliberate decision not to have a will because they would rather rely on The Devolution of Estates Act? Is that your impression?

MS. STEINBART: No.

MR. CHERNIACK: Well, that is what I think you just said.

MS. STEINBART: They do not make a will for other reasons. However I would like to point out that the majority of people who do make a will usually leave everything to the spouse, and The Devolution of Estates Act should recognize that and say, "Well, the majority of Manitobans usually want this, so we will impose this, and if they don't want it, let them make their own will."

MR. CHERNIACK: That is the position of the Coalition which has discussed this question and has come to that conclusion? I am not asking you your opinion. . .

MS. STEINBART: Yes, I understand . . .

MR. CHERNIACK: . . . I'm asking you, does the Coalition . . . ?

MS. STEINBART: As I understand it, yes.

MR. CHERNIACK: And that is your interpretation? All right, I must tell you I see at least one head shaking sideways, I must tell you that . . .

MS. STEINBART: Maybe I don't understand it then.

MR. CHERNIACK: . . . maybe you can't see that head. All right, I want to go on, Ms. Steinbart. You were talking about income taxes. Did you now accept Mr. Spivak's suggestion that if there is a tax liability created because of the action of The Marital Property Act, that that liability should be shared? That's really what he said. Did you accept that?

MS. STEINBART: I don't think I answered his question. I said that the Coalition hadn't discussed that problem and I would only be giving my own personal answer.

MR. CHERNIACK: Well, then, are we to assume that the Coalition has not discussed the impact of taxation on this proposal?

MS. STEINBART: Not this particular problem.

MR. CHERNIACK: Would you mind elaborating on what it did, because, and now I refer to your brief, you say that the answer is to have the Federal Government change The Tax Act. Are you under the impression that the Government or the Legislature of Manitoba could "have the Federal

Government change The Tax Act?"

MS. STEINBART: No, they can't.

MR. CHERNIACK: Well, then, until we succeed in having them change The Tax Act, what do you think should take place?

MS. STEINBART: The Coalition's position is that if there is any problem with the tax implication, the concept of equality in marriage, the concept of sharing during marriage should not take second place to income tax implications. If there's an unfairness in the income tax implications, then that's unfortunate but it's going to happen and it's much better than to say there should be no equal sharing because of that.

MR. CHERNIACK: Are you aware that this could be damaging to both parties to a marriage?

MS. STEINBART: Now if we are talking just about this move for attribution, it does not apply . . .

MR. CHERNIACK: I haven't come to attribution yet. I'm talking about the deemed capital gain and I think the deemed recapture.

MS. STEINBART: I think that would not apply to that many Manitobans.

MR. CHERNIACK: Oh, so since you say it doesn't apply to many Manitobans, the Coalition is not really concerned about that?

MS. STEINBART: No, we're not saying we're not concerned about that. We're saying that we would like to see The Income Tax Act changed. That's what should be done but in the meantime you should not destroy the principle of equality during marriage, of sharing during marriage, simply because of these income tax implications.

MR. CHERNIACK: All right, I want to suggest to you that the only reasonable position that you ought to be taking should be that until the law is changed, that there should be an absolute sharing of all the liabilities that are created as a result of the decision of one and indeed one party and the law to force a separation of assets.

MS. STEINBART: It seems to me that that's implicit in the bill and the Coalition has accepted . . .

MR. CHERNIACK: It's not in the bill, I'm sorry.

MS. STEINBART: Well, maybe I don't understand the question but it seems to me that liabilities, when you determine the commercial assets, the liabilities will be . . .

MR. CHERNIACK: Potential, I'm talking about a potential liability created as a result of what happens. I just want to see whether you agree. I don't want to argue what the bill says.

MS. STEINBART: I don't understand the question — maybe if you could repeat it.

MR. CHERNIACK: Well, I'll try again. Mr. Spivak started it.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: I just wonder if it would be helpful, Mr. Cherniack, if I mentioned that at the request of myself, the Federal Government and the provinces meeting together at the end of June, we will be dealing with this very subject matter. The Federal Government has indicated at different times, their desire that there be equal sharing of property and Mr. Basford has been requested to include this on an agenda of Ministers of the Crown relating to justice provincially and federally. In the meantime, we intend to do a very thorough analysis of the tax implications. The impression that we had from the Federal Government is that they are certainly very anxious to look at any situation pertaining thereto because they have indicated general support in principle for the . . .

MR. CHAIRMAN: Mr. Spivak on a point of order.

MR. SPIVAK: Mr. Chairman, just on a point of order, is it Attorney-General suggesting that he is prepared not to proclaim this bill until the arrangements are finalized with the Federal Government?

A MEMBER: He didn't say that.

MR. SPIVAK: You're not prepared to say that, so in effect we have to deal with the Act as it is now.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I was going to ask that question as well of the Coalition. We can discuss this later; we have a few more people to hear from, I know.

I just want to clarify that it seems to me that until we persuade the Federal Government to change The Income Tax Act, there is a liability created, a potential liability which is an actual payment out of dollars in taxation where there may not be any additional moneys thrown into the pot in any way and that that cost should, in my opinion, be calculated and deducted from the gross before the distribution is made. But when The Income Tax Law is changed — hopefully the Federal Government will be persuaded to change it — until it does then surely it should be one of two things. Either you accept the principle of the mutual sharing of this cost, or you should ask the Attorney-General not to proclaim the bill until he is sure that there is no adverse effect.

MS. STEINBART: No.

MR. CHERNIACK: I thought so. So will you accept the first suggestion?

MS. STEINBART: Yes, but when you say "potential liability," I would have thought that would have been covered when liabilities are included or deducted from . . .

MR. CHERNIACK: Ms. Steinbart, I don't really want to impose on you to draw up the legislation. All I want of you is to accept the principle and we have professionally-trained people who draw up the

. . .

MS. STEINBART: I accept . . . and the Coalition . . .

MR. CHERNIACK: All right, then I'll move on to ask you about financial independence. I don't know whether again you are giving legal interpretations, but let me give you mine. I read Section 4 of The Maintenance Act to speak of financial independence. You say, "We don't know what is should mean but we think it should mean something that you say it means." In effect you are saying, "Well, you define it. We don't know how to help you."

So I accept your inability to do that because as Mr. Pawley said, it's pretty tough to do. But then would you not agree that under Section 5 where it refers to the order that is to be made, that indeed there they do speak of the financial needs and the financial means and the earning capacity of each spouse and the standard of living and lifestyle. Would you not say that that is already an indication to the court as to what are the factors involved which would include, to my mind, the standard of living of both parties at the time of the separation? Would you not be satisfied that that would take care ofthe problem?

MS. STEINBART: Well, that seems to say that the standard of living is the definition of financial independence. Perhaps it does take care of the problem; perhaps that's the definition that should be used. It's not necessarily that clear.

MR. CHERNIACK: I agree with you, but you can't help us?

MS. STEINBART: I can't give you an answer. I think it's up to you to make the decision as to whether it's first of all clear, what's financial independence, and if it's not clear, to decide what should financial independence mean.

MR. CHERNIACK: But you cannot advise us on how to set that definition?

MS. STEINBART: The Coalition did not make a decision as to what financial independence should mean.

MR. CHERNIACK: Did the Coalition discuss it?

MS. STEINBART: They did, yes.

MR. CHERNIACK: And could not agree?

MS. STEINBART: Well, it's not that they could not agree; there was just simply not enough time to go over all of this material.

MR. CHERNIACK: Well would you let us know pretty soon if you do come to some . . .

MS. STEINBART: If we find the time.

MR. CHERNIACK: All right. Now, more important than what I have asked up to now; you said there has to be a cut-off at some time — I'm quoting you — there has to be a cut-off, we have to agree that if this case of this woman whose husband was an alcoholic and did not contribute to the building of assets of the family, that if she was prepared to live with this person under these circumstances for a period of time then that is how it happens. How far back do you feel you ought to go in your demand for retroactive recognition?

MS. STEINBART: Maybe I don't understand the question.

MR. CHERNIACK: All right, let me elaborate on it. You have a case of a sixty year old couple who have lived together for 40 years and, under your recommendation — which I support I might say — they are continuing to live together and I believe that we should recognize that whatever rights she acquired should include the building up of the assets. Now, suppose there was — I will give you the other extreme — a separation 25 years ago, by court order, no divorce but the parties are separated, and they have each gone their own way, would you go back to that marital regime and recognize the rights of both of the parties?

MS. STEINBART: It seems to me, from my reading of the Act, that would not be . . . those who had separated 2 years ago, they would not be covered by this because present separations are not covered by this Act. Now if the Act doesn't say that, then it should because we ought not to go back in the past and look at people who have been separated and have a separation order or agreement.

MR. CHERNIACK: I gave you the extremes and again I am not looking for you to interpret the Act, I want to know what the Coalition feels about it. You are saying that what has happened in the past is cut off but you are talking about a present marital relationship which is existing now and which should therefore recognize the accumulation of the assets for the time from the marriage until there may be a break-up.

MS. STEINBART: No, people who have separated before this Act comes into force are not protected by this Act. But, if there is a continuing marriage situation now, then they should be protected by the Act.

MR. CHERNIACK: Thank you, Ms. Steinbart.

MR. CHAIRMAN: Are there any further questions? Mr. Sherman.

MR. SHERMAN: Mr. Chairman, I would just like to ask Ms. Steinbart two questions. One, would you agree Ms. Steinbart that the Coalition on Family Law, which you represent, has taken an active participatory role in the studies that this particular Committee has been engaged in on the particular subject in front of us for the past six to eight months and that your role has probably been substantially wider than that of many other segments of the community?

MS. STEINBART: That's a nice compliment, yes.

MR. SHERMAN: And would you allow me to remind you that, under questioning from Mr. Cherniack, you said that with respect to arriving at a definition of financial independence your position was not that the Coalition was not prepared to advise the Committee as to what to do but, I think your wording was that there has not been enough time to go over this material. In the light of that I wonder if you would be prepared to revise or amend your contention on Page 1 of your brief that to advocate delay for further study of this bill is incredible.

MS. STEINBART: The concept of financial independence was only first presented in these bills now before the Legislature. We have been going on for several months, that's true, but we did not have that concept before us for several months. The bills were only made available to us, I think, in May. The first reading came before that, but printed material did not come out to the Coalition until May, I am not quite sure when in May. I know we did not have enough time to go over all the details.

MR. SHERMAN: Would you agree with me on one further point, because you have been very helpful and very active in these Committee hearings since last November, as I have suggested, that, at almost every meeting of our Committee there have been new concepts, new questions, new difficulties that have been posed, that have arisen such as has just happened now under the questioning of Mr. Spivak and Mr. Cherniack, and that there are enormous, complicated problems that still have to be studied and considered.

MS. STEINBART: No, the main points have always been — I really shouldn't say always, but have been there for quite a long period of time — it is time these main points were passed: the equality in marriage, equal sharing, maintenance — there is no fault, and so forth. These have been there. They have been studied and studied. It is time they were passed. If there are details, most of the details can probably be cleared up now. If they are not able to be cleared up now, then they can be done after the Act. This happens in many cases with many Acts. Acts are continually being amended, but it is time the Act was passed. Reform is long overdue and it should not be delayed because of details.

MR. SHERMAN: Even when those details have the kinds of effects that have been suggested in the previous question.

MS. STEINBART: That's right. I don't think the details should hold up this reform which is long overdue and well-studied.

MR. SHERMAN: Thank you, Mr. Chairman.

MR. CHAIRMAN: If, then, there are no further questions, thank you, Ms. Steinbart.

MS. STEINBART: Thank you.

MR. CHAIRMAN: Mrs. Millicent Laird, please.

MRS. MILLICENT LAIRD: Mr. Minister, honourable members and guests, I don't think the recognition of women's rights is quite the universal cry that its proponents would have me believe. The married woman is concerned about the sharing the of the marital property. A career woman has more interest in equal pay practices and promotional opportunity than the woman who has chosen family-home management. I am weary of hearing about the alcoholic husband. What about the alcoholic wife who relinquishes her rights? What about the husband who has suffered a serious injury which has incapacitated him, who, upon discharge from the nursing home, discovers that he has been deprived of all his financial assets without his consent or knowledge his wife? He has the option to remain at the nursing home or else go live with a relative. Should the wife be entitled to equal sharing of the property which she never helped to contribute to financially and in labour in the acquisition of the property? I suggest for more judicial discretion to vary 50-50 sharing arrangements. The horrendous divorce statistics, 1 in 3, the plain fact is that also today an increasing proportion of marriages are performed civilly in what amounts to a little more than a two-minute ceremony. Holy matrimony is much more than a civil marriage contract. I oppose Bill 61. There appears to be no ethical values upheld by this new Marital Property Act. Thank you, Mr. Minister.

MR. CHAIRMAN: Order please.

MRS. LAIRD: I have been very brief and to the point.

MR. CHAIRMAN: For that the Committee thanks you. Are there any questions from members of the Committee? Hearing none, thank you, Mrs. Laird.

MR. CHAIRMAN: Mona Brown, please.

