Legislative Assembly of Manitoba

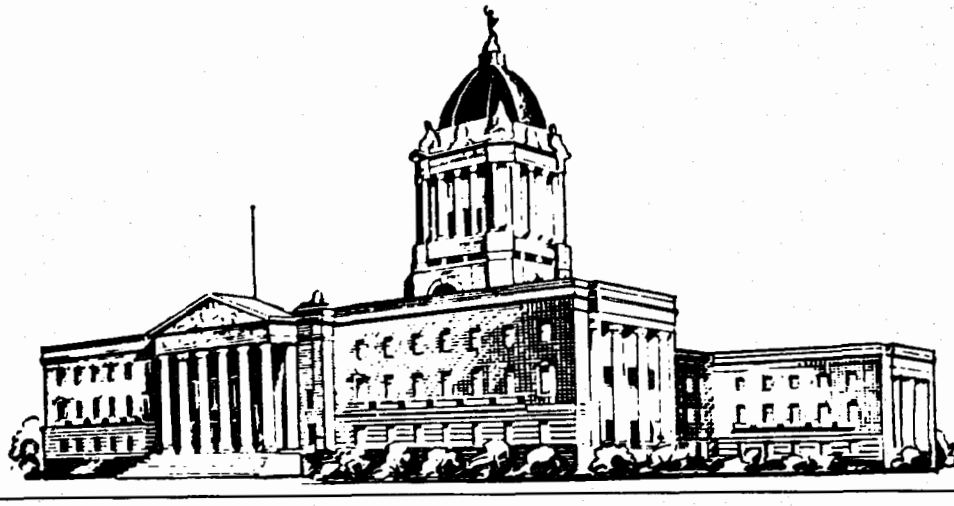
HEARINGS OF THE STANDING COMMITTEE

ON

LAW AMENDMENTS

Chairman

Mr. J. Wally McKenzie
Constituency of Roblin



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Time: 2:30 p.m.

CHAIRMAN: Mr. J. Wally McKenzie.

MR. CHAIRMAN: I call Charles Lamont. —(Interjection)— Can I have your name, please.

MS. GOODMAN: Donna Goodman.

MR. CHAIAN: Proceed.

MS. GOODMAN: First of all I will mention that because of a shortness of notice of this meeting, Ralph Kepitz , the president of MTS is unable to be with you as he has a previously scheduled meeting. He's asked me to present his brief comments. He has here a short written brief, and I'll just speak to it very briefly.

The Manitoba Teachers' Society, that special organization representing the province's 12,000 teachers appreciates this opportunity to express its views to the Law Amendments Committee looking into Family Law Legislation.

Last year, on November 19, the elected provincial executive of MTS endorsed the recommendations of the Action Coalition of Family Law. While the Society espouses the principles embodied in these commissions, we have to make it clear that we are not prepared to become involved in, nor do we have official positions on the various legal controversies arising out of the law.

We however wish to appear here to express our disappointment at the postponement of the Family Law Legislation. We feel that quite likely the technical difficulties involved in the proposed new law might have been ironed out by the courts, or by consequent remedial legislation. To delay, we feel, might adversely affect family relations, and what affects the family affects children.

MR. CHAIAN: Can I interrupt you for one moment Madam? Did you say you had copies of your brief for the committee?

MS. GOODMAN: e have, I believe, just six or seven copies.

MR. CHAI thank you. AN: Oh, Proceed.

MS. GOODMAN: I'm terribly sorry. We put this togetuer after hours, when we had notice, and we didn't have the full reproductive facilities to make enough.

As teachers our first and foremost concern is for the welfare of children, and we believe that many of the physical and emotional influences on a child's life have a direct influence on performance in school and on success in later life.

Marriage breakdown, of course, adversely affects a child, causes trama, and there's nothing that any law can do to eliminate that. Unfortunately, however, many of the legal disputes arrising out of the custody and support litigations in the present law, have a direct and negative effect upon the welfare of children. It is for this reason that the Society endorses the aspects of the law that provide for greater ease in maintenance and child support, believe that the law tends to mitigate against custody and maintenance disputes which will tend in the long run to harm the children. Likewise, therefore, we have endorsed the no-fault principle of the law, because this removes the potential for dispute, which in all cases, catches the child in the middle. A society that does not now provide for the well-being of its children, will later pay the price.

The Society also believes in equality of men and women. Teachers were among the first group to fight for and receive equal pay for men and women in the profession. We therefore extend this belief to feel that equality in the laws affecting marriage should result for both partners, both in and after marriage.

Teachers have also a particular concern for the part of the law respecting equal access to information and access to family income by both partners. Once again, in any case where equal access does not exist, or where there's a dispute towards the proper allocation of that family income, it tends to be the least influential members of the family that tend to suffer, and those are the children.

In conclusion, we'd like to say that our society supports the basic principles of the Family Maintenance and Marital Property Act. We feel that delay should not happen, and we most of all believe that these principles should not be interfered with in any consequent legislation. Thank you.

MR. CHAIRMAN: Thank you. Questions from the committee. I thank you for your presentation. Mr. Cherniack.

MR. CHERNIACK: Sorry, I was late, and I didn't have the opportunity to read these comments. Some of the comments seem strongly worded. Ms. Goodman, is it? Do you have any reason to think that the principles that you support are in danger of being removed from the legislation.

MS. GOODMAN: I have to speak most personally, not entirely for the society. First of all, the fact

that they're even being delayed is our concern, because that puts us back to the old law, and the old law does cause hardship to children, so I suppose that that's basically what we're saying. As for what will happen in the future, we hope that we can trust the assurances of the members of the government that these principles will be maintained, but I suppose personally I feel some anxiety as expressed by members who presented briefs to you earlier.

MR. CHERNIACK: What assurances have you received that these principles will be maintained?

MS. GOODMAN: Do you mean personally, or as a Society?

MR. CHERNIACK: Either way.

MS. GOODMAN: All we can go by is what we have heard Mr. Mercier say to the press and media.

MR. CHERNIACK: Well, the reason I ask that specifically is that I recall that he has made the statement more than once that they believe in the principle of equal sharing. I'm having difficulty remembering anything else he said positive in line withhhe maintenance of the principles that you espouse. Now I may be wrong, but I do know that he seems to have questioned the equal sharing of commercial assets, and has thrown some doubt in my mind about the no-fault aspect of maintenance. But, other than that, I'm not aware of any other assurances — I wonder if you are.

MS. GOODN: No, I'm not. It would perhaps be best to check with him. I don't wish to get become involved in the partisan debate representing the Society. Thank you.

MR. CHAIRMAN: Thank you. I call Charles Lamont. I call Arni Peltz of Legal Aid.

MR. PELTZ: I should introduce myself and the group upon whose behalf I appear. I'm the president of the Legal Aid Lawyers Association. The Legal Aid Lawyers Association is the bargaining agent and the representative for staff lawyers who are employed by Legal Aid Manitoba in Winnipeg and at various locations around the province. We also represent articling students who come forward by Legal Aid Manitoba and in total our membership is something in the order of 40 around the province.