MS. BROWN: First of all as I am going to be speaking mainly on instantaneous community property, I have a list of thirteen books at the Law Library, Mr. Axworthy, that are on community property, if you would like to look them up, particularly on the United States law.

I wanted to explain I am giving a personal opinion. I want to explain that I live in rural Manitoba. My husband and I own a farm together in joint ownership, and I have spoken to numerous groups out in rural Manitoba, have presented a petition to Mr. Pawley on community of property, and that petition was signed by mainly farm couples. I would like to emphasize that although I am speaking as an individual, I know that I have an awful lot of rural people from south-central Manitoba behind me in what I am saying.

I would firstly like to state that I agree with the fundamental concepts of the proposed legislation. I recognize that there are certain drafting changes, drafting errors, and I understand that some of these have been cleared up by the amendments, which I haven't had a chance to go through and that more of them, I'm sure, will be brought to your attention tonight and perhaps tomorrow night if you have to meet again.

I would like to say that I especially agree with the concept in Bill 60 that spouses should become financially independent. I especially agree with the concept that they should abolish the concept of fault, and I especially agree with the fact that Bill 60 does not allow for very much judicial discretion.

With respect to Bill 61, I would like to say that the concept of community of property applying to all marriages with bilateral contracting out is excellent. I think that's good. I think, however, that that was necessary in order to have any real fundamental property law change. However, my proposed amendments are to make the Act stronger and I feel that it is deficient in some respects.

I believe strongly in the concept of community of property and suggest that the entire concept of instantaneous community of property be instituted instead of differentiating between the family and commercial assets. A community of property system is not radical. A large number of people who have just started to look at the proposals within the last couple of months seem to think that this is a very radical concept. True in fact, this system has been prevalent in our world for centuries. Specific countries have had them for numerous centuries and I can name countries. All the Scandinavian countries, Germany, Holland, France, Spain, Mexico, eight states in the United States including Arizona, California — since 1951 has been revised to include joint management — Idaho, Louisiana, Nevada, New Mexico, Texas and Washington. Also a version of community of property exists in the Province of Quebec under the Civil Code.

So I don't think that the concept of community of property is new. It's not radical and it's not new. I really feel that the Law Reform Commission didn't look closely enough at it, and I presented a petition earlier at public hearings and a petition to Mr. Pawley saying that I really feel that instantaneous community of property is really showing what equal partnership is.

I feel an instantaneous community of property system would recognize the partnership element in a marriage. It would meet the complaint that the present law is unfair to a spouse who has no earnings or assets and with the incorporation of the joint management system it would also be an affirmative action type stimulus to making each spouse more financially aware and independent. By that I really mean . . . and I am sure you all know what affirmative action programs are. For an example, and this could apply to men as well as women, but I have seen women who have never written a cheque. Suddenly their husband dies. They don't know anything about the estate, etc. I would really like to see women be able to take a more active role and a more managerial role in the affairs of the family farm, family business, etc. and I think this is really important. I think we can have this affirmative action type program by instituting instantaneous community of property with joint management.

It would also give the spouse who has little or no assets, or no earnings, a large measure of security and certainty. I think Ms. Steinbart made the position on that quite clear. I won't repeat things. It would no longer be necessary for that spouse to rely on the court's discretion to secure an interest in the family assets. Thus we would ensure that Murdoch will never happen again. I've heard people tell me a number of times, "Oh, Murdoch is never going to happen again, anyways." Mind you, I was reading a case from England by Lord Denning, who happens to be one of the judges I respect the most, but in that specific case, Lord Dennings saw fit to award two-thirds of the property to the husband and one-third to the wife. The rationale or the reason was that the husband, when he came home at night, would have to hire a housekeeper, etc., to look after his house, to do his laundry, his dishes, etc., whereas the wife knew how to do this already and had been doing it for years, even though both were working, so she only needed one-third. Well, if that's judicial discretion, I don't want judicial discretion. And that's one of my favourite judges.

Alternatively, if the Commission and the Legislature are not willing to accept my submission, I would like to propose two amendments. One is that the definition of family assets be widened to include "a family farm or business which both spouses have contributed either financially, physically — as in the Murdoch case — or managerially through joint decision-making and that the onus of proof should be on the party who is trying to disprove that these assets are family assets to so prove." Meaning there would be a presumption that assets, in cases of like say a farm owned by husband and wife, or perhaps in title of the husband but run by the husband and wife, would be a family asset unless the husband could prove that his wife had not contributed physically, managerially or financially to that farm, as an example. That is the petition that I presented to Mr. Pawley that had the signatures of a large number of rural couples on it.

My second amendment would be to add to Bill 61, Division 4 Section 19. I would suggest that Section 19 read Section 19.1 as it is. I haven't seen the amendments so I'll have to go by the old division. 1 (a) through (e) and then 19.2 that it should be automatically upon the death of a spouse. I think that this is an important concept. It's incorporated, checking through the community of

property estates, whether they have deferred community of property, instantaneous community of property, or a combination of both, such as is suggested in this bill, every one of them includes death as a reason for dissolution of the marriage. Death is included in everyone of them. And I think it should be included here as well.

This would also solve some of the problems that I'm sure are going to be raised with respect to estate planning because the problems that I've heard people raise are that people who have already done estate planning, that that estate planning might be meddled with and tampered with and very much confused because of the new Act that's coming into force. This way, if you eliminated the interspousal transfers from succession duties, there would be no problem. And so you would eliminate that whole problem and you would eliminate possibly a lot of drafting problems, etc.

Along with this, I think that the main reason why I would like to see death included is because, as the bill presently stands, it encourages separation. If you separate, you are entitled to one-half the assets under the standard marital regime. If you do not separate but stay married to your spouse until his or her death, you might have to pay succession duties on that estate.

So as the bill presently stands, it would seem to me that lawyers will be advising their clients, on their deathbeds, to go ahead and get that separation order so that they can avoid succession duties. And don't believe they won't be doing it. So I would really strongly maintain that death should be included, upon death or dissolution of the marriage. I think this will also encompass the problem which I am specifically speaking to, of a family farm. Example, my parents have been married for twenty-six years. My father holds title to the farm. Twenty-six years ago, that's the way it was done. He was probably advised so by an incompetent lawyer. My father would be the first to agree that my mother should own half of that farm and yet, under the present system, because that farm is succession dutiable, my mother, if she owns half the farm, then give her half the farm, either upon death or I would say right now. Give her her half of the farm and then, if there is succession duties to pay when my father dies on his half the farm, that's fine, she'll pay succession duties. But she shouldn't have to pay succession duties on the half that's supposedly already hers. Someone who separates is getting an advantage over someone who is married and I don't see that that is fair.

So I don't think that you are recognizing an equal partnership in that aspect unless you include death as one of the categories. I don't think that Bill 72 accomplishes this because it doesn't eliminate interspousal transfer for succession duties.

There are just a couple of things that I wanted to answer, having heard the last two submissions. I wanted to give my own personal opinion on a couple of things there. One was the question of a will that Mr. Cherniack was raising and I would personally — this is my personal opinion and I believe it would be the opinion, as I discussed it, with the people that I was talking to — is that the will should be half and that the other half you can give to whomever you like which might very well be your wife or your spouse. But that's my personal opinion.

With respect to the Tax Act, I was going to say exactly what Mr. Pawley said. When I was in Ottawa at a conference in January, it was made specifically clear by Mr. Basford that they were wanting these changes very badly — the equality in marriage and the property changes — and they were pushing the provinces right then. And I questioned him on it quite specifically. Of course, he's not Minister of Finance, he is Minister of Justice, but I think that he can speak for the Federal Government and I'm sure they are going to be co-operative. Mr. Spivak is no longer here, but in the event that those changes do not come into effect until after our bill comes into effect, well, I would agree that any detriment should be shared jointly.

With respect to the hardship situation, I know that a lot of people are going to stand up here and advocate judicial discretion. The case of the drunken spouse, or one spouse that does nothing. I've been given the example a number of times of a woman who marries a fairly wealthy man. He doesn't want her to work, so she doesn't work and she hires a housekeeper to do all her cleaning. She doesn't have any children. What does she contribute to that marriage? Well, first of all, there is psychological support. Second of all, there is the fact that he didn't want her to work due to prestige or something. But more than that, I think there will be some cases . . . If you are going to put a 50-50, there will be cases, and we have to recognize it, where it will be unfair for one partner to get 50 percent. But if you recognize marriage as an equal partnership, that's the only way you can do it. If you allow for judicial discretion, perhaps you will get some very good decisions. But perhaps you will get some decisions like the one I told about of Lord Denning when they opted for judicial discretion in Great Britain. Pertaps you will get some decisions like Murdoch. I don't think that we can risk that and that's why I am very much in favour of the bill as it stands now.

The final thing I would like to say is that I feel . . . The Commission spent two years on it; we've spent another year on it since then. There has been two sessions of public hearings that people should have been aware of. If they weren't aware of it, it was due to their own negligence. I've tried to make as many people aware of it through speaking throughout the country and the city on this thing. I have talked to people and asked people their opinio . As far as I know, there is a great deal of support for this bill and I think it would be very unjust to delay this bill. If there are matters that need to be

cleared up, clear them up, either now through amendments — I haven't read all the amendments — or clear them up afterwards but don't procrastinate and delay this bill any longer.

People have said to me, "Oh, it's long overdue. It's long overdue." And then everybody says to me, "They want it delayed. They want it delayed." Well, I say don't delay. We have had enough delay. Put the principles in, the principles everybody says they agree on. Put the principles in. If we need to change them, we will change a few things afterwards. Thank you.

MR. CHAIRMAN: Thank you. Order please. I will remind the audience again that expressions of opinion are not permitted under our rules. Mr. Cherniack.

MR. CHERNIACK: I was just thinking of women's rights to applaud when they like to. Mr. Chairman, I would like to ask Ms. Brown . . . . I don't recognize that right, I just see that they assert it.

Mr. Chairman, I must tell Ms. Brown that she brought her father into the picture so I have to comment that I thought that six or eight months ago, whenever it was that you came before the Committee, you told us that there was something being done about correcting that injustice of some twenty-five years. I am disappointed to hear that it's still on its way.

MS. BROWN: It is being done. It's being done very slowly. Through the gift tax implications, my father can give my mother $5,000 a year. I believe that's being changed now. Let me see, he will be 100 and what, 65, by the time she gets all that.

MR. CHERNIACK: Well, then, Ms. Brown, you will be glad to know that there is a bill you may not have seen and that's Bill 84, which deals with changes to the Gift Tax and the Succession Duty Act. Have you studied that?

MS. BROWN: I have seen it.

MR. CHERNIACK: Well, then, would you not agree that under that Act moneys that pass from one spouse to another in accordance with the entitlements under the Family Property Law would be tax free?

MS. BROWN: I didn't think that it included the commercial assets.

MR. CHERNIACK: Yes, yes.

MS. BROWN: It does.

MR. CHERNIACK: Yes, if you look at it you will see that the section describing property does not include an exception or an exclusion of the commercial assets.

MS. BROWN: Okay, if that's clarified. But I don't see why that one little clause "upon death" could not be put into the bill. It certainly isn't going to harm anything and I don't see why it couldn't be put into the bill anyway. I see no reason for not putting it in.

MR. CHERNIACK: Well, under The Dower Act, we are providing that a spouse is entitled to one-half of the estate.

MS. BROWN: Right.

MR. CHERNIACK: Which is much more, in many cases, than would be the amount of entitlement under The Marital Act. It's not less than . . . .

MS. BROWN: That's right. But I don't see why one-half still could not go into this Act. The more insurance the better. Let's put it that way.

MR. CHERNIACK: Yes, well I know your concern. But surely if you do make provision for one-half of the total estate passing, and you and I know that that is probably more than the entitlement under The Marital Property Act, then surely it's covered.

MS. BROWN: Okay, but The Dower Act does not encompass any succession duty.

MR. CHERNIACK: Well then I refer you to The Succession Duty Act, which does recognize that portion which you and I agree is the entitlement of the spouse, that is a share of the marital assets. Is that right?

MS. BROWN: If the interpretation of the bill is such that it will include the family farm, the business, etc.

MR. CHERNIACK: No, you didn't hear me then. What I say it includes is that portion of the estates of a person which has increased during the marital regime. Nothing before the regime started, nothing after.

MS. BROWN: Right. But if . . .

MR. CHERNIACK: But if the family farm was brought in during the regime, then of course it covers it.

MS. BROWN: Okay.

MR. CHERNIACK: Okay? I don't want to mislead you into thinking that the question . . .

MS. BROWN: No. I did not read the Act that way. I guess I wasn't looking for . . .

MR. CHERNIACK: I wish you would, I would appreciate it. If you don't agree with the interpretation, it would be good if you'd let us know. But that is my interpretation, not one-half of the estate but one-half of the marital property tax free.

MS. BROWN: Right, okay. I did not read section . . .

MR. CHERNIACK: In addition is the exemption for a spouse.

MS. BROWN: My point would still be that I don't see it's going to hurt to put this into this bill.

MR. CHERNIACK: That's fine, thank you, Mr. Chairman.

MR. CHAIRMAN: Mr. Axworthy.

MR. AXWORTHY: Mr. Chairman, I'd just like to ask Ms. Brown, on the issue that you raised about the question of discretion. Without using it as the overriding principle, would you see it as applied to certain cases where there are exceptional circumstances as was recommended in the dissenting report in the Law Reform Commission?

MS. BROWN: No I wouldn't. I wish that we could do it that way. I really wish we could but I personally cannot say. When I had to decide whether I would opt for judicial discretion in some cases as was the dissent, or whether I would want a straight 50-50 with no judicial discretion, from looking at the judgments and reading over judgments I personally have to say that I would opt for straight 50-50 and I'm sorry about the cases but that have created hardship. There have been a great many cases that hardships have been created in the past and it's been very inequitable as well.

I might point out too, that everybody seems to notice that half of what would normally be considered male property — the husband's property — is being transferred to the wife, but people don't seem to pick up that in Bill 60 the wife is now having to become financially independent. The wife is now having to help support the children, that husbands are not going to be saddled with alimony payments for the rest of their lives anymore. That's a big step forward for men too. We're looking for equality for all people.

MR. AXWORTHY: Ms. Brown, I ve just been reading the report on Family Property that the Canadian Law Reform Commission put out. If I just may quote to you, it says "A discretionary property system as opposed to fixed rules are probably the most difficult regime under which to unfairly avoid sharing. Where fixed rules exist, it may be possible for a married person by careful manipulation of those rules to so arrange his or her affairs as to avoid sharing property with a spouse. Fixed rules tend attract the lay of the law while discretion brings forth its spirit."

Are you saying your only objection . . . In other words you agree with that in principle and your only objection is you just don't really trust the courts. Is that right?

MS. BROWN: That's probably a correct statement as you put it there, that if we have judges, all judges — and I shouldn't condemn all judges, the poor judges — but I just cannot say right now that I have enough faith in the judiciary that we now have. The majority of the Supreme Court, if not all of them' are still the same members that decided Murdoch, and they are the highest court in Canada. I can honestly say that . . . is usually in the minority and I do not have enough faith in the judiciary right now to want to advocate judicial discretion.

MR. AXWORTHY: Could I suggest this and I suppose judges can learn like everyone else does, but if the legislation carries within it the basic formula of equal sharing, a 50-50 basis, that provided for an option of judicial discretion where there are extraordinary circumstances then the guidelines would be very clear in the legislation from which the courts could learn and therefore exercise their judgment. Would that be reasonable?

MS. BROWN: Well, it could be reasonable if the judges are willing to accept that. I've seen judges go out of their way to not accept things like that. The problem there, I think, is also that you're going to create massive litigation because everybody is going to think that they have a special case. Well, what are you going to say? "Well, my wife vacuumed the house once a week, or my wife only had two children instead of three children, or my husband went out drinking with the boys once too many times." What is going to be the exceptional case? Where are you going to draw the line? You're going to have exactly what you have in the United Kingdom where you get one-third, two-thirds because she already knows how to do the cooking and the washing.

MR. AXWORTHY: I was wondering, seeing as you were good enough to provide me with references on the California Community Property, maybe you could provide me with the same references on how it works in England to see if the same degree of litigation or extensiveness of it works in the same way.

MS. BROWN: The English system hasn't been in for as long as the California system. California has been in, and a number of the other jurisdictions for, some of them for hundreds of years and California since 1951. The English Law Reform Commission Report only came out in 1971 and their's has only been in for a couple of years. But, I'm sure if you look under Community of Property in the index cards of the Law Library or the Law Courts Building that you'll be able to find them.

MR. AXWORTHY: Thank you.

MR. CHAIRMAN: No further questions. Thank you Ms. Brown.

MS. BROWN: Thank you.

MR. CHAIRMAN: Carol Perch please. Is Carol Perch present please? Mrs. Perch is not here. Ruth· Browne. Would you come forward please?

MS. BROWNE: Good evening. I wish to commend the Honourable Attorney-General and the Government of Manitoba for the introduction of Bill 61, the Standard Marital Regime, and Bill 60, Maintenance. And I understand Bill 72 is also being considered tonight, which I wasn't aware of. .

The principle stated in these bills will, if enacted, provide Manitoba with the most progressive

legislation on matrimonial property in Canada. I commend you on the philosophy incorporating the principles of equality between spouses and marriage as an interdependent partnership of shared responsibilities. This legislation takes a major step in recognizing the contribution to the family and thereby to society of the spouse who chooses to work within the home.

I have heard some criticisms of this bill to the effect that it will introduce problems of administration. True, changes will have to be made to accommodate the effects of this new law, however, as has occurred with many other pieces of legislation, such as the Dower Act, we anticipate future amendments will be able to deal adequately with flaws that will appear as a result of application of Bill 61.

One serious omission of Bill 61, as I see it is the omission of income in money form as a shared asset. The three main family functions are income earning, home management and child care. Whether these three functions are shared or not should not affect the income of either spouse. If one spouse does not, in effect, contract to take over the home responsibility the other is not free to earn income. Therefore the income earned should be shareable with the homemaker spouse as payment for home management.

If one spouse did not do the work involved with family and home care, studies have shown that the family would have to pay in the neighborhood of $13,000 a year to have it done by outside help. And if you wish to have some verification of that figure — I didn't just pull it out of the air — Catherine Walker and William Glogger have written a brochure called, The Dollar Value of Housework. I've seen this estimated as high as $20,000 and as low as $8,000 so you can pick a figure somewhere in the middle. For example, it costs a family $25 a day to have a house cleaner for six hours. This does not include laundry, meals, child care, etc.

In many families, income is the only asset. If it is not shareable, where is the equitable partnership?

Another area that this legislation has not adequately covered is that of the family farm and the unincorporated family businesses.

Unpaid work by one spouse in a business owned by the other spouse should be recognized as an equal contribution to that business, and therefore the spouse of a farmer, fisherman, rancher, etc. should be entitled to one-half of the assets of that business.

Manitoba farm women contribute a great deal to the economic unit known as the family farm. I consider it a great grave injustice that these women do not have equal rights concerning ownership of all farm property.

The unincorporated business, which in many cases could not exist without the contribution of both spouses, I see as being in the same category as the family farm.

I therefore recommend to the committee that these economic units, the family farm and the unincorporated family business be instantaneously shareable.

I endorse the concept of retroactivity as applied to marital property, with one important exception. I feel that undue hardship would be worked on many couples if existing contracts are negated. I therefore submit that, retroactivity shall apply to existing marriages, with the exception of existing contracts, whether separation contracts or marriage contracts.

Retroactivity should definitely apply to existing marriages with the above exceptions. Adequate provision is made in the bill for opting out. I am pleased to note that opting out shall be only upon mutual consent and after individual legal counsel has been obtained and a written verification of such counsel provided.

In Bill 60, the Family Maintenance Act, I support the idea of Section 4(1), i.e. "the onus of self-support after separation." It is my feeling that the dependency created by never-ending alimony is at least as harmful to the recipient as to the donor. Reaching for, and being supported in the search for independence, should do a great deal to end the bitterness and rancor which is maintained between separated or divorced spouses.

I am also pleased to see some provision for each spouse to obtain financial information of the other spouse.

I feel that there should be some provision made for common-LAW MARRIAGE BREAKDOWN, WHEREBY JUDICIAL DISCRETION COULD MAKE ALLOWANCES IN EXCEPTIONAL CIRCUMSTANCES. I am thinking particularly, in this case, of common-law marriages of long standing, where the children would be grown, where the dependent common-law spouse would be just as disadvantaged as a married spouse.

It is my opinion that Bill 60 fails to make adequate provision for the enforcement of maintenance orders. It is a fact that 75 percent of maintenance orders are in default, resulting in the maintenance of many families being a public debt.

I strongly feel that the provincial governments, along with the federal government should provide whatever mechanisms necessary to trace defaulters. The court system should then enforce the collection of these debts - not leave the tracing and collection to the dependent spouse, who is usually a woman and who is trying to care for one or more children. Since the debt of caring for the

families of defaulting parents falls on the state, the state should take over the responsibility for collecting the debt.

I urge you to add to Bill 60, an amendment, placing the collection of maintenance orders in the hands of the court system.

I further recommend that a central registry of court decisions from all jurisdictions of Canada, which have regard to maintenance and custody of children of separated or divorced parents, should be established and maintained by the Government of Canada. And I realize that you have no power to enforce this but I would hope that your government, when you are in consultation with the Federal Government, would recommend this.

Now, I have a short note on Bill 72 which isn't included in the papers that I passed out. I would like to read it though.

I feel that Bill 72 is a step in the right direction. However, in Section 2 referring to The Devolution of Estates Act, I recommend that 50,000 should be changed to $100,000.00. In today's society $50,000 is a very small estate if we consider the value of a home or a family farm.

I note the absence of reference to the abolition of interspousal taxation. If indeed marriage is a mutually supportive economic unit, the survivor of this partner should not be taxed, nor should transfer of assets between spouses be taxed. The time for taxation of the estate, jointly built up by two people, should surely be on the death of the surviving spouse.

Tax has been paid on money earned by the partnership as it is earned. Taxation of the estate when it passes to the surviving partner is double-taxation in effect.

I therefore recommend the abolition of taxation of interspousal gifts and of the estate passing to a surviving spouse.

I am pleased to see the change in The Dower Act entitling the wife to one-half of the husband's estate instead of one-third of the estate. Again, may I congratulate the Government of Manitoba on their efforts to remedy the inequities existing in the present family law. The passage of these laws will be a momentous step in the history of family law in Canada. It is to be hoped that it will serve as a model for family law reform in all the common law provinces of this country. I hope that these bills are given speedy passage in the Legislature and early proclamation as the Law of Manitoba. Thank you.

MR. CHAIRMAN: Thank you. Are there any questions? Mr. Cherniack.

MR. CHERNIACK: I'm having difficulty with this proposal of including income as a shared asset. The theory there's no problem with and I suppose — not I suppose — I know there are many homes in which it is treated as a shared asset. Could you please picture for me the stability of an existing marriage made more stable or more secure for either party in the event that income is a shareable asset.

MS. BROWNE: As I see a sharing of income, in most marriages it isn't a problem even now. We get along all right and . . .

MR. CHERNIACK: But where it is a problem.

MS. BROWNE: Where it is a problem, I think the action provides some recourse. In other words, if one spouse is earning the income and absolutely refuses to share it with the other I think the spouse who is disadvantaged should have some recourse.

MR. CHERNIACK: Could you picture for me what happens to the salary cheque after the one that was compulsorily divided.

MS. BROWNE: Are you meaning' if there are two salaries in the family?

MR. CHERNIACK: No, no. I'm saying that at a certain stage in life, the non-earning spouse says, "Okay the law says that this income' this cheque that you got today belongs to both of us." Picture for me what happens the next time the payday comes around?

MS. BROWNE: I don't think I understand.

MR. CHERNIACK: Will there be a just a handing over of half? Will there be consultation between an unwilling spouse and a demanding spouse?

MS. BROWNE: I think it's when the spouse is unwilling that there has to be some protection.

MR. CHERNIACK: Well, I'm asking you, what will happen to the stability of that marriage once one person asserts that right?

MS. BROWNE: I couldn't possibly imagine what would happen to the stability of most marriages. I would submit that the majority of marriages that are working and are existing today, this is probably happening to some degree. All I'm saying is that it should be a right.

MR. CHERNIACK: I'm suggesting to you that that right would force a separation all the more quickly.

MS. BROWNE: Well, I don't agree with you.

MR. CHERNIACK: You don't agree. You think that the non-earning spouse would assert the right to share against an unwilling spouse who is the earning spouse and that that will not adversely affect the stability of the marriage.

MS. BROWNE: My contention is that if things are at that state in that marriage, the marriage is in trouble anyway and this law won't make it any worse.

MR. CHERNIACK: Well, then you and I agree, because I think that once it is necessary to assert the powers then that marriage is pretty well on the way out anyway and there would probably a separation and a splitting of assets and a maintenance order rather than just a simplistic thing of saying that cheque belongs to both rather than to one.

MS. BROWNE: It does give the wife some right which she does not now have.

MR. CHERNIACK: We are now speaking about a wife who up to now has not asserted herself although she could.

MS. BROWNE: Because she had no backup if she wanted to. What is there to do today if you want money and your husband won't give it to you, you would go out and get a job or whatever.

MR. CHERNIACK: Or you walk out.

MS. BROWNE: That's right. With no money.

MR. CHERNIACK: Well, you walk out and you get your maintenance order.

MS. BROWNE: With no money.

MR. CHERNIACK: We are talking about income, aren't we?

MS. BROWNE: Yes.

MR. CHERNIACK: You picture the family farm which I can visualize as apart from the large farm that is operated almost like a . . . .

MS. BROWNE: An incorporated . . . .

MR. CHERNIACK: Incorporated is not necessarily descriptive of a non-family farm. You could have both an incorporated family farm, you could have it unincorporated non-family farm where the family may well be living 40 miles away from the farm and it is operated as a business. But the unincorporated family business: What is a family business?