I'm here today because several weeks ago our association voted on a question of delay of family law legislation. The resolution which was passed by the membership was to the effect that we would oppose repeal or delay of either of the two bills which your committee is considering. In particular our membership expressed concern about one of the Acts and I'm here to try to persuade the members of the committee to withdraw or to amend Bill 5 so that The Family Maintenance Act is no delayed, is not suspended. It's our position, and I think it's borne out by all the debate that has gone on to this point and all the criticism that has come forward, that The Family Maintenance Act possibly in contrast to the other legislation, is indeed workable. There has been a great deal of talk about whether this legislation can work, whether there will be disastrous consequences in terms of litigation and so on if the legislation goes ahead. I would suggest that the record probably shows that most of those comments were directed at The Marital Property Act. I'm not saying that I agree with those comments; I am saying however that in terms of The Family Maintenance Act, there really has been very little said about the workability of that legislation. In any event, and I intend to comment on that further, I would like to point out to the members of the committee, as a lawyer, a concern I have about some of the debate which has gone forward. The suggestion has been made by other members of my profession and by other critics of the family law legislation that there is a real problem of workability here. It has been suggested, I think — well, the impression which I think has been left with lay people, with the public and possibly with lay members of this committee, by that I mean non lawyers — that this is an unusual, a unique situation. We have legislation presented here which was not properly thought through, which is going to be disastrous for the public generally and for individual parties. I wish that I could say that legislation when it's new and ground-breaking legislation is always carefully done and doesn't cause too much difficulty to parties. That just isn't so. I think it would be misleading for a lawyer to say that it's possible to produce new legislation and not have problems, problems which are inevitably going to lead to litigation in order to clarify what this legislation is all about. Indeed, the Legislature, I think, and there are a number of experienced legislators here' is aware that it is not possible to operate a legal system without having judicial interpretation of the provisions of statutes. That is a part of our system; it's part of the democratic system that judges fulfill this role.

I think that at least in terms of The Family Maintenance Act, there has been very little said about that, but even in terms of The Marital Property Act, which I don't really want to dwell on, but I think that you have to take the comments about unworkability in that context. As an example, I would like to describe a seminar which I was at this morning and which is still going on now, which is the Law Society Seminar, very similar to the one which has been discussed quite often during the debate on this legislation. The one today which is going on over in Lakeview Square at the Law Society's office concerns recent amendments to The Criminal Code and in particular the one this morning was concerning amendments to Section 142 which is the rape offence. That's relevant I think because those amendments on the trial of rape came from the same women's movement which brought the

amendments forward eventually to this stage where we are at today. The discussion was very similar, I would suggest, to the kind of the discussion that has gone on about these bills, in this sense8 and perhaps I can read from a letter to the Winnipeg Tribune from some of my colleagues, which was quite critical. It said, "Recently at a seminar conducted by some 500 Manitoba lawyers, a panel of acknowledged experts in the field of family law struggled to interpret what is alleged to be 'the best family law legislation in Canada' for their colleagues." It goes on to say that they were unable to agree on some points, some of which were considered to be basic points. That's presented by the writer in this letter as an indication that the legislation is faulty to the point where it ought to be suspended until it can be clarified.

This morning at the Law Society of Manitoba offices, there was discussion of Section 142 of The Criminal Code which was supposed to do this: It was supposed to remove from a trial judge in a rape case the obligation to tell the jury that it's unsafe to convict a person on the uncorroborated evidence of a rape victim or alleged rape victim or complainant. That was a sore point with many people, with women's groups in particular. So the legislation was supposed to do that, federal legislation. In addition, it was supposed to limit the cross-examination of a rape victim or a rape complainant as to her past sexual conduct because that was felt to be quite offensive in the way that rape trials were conducted. That was reform legislation.

This morning we had a judge of the Queen's Bench, a defence counsel experienced at the Manitoba Bar who is a Queen's Counsel, and an experienced Crown Prosecutor on the panel to discuss the meaning and the application of these two very important reform measures in The Criminal Code. Briefly, they couldn't agree on anything. They couldn't agree whether this legislation which seems to be clearly worded means that a warning is not necessary to the jury as to corroboration. In fact, they couldn't agree on whether the warning should be given at all — would it be proper to give it, is it mandatory to give it — no agreement.

On the question of sexual conduct and the dredging up of a woman's sexual conduct when she's a rape complainant, there was no agreement on what sexual conduct means. The panel members couldn't agree as to whether it meant sexual intercourse, did it mean titillating conversation, did it mean anything short of sexual intercourse? They couldn't agree. They couldn't agree on which witnesses could be examined as to the sexual conduct; they couldn't agree on whether there could be rebuttal evidence by either side once this preliminary procedure on the sexual past conduct had begun. They weren't even sure about how, in the course of a trial, this was going to work itself out in terms of when the witnesses would be called and so on and where the jury might be at the time.

So there was a great deal of discussion. In fact, that was the purpose of the seminar, was to explore the intent of the legislation, the apparent meaning of it and where some of the problems would be. But the significant thing is that no one has ever suggested with respect to Section 142 of the Criminal Code at any time that it ought to be hoisted or suspended because we can't say with certainty how it's going to work out in practice. In fact, there is only one way to find out how it is going to work and that is through test litigation as the cases progress and as individual matters come before the courts. That's not regarded as a disaster or a dog's breakfast; that's the normal procedure, the normal course of our system of justice.

Now as I said, I'm not really intending to speak to The Marital Property Act but I think that you should be aware of that, that it's not that unusual and lawyers, I think, are misleading, or perhaps unintentionally, if they leave that impression that this legislation, if it is not completely clear, is disastrous and has to be hoisted. That's not the normal course of events.

In any event, the Legal Aid Lawyers Association is here, or I'm here on their behalf to tell you that as far as we know, The Family Maintenance Act specifically is workable. In fact it is working, it is in effect and has been since November 14. I can tell you from my own experience, my own cases and also others that I'm aware of, that applications have been filed under that legislation, that trials have been heard based on pleadings which were drawn under that legislation, that orders have been given in the Family Court and possibly other courts, at least interim orders and I'm not aware of any final orders. That legislation is in operation; it is operational. I suggest that it is workable. I would ask you to consider from the material that you have and the submissions that you have heard whether there have been any criticisms of The Family Maintenance Act as to its workability, that is, as to the clarity of the legislation? I would suggest that there really haven't been.

I should tell you also, Mr. Chairman and members, that we are particularly concerned about this legislation because as legal aid lawyers we carry, all of us, a heavy caseload of domestic matters. In fact our breakdown, I think, is something like roughly 50 percent criminal and 50 percent domestic. Separations under The Wives and Children Maintenance Act or now The Family Maintenance Act are a large part of our work. We are well aware of The Wives and Children Maintenance Act which has been law for a great length of time and if we had all day I could tell you about the inequities and the procedural difficulties and the nightmare which that legislation has been for lawyers as well as for husbands and for wives. That's the reason why we are here to request that at least The Family Maintenance Act ought to be left in intact and if there are any problems, and I don't think there have been any problems suggested as to its workability, that those certainly can be changed by minor amendments if they are necessary.