MS. BROWNE: A business which is operated by a man and wife together.

MR. CHERNIACK: So now you are saying that, although the title may be in the name of one of them, the other spouse is required to continue to work there if that other spouse doesn't get equal sharing?

MS. BROWNE: I am saying that where they are working together, it should be recognized as an instantaneous community property.

MR. CHERNIACK: —(Interjection)— Mr. Graham asked: What if they are not working together? I assume you mean where they are not working together, it should not be shareable.

MS. BROWNE: An unincorporated family business. To me, the family business infers that they are working together.

MR. CHERNIACK: So your answer to Mr. Graham, I assume, would be that if they are not working together, then it is not a family business, then it is not covered.

MS. BROWNE: I wouldn't see it as such, no. I am thinking of the corner grocery where the mother and father run it and perhaps some of the family, and this kind of business is not shareable.

MR. CHERNIACK: You are quite right, because I gather we have just saved that family business from going under. Thank you.

MR. CHAIRMAN: Mr. Lyon.

MR. LYON: Mr. Chairman, this question might better have been asked of the Coalition, but I would ask Ms. Browne in any case because it arose during the discussion with Mr. Cherniack: Have you in the course of your consideration of this matter — the question of splitting of income and so on — had occasion to discuss with the banks, the *caisses populaires* and so on the frequency or the incidence of joint bank accounts as between husbands and wives?

MS. BROWNE: I have discussed it. I am not sure what you are getting at.

MR. LYON: My impression, in the absence of any statistics or any statistical information, would be that a goodly number of married couples in effect establish joint accounts to which each has equal access, so that in effect you have in practice a sharing of the income or incomes through that instrumentality at the present time.

MS. BROWNE: You are really agreeing with me, then, it wouldn't hurt to put it into law.

MR. LYON: What I am merely saying is that it is happening in practice. If it is happening in practice, then why legislate it.

MS. BROWNE: Then let's legislate it.

MR. LYON: Well, why legislate it?

MS. BROWNE: Because then it is a guaranteed right, not just the goodwill.

MR. LYON: Well, then, would you prefer to see the legislation say that there should be a joint account to which . . . .

MS. BROWNE: I would have to think about that.

MR. LYON: Okay.

MR. CHAIRMAN: Mr. Graham.

MR. GRAHAM: Ms. Browne, could you give me a definition or what you consider to be a family farm?

MS. BROWNE: To my thinking — and I am not an expert, I don't profess to be — a family farm is one that is run by a husband and wife and perhaps their children, together and jointly, where each is contributing to the production of that family farm, whether it be by feeding the chickens or running the tractor.

MR. GRAHAM: And in that you feel that the one spouse should be entitled to half of the assets of that business, is that what your brief says?

MS. BROWNE: Yes.

MR. GRAHAM: I consider myself to be one who does operate a family farm. It is my son and myself that operate it. Would my wife under your provisions, should she get one-half of the operation of that?

MS. BROWNE: Does your wife live on the farm and help you on the farm?

MR. GRAHAM: No.

MS. BROWNE: Perhaps not, then.

MR. GRAHAM: She has great difficulty finding it.

MS. BROWNE: I don't know. That perhaps, then, doesn't fit under the definition of a family farm.

MR. GRAHAM: I just wondered what your definition of a family farm was.

MS. BROWNE: Well, you've got it.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: Ms. Browne, I should like to just have your comments in connection with the issue of unilateral opting out versus mutual or bilateral opting out.

MS. BROWNE: I am in favour of bilateral opting out only.

MR. PAWLEY: Would you give me your reasons?

MS. BROWNE: I think unilateral opting out would destroy the value of your bill.

MR. PAWLEY: What if the provision was for the opting out to take place on a unilateral basis for the first six months of this legislation, and to be based upon discretion given to the courts based upon some equitable guidelines? Do you feel that . . . ?

MS. BROWNE: I disagree.

MR. PAWLEY: Would you just specify what would be the reason that you disagree with that?

MS. BROWNE: I think that the provisions that you have put into your bill as it stands cover the situation very well, and I think you will remember that I accepted separation contracts and existing contracts, marriage contracts. So if a couple does not wish to follow the marital regime that you are proposing, presumably they are doing it by agreement, and if they are not agreeing, then it is my feeling — and maybe I am wrong, I don't think so, though — that one spouse is to be disadvantaged.

MR. PAWLEY: What about the argument that a spouse now finds him or herself with an arrangement that we are legislating that they did not foresee and therefore we are legislating retroactively affecting them in a way that they did not foresee, imposing a legal regime on them that they would not have intended to accept when they were married.

MS. BROWNE: I am not sure what you mean.

MR. PAWLEY: That we are imposing a legal regime upon spouses.

MS. BROWNE: I don't think that that is such a hardship. I feel that if the spouses agree to opt out, that this should cover the cases where the arrangement is equitable. Unilateral opting out will provide opportunity for inequitable arrangements, and that is what we are talking about isn't it, to make it equitable.

MR. PAWLEY: So you don't feel that the court would make it equitable?

MS. BROWNE: Well, I share Ms. Brown's suspicion of judicial discretion.

MR. CHAIRMAN: Mr. Jenkins.

MR. JENKINS: I have just one question, Mr. Chairman, through you to Ms. Browne and that's dealing on Page 3 where you are dealing with mutual consent on the individual . . . . Oh, I see. I beg your pardon. I never noticed that you said "independent legal opinion." You favour that as it is in the Act?

MS. BROWNE: Yes.

MR. JENKINS: Thank you.

MR. CHAIRMAN: If there are no further questions, thank you, Ms. Browne.

MS. BROWNE: Thank you.

MR. CHAIRMAN: Perry Schulman, please.

MR. MARK SCHULMAN: My name is Mark Schulman and I am appearing in connection with the submission prepared by both of us. I am appearing also as a private lawyer in practice and concerned about this bill.

I have prepared the written submission which I believe has been circulated or is to be circulated. Has it been circulated?

MR. CHAIRMAN: Not yet. It will be if you left it with the Clerk. Proceed whenever you are ready, Mr. Schulman.

MR. SCHULMAN: Yes ' I have several comments. I wish to digress from the written brief because

of the amendments which I have had an opportunity to read through. I wish to take issue with one amendment which has been proposed and which I think is contrary to the principle of the Act, and that is the propsoed proposed amendment which is to be described as Section 2(2). In yesterday's amendment, I believe it was described as Section 2(2) also.

First of all, I think that this bill has been proposed to redress long-standing grievances, and I would think it would make a farce out of the bill to allow unilateral opting out, because in those cases where the grievances exist, the party who has benefitted from the unjust arrangement will simply opt out. Now I think , secondly, that it would be completely unconscienable in an Act where unilateral opting out is not permitted not to make this regime apply to marriages which have partly disintegrated already. In fact this Section 2(2) is just ridiculous. It says that "the standard marital regime does not apply to spouses who, upon the coming into force of this Act, are living separate and apart from each other pursuant to the order of a court; or following the commencement of proceedings for the dissolution or annulment of their marriage; and the standard marital regime remains inapplicable to those spouses for such period of time as they continue living separate and apart from each other."

Now first of all, why are you picking on people who are separated pursuant to a court order and depriving them of their rights under this Act? First of all, there are people separated under many circumstances. Some are separated because one spouse has deserted the other. In fact if the wife has walked off, under the present law, unless the relatively rare proceeding of judicial separation is taken, the separation will be without a court order. Secondly, the separation may be due to mutual agreement whether in writing or verbal. Now in any of those cases, or even where there is a court order, there may have been no arrangements for property settlement at all. Why are those people not entitled to the benefits of this Act?

For example, who is separated in this province under a court order? I would suggest to you that the only people are those women who have had to make application under The Wives' and Children's Maintenance Act because they have been beaten up by their husbands; because their husbands have deserted them, and possibly walked off with the family assets — those people are deprived by this provision of any application for their rights under this Act.

On the other hand, if a wife has not obtained a court order, but simply deserted her husband, she will be able to benefit from the rights under this Act.

So I repeat, if you are going to exclude from the Act people who are separated, it should be all people who are separated, not just people who are separated by court order. I think it is completely unfair to exclude from the operation of this Act people who are separated and who have not settled their property differences by agreement.

Mr. Cherniack referred to a case where they had been separated for 25 years and this Act comes in. Now first of all, there may be a tacit property settlement in that case. If nobody has done anything for 25 years, one can assume that everybody is happy. Why should that affect people who were separated last month or a person who got a court order last month and didn't get a property settlement? Why should a person be deprived of applying under this Act?

Now even worse is this provision to exclude people who have commenced proceedings for divorce. This is merely a unilateral opting out. A husband who doesn't like this Act, in the next six months before it comes into force next January 1st simply has to leave his wife and start divorce proceedings, and this Act does not apply to him. Is that not ridiculous?

Now I don't see any reason to exclude this Act from persons who are separated and who have not made agreements to settle their property, no matter when that separation has taken place. But if you are going to recognize separation as a reason for excluding the Act, it should only apply to obviously stale situations , and you would have to pick some arbitrary time, like a separation that took place 25 years ago for example, or 10 years ago, where there is no question that there is no need for this Act. Surely you should not make this Act not apply to marriages which are currently in the course of disintegrating.

I should also point out that this proposed Section 2(2) is completely inconsistent with the amendments under Section 28(1) and 28(5). 28(1) provides that there will be recognized any property settlement by agreement made prior to May 6, 1977. And Section 25 provides that where that particular agreement has been made, the marital regime will apply to the extent that the agreement is silent. So here you have a clear case. People have separated, they have made a partial property settlement, and the intention is that the marital regime will apply to that portion of the property that is not covered by the agreement that was made before May 6. Now it seems to me that is completely inconsistent with Section 2(2), which completely excludes people who have been separated by court order. The intention under 28(5) is to make this law apply to all people who have not settled their property differences as of the date this legislation comes in, whether they are separated or not, unless they have already made an agreement. And that's the way it should be left. Otherwise you should simply allow everybody to opt out of this Act.

Now certainly I want to comment on a few of the provisions of the bill. Firstly, on the manner of

dealing with marital homes, I think it is quite surprising that there is absolutely no provision in the Act making a spouse who acquires a vested interest in the marital home, a joint interest, not jointly liable for any debt incurred in connection with the acquisition of the home. Now I am particularly concerned because this legislation is retroactive and there are many people who ordered their affairs not knowing that this Act was going to come into place.

For example, I think that probably this legislation contemplated a standard situation where one spouse has bought the home and has taken out a mortgage to acquire it. In that case, obviously, when the other spouse acquires a joint interest, they are going to become liable for the mortgage also because it is against the house. But there are instances, first of all, where the cash to buy the house has been financed by a loan which did not get registered by way of a mortgage against the house. The money may have been borrowed from a parent without taking a mortgage. The title may simply be hypothecated at the bank without a mortgage being registered. The employer may have loaned the money, or there may be a mortgage, but the spouse borrowed the equity. Why should the other spouse who is acquiring an interest in the house not be required to share the debt?

I make this point not only in connection with marital homes, but with family assets. The car may have been bought by way of a bank loan and the bank did not take a mortgage on the car. and If the spouse is going to acquire half the car, why shouldn't she be liable for half the loan?

Therefore, I submit that these provisions should be amended to provide that where a spouse acquires a vested joint interest of the marital home, as I have set out here under Paragraph 2, or equally under the sharing of family assets provisions, that spouse shall thereby become jointly and equally liable with the other spouse for any debt incurred by the other spouse to acquire, construct or substantially remodel the marital home and if the spouse doesn't like acquiring that liability then she can simply disclaim the joint tenancy.

Now, I think there is a gross omission in the Act in not making that provision. I don't think it's remedied by the sharing of assets and liabilities under commercial assets because there may be no commercial assets. In many families in our community the house and maybe the car are the only assets. And if one spouse gets half the house and the other gets the whole debt, that is hardly going to be regarded as fair legislation.

My second comment I see has been covered by the amendments, so I won't deal with it.

Now my fourth point on Page 2, I submit that "death" should be added to Section 19 as one of the grounds for notice and for equalization of assets under this Act. First of all, death is an obvious form of dissolution of marriage and it's permanent.

I do not regard The Dower Act, or an amendment to The Dower Act, giving the spouse 50 percent under that Act as anything near adequate to compare with The Marital Property Act. The Dower Act is a poor substitute for this Act and is hardly the same thing at all.

Firstly, The Dower Act does not comprise the same assets as The Marital Property Act. The Dower Act only gives the surviving spouse access to the assets which go through probate. For example, life insurance where the beneficiary is designated or pension money where the beneficiary is designated does not have to be shared under The Dower Act because it's not an asset which goes through probate, and the spouse only has to leave 50 percent of those assets which go through probate under The Dower Act.

Secondly, there are many loopholes under The Dower Act which are not present in The Marital Property Act. First of all, under Section 16.1 in case of a marriage made before 1964, if the spouse leaves a lifetime income of $6,000 a year to his other spouse, he does not have to leave 50 percent of his estate. Now this law is going to apply to people with larger estates' as well as smaller estates. I think the Murdoch case involved a large estate and that has brought forth this legislation. Supposing the husband has half a million dollars, and under The Marital Property Act, the spouse, if the marriage broke down, would be entitled to share that. All the husband has to do under The Dower Act is leave her $6,000 a year and she is left in the cold. There is another provision where, if a lump sum of $100,000 is left, you don't have to leave 50 percent.

I submit that The Dower Act is a poor substitute for The Marital Property Act because it doesn't apply to all of the assets that The Marital Property Act does, and because there are easy ways to get out of it. So I am proposing that "death" be added as a ground and, secondly, that the spouse could be put to an option. Either take your equalization under The Marital Property Act or take your rights under The Dower Act. You can't have both but just figure out which is best for you and take your choice. In that case, we will be sure that there will be no inequities. And there could be a time limitation put on that election after death, the same as in the Testators Family Maintenance Act, the spouse would have to make up his or her mind within six months of probate.

Now, dealing with commercial assets, I think there is a deficiency, first of all, in the definition of assets. I gather that the concept here is to share what accumulates during marriage and this includes not only assets which are acquired after marriage but accrued appreciation of assets which were owned before marriage.

Well, how about the accrued depreciation of some of those assets after marriage? Surely the other

spouse should share the losers with the winners. A husband may have two stocks which he owned before marriage. One went up in value after the marriage, the other went down. Surely there should be a set-off of one against the other. I don't see any provision in Section 20 which permits a set-off of the losers against the winners. So I think that that provision should be reconsidered. That's a minor point.

There has been some talk about judicial discretion. I don't think there should be any judicial discretion in the main principle of an equal sharing but I think that there should be some judicial discretion in the implementation of the precise formula in the Act. For example, I'm sure there will be numerous anomalies discovered which, instead of producing equal sharing or a fair result, will instead produce a hilarious result.

I have set out one example in the Act. In this example, before marriage the bridegroom has $100,000 cash, let us say, and the bride has $100,000 cash and also some shares which at that time are worth a dollar. Later on, and let's assume that this is not a first marriage a second marriage so they both accumulated some assets. Later on, some years later when the marriage breaks down, the husband who had a good job and didn't have to spend any of his money, he saved it all. He's got his original $100,000 so this is not a sharable asset under the Act. He just keeps it. The wife, who did not work, and while they were getting along well spent all of her cash on family living to raise the standard of living, so she has got none of her money left. However, the shares which he owned have increased in value. They are now worth $100,000.00. She decided, instead of spending the earnings on her shares, she'd spend the cash. Under the provisions of this Act, the growth in value under these shares is a sharable asset. So the husband will get a judgement against the wife for $50,000 and he will end up with $150,000, and the wife is left with $50,000 on the equalization.

Now that is the result of a strict application of a rigid formula in all circumstances. First of all, this anomaly results from the fact that the formula set out does not permit both the husband and wife, before the equalization, to withdraw their original contribution to the marriage, as happens in a partnership. When a partnership breaks up, first each partner takes out the original capital contribution and then whatever is left is divided equally. This is not provided for in the Act. However, this is only one example of an anomaly. It seems to me that what should be put in here is just the general principle of an equalized sharing and the courts should have some discretion to make adjustments in the final settlement to take care of injustices that might come about.

Now I'm not talking about a discretion to consider the merits of each spouse. I'm simply talking about a discretion to make adjustments in the application of a rigid sharing rules so that there is a true division equalization. That discretion would override any unfairness that appears in the strict application of the formulas in the Act. I think that matter would be resolved quite simply by giving the court some power to relieve against such anomalies.

Now I further submit that if such a provision were put in this would lead to less litigation rather than more litigation. First of all, I think that if the formula is rigid then the party who is being shafted is simply going to defy the law, and the party who wants to take advantage of the other is going to go to court to try and force the judge to force the favourable result. On the other hand, if there is this discretion and both parties know that they are not going, in court, to be able to take advantage of each other, I think it more likely that these various questions of equalization will be settled at the bargaining table rather than in court.

That's basically all the submissions I have.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: I wonder, Mr. Schulman, if you would, first in connection with the reference that you made to divorce proceedings in process and the concern that you mentioned in that connection at the beginning of your address, if we established a date, such as the date of the introduction of this bill in second reading, would that handle the problem that you foresaw? If not, what would you suggest as an alternative?

MR. SCHULMAN: Well, I think that you are — bluntly — screwing somebody who filed a petition last month, not knowing that you are going to do this. That's really all you are doing. Surely this law should apply to anybody who has not settled their property differences whether they are separated or not. What difference does it make whether the divorce petition is filed?

MR. PAWLEY: So you're saying that this law should apply to any case now in process through the courts.

MR. SCHULMAN: I think it should apply to any parties who have not had a property settlement, whether they are in the courts, or out of the courts, or on their way to the courts. First of all, every case in the Family Court is going to have to stop now that we know that this is going to happen. Because anybody that gets an order between now and next January is going to lose their rights under this Act. Now, why have a law like that? Every husband who wants to avoid this law is going to file a divorce petition. Well, you said to put a deadline on it but I don't see why people who filed a petition six months ago should be precluded from this law. The only question is, has there been a property settlement by agreement or not? If not, then if this law is going to apply to everybody else, why

shouldn't it apply to those people too?

MR. PAWLEY: And you disagree with the concept of unilateral opting out of the standard marital regime?

MR. SCHULMAN: Well, I think that this Act. . . . It's obvious from all the submissions and from what has been going on in society that there are longstanding grievances that have to be remedied. And if you're going to allow unilateralling out you are simply going to wash out the purpose of the Act.

MR. PAWLEY: I wasn't quite sure how you arrived at the conclusion in respect to one spouse having an increase in the value of stock, and the other spouse having a decrease in the value of the stock. Why that would not be taken into consideration here in the legislation and the equalization process that is . . .

MR. SCHULMAN: Well, first of all, if a stock was acquired before marriage it's not an asset unless it has increased in value. Because the definition of assets only applies, as I understand it, to assets acquired after marriage which consist either of assets actually acquired or the increase in value. I don't see any provision where there can be recognition if one person has two assets both held before marriage and one has gone up in value and the other has gone down in value, I don't see in the definition that the decrease in value would be considered a negative asset to be set-off against the . . . .

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Well, Mr. Schulman, I must say that I suspect that you are going to be in the minority of the lawyers who will be coming here and saying that our law doesn't go far enough, or our proposal doesn't go far enough in recognition of the rights of the spouses who share. But several of the points you make, I think, are valid and I think I understand them. The first one, however, is where I become a little apprehensive about how far back we can go. You know, you talked about equity or justice. It seems to me that you are attempting to reopen marital problems that may well have been settled in the minds of the people to the marriage, who are separated now, and were separated before they knew that this legislation was coming through and I think the question I asked becomes a valid one. I said twenty-five years ago. It may well be that a court with the discretion that you want to give it, who has to decide whether or not they come to an acceptance of it, could go back as long as both spouses are still alive and maybe even prior to that if you didn't put any starting date. It seems to me that we will have made very substantial progress in recognizing equal rights if we deal with those situations which still consist of a marriage such as we know it to be.

You pointed out inconsistencies and I agreed with you. But I was prepared to suggest that in that amendment of Section 2(2) that the exclusion actually stops right on the third line, to read "The standard marital regime does not apply to spouses who upon becoming into the force of this Act", or Mr. Pawley suggested possibly the date when it was introduced for second reading, "are living separate and apart from each other."

My reason for saying that is that as far as I know it, and I want you to clarify this for me, there is no law today that entitles anybody to a property settlement other than where there is jointly owned property.

MR. SCHULMAN: Well, I say first of all, people's expectations have been built up over the last six months.

MR. CHERNIACK: Well, does that not always occur? If there were expectations built up, is it not likely that they really froze on a situation waiting for the law to happen and hoping that it would be retroactive, and is that really the basis on which legislators should make decisions?

MR. SCHULMAN: Well, I just don't see any difference in principle between people who are living separate and apart and have not make any property settlement, and those who are living together and have not made any property settlement.

MR. CHERNIACK: But would you concur to me that there is no right to a property settlement in today's law.

MR. SCHULMAN: Well, there may be a right and it may be unresolved.

MR. CHERNIACK: Would you explain it, please.

MR. SCHULMAN: Well, Mrs. Murdoch went to court and spent years in court to find out what she was going to get.

MR. CHERNIACK: She discovered there was no right for her.

MR. SCHULMAN: No, she got something. Or she didn't but othersdid.

MR. CHERNIACK: Right.

MR. SCHULMAN: It depends on the judge.

MR. CHERNIACK: She got nothing because she had no rights. That's right. So it depends on the judge.

MR. SCHULMAN: Yes.

MR. CHERNIACK: And are you therefore going back and reopening the case of Mrs. Murdoch in

effect?

MR. SCHULMAN: No, I'm not reopening any case where there has been a property settlement.

MR. CHERNIACK: But there has been no property settlement in the Murdoch case, I believe. — (Interjection)— There was.

MR. SCHULMAN: There has been.

MR. CHERNIACK: I'm not going to get trapped by my inadequate knowledge of the Murdoch case. Let me suggest that there have been cases where people have found that they have no rights to property settlement because they have no stake in it.

MR. SCHULMAN: This legislation is being passed — because that's an unjust situation. There should have been property rights recognized and I'm saying, why are you excluding just because people happen to be separated at the moment.

MR. CHERNIACK: Well, I suspect, Mr. Schulman, that the big argument that has yet to take place as our discussion develops is between the principle of unilateral opting out for any retroactive effect and what we are proposing or what is being proposed in this bill and with my suggestion which would be dealing with marriages that are still extant. Now you're saying go even further back. . .

MR. SCHULMAN: If you're going to let people opt out why not everybody opt out, why just those who are separated. You're saying they're out.

MR. CHERNIACK: Yes, that's right. It's not opting out.

MR. SCHULMAN: Well, why shouldn't everybody be out?

MR. CHERNIACK: You mean we shouldn't pass the law. Are you saying that?

MR. SCHULMAN: Well, if you're not going to apply it to people who are separated and who haven't made their property settlements by agreement or by just somehow, I don't see why it should apply to anybody.

MR. CHERNIACK: At all?

MR. SCHULMAN: Yes.

MR. CHERNIACK: Thank you, Mr. Chairman.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Schulman, what you are really asking for it seems to me here, and I would appreciate some direction on it is for some retroactivity in this legislation. Whether there's such a thing as some retroactivity is a good question. There is either retroactivity or there isn't but you're asking for retroactivity applied in certain circumstances.

MR. SCHULMAN: Well, I just don't see why if there happens to be a court order for people who are living separate and apart that the action somehow not apply to them and I don't see why just because they're living separate and apart the Act should not apply to them where these assets have been accumulated over the years. I think if it's going to be retroactive for people who are living together it should also apply for those who have at least freshly disintegrated marriages.

MR. SHERMAN: Well, what I'm getting at is that you are in fact asking for some application of retroactivity which is a point that I want to establish because it's a major point of issue for many of us on this committee, the principle of retroactivity and whether it is acceptable in ethical terms or not.

Would you explain to me what you mean by your statement to the committee that if you're going to allow unilateral opting out then you defeat the purpose of the Act. I've heard the contention before but I don't understand what is meant by it because the opting out provision, whether it's unilateral or mutual only applies, or at least in terms of the argument as to whether unilateral opting out should be permitted, it only applies in relation to the first six months after the Act comes into effect. In other words we're passing or working on a piece of legislation here that would apply in the Province of Manitoba for some considerable years and decades to come and I don't understand the argument that by simply taking the position that it would not be within the moral or ethical prerogative of any government to change rules with respect to specific relationships in existence now, how that argument can be used to suggest that simply by observing that principle we would be defeating the whole purpose of the Act. The Act would apply to everybody from the date the Act became law and to all marriages that took effect from six months after that date plus all those marriages the partners of which did not exercise the unilateral opting out option.

MR. SCHULMAN: Well, my premise was that this Act is being passed to redress long-standing inequities which already exist and for which there is no adequate remedy in the law. If you're just passing it for future generations to prevent future inequities which may develop, that's a different matter. I don't think that that's why all these women's groups are here and why there has been all this agitation for this law. If the only way out of this Act is by agreement then I think it should apply to all situations which now exist whether they happen to be living together or not.

MR. SHERMAN: Well, you say that you don't think that's why all these women's groups are here, but why do you think there are a lot of other women's groups that aren't here?

MR. SCHULMAN: Well I think that there's a large segment of the population that knows how to order their affairs without recourse to an Act like this.

MR. SHERMAN: Exactly, and that were not exercised sufficiently about this point at issue or at least up to this point aren't familiar enough with the proposed legislation and the impact it will have

on their lives to participate at this point in the debate. Would you agree with me on that that there is substantial. . .

MR. SCHULMAN: That's true of any legislation.

MR. SHERMAN: There still is need for substantial dissemination of all the facts and all the information related to this question in terms of the general public.