I would just like to give you a couple of examples because I don't know how many people are familiar with the contents of The Wives and Children Maintenance Act and that of course will be the

law again in Manitoba governing separations if Bill 5 goes ahead in its entirety. Since this is a committee composed entirely — well perhaps not entirely, almost entirely — of men, you might be interested to know that when the new law comes in, when Bill 5 goes through the Legislature, it will not be possible for any of you individual men should the unfortunate circumstance arise, to apply to a County Court or a Family Court judge for a separation unless you can show that your wife is a habitual drunkard. Now that is a bizarre situation to say the least; it's not equitable and now we're not talking about women's rights, we're talking about men's rights. The Family Maintenance Act says that there are equal rights to apply and I think that there is no ideological issue involved in that; it's a simple matter of common sense. But that's not what The Wives and Children Maintenance Act says and I think that that's inexcusable. A second point on the other side of the fence, in terms of women's rights and the Wives' and Children's Maintenance Act, if a woman commits a single act of adultery which can be proven in court she thereby disentitles herself from any maintenance from her husband. Now, there is no proviso there that if the husband is out living it up out on the town that he is somehow penalized.

MR. GREEN: He should pay double maintenance.

MR. PELTZ: Now the provisions of the Act go further, if a maintenance order is made under the Wives' and Children's Maintenance Act for a wife — based on need and also on the husband's ability-to-pay and the number of children and so on — and subsequently comes to the attention, — this is after separation, there's been an order made, they're separated, they're no longer bound to co-habit the Act says although they're still legally man and wife — and then it comes to the husband's attention that the wife has committed an act of adultery — which might be a single act or several — he can apply to have her maintenance cancelled. Now, if I was a woman in this province I would be extremely upset about that and I don't think that any man can seriously contend that that is a fair state of the law. I think that it could be said that if there was a change in her circumstances, if she had income from her new male friend that that would be a fair reason for reducing maintenance, but simply a sexual act on the part of the wife, that's enough to disentitle her. That is the law which Bill 5 proposes to take us back to. Frankly, I see no reason to go back to that.

The Family Maintenance Act proposes to put both parties on an egalitarian basis. There are a number of provisions which I would submit to you in the Family Maintenance Act are not controversial, they haven't been questioned as to their substance or procedure by any one on either side of the House or by any critics and we have to realize that we throw out the baby with the bath water if we pass Bill 5.

All of the non-controversial, very necessary reforms to the law of separation will go, and of course we don't really know what is going to replace them eventually. I alluded to one already, that was the equal right to apply — husbands and wives — the provision that domestic service is deemed to be an equal financial contribution.

Another important one which perhaps husbands might be concerned about but the obligation by any spouse — and I suppose directed directed particularly at wives — to make all reasonable efforts to become financially independent as soon as reasonably possible.

A new provision for lump sum orders rather than simply maintenance, periodic maintenance orders by a judge, this is provided for in The Divorce Act and it adds flexibility. No one's ever said that that's not a good addition to the Act.

More options for enforcement, although that's far from a completed matter and other delegates have told you that there is a problem with enforcements of orders in this province but The Family Maintenance Act takes at least a small step by giving some more flexibility to the judge.

Child support orders, some additional support provisions there. Everyone's concerned about children and is concerned that the money which is ordered to be paid by a judge actually benefits the child in the way that it's intended to do. For example, trustees and receivers, and that can be a very useful and flexible tool for a Family Court to use.

Provision for financial disclosure while the parties are together I don't think any husband would seriously maintain his wife ought not to know what the debts are and what the earnings are. An allowance, an expense allowance for the sole discretionary use of the spouse for personal matters. From a legal point of view this provision in The Family Maintenance Act for what's known as examination for discovery for interrogatories, for particulars and so on, these are all methods used always used, in a normal civil action for one side to find out what the other side is alleging and what the case is all about. In civil litigation that's regarded as essential for the conduct of a case and, in fact it speeds up litigation. It encourages parties to find out what the issues are and what the other side strengths are. I would suggest that while that might cause some delays and there have been some concerns about those provisions causing delays, overall it's probably beneficial in that you'll have more cases settled because everything is out in the open prior to going into court. Once you go in court of course whether it's Legal Aid or a private lawyer you're paying $200, $500 maybe more, per day for that lawyer's time in court. I don't think that that benefits anyone if the issues can be resolved beforehand.

And the last provision which possibly is the most valuable one from the lawyers point of view, from a procedural point of view, concerns *ex-parte* orders, interim orders, under this legislation. Under The Wives and Children's Maintenance Act there has been great doubt and controversy as

confusion and legal terms over whether a judge could make an . *ex-parte* order, that is an order where only one side is present and the other side hasn't been notified. I can tell you that that comes up quite frequently and it involves a question of health and probably questions of life and death where prohibition orders are needed against the spouse, usually a husband who has threatened or already attacked or assulted his wife. I should say credit should be given where credit is due and apparently the government intends to maintain that one provision allowing for *ex-parte* orders and I say, that I congratulate the government members for doing that,it's possible one of he most urgent reforms which is needed to the old law. But that is the only one of these many items which I've listed which will be reserved pending whatever the outcome is on this legislation.

So, Mr. Chairman, my submission is that the vast majority of the changes in this Act are not controversial, have never been questioned, that it's workable. The only two items as far as I know which have been controversial are the fact that grounds will not be needed in order to get an order of separation and the fact of fault being eliminated as a consideration for maintenance awards, and I would like to deal briefly with those two.

First of all as to grounds, I think that's probably the lesser of the two matters. Myself, and our association fails to see how you can force people to live together and how you can say to a person that while one spouse wants a separation, feeling that the relationship is not working, the other can force the person to stay with them or to maintain the relationship. It's a mutual affair, as it said, and I don't see how anything else can really be maintained in law. In any event people will live separately if their not getting along and so all you're doing is putting the legal blessing on what is already *de facto* . But also you should probably consider that we're not talking about divorce here, we're talking about separation. Divorce is not within the confidence of this legislature and perhaps there should be some different considerations applying to divorce. Separation is something which happens, especially these days, to many marriages and it's not always the end, but the fact that you have a no-fault , no fault in the sense of no grounds needing to be proved for separation, I don't think, really, can in any sense be said to undermine the institution of marriage, it may even assist it in that if people can separate fairly easily and without too much rancor the chances that they'll get back together again I would say are heightened. From my experience in domestic cases there is nothing worse than a contested court case. It seals the fact of the separation and the marriage breakdown forever. That's presumable not what's intended by the legislature of this committee.

On the question of no-fault maintenance, I would suggest that some of the *scenarios* which have been brought forward in this regard while they may be conceivable are unlikely , and in any event are really a small minority of the kind of cases which do come up in our courts. I think that you have to think about what's meant by fault when you're talking about no-fault maintenance and at the moment the fault which disentitles a women to maintenance, at least under The Wives' and Children's Act is desertion or adultery. First on desertion: I think what we're talking about with desertion, in practice the situations where a husband and a wife are incompatible they're simply not getting along. If the wife leaves without having been beaten up or somehow driven out I would think she's legally in desertion and that's the kind of fault which we're saying is going to disentitle her for maintenance. If here's a mutual incompatibility we see no reason why that should disentitle either party who is needy rom receiving maintenance.

I've already talked about adultery, again, I can't see how that's relevant to maintenance regardless of whose adultery may have initiated the breakup in the marriage. Need, changes in circumstances and so on are relevant to maintenance but I can't see how an act of adultery could be. I would suggest hat since the new Act, The Family Maintenance Act bases maintenance awards on need, first of all, on the means or the ability-to-pay of the other spouse, since it includes an obligation on the receiving spouse to make efforts to become independent to stop being a millstone — if that's what they're being — since in addition to that at any time after an order is made there can always be an application to ary that order because of a change in circumstances. Since all those things are present in the egislation I can't see that there'd be any injustice except in the most remote and rarist of occasions. I lon't think that we should direct our law at the odd exceptions. I think we should try to direct our laws t the vast majority of cases and the mechanisms which are in the Act, some of which we have had in ne old Act, but we have some new ones and some reputable ones now, I think deal with most of the ituations that anyone could dream up in terms of wife or husband being at fault. I think that ssentially that fault issue is a red herring. Certainly in our experience the type of cases we handle, nat type of situation, the idle wife who breaks up the marriage and goes off with someone else and nilks her husband for everything he's worth just doesn't happen.

MR. CHAIRMAN: May I remind you sir, you have five minutes left.

MR. PELTZ: Thank you. Just on the subject of the lawyers and the legal profession's position or esponse to this legislation I wanted to say, and I meant to say at the beginning, that apparently there as a statement made by the president of the Manitoba Branch, Canadian Bar Association, which as noted in the paper to the effect that he supported Bill 5 and that this legislation ought to be uspended for some time.

Myself, I am a member of the Manitoba Branch of the Canadian Bar Association. Two weeks ago ne Manitoba Branch held it's resolutions day at which a number of resolutions were passed ncluding some dealing with family law. I believe that Mr. Mercury was present there, I don't know him

personally. There was no resolution presented on the subject of family law in Manitoba although there were some with respect to divorce legislation. There was nothing ever circulated to members of the Manitoba Branch on the subject of these hearings or this legislation and no resolution, as far as I'm aware of, was ever passed by the executive or membership or anyone in the Manitoba Branch of the Bar. From that I conclude that Mr. Mercury was speaking personally. I hope that he didn't mean to mislead the reporter or whoever he spoke to in suggesting that he spoke on behalf of the Manitoba Bar Association in making those comments because he doesn't speak on behalf of me and he doesn't speak on behalf of the members of the Legal Aid Lawyers Association many of whom are also members of the Manitoba Bar. I'm not sure what the position of the subsection was. I just wanted to make that clear because I don't think that this committee should come away from these hearings with the impression that the legal profession *en masse* and as a block is opposed to the The Marital Property Act and The Family Maintenance Act, that is certainly not the case.

My last point, Mr. Chairman, concerns the relationship of this legislation to our clients, to low income people in Manitoba, and that's the point I'd like to leave you with. It's my suggestion to you that we have involved in The Family Maintenance Act a case of — if it's removed — a case of the violation of the rights of poor people and I'll tell you why I believe that. There is a difference in the way that domestic cases are handled, — perhaps it's a sad state of affairs but it seems to be true — depending on a person's income. Affluent people, people of a comfortable income tend to use separation agreements and to settle their domestic problems out of court. On the other hand clients of Legal Aid lawyers, poorer people, by necessity really have to resort to a court and usually it's the Family Court. They need enforcement mechanisms. Their spouses can't be relied on to honour agreements. They're not rooted in the community because they have businesses or obligations and commitments. The Family Court really is the protector and the resolver of domestic disputes for our clients. It's therefore very important in terms of custody; in terms of personal protection from abusive spouses; in terms of maintenance and so on, that the family court system operate equitably and efficiently in this province. Our association sees The Family Maintenance Act as accomplishing that. We see it as workable, it is working. We haven't heard any criticisms of its technical details or its drafting.

In particular, I draw your attention, and I know there are members from outside Winnipeg, to the problem of people in remote areas and rural areas, because they, in dealing with their domestic problems — separations occur just as much in Powerview and Fort Alexander as they do in Winnipeg. They, more than any other area of the province or more than the urban areas, have to depend on the family courts. It's just not good enough to say to a wife who's been battered and who requires some kind of protection from the court system and who lives on a reserve or lives in a small town outside of Winnipeg or a major center, that she can get a lawyer, go to the Court of Queen's Bench in Winnipeg in the Law Courts building and get interim relief to get an injunction to protect herself from her husband and from his assaults. It is a workable notion that sue can go down to the RCMP, file an information and complaint or some application under The Family Maintenance Act and when the judge is out on circuit, or the magistrate, get an interim order as is now provided to protect her, an order which the RCMP will enforce. I myself, have been a duty counsel in rural areas. I can tell you that we used the family court, we used the circuit judges who were in the community sitting in curling halls and schools and other similar places and we got orders and we protected our clients by using this legislation. You can't do that unless The Family Maintenance Act is in place; unless the orders can be given; and unless there is an equitable system of law governing separation. So in addition to everything else which has been said I would urge you to think about the situation, the plight of our clients, of people who are outside of the major centers and don't really have access to the courts. There is an issue here — in addition to everything else, women's rights and all the other things which have been talked about — there is an issue here of access to legal services and to due process for low income people and that's the point which I would like to leave you with. Thank you very much.

MR. CHAIRMAN: Thank you Mr. Peltz. Mr. Cherniack.

MR. CHERNIACK: Mr. Peltz you have expressed considerable criticism of the inequities of The Wives' and Children's Maintenance Act. You've expressed some concern about some of the aspects of The Family Maintenance Act. You've said that you would like The Family Maintenance Act not to be suspended but to be maintained in its present form and before the government, in its wisdom proposes amendments to it. Is there any choice, in your mind, as between the present Family Maintenance Act and the just repealed Wives' and

Children's Maintenance Act?

MR. PELTZ: No, there's no question in my mind or the collective mind of our association that this legislation, The Family Maintenance Act ought to stay. If we had anything to do with it it would stay in its entirety. I'm doubtful that there would be, as it turns out that there will be more than a handful of procedural or technical or drafting amendments to it.

MR. CHERNIACK: When you say you speak for the Legal Aid lawyers, do you speak after a meeting that has discussed it at some length or are you just authorized to speak on their behalf.

MR. PELTZ: Well, the procedure we followed was to send a resolution aroundto all of our members accompanied by a brief which I've tried to follow, more or less, of some five or six pages that was circulated. A meeting was then held in Winnipeg and we have members outside of Winnipeg, they communicate by phone generally on these matters. The entire association obviously was not present, but the resolution was then put to those who were there and it was approved. The resolution was circulated again along with the suggestion that the President ought to attend here and also a press release should be issued. After that was all communicated to the members, then we proceeded.

MR. CHERNIACK: Mr. Peltz, aside from your organization I gather you said you didn't know the position of the Subsection of the Manitoba Bar, the Family Law Subsection.

MR. PELTZ: No, I don't.

MR. CHERNIACK: Well, then I can inform you that in a letter addressed for the Progressive-Conservative caucus, Ms. Bowman, on behalf of the Subsection, said in relation to the Maintenance Act, talking about the possility of an amendment on the fault aspect said, "With or without the amendment, however, we think it essential that this Act too," that is the Maintenance Act, "should go forward as planned and come into force on November 14th." That letter is dated October 24th, 1977.

Mr. Peltz, now we know of two bodies of lawyers that are in support of the continuation of the Maintenance Act. You have indicated, I believe, that the Manitoba Bar to your knowledge has not made any such decision, and you are a member of it.

MR. PELTZ: That is correct.