MR. SCHULMAN: I think that it's been known for some time that legislation to equalize assets is on the way and I think that with some of the changes that are proposed now by myself and others that we can get the show on the road.

MR. SHERMAN: Just one other question, Mr. Chairman, and here I would betray my lack of legal training, Mr. Schulman, so I need your direction again on this. You cite a very interesting or propose a very interesting example at the bottom of Page 2 and the top of Page 3 in your presentation where you deal with the husband and wife who each had a $100,000 cash, — bridegroom and bride— coming into the marriage and the wife had shares worth a dollar which subsequently appreciated to a total value of $100,000.00. I don't understand your concern over the potential inequitable division which you cite in your example. Does Section 22 (2) of Bill 61 not take care of that? I'm asking for your legal direction on this. Section 22(2). The exception under Division 4 dealing with commercial assets makes the point: "commercial assets of a spouse may be accorded a negative value equivalent to the amount of any debts and liabilities of the spouse directly incurred in fulfilling family maintenance obligations or other financial family obligations including obligations to maintain the family's standard of living." Now the example that you've posed is one in which you specifically describe the wife as having spent her cash on family maintenance.

MR. SCHULMAN: Well, 22(2) just refers to the amount of debts and liabilities. In my example there are no debts and liabilities, she just spent all her money. She wasn't left with any debts or liabilities.

MR. SHERMAN: Then what you're saying to us, your objection is that debts and liabilities aren't calculated into the sharing proposition too.

MR. SCHULMAN: No, I think that my objection is that a principle sharing is fine, but a rigid formula may not result in an actual fair sharing in some cases. In the court there has to be room for a judge who accepts the principle of 50-50 sharing to make some adjustments to alleviate any hardship by the strict application of a formula which may give rise to instances, and you shouldn't have to convene the Legislature every time somebody finds an anomaly. The judge who is deciding a specific case should have the power to make an adjustment which any reasonable person would think is fair.

MR. SHERMAN: And your reading, for my help and information, is that Section 22(2), of Division 4 does not accommodate that requirement.

MR. SCHULMAN: No, not at all because it only refers to debts and liabilities which have been incurred.

MR. SHERMAN: Thank you, Mr. Chairman.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: Mr. Schulman, if amendment was made which would refer to cases of unusual hardship that a court can make an adjustment, would you be concerned that by so doing there would be the danger that we would open the doors to a judge to award other than on a 50-50 basis to allow other factors to enter into it rather than deal with anomalies or would you suggest any particular type of wording.

MR. SCHULMAN: Well, I think that the cases of unusual hardship would apply only to the application of the strict formulas, not to extraneous circumstances like someone who is crippled for 20 years or one's spouse was drunk, but rather to hardships arising from the strict application of the formulas that don't produce a sharing.

MR. CHAIRMAN: If there are no further questions — Mr. Lyon.

MR. LYON: Mr. Schulman, you made mention of the fact that, in your opinion, the main stimulus for this piece of legislation was undoubtedly the Murdoch case. The Murdoch case, as I recall, was the case where the spouse in question did not get all that she asked for, however, she did get . . .

MR. SCHULMAN: She got a third instead of a half.

MR. LYON: She got a third instead of a half, right. Are you aware of other cases from your own experience in practice where the judicial discretion about which we have heard something tonight has been exercised in a prejudicial way against either spouse before the court. I am not just referring to the cases that you lost.

MR. SCHULMAN: Well, at the present time there just is no general principle of sharing assets so I don't think the judges have had the opportunity to be unfair.

MR. LYON: There was a case, the citation of which I forget, that was decided in the last 18 months or 2 years by Chief Justice Dewar. . .

MR. SCHULMAN: Well, where the facts warrant it the court will find there was really a partnership but it's a pretty tough job to. . .

MR. LYON: And the finding in the Murdoch case, as I recall right from the trial through to the Court of Appeal to the Supreme was based on a finding of fact rather than on any judicial interpretation of

the Law. Right?

MR. SCHULMAN: That's a pretty brutal process to have to go through to establish property rights.

MR. LYON: Thank you.

MR. CHAIRMAN: Further questions? Hearing none, thank you, Mr. Schulman.

Before I call the next person on the list, maybe I should indicate to those members of the public still waiting to speak to the Committee that it has been the practice of the Committee to attempt not to work later than midnight. Now there are still nearly 40 persons on the list and I should indicate that the Committee will meet again tomorrow morning at 10 a.m. and again tomorrow evening at 8 p.m. I will read the names of the next few people on the list so that if there are any others further down the list who may wish to leave and come back tomorrow they should not feel bound to wait the rest of the evening.

Next on the list is Linda Taylor, followed by Mrs. Wyrzkowski Jill Oliver, Jean Carson, Bernice Mayne and Joyce Brazer. I would then call Linda Taylor, please.

MS. TAYLOR: My name is Linda Taylor, and I am speaking on behalf of Women's Place and Women's Liberation and we are participating members of the Coalition on Family Law.

We would like to begin by commending Mr. Pawley and this Committee for the seriousness with which you have addressed the issue of family law, and for the bills which have been introduced We were impressed, as you no doubt were, with the large number of thoughtful presentations made at the last public hearings and by the number of people in the population represented tbrough these briefs. Your acknowledgement of the strong public feelings on this issue manifested by your modification of the Law Reform Commission proposals has shown to us the value of political participation by the public.

However, the legislation proposed has fallen short of our goals. We remind you again that additional and wide-spread changes will be necessary before real equality for women, inside or outside marriage, will be possible. Although Bills 60 and 61 are progressive and will surely become a model for other provinces they do not meet our demands.

We asked for instant community of property, and we did not receive it. We demanded a change in maintenance provisions so that court-awarded maintenance would be paid. As far as we can determine in that regard no significant changes have been made. The victim of the crime will remain the one responsible for apprehending the criminal. This must change: the courts, the government and the people of this province must insist that to ignore the support owed to one's children is a serious crime and will not be tolerated.

We continue to ask for substantial changes in enforcement procedures. Let us remember that few Manitoba families own any significant amount of property. The improvement in the conditions experienced by single parents is dependent therefore on enforcement of maintenance orders and the sharing, not of assets but of wages.

Since the introduction of Bills 60 and 61, we understand there has been some dissent heard from the legal profession although little from the public. We would like now to reiterate our position that unilateral opting out would be a gross miscarriage of justice, a position we remind you taken in almost all the public presentations made before this committee at the last session. Many changes in family law have been retroactive. They have not allowed either unilateral or bilateral opting out.

You should have also been given a copy of the Married Women's Real Estate Act. Do you have that? And if you look at the underlined part on the second page you will note that it is retroactive from 1890 to 1875, quite clearly is spelled out there.

The provincial Dower Law when introduced also covered all existing and previously contracted marital agreements. The Federal Divorce Act of 1968 similarly applied to all marriages. It would indeed be laughable if an aggrieved spouse in a divorce proceeding argued that when he/she was married, cruelty was not defined as grounds for divorce, and therefore should not now be examined.

The Divorce Act retroactively defined certain behavior as undesirable in a marriage. Cruelty toward one's spouse, for example, was defined as grounds for divorce whether it occurred in the present or in the past.

Like the laws under consideration now, these changes were designed to conform to public feelings. They merely enunciated what was already regarded as appropriate.

Do any of you seriously believe that women entered into marriages understanding that their work in the home, farm, or family business would be less valued than that of the hired hand? No, they did not. They believed they were entering a partnership, entering into an agreement to share and to help one another.

In 1916 Manitoba women won the right to vote. It was a long struggle and hard fought. If husbands had been allowed at that time to unilaterally decide that wives should not be allowed to vote, many of them would have taken that action. Without the commitment of the state to equality for all, some women today would still be alive without voting privileges. What a travesty of democracy that would be.

We approve of the new maintenance laws which acknowledge the legal responsibilities women

will assume for the support and maintenance of their husbands during marriage, or upon separation. Have those in the legal profession so concerned about protecting the private property primarily owned by men expressed similar concern about the changes in the marriage contract as it defines the responsibilities of women? Women have not argued for the right to opt out of the provisions which remove their dependence on men, which obligate them to be equals in the care and support of their families. In fact, most women have traditionally assumed this sharing of responsibilities.

However, we will not willingly stand by and see the fruits of our labour continue to be legally owned by another. The suggestion that unilateral opting out of the standard marital regime should be allowed is the vestige of nineteenth century views of women. To give any credibility to that argument would be to seriously misread public sentiment.

Bill 60 and 61 contain a number of drafting problems. Like all new legislation, there will be amendments necessary. But to retreat from the legislation would be a move backwards. To pass the bills in this session would move us one step closer to equality of the human condition. Thank you.

MR. CHAIRMAN: Thank you. Are there any questions? Hearing none, thank you, Ms. Taylor. Mrs. Wyrzykowski, please.

MRS. EVELYN WYRZYKOWSKI: Mr. Chairman, Honourable Attorney-General and members of the Legislature, I've come here from our provincial annual convention of the Catholic Women's League and we voted there an approval and support of this brief by the delegates who represent our membership of 3,179 ladies in the province, and it does explain why we are, unfortunately, not in tune with the latest amendments that were handed out. In fact, it came as quite a shock when we came in this evening to discover that this had been happening as we have been busy with our convention; and are somewhat disappointed, too, in the fact that we have tried very hard to stay in touch with happenings with these bills since we first became involved in November.

This evening I have our newly elected President, Mrs. Shirley Scaletta, with me and I would like to ask if she could help present this with me.

MRS. SCALETTA: Mr. Chairman, Honourable Attorney-General and members of the Committee, we think it's rather interesting this evening that we are here sharing with you at the same time Mr. Premier, Ed Schreyer, is addressing our group.

In viewing both Bill 60 and 61, we recognize that marriage breakdown litigation is unique among other legal actions. It is rarely a cutanddried piece of economic business with a clearcut beginning and end which can be handled and filed away. Rather it is a painful process for all concerned, which incidentally includes the lawyer and the judge, and it is almost invariably accompanied by the most intense and intimate emotions of spouses.

Lawyers, police, social workers, churches and psychiatrists deal daily with such associate psychological and sociological consequences of family breakdown, such as increased child abuse, child abduction, juvenile delinquency, second generation divorce, and even murder of a separated spouse. We find the new laws are not dealing with these realities and since the human ramifications of marriage breakdown are too complex to be dealt with by a single profession — that is, the legal — we are pleading for a co-operative effort between law and the behavioural sciences with the hopeful result of less fragmentation and more comprehensive and meaningful service to spouses and families in crises.

In Bill 61, The Marital Property Act, the complications resulting around the enforcement of maintainence and support will persist as before unless the psychological factors which affect the situation are dealt with throughout the entire process of applying to the courts for help. Custody of children, division of property, support payments are issues which rarely disclose the real reasons underlying the disintegration of the family.

Throughout the centuries, the law has enunciated the principle of strengthening and preserving family life. However, it appears this principle cannot be translated into an effective action-orientated program until the legal profession and the behavioural sciences co-operate. Until recently, there has been little evidence of the law's willingness to assume an aggressive and effective approach to the problem of family breakdown. But now we have a wealth of documentation and statistical reports to look at from California's Court of Conciliation. There each profession has taken on an added responsibility and effectiveness in serving both society and its most basic unit, the family. They have proven that a working relationship is possible and have secured the enthusiastic support of the Bench, Bar, social agencies, Board of Supervisors, and the general public.

We are not so naive as to believe that the mere establishment of a Court of Conciliation and its successful operation is the only answer to deal with the increasing problem of family breakdown. But we believe that this non-traditional approach to the problem creates an added dimension of effectiveness in handling the problems which Bill 60 and 61 have attempted to address. Further, this non-traditional approach includes a total effort on the part of all the institutions, including churches, in a community.

With the system of a Conciliation Court we believe a judge will be best able to deal with the

tremendous amount of judicial discretion that is called for in Bill 60 and 61. It is because we believe that the law, as an institution, is the first line of defence to protect our way of life that we come to you again. We are calling for the full potential of the law. We recognize that judges and lawyers constitute a well-organized force to protect us from the increasing rate of family breakdown and the resulting difficulties and injustices. And since separation and divorce require a legal procedure, then the judiciary is in the advantageous position to provide marital counselling services that are simple, direct and immediately available on application to a Conciliation Court.

The law alone is not sufficient to handle the complexities involved in the continuance of sound human relationships, neither are the social services or educational programs as we know them. But if all of these are pooled together, well again that is something else.

MRS. WYRZYKOWSKI: The point on which we can agree with all the other groups and persons coming to present to this Committee their concerns about the formulating of the new family law is to seek more just laws. And to do this well we believe there are certain important concepts that have still to be taken into . consideration and perhaps further time may be needed to ensure that this happens.

Concepts such as , the first being , in our laws we will have to become more explicit as to how Manitobans view human nature at this given time and place. For example, while we are quite capable of being bad, the question is, are we able to become more aware and see the better that is actual and possible in persons? We must continuously focus on the wholeness of a person, on the wholeness of a family, on the wholeness of a people, in order to avoid the fragmentation and uniformization presently inherent in the law and in justice. Only from a deepened sense of self and of other persons, of our common yet individually specific human nature, can better justice flow.