MR. CHERNIACK: Do you know of any group of lawyers that have met, dealt with this subject and come up with any opinion other than the ones we have just referred to?

MR. PELTZ: I am not aware of any. There is a Manitoba Trial Lawyers Association, I am not sure whether they have considered t.

MR. CHERNIACK: Mr. Peltz, were you at the meeting of the Law Society, not the meeting but the seminar, on October 15th last, where allegedly 500 to 600 people, mostly lawyers, attended. Were you one of those?

MR. PELTZ: Yes, I was there.

MR. CHERNIACK: Did that meeting come out with any resolution, decision, or recommendation?

MR. PELTZ: Well, I don't believe it did. I wasn't there right until the end, so I am not sure what might have happened at the end of the program. I hadn't heard of any resolution. I think that the reason that there were 500 or 600 lawyers, and there were a large number of lawyers there, shouldn't be misconstrued. It was my impression at least that the reason there were a great many lawyers there was because (a) we had new legislation, (b) almost every lawyer in this province, even corporate lawyers, even tax lawyers, has some domestic clients, it is inevitable. There are always separations whether the clients otherwise are criminal cases, or civil litigation matters, or tax matters. So it was my impression that people were there because we had new legislation and because they wanted to find out about it, because all of them at one time or another are in divorce court or in family court.

MR. CHERNIACK: May I ask how long you spent there, how many hours of the day?

MR. PELTZ: Well, I was there from around nine until two or two-thirty.

MR. CHERNIACK: Well, for the portion of the time you were there, would you concur with the Attorney-General's statement, which I am about to quote: "It became clear that there was hopeless confusion in many areas as to the intent and meaning of the Act. The coming into force of these Acts their present form would only lead to confusion and considerable litigation." Do you confirm that assessment for the period that you were there?

MR. PELTZ: It was my recollection that there were doubtful areas, as there always are, and as I indicated there were this morning in considering criminal law. There was more concern about the Marital Property Act. There was almost nothing, as I recall, in terms of interpretation of the Family Maintenance Act.

MR. CHERNIACK: And finally, I am coming back to Mr. Mercury's statement. I have a quote here from the newspaper: "Mercury said that the association supports the basic principles of the legislation, but there is no doubt that the legislation the way it is presently drafted would cause needless and expensive litigation." Two factors there, would you agree that he had a right to say that

the association supports the basic principles of the legislation? Was that ever discussed?

MR. PELTZ: Well, unless I am not getting my mail. I was never notified as a member of the association.

MR. CHERNIACK: Well, then are you aware of any discussion by the association as such dealing with the principles of the legislation?

MR. PELTZ: No, I am not.

MR. CHERNIACK: Thank you, Mr. Peltz.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: Mr. Peltz, I wonder if you would be in a position that you could provide any estimate as to the proportion of the total number of cases, family law maintenance, dealing with maintenance, that is dealt with in the province of Manitoba by members of your association?

MR. PELTZ: I really can't say.

MR. PAWLEY: Would it be reasonable to say that it is quite a substantial proportion?

MR. PELTZ: Oh, certainly it is substantial.

MR. PAWLEY: Now there has been a great deal of concern expressed by some that no grounds are spelled out in the Family Maintenance Act. I would just like from yourself some observations as to the present existence of grounds in the Wives and Family Maintenance Act, the need to prove grounds. Have there been cases which you have dealt with that have resulted in injustice as a result of that need to spell out grounds. If so, I wonder if you could give us some further example.

MR. PELTZ: Well, I suppose the first problem with having grounds is that they have to be specified in the court documents which initiate the case, and so you have to say if you are a wife that your husband has been guilty of persistent cruelty or that your husband is an habitual drunkard. That has to be put down on a piece of paper which is then filed in court and a copy of which is served by a police officer personally on the husband. I don't need to tell you that there are some husbands that are habitual drunkards, but don't like to be reminded of the fact especially in writing in a court document, and there have been occasions when an already tense domestic situation is really worsened, in some cases resulting in assaults, continuing assaults because they have usually happened before, because of the document itself. Of course, then you get into court and everybody is all riled up about the fact that these allegations have been made. Persistent cruelty sounds pretty awful, it sounds to some men, I suppose, as if their wife is accusing them of whipping them in the basement nightly or something of that sort when it really doesn't. But that is the sort of thing which really riles people up and I would suggest the fact of having grounds means that your cases go longer, they are fought more bitterly, that things je fought about which otherwise would never even be the subject of court time. So you have tied up your lawyers and you have aggravated the parties and you spent time on your judges and your court reporters and everybody else trying to prove persistent cruelty when in some cases all that it is really about is who is going to have the children. Well, if that is all it is really about we shouldn't have a lot of red herrings hanging around which are used by one side or the other as a tactic or strategy in the court proceedings to try to get at a better maintenance settlement or to get at a custody order for the children.

MR. PAWLEY: Now, if there was an issue as to the custody of the children, would you agree that there still would be considerable evidence adduced as to the conduct of the parties?

MR. PELTZ: Oh, definitely, almost anything is relevant to a question of child custody.

MR. PAWLEY: So it has been argued that we are not going to escape the process of fault-finding regardless because of the aspect of children. I would like you to just comment on that as to whether or not the step which we felt we had undertaken in the Family Maintenance Act was really as important or as major a one as we felt insofar as escaping that . . .

MR. PELTZ: No, I think that all it means is that, for example, in a case which I presently have where we filed an application in Family Court for custody, maintenance and separation, but really had very weak grounds as far as proving cruelty on the part of the husband, under the old Act what would happen is that the wife might get the children but she wouldn't get any maintenance for herself, no matter what need she could prove and no matter how able her husband was to pay. Now that case has actually started and the difference with the new legislation is that if she can show her need and he can pay, though she can't prove persistent cruelty, she will get an order subject to, of course' making

reasonable efforts to become independent herself.

On the question of the custody, though, conduct by both parties is going to be relevant and there has been lots of evidence on this.

MR. PAWLEY: I would like to just read to you and obtain your comment to a sentence in the letter referred toearlier by my colleague, Mr. Cherniack, the letter to Mr. Haig from Mrs. Bowman, in which she suggests that, I will just read the paragraph to you: "We do, however, believe that certain substantial amendments should be enacted at the first opportunity in order to make the bill more workable and to clear up some confusion. If a session is to be held this year and amendments can be made then, so much the better. If not, then they should be made at the first session in 1978, and the government should announce the intended amendments well in advance of January 1st, so that at least the profession has some idea of how to advise their clients."

Now, earlier Mrs. Bowman had recommended that the Family Maintenance Act and Marital Property Act proceed forthwith, but as to amendments she felt they should be announced well in advance of January 1 because of confusion. Do you have concern that there will be confusion as a result of a continued period of time, time-space, in which there is a lack of preciseness as to what is intended by the government.

MR. PELTZ: I can tell you that it is almost impossible for us at the present time to perform a function which is supposed to be an integral part of the function of Legal Aid Manitoba, which is the giving of informal advice and hopefully assisting in preventative law rather than after-the-fact law. What do you say to someone who comes in and says, "We are separating, but these are our assets, and this is what he has done and this is what I've done, and this is what is the state of affairs with the children." How do you advise someone about a law which is supposed to come into force, The Marital Property Act, but probably won't come into force and may come back into force, but if it does we don't know how it is going to come back into force. Or dealing with the Family Maintenance Act, how do you advise somebody who has started proceedings but Bill No. 5 has come up and wants to know will they get any maintenance, are they entitled to it, are they barred by adultery, what does the transitional Section (7) mean that proceedings continue so far as possible. It is really impossible to give people advice, so what you give them is advice so qualified it is probably not very useful to them.

MR. PAWLEY: I don't know whether I missed your earlier advice as to whether the association expressed a view in connection with the Marital Property Act, whether the association felt it should proceed as well with the Family Maintenance Act.

MR. PELTZ: We felt in general that it should proceed, but we were not prepared to become very much involved in that Act. We felt that The Family Maintenance Act was more relevant to our clients and that we had more experience with it, and that we ought to try to raise that issue. I am trying to do that in particular because most of the attention has gone to The Marital Property Act, to commercial assets in particular, and it seems that the question of maintenance and all the other items, the reforms which were in The Family Maintenance Act, have been ignored.

MR. PAWLEY: Now there has been some reference in the House by the Attorney-General but I don't know whether you are able to comment on the statement that — and now there is some question as to the meaning of words spoken by the Executive Director of Legal Aid, in connection with the financial implications of the Family Maintenance Act upon Legal Aid Manitoba. Is it your view that there will be s:,gnificant cost increases to Legal Aid in Manitoba if The Family Maintenance Act is allowed to proceed?

MR. PELTZ: Well, I'm not an administrator of Legal Aid and if I have an opinion, which I do, it should be qualified by that. I was present when comments, which I can't recall exactly, were made by my boss, my Executive-Director at the Family Law Seminar. My understanding is that since that time the Executive-Director has written to the AttorneyGeneral and has indicated to him what exactly those comments were intended to convey. I haven't seen that letter. I imagine Mr. Mercier must have received it by now, and I hope that he is no longer taking the public position that as far as Legal Aid is concerned we will be bankrupted or we feel we may be bankrupted by this legislation, because that is not the view of our association, or my view, and apparently it is not the view of the Executive-Director either. So hopefully Mr. Mercier will be clarifying that at some point. But we don't feel that we are really able to say how it is going to affect Legal Aid.

There are a number of ways, for example, in which it could result in more applications. If you give people a right to apply to courts in order to determine the distribution of property then some people are going to apply, and if they don't have the means then Legal Aid may represent them. So that might mean more costs. But at the same time Legal Aid regulations permit us to ask for a contribution from any settlement received and if people are now going to be getting, or could be getting settlements, which they weren't entitled to before, then Legal Aid may be paying for all or some of those extra legal costs in that way. We do that now, but we don't do it all that often. If we are going to be dealing with property cases we may do it more often. I shouldn't say we because I'm not an administrator, but that is an option open to the administration. If there are no grounds required for a separation, then

presumably more people can apply, people who may have been barred because they couldn't prove cruelty. On the other hand —(Interjection)— I'm sorry. Well the question was relating to costs and I am trying to answer that question. More people may apply so that might tend to raise the costs to Legal Aid. But on the other hand, since there won't be any expensive wrangling over proving failure to support, or physical cruelty and that sort of thing, the really heavy costs, which are the costs of litigation, of contested matters, that may cause a reduction in costs. I think Mr. Larson , the Executive-Director's position, if I am not misstating it, was that we were unable to say how it would affect Legal Aid's budget and that we would monitor it and we would adjust because we have flexibility. I concur with that.

MR. PAWLEY: I believe that you indicated that you felt the interlocutory measures that are available under this legislation might reduce the amount of eventual litigation.

MR. PELTZ: Yes, I think that the interlocutory procedures on the one hand might delay matters, might cause extra costs. If a lawyer conducts an examination for discovery in a family court case where he couldn't have done it before, if it is a legal aid case Legal Aid will have to pay that lawyer. On the other hand, once the transcript is in from the discovery it is quite possible as happens in civil litigation that the parties will sit down and look it over with — give it a good hard look — and settle the matter or at least that the litigation won't be as wide-ranging and so it will be less expensive.

MR. PAWLEY: Good, thank you.

MR. CHAIRMAN: Mr. Green.

MR. GREEN: I am sorry, I am rather astonished at some of the revelations here concerning the Manitoba Bar Association. You are a member of the Bar Association.

MR. PELTZ: Yes.

MR. GREEN: I know that I was one and I am now considering whether I am going to renew my membership and I want to fully understand what has happened with the Bar Association. The Bar Association has written the Attorney-General, going on record that the Manitoba Bar Association of which you are a member, I don't know if Mr. Cherniack is a member — Mr. Cherniack says he can't afford it — I can afford it, but I am not going to put money into a political organization, and I want to find out whether this is now a political organization. You are a member of the Manitoba Bar Association. You have no notice of any proceedings relative to them formulating an opinion on Family Law. Is that correct?

MR. PELTZ: That is correct.

MR. GREEN: You are aware that there is a Subsection of the Bar Association which was directed to consider the question of Family Law. They have formed an opinion of Family Law. Is that right?

MR. PELTZ: I wasn't aware of it personally, but that's what I have been told.

MR. GREEN: Well, Mr. Cherniack apparently has a letter which indicateshhat the committee of the Bar Association, which was directed to deal with this question or has the responsibility of dealing with this question, feels that the two marital property acts that are before us should not be suspended. You are a member of a sub-group of lawyers, not associated with the Bar Association, I suppose the Legal Aid lawyers. When they formulated their opinion they gave notice to their members. They had a meeting; they had a discussion and they passed a resolution. Is that correct?

MR. PELTZ: That's correct.

MR. GREEN: So you are here speaking with the authority of people who have considered a question and have passed a resolution. So far as we know, the Manitoba Bar Association, other than its committee which came to the contrary conclusion, has never had a meeting of its members or any discussion on this issue unless it was discussed at an executive level but certainly not amongst the members, to your knowledge?

MR. PELTZ: Yes, it might have been discussed at an executive level, I don't know. But as I indicated in my submission, I was at the Resolutions Day of the Manitoba branch and family law matters were discussed at that time. The branch took a position on the Federal Law Reform Commission proposals on divorce and passed a resolution asking that the period of separation for divorce be reduced from three years to one year. I recall those and various other resolutions.

MR. GREEN: So then would I be fair in deducing that the president of the Manitoba Bar Association, one Leon Mercury, Tully Mercury, in direct contradiction — is it Leon or Tully? — (Interjection)—Michael, there are many Mercurys.—(Interjection)— A. J. Mercury, in direct contradiction to a subcommittee, without a procedure whereby the wishes of the membership were known and on an issue which is in the public eye in a serious political way, has decided on his own to say that you and every other member of the Bar Association as a composite, agree with the Conservative government's action on this question?

MR. PELTZ: That's the way it looks.

MR. GREEN: Don't you think, if you were a member of the — if I was a member of the Bar Association and I'm going to have to check whether I am — I certainly am back in practice and I have no intention of joining this political organization — I would resign from the organization and I would protest to the organization, taking a position in that way on a political question. May I ask whether your group of lawyers, as members of the Manitoba Bar Association, have considered or will consider this action?

MR. PELTZ: Well, I don't know how many of my members are members of the Bar Association.