It is only by the focusing on each concrete relationship, on the qualities of specific human relationships, that we keep our consideration real, concrete, and therefore probably more actual and more just.

We believe that good family laws should buttress rather than undermine the stability of marriage. And when, despite support, a marriage has irreversibly broken down then the law should assist that separating of spouses to happen with maximum fairness and minimum bitterness, distress and humiliation.

MRS. SCALETTA: We again wish to re-emphasize our opinion on the no-fault as stated in the Appendix 1 of our supplementary brief to your committee presented on February 10th, and we have enclosed a further copy for your information but will not read this evening.

It is our view that the present drafted legislation has directed itself to the many injustices which do exist in the present law, mainly in the sharing and disposition of the marital assets. The drafters of the proposed bills are to be congratulated on that aspect.

We still believe that the no-fault concept is being offered as a too simple solution to a very complicated problem. It should be noted, moreover, that the no-fault clause is a short-term solution. It alleviates the immediate painful situations of individuals but, on the long run it undermines the stability of the family and jeopardizes the already shaken institution of marriage. Adherents to the no-fault theory seem to be completely unaware of these disastrous side effects or seem to ignore them in their quest to bring a quick solution to people's problems without looking at the eventual harmful repercussions of these solutions to marriage and to the family.

If we, as the people of Manitoba, mouth words about the family being a cornerstone of society and then propose laws which do little to support the strengthening of such family units, our actions can only be seen as ambiguous. Nofault is being understood as a convenient way for someone to be relieved of his or her responsibilities towards the marriage partner and offspring, in letting the other partner or the state carry the obligations. In other words, all citizens would be taxed accordingly in order to act as substitutes for someone who succeeded to shrug off his or her responsibilities.

Many spouses who strive, sacrifice and often struggle to build and preserve their marriage commitment made to one another and to the children of their union are seeing this no-fault clause as a penalty towards them. How many people, particularly today's youth, will want to get involved in a marriage partnership with its obligations if they know that the other partner can easily and quite simply be released from his or her obligations with no questions being asked? Youth of today, as in all periods of history, need to be exposed to solid human values. The commitment made at the time of marriage is a value both to the couple and to society.

We have to accept the fact that marriage breakdown, in whatever shape or form, undermines and destroys the stability of the family. Marriage breakdown is quickly becoming the scandal of our times and it will always be a tragic experience, carrying its share of pain and hurts. Marriage breakdown procedure should be streamlined to become less trying and less destructive while safeguarding the institution of marriage and the dignity of people involved.

It is our hope then that a system of Conciliation Courts, as per information being submitted to the Attorney-General, will develop and grow in our Province of Manitoba.

MRS. WYRZYKOWSKI: If you will turn now to the page marked Bill 60, The Family Maintenance Act. We have done considerable study on the Conciliation Court that has been happening in

California and, as a result, have come up with some suggestions.

We find it necessary to read between the lines to find the procedure for a separation order in Bill 60 and presumably this indicates that there are no grounds necessary for a separation; perhaps indicates that when one spouse is dissatisfied with the relationship that that is all which is required for a separation.

Further in this bill, the law is reflecting that the only needs of persons is of an economic nature and only hint at responsibility in marriage in Section 5 Subsection 2 regarding a domestic arrangement, where it is defined. It does not address itself to how to deal with enforcement of justice in marriage except to undertake court action on one spouse.

We therefore recommend that Section 7 Subsection 1 Application of Relief would read "A spouse or any person on behalf of the spouse may file a petition for conciliation in the Conciliation Court." Now in California there is no charge or filing fee for this. If a spouse is unable to appear in person or to make application, he or she can request the application by letter or telephone.

And then Court Order in Section 8 Subsection 1, "When during the Conciliation joint conference between the spouses and the Counsellor, the spouses decide they want to attempt reconciliation, they may sign a reconciliation agreement which, when signed by the judge becomes an Order of Court. All prior orders made are suspended with the exception of attorney fees."

Now in Los Angeles County this agreement consists of some 25 pages which cover practically every facet of married life and common marital problems. In being signed by the judge becomes enforceable by contempt proceedings if there is a flagrant violation such as continuing to see a third party paramour or physical abuse, or dissipating family assets.

Apparently the California Court rarely exercises its contempt power. They have found that this agreement becomes a valuable tool to the spouses. First, it fosters communication as they attempt to pinpoint the problems they are having. Second, it enables the husband and wife to redefine their respective roles and responsibilities in the marriage. Third, the agreement becomes a blueprint for a successful marriage tailored to meet the needs of each family. And fourth, since the agreement mentions most of the problems commonly encountered in marriage, the spouses usually find relief in the discovery that others have problems similar to theirs. This gives them emotional support and hope and no longer feeling different.

A further recommendation would be Section 8 Subsection 2, Termination of Reconciliation Agreement. "Either spouse may, at any time, ask the court to terminate the agreement if reconciliation fails. Whereupon the prior orders are immediately reinstated by the Conciliation Court."

We do not suggest a goal of saving all marriages. We recognize that in certain instances a divorce is the ultimate answer. Experience, however, of the Conciliation Court of the Superior Court of Los Angeles County, California, shows that there are many families who come to a divorce court who really have no business being there and that with professional help at the separation stage the marriage could be restored. This court, by virtue of the many face-saving techniques, permits people under stress to accept help which is unfortunately often regarded in our culture as a sign of weakness rather than strength.

Now statistics from the California Conciliation Court: Records indicate that of about 40 percent of the families served no legal action has been taken to terminate the marriage; and 50 percent of their applications are filed by husbands, which is unique since other counselling agencies report that it is usually the wife who takes the initial step to obtain help in marriage breakdown; and also that about 12 percent of the petitions are filed by spouses without children.

In Part III of Bill 60, we would recommend under "Procedure" that a paragraph which is taken from the California Code of Procedures would begin with "Purpose":

> "The purposes of these procedures are to protect the lives of children and to promote the public welfare by preserving, promoting and protecting family life and the institution of matrimony and to provide means for the reconciliation of spouses and the amiable settlement of domestic and family controversies."

We realize that further, Sections 16, 17 and 18, etc., would be rewritten to conform with our recommendations for Sections 7 and 8. Now I have made inquiries and there is a copy of the California Code of Civil Procedures available for reference at the Manitoba Law School Library, and I have listed the phone number and the reference librarian for you.

Respectfully submitted on behalf of the Manitoba Provincial Council of the Catholic Women's League of Canada.

MR. CHAIRMAN: Thank you. There may be some questions. Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I welcome the ladies and their presentation. I have quickly followed both this presentation and reviewed the presentation made last December by the same two ladies, and judging from your statement on Page 3, "It is our view that the present drafted legislation has directed itself to the many injustices which do exist in the present law, mainly in the sharing and disposition of the marital assets. The drafters of the proposed bills are to be congratulated on that

aspect" — judging from what I have just read in today's brief and judging from my review of what was discussed with you on December 9, it would appear to me that the bills before us largely represent points of view which you support. I don't want to put words in your mouth. That's why I am saying it out in your presence.

MRS. WYRZYKOWSKI: I think that what I would rather you would observe is that our main thrust in our original presentation to you was looking for this kind of consideration and reflection in the laws, calling for couples being helped to look at their relationship. And when we went further now to prepare this brief, we discovered that such a concept existed, and so we, in hoping perhaps that you knew about it or maybe didn't, spent considerable time to bring the recommendation of a Conciliation Court to you.

MR. CHERNIACK: You are way ahead of me, Mrs. Wyrzykowski. I was going to suggest to you that, having accomplished much of what you intended to accomplish on December 9 by seeing the bills before you, you sort of set them aside and said, "Well, now, the next step we want to talk about is a conciliation effort and what is very important in attempting to keep marriages together." I wanted to confirm my impression that that is the approach as to . . . . Well, firstly I really think it is a magnificent document that you have given us today, which I really don't see as part of the present bills, but something, I think, that should be, as suggested somewhere, a matter for continuing study by government. I notice one of the last things you said on December 9th was a recommendation of a continuing study on . . . here it is, Page 158: "We strongly recommend and urge you to seriously consider a further commission to study such things as why marriages and families are in malaise, why the fabric of family life is weakening; to consider what can be done to assist persons to achieve healthy, fulfilling marriages that will withstand the comp lexity of today's society." I am all with you on that, although I don't think that is before us today. But I do want to give you my impression, that reading the presentation of December 9th, reading and hearing what you have said today, that we are working along the lines that you approve, and it is very important that I am correct in my assumption. I point out that you haven't even pointed out any minor disagreements, although of course they may exist. Am I okay so far with my inference?

MRS. SCALETTA: We find it, in all humility, we find it very difficult at times to deal with the terminology put forth in the bill. Our concern is still more with people than with things. If if that answers your question, Mr. Cherniack, I am happy.

MR. CHERNIACK: Well, yes, it does, and you expressed the same kind of humility — which I think is undeserved — the last time as well, but you did say, and I quote again from your December brief, "The Law Reform Commission is proposing new legislation designed to deal with the economic consequences of such breakdown. On the whole we believe these proposals are sound." Then you say further, "We endorse the general concept of the standard marital regime as presented under the equal disposition of post-nuptial assets, because we see it as a beginning of recognition of the worth of the contribution made by women and the role of a partner in marriage and the family and in society. One point we do wish to make is that we are not in favour of the six months' time option for unilateral contracting out." And you speak in favour of individual legal counsel for the parties.

So I will just repeat, I am going on the assumption that generally you approve in what we are dealing with, but not taking responsibility for this specific interpretation of specific terms.

MRS. WYRZYKOWSKI: Mr. Cherniack, we have attempted to be in tune with the bill by taking specific places and pointing out where we believe the concepts we would like to see written into this law could in fact be written into it.

MR. CHERNIACK: Yes.

MRS. WYRZYKOWSKI: And that, believe me, is a humble attempt.

MR. CHERNAICK: Well, I wish we were all that humble, but still we have to . . . .

MRS. WYRZYKOWSKI: It's just that we have to limit ourselves in what our primary message to you was, and we attempted to do it in the method which was appropriate to where you are with this bill.

MR. CHERNIACK: Now, my next question is one that I approach with some hesitancy, but nevertheless fools step in where — I think it is — angels fear to tread, and you are closer to angels than I am, I assure you. I am looking at a letter which was addressed to the Attorney-General from the Manitoba Catholic Conference, which strikes a different note altogether the way I read it. I don't know how closely connected are your organization and that of the conference, but in the letter sent by the chairman of the Catholic Bishops of Manitoba, there is opposition to the "no fault" concept; there is strong suggestion that we are proceeding too quickly, and I quote one sentence, "We believe that a bill of this nature, with all its complex ramifications, should not be passed hurriedly, but should be subject to critical scrutiny . . . ."

MRS. WYRZYKOWSKI: Have we not said that this evening?

MR. CHERNIACK: No.

MRS. WYRZYKOWSKI: Have we not said about the "no fault" concept?

MR. CHERNIACK: Yes.

MRS. WYRZYKOWSKI: There are words that I said this evening that were not printed, in terms of

perhaps further time may be needed, to ensure that these concepts were in.

MR. CHERNIACK: Well, then I am bringing this to your attention by asking you whether you feel that we should put everything away for awhile and continue to study, or proceed with legislation. That is really the fundamental question I was leading to.

MRS. SCALETTA : I think that is an extremely difficult question now for us to answer with a direct yes or no. We are not terribly familiar with the legislative procedure as far as that goes.

MR. CHERNIACK: Well, I would say that it is either this week or a year. You know, I am just guessing.

MRS. WYRZYKOWSKI: Well, we will have to confess to you that we only really became active with this in November, and we know that other people have been studying this a long time before that, and we have been accused of not having made ourselves aware — okay. So there is a certain guilt on our part. But we would claim that there is a certain guilt on the part of those who had begun the study, that there wasn't sufficient exposure to the public at large when all families are concerned in family law. So I would like to say that we feel there has been a certain lack of communication on their part, and therefore at this point in time, yes, we need more time if we are to help you to say what we think the law should say, and to help other families in our discussions with neighbours, with other members of the Catholic Women's League. We find that many, many people are not informed of what is happening with regards to these proposed bills; I think it is just beginning to happen.

MR. CHERNIACK: I asked that because of the very extensive discussion and debate that has taken place in relation to this problem as compared with so many other bills that we pass in a normal . . . .

MRS. SCALETTA: Excuse me, Mr. Cherniack, but that discussion and debate has just occurred recently, has it not?

MR. CHERNIACK: Oh, well. You asked me a question. I would have to say no, because the Law Reform report is dated February, 1976. It was made after very extensive hearings where there are a tremendous number of people who presented briefs back in January of 1975, so we are into two and a half years.

MRS. SCALETTA: Yes Mr. Cherniack, I assumed that you were referring to the discussion and the debate in the Legislature, not in the public arena.

MR. CHERNIACK: I am talking about the public . arena

MRS. SCALETTA : Yes, we are aware of that.