MR. CHAIRMAN: Order, order please. I think that we should get back to the legislation that is before us and let's quit arguing about whether the Bar Association is political or whether it isn't political. That's not before this committee. We are dealing with a bill here and whether we're supposed to suspend The Maintenance Act and we'll be here forever if we're going to get into this arena.

MR. GREEN: Mr. Chairman, I'm prepared to stay here until hell freezes over if I am relevant, and the fact is . . .

MR. CHAIRMAN: Order please.

MR. GREEN: I should say until hell melts. Mr. Chairman, the attorney-general will let me speak to the point of order.

MR. CHAIRMAN: Order please. Just very briefly again, members of the committee and madam, let us try somehow to deal with the legislation that is before us. The wide-ranging debate that we are getting into at the present time will never resolve this problem at this table. So I just ask you to bear with me and let's try to deal with the matter that is before us today.

MR. GREEN: Yes, Mr. Chairman. The attorney-general, in introducing this legislation, in speaking to it, in closing debate, took out a letter and said that the Manitoba Bar Association has gone on record in favour of the government's position on this question. We have before us a member of the Manitoba Bar Association who says he wasn't called, knows of no procedure whereby they came to his conclusion. We have a letter before us telling us that the subcommittee charged with this problem has come to the opposite conclusion and if that's not relevant, Mr. Chairman, it's an indication that the Conservatives are not prepared to discuss this issue that is directly relevant. I intend to go into it further and if you rule me out of order, Mr. Speaker, I'm going to take this issue further.

I want to proceed on this question as to whether the Manitoba Bar Association has now involved itself into this question in a political way without going to its members and dealing with the question. Mr. Chairman, we have had two lawyers before this committee. Both of them have said that they are against what the government is doing. We have three lawyers sitting — Mr. Pawley, Mr. Cherniack and myself — who are against what the government is doing. The Bar Association president didn't have the nerve to come before this committee because he could not back up his word. Mr. Houston, Mr. Anderson won't be brought before this committee. We haven't had a single lawyer appear before this committee who says that this legislation is legally unworkable. And the reason is, Mr. Chairman, that they are supremely confident, those who are against it, that they don't have to come before this committee, because the Conservative Party has the real committee in its pocket, namely the review committee to whom they have referred this legislation. I intend, Mr. Chairman, to pursue this matter.

MR. CHAIRMAN: Members of the committee, again, I don't see how we can possibly ask the Bar Association, their executive, to come before this committee . . .

MR. GREEN: I'm not asking you . . .

MR. CHAIRMAN: . . . they come on a voluntary basis.

MR. GREEN: They won't come before this committee. They will hide under the covers.

MR. CHAIAN: Mr. Spivak, on a point of order.

MR. SPIVAK: It's hard for me to understand the position of Mr. Green. Is he suggesting that anybody that makes any comment on any legislation has an obligation to come before this committee?

MR. GREEN: No.

MR. SPIVAK: Is he suggesting that anyone who makes a comment who has been elected as an official of an organization must have the clearance of the executive and the members of the association for every comment that has to be made? Because, Mr. Chairman, if that's the case, almost everyone who appears here will be asked the same question over and over again and to my knowledge, in the main, this has not been the practice of this committee. —(Interjection)— Well, in various ways, Mr. Chairman, people have suggested that they may have discussed it by our executive or a few of our members may have discussed it, or "I think I know what the general concensus is," but the point being, Mr. Chairman, that we deal with the people who are here, with the testimony or the evidence that they present. It's not our function to deal with statements that are made outside, some of which may have been reported in the media, some of which may have been referred to in debate. The point has been made and I'm not suggesting that the point can't be made, and it has been made by Mr. Green, but it would seem to me that if he has a complaint with respect to the Bar Association, he should attend the Bar Association meetings and have it out with them. It's not to use this committee for these kind of grandstand tactics which really have no bearing with respect to the basic issue in front of us. And I really believe this, Mr. Chairman, because if you allow this to continue, then this committee will degenerate in the months to come as others appear on other pieces of legislation in which there may be one side or the other who agree or disagree and we go through this same kind of examination and cross-examination. This is not the intent as I understand it of the legislative committee.

MR. GREEN: Mr. Chairman, to the point of order, I never suggested that Mr. Mercury come before the committee. I never suggested that. As a matter of fact, I said that he will stay home. He feels that he doesn't have to come before the committee. —(Interjection)— Mr. Chairman, let me now continue on the point of order. This started when I was asking this gentleman as to what his role was in the decision of the Manitoba Bar Association to go on record as being in favour of the Conservative government's position respecting this law. That's the only thing that I asked. I am not asking those people to come before committee. I know they won't come before committee.

The honourable member says that I am grandstanding; what he really says is that there is a substantial point being made here which is liable to appeal to the public if we let it be made and therefore don't let it be made because that's grandstanding. I tell you, Mr. Chairman, there is absolutely no doubt, I am making this point because I believe that it will commend itself to the people of the province of Manitoba. I am making it as strong as I can because I hope it will disseminate throughout this province and that we will get that one person who voted Conservative last time and will vote New Democrat next time. Damn right that's what I am doing.

MR. CHAIRMAN: Mr. Jorgenson.

MR. JORGENSON: Mr. Chairman, I have no objection to Mr. Green making points, but it was he himself on Bill No. 6 when we had a witness before this committee, who insisted that the witness stay before the point that was being discussed and I had no objection to that. I thought he was perfectly right. In this instance, I think that he should follow his own advice as well because we are here to to discuss Bill No. 5 and what the Member for Inkster is doing is questioning the witness on matters relating to the Bar Association, having nothing to do with Bill No. 5. Now, if he can relate his questions to the points that are made in Bill No. 5, I have no objection to him questioning until midnight. —(Interjection)— I have no objection to that at all but I do think that, Mr. Green, you are straying far away. I might say that if it's a political point you want to make, I know you well enough to know that you will make that point come hell or high water and you have every right to do that. But I think in so doing, you should stay to the bill that is before us.

MR. GREEN: I agree with the remarks that have been made, Mr. Chairman. May I say that the debate got a little bit afield after I was stopped. I was questioning this gentleman, who is a member of the Bar Association and whose group, after having a discussion, came to a democratic decision as to how they are going to deal with it, I am questioning him as to how his association of which he is a member came to that decision. What he tells me is that A. J. Mercury, president of the Bar, to his knowledge did not have any view from the members other than a contrary view of the committee that was designed to deal with the subject. I will leave it at that.

I now want to ask . . .

MR. CHAIAN: Mr. Pawley on the same point of order.

MR. PAWLEY: I just want to make it very very quick and to the point that the issue of the Bar Association and the lawyers in Manitoba really has been injected into this as one of the reasons for introducing this legislation. It has been said over and over again by the attorney-general that the reason we are dealing with this legislation is because lawyers are confused and they are opposed to this legislation. So Mr. Green is quite in order in trying to pinpoint whether or not the Bar Association is in support or against the legislation.

MR. CHAIRMAN: Again, order. Madam and members of the committee, I am your chairman; I am your servant. If you want to let the debate go in those fields, that's fine with me. Just give me the guidelines. But the document that I have before me is Bill No. 5. Would you kindly try to stay within those guidelines.