MR. CHERNIACK: Because that is where you're involved, in the public arena. You are really not involved in the Legislature.

MRS. SCALETTA: No, but we would ask again, in what form were the public told about these meetings, about the Law Reform Commission, other than maybe little articles in the paper? Could you tell us that, please?

MR. CHERNIACK: Well, I would say that the Law Reform Commission which held extensive hearings advertised their availability at certain stated times and places, and so did the Committee that we had at the Legislature last year — did that which is rather unprecedented, so that there has been much more availability for public discussion than in most legislation that I am aware of. But having answered you, I am preempting time of the Committee which I have no right to do, because really this is your forum, not ours at this stage.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: I wonder if I could discuss with you the position that you would take in connection with the Marital Property Legislation and also the Marital Maintenance legislation. First, I would assume with respect to the Marital Property legislation, that you would support the concept of marriage being an equal partnership rather than an unequal partnership, and you would accept the equal division of assets after the termination of the marriage — and I'm going to deal with this question of trying to preserve marriages later. I would think fault does not play any part of course now, or is not supposed to play any part in property division. The pecuniary contribution of one spouse to another plays a part in the property division under existing law; that you would find that to be not the type of law that would contribute to a healthy marriage partnership. Would I be correct in that?

MRS. WYRZYKOWSKI: I'm not sure I followed you, Mr. Pawley.

MR. PAWLEY: Would you agree that the existing law, by its very nature, does not recognize the equal contribution of each partner to the marriage — that it's an unhealthy law insofar as the support of the marriage institution is concerned. Could I ask you, because Mr. Cherniack made reference to it, and you probably have had some chance to reflect upon it since the earlier submission — do you feel that there is any ground for unilateral opting out of that type of arrangement, as has been suggested by some particular legal profession; that there should be unilateral opting out rather than mutual opting out by one of the spouses?

MRS. WYRZYKOWSKI: I've been preparing an answer for you all evening, as I hear you repeatedly

ask that question. I listen to you carefully each time to try and accept and understand the concept that you probably have in your mind. I would still say — and I can only speak from a personal experience because we haven't dealt with further than answering your question — the last time on the prepared submission that when you encourage couples to move in a certain direction independently, that you are not encouraging them to discuss this matter, and it seems to me that a healthy relationship is to be able to sit down and work out a fair and honest kind of situation of opting out, if that's what they chose to do.

MR. PAWLEY: You wouldn't like to see then, the parties going unilaterally in their own separate directions.

MRS. WYRZYKOWSKI: No. Even the six-month thing — even though you say that they entered a relationship without that in the initial status. I would hope that they entered the relationship with the understand that it was a mutual partnership in all matters, and that that is why the unilateral is causing that not to be a conflict.

MR. PAWLEY: Now, dealing with the maintenance aspect, I agree with you that I think this term "no fault" is thrown around too much. I don't know where it really has developed, because I've tried to avoid the use of that term. I think in any marriage termination, generally both spouses have contributed through their individual faults to the marriage breakdown, and that it's wrong to say that one spouse is without fault, and the other spouse is all at fault; they generally have contributed together. I gather that what you are saying is, rather than fault. . . Well, you're saying that there is fault, that the court process should be attempting to find cause or why or reasons for the marriage breakdown, and that we should do something beyond what we have provided for in this legislation; that is, to provide a reconciliation procedure or a specific court reconciliation. Now, I'm very interested in that. I want to commit myself to thoroughly looking into this California Court that you made reference to.

MRS. WYRZYKOWSKI: I have here a single copy which I referred to leaving with you. It's not the court, it's not . . .

MR. PAWLEY: Could I just interrupt for a moment? You would support me if the opposition members in this Committee criticized me for taking a trip down to California next week to look into it?

MRS. WYRZYKOWSKI: Only if you took us with you.

MR. PAWLEY: Could I just pursue this a little further? Not the trip, but another aspect. The courts at the present time do take on to themselves often when a couple are before them to attempt to bring about a reconciliation. They'll insist before they hear the case, in knowing from counsel for the parties, whether they have attempted to reconcile, if not, to attempt to get the parties to see marriage counsellors. I gather you feel the present system is not woiking, that you need a more formal institution than the existing one.

MRS. WYRZYKOWSKI: Yes, and there are different kinds of counselling. There is counselling specifically geared for Conciliation Court counselling, and I have a whole paper on that alone which explains that a counsellor has a different role than in an ongoing counselling situation or for marriage counselling. This Court Counsellor is what they call a short contract counsellor, and has special techniques in dealing with this situation as compared with another counsellor, and there is a certain power that is given to him because it's in a court situation. It is not in another situation.

MR. PAWLEY: So, you would say that we need quite a different procedure, entirely different structure than the one that presently exists?

MRS. WYRZYKOWSKI: Yes. I haven't looked into that part, because I'm not all that familiar with the present structure as compared with the California . . . It would take a legal person to do that.

MR. PAWLEY: Now, in going back to the question of the existing procedure which ends up — if the parties can't just enter into a voluntary separation agreement, which I guess most separations take place because the parties just voluntarily agree to separate — but the only time they end up in court with this hanging all the dirty linen out in court, and lining up their family and friends and what-notto give evidence, is when they are unable to arrive at a mutually agreeable separation agreement. What is your view of that present type process that takes place in our Family Court?

MRS. WYRZYKOWSKI: It's very haimful and very destructive, first of all because of the legal way in which it has to be handled. One lawyer has to take one side and another lawyer has to take the other side, and it is their role to defend one person, and in fact turns out, has to attack the other person. The system is there existing, that can't be changed because it is the system of the law.

MR. PAWLEY: And would you agree it would do irreparable harm to any possibility of reconciliation afterwards, and the children would be. . . generally because they have been forced to line up, that it would even make it worse?

MRS. WYRZYKOWSKI: Oh yes. This is the damage that is being done. But, you see, we recognize that people are saying that because of this, there should be no fault brought out, and that that would do away with those kind of things. We are saying, and as you said, we would rather not even deal with that term. We would rather say there is a process in helping people to separate with some kind of understanding and some self-worth.

MR. PAWLEY: So, if I could just conclude, your emphasis would be that there ought to be a development of a structure that would attempt to bring about reconciliation which would fit in somewhere between the separation and the actual termination of the marriage.

MRS. WYRZYKOWSKI: Yes, but it isn't reconciliation. It's conciliation — there's a difference.

MR. PAWLEY: Fine. Thank you.

MR. CHAIRMAN: Mr. Johnston.

MR. F. JOHNSTON: Thank you. Just on that last point of the Attorney-General, your brief does say that there are certainly hardships at the present time in the present process, and I read your brief to say that the present process is an undesirable one, but by putting in the no-fault stipulations, that it is not the answer to good marital relations or holding mairiages together. Am I correct?

MRS. WYRZYKOWSKI: Or even maintaining a person's wholeness. . .

MR. F. JOHNSTON: Thank you. On Page 3 of your brief at the beginning — first of all I would like to say that I'm more concerned with what your brief says tonight than the past one, because you have just come off a convention as you mentioned, representing 3,176 women. The law as it presently stands is one thing, but this bill says that there will be no courts or no judicial or anything — it's just absolutely no fault. Now, on that basis, do you believe that this bill does more to contribute to the break-up of marriages, and contribute to young people thinking about not getting married than the opposite? In other words this bill is not going the right way in your opinion as far as good marital relations or people thinking of getting married?

MRS. WYRZYKOWSKI: It doesn't seem to have a teaching effect on marriage except that it is a financial arrangement, and that there ought to be justice in that. There is so little reference to that in the bill as it's worded. We recognized when we first submitted our original presentation that we didn't know how that could be worded or what concept that could be. We just knew that's what we hoped could happen in law.

MR. F. JOHNSTON: In other words, the bill basically with all the technicalities , of references of accounting, and references of equal sharing of assets and all of these things are, shall we say, the material things or something of that nature. But the no fault which you refer to here, is really something that can be contributing to the personal breakdown of marriages or probably having young people think they shouldn't get married under these conditions, if one partner can just walk out on the other.

MRS. SCALETTA: We find it very sad that first of all, our society requires such detailed laws to deal with decisions amongst individuals particularly in the marriage union. That we are not assisting couples who are in crises by producing laws which do not call them to try to understand why their actions or reactions in the marriage cause the breakdown and to assist them to grow from the marriage breakdown experience so that if they enter another relationship, there will be a growth which will be beneficial to society . And that the compilation of laws dealing only with the things and never calling the people to a growth experience of human relationships at the time of marriage breakdown, is a sadness and lacking here.

MR. F. JOHNSTON: Thank you.

MR. CHAIRMAN: Mr. Axworthy.

MR. AXWORTHY: Mr. Chairman, I just have a few short questions arising out of some of the previous exchange. When you are asked about your views as to whether the bill should be delayed or not, you seemed to indicate that there were some reservations about it and that a lot of people didn't know about it, just didn't understand what the implications would be. I would like to ask you this: Do you feel that the best way of providing an education would be to pass the bill with , and whatever inadequacies it may have then learn as we go, then if changes have to be made, they will be made as opposed to kind of going back over old ground, more study, kind or repeating ouiselves one more time. If you had a preference, what would you be advising us to do in those circumstances? You don't have to answer that.

MRS. WYRZYKOWSKI: I guess I'd just like to say I wish that you could incorporate some of the Conciliation Court aspects in the law now and proceed with that possibility — like to take a really courageous step and say, "Why not."

MR. AXWORTHY: Okay, that's a point I was coming to. In reading your brief and listening to you talk, you seem to feel that the biggest mistake we are making is perhaps in putting too much emphasis on the economic property aspects of marriage and not upon the relationship between two people, and that if you felt this Legislature was as much concerned with the second aspect as with the first, you would be more satisfied. Is that correct?

MRS. WYRZYKOWSKI: Yes. . . . in very good words.

MRS. SCALETTA: I think it was in our first brief, Mr. Axworthy that we made the analogy that if the plaster in the ceiling keeps cracking and we just keep repairing it but we never go down to the basement to find out what was causing the cracks, then we will just continue the same pattern.

MR. AXWORTHY: One thing that maybe you could inform me, based upon your research you've been doing, the California Court of Conciliation works on a system where there is full community

property sharing as part of the marital property regime. Does the Court of Conciliation become an automatic requirement when there is some initiative taken with the courts to bring this about? Is it part of the law there, that this must be or must go through this procedure before you go into any form of proceeding to separate or divide property?

MRS. WYRZYKOWSKI: It is a voluntary court oider. The conciliation court order is voluntary.

MR. AXWORTHY: It's a voluntary. . .

MRS. WYRZYKOWSKI: Yes, and one partner can ask for that.

MR. AXWORTHY: I see. And it works under the auspices of the court itself. It's not a separate private agency or anything?

MRS. WYRZYKOWSKI: No.

MR. AXWORTHY: Well I think that the rest of us would be interested in learning more about it, and I certainly endorse your own feelings about maybe we should be as concerned about the one as the other. Thank you.

MR. CHAIRMAN: Are there any further questions? Thank you Mrs. Wyrzykowski and Mrs. Scaletta.

Committee rise and report. The Committee will rise and reconvene at 10:00 a.m. tomorrow morning.

BRIEF SUBMITTED — NOT AD

Family Services of Winnipeg Inc. (Mrs. Lillian McIlwain)):

On behalf of the Board of Directors and staff of the Family Services of Winnipeg, I wish to express our appreciation of and support for the proposed changes in family law as expressed in The Family Maintenance Act (Bill 60) and the Marital Property Act (Bill 61).

Along with many other concerned citizens and as a result of our years of experience with families facing separation, we presented a brief to the Standing Committee on Statutory Regulations and Orders on December 9, 1976. We are pleased to see that so many of the principles we enunciated at that time have been incorporated into these bills. And we again want to thank the Standing Committee for its thoughtful attention to our brief.

In particular, we should like to commend the Committee for including the instantaneous sharing of family assets, the abandonment of "fault" as one of the conditions for determining spousal maintenance, the emphasis on the eventual economic self-sufficiency of both spouses and the continuation of the obligation of both spouses for the support and maintenance of their children until those children are eighteen.

We are concerned, however, that the enforcement of maintenance orders will remain a problem as these Acts come into effect. We hope that your Committee will review this difficult question to determine whether some mechanism, such as the establishment of a public agency, might be built into the new Act to ensure the collection of maintenance.

Finally, for your consideration, we should like to quote from our earlier brief:

> . . . we should like to speak about one aspect of family law which may not be a direct concern of this Committee, but which is of great concern to us as a family agency: the custody of the children in a legal separation or divorce.
>
> We know that it is the children who stand to lose when parents engage in a long, drawn-out legal dispute as to who is to have custody. And we know that no other area of contention - maintenance, division of property, or whatever - can be as destructive of the future of the whole family as that of custody.
>
> We have no instant or simple solutions to offer. We would ask, however, that this Committee consider recommending that some provision be made to look at this most complex issue: the custody of children in a legal separation.

We appreciate your attention to this letter and hope that there will be an early enactment of this most important legislation.