MR. CHERNIACK: Mr. Chairman, on a matter of privilege on behalf of the woman member of this committee, she is a member. I think it is wrong to say, "members of the committee and Madam" because you are therefore differentiating her from the rest of us. I think you should confine yourself to "members of the committee."

MR. CHAIRMAN: Mr. Cherniack, because she is the only lady gracing this table, I give her special attention.

A MEMBER: That is exactly what this bill is all about.

MR. CHERNIACK: . . . I suggest that you raise your levels and your respect for womankind by addressing her as a member just like the rest of us.

MR. CHAIRMAN: Order please. Let us proceed with the legislation that is before us. Carry on, Mr. Green.

MR. GREEN: Mr. Peltz, would I be correct in saying that a great share of the family work, the contested work at the maintenance level, is done by legal aid lawyers?

MR. PELTZ: A great deal of the domestic work is done under the auspices of Legal Aid Manitoba. Some of that work is done by private lawyers paid by Legal Aid and a large portion is done by staff attorneys who are members of our association.

MR. GREEN: So would it be correct to say that the Manitoba Bar Association, in trying to determine what its position should be, should have reference to those people very much involved and that is the Association of Legal Aid Lawyers?

MR. PELTZ: I would think so.

MR. GREEN: Did they consult you?

MR. PELTZ: No, we weren't consulted.

MR. GREEN: When is the last time you say . . .

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

MR. SPIVAK: Mr. Chairman, I do not believe that the series of questions are relevant to the bill. I appreciate what Mr. Green is trying to say; he has already said it and he is trying to do this through examination again. He has made his statement and there is certainly going to be an opportunity in the House when we debate the bill to deal with it and even at the end of the hearings. But in terms of the witness who is appearing before us, I do not believe that this examination is really relevant at this point. What the Bar Association did or did not do; how the president came to make his statement; wherever that statement was made, either by letter or by written statement or by a published statement through the media, it would seem to me that it is not relevant in this connection. The witness has already, I think, indicated his own position with respect to the Bar as to what has happened and I think to that extent those facts are known. I just do not believe, Mr. Chairman, that the continuation of this kind of questioning gets us anywhere. It may accomplish for Mr. Green the objective that he would like to do of converting a person who was against the NDP but at this point, Mr. Chairman, I think in terms of the committee, its operation and its operation in the future, if we allow this to continue this will be an occurrence that will be with us on every bill, on every witness who comes forward who says he represents an organization or is a member of an organization in which someone else has made a statement on behalf of the organization. I think the point has been made; we understand it; it's in the record. I do not think the continuation of this really is meaningful or is

consistent with what we are supposed to do at this committee.

MR. CHAIRMAN: Mr. Doern.

MR. DOERN: Mr. Chairman, to me, I understood that the main thrust of the discussion should be on the question of the delay of the bill, that this is why we are here. We are here to discuss the fact that the legislation should be delayed and one of the main reasons that we have heard repeated over and over again is the fact that there is confusion in the legal profession. We are given as an example the statement of the president. To me, nothing could be more relevant than that. Much of the discussion I have heard seems to be off the main point, the main point being the necessity of the delay. It seems to me that Mr. Green is in fact discussing that very point.

MR. CHAIRMAN: Mr. Enns.

MR. ENNS: Mr. Chairman, as an individual member of the committee, I would be prepared to accept the process that Mr. Green has embarked on if the committee would accord me the privilege of recalling the immediate past witness who spoke on behalf of the Teacher's Association on behalf of Mr. Ralph Kyritz. I would like to know whether the many thousands of teachers were assembled together to prepare the brief that was presented to us as a representative of that Teacher's Association and had in fact the endorsation of the many thousands of teachers in the province. If I remember correctly, one of the reasons for the brevity of the brief given by the representative of the Teacher's Association was because of the short notice the president himself couldn't be here, a number of the the executive got together and presented the one-and-a-half page brief. However, the presentation was made on behalf of the Teacher's Association. I would like to have that opportunity to re-examine that person to find out the numbers of these people, teachers who were present when that association arrived at that position.

MR. GREEN: I agree, Mr. Chairman, it's perfectly in order.

MR. CHAIRMAN: Proceed.

MR. GREEN: I think it's always interesting to know when a person is speaking, representing a group, how that decision was arrived at. We found out how the Bar Association decision was arrived at and if you want to know from the Teacher's Society who dealt with this at a convention, you can find out from them as well.

Mr. Peltz, now that we have had another skirmish, I would like to go back to the last question. To your knowledge, the Bar Association did not solicit the views of the Legal Aid lawyers with regard to their position on this question, is that correct?

MR. PELTZ: Yes, that's correct.

MR. GREEN: And they went contrary to their own subcommittee, if you understand, from what the subcommittee said in the letter is correct?

MR. PELTZ: Yes.

MR. GREEN: When was the last time you ran into A. J. Mercury in Family Court?

MR. PELTZ: I don't think I would know him if I saw him although I think that there are several Messrs. Mercury and I believe he was at the Resolutions Day two weeks ago. I believe that was the individual that we are talking about.

MR. GREEN: Mr. Peltz, when a group of lawyers gets together to discuss a question such as corporation law, income tax law, isn't it in the nature of the discussion that what they are doing is discussing the confusion of the law?

MR. PELTZ: That's how we make our money, yes.

MR. GREEN: Wouldn't it be true of any seminar of lawyers discussing any important field of law that they would be talking about how confusing it is.

A MEMBER: Like politicians.

MR. GREEN: And if it wasn't . . . yes, exactly, like politicans, exactly the same. And therefore we can take their opinions as being exactly the same — subjective and subject to policy consideration But would it be a surprise to you if a group of lawyers got together to discuss the clarity of a particular field of law? Would the discussion be valuable or necessary?

mr. PELTZ: I think the answer to your question is yes. That was the reason for the example which I gave earlier concerning the criminal code amendments and the discussion which went on at the criminal law seminar and is continuing to go on on other subjects this afternoon.

MR. GREEN: I have no further questions.

MR. CHAIRMAN: Mr. Parasiuk.

MR. PARASIUK: Thank you. I had just a question regarding the number of applications that you yourself have made since November the 14th under the Family Maintenance Act. Have you made a number yourself?

MR. PELTZ: Yes, I've made one, and that case is in progress. In our office a number of others have been made.

MR. PARASIUK: Have you got any rough idea of how many would have been made, say, in your office?

MR. PELTZ: I think something in the order of four or five altogether, although I'm not really sure. The Family Court office keeps track of them numerically, so a phone call could answer that.

MR. PARASIUK: Are you in a position to comment on the workability of the law in terms of a particular application that you're pursuing as compared to the past law that this new Family Maintenance Act . . .

MR. PELTZ: Well, in answer to that, there don't appear to be any; none of the changes which have been suggested have surfaced yet in terms of problems in the particular case that I'm involved in. We're operating under pleadings which are new pleadings under that legislation. There didn't appear to be any problem with the pleadings. We went ahead on a custody matter, also maintenance and other issues in this trial, and things seemed to proceed pretty well as they did procedurally before, subject to the fact, obviously, that the substantive law was different. There didn't have to be grounds proved, and so the order hopefully will be different than it would have been before. But in terms of working through the court process it appeared to be the same.

MR. PARASIUK: So justice has not come to a crunching halt on November 14th with respect to family law.

MR. PELTZ: No.

MR. PARASIUK: Thank you.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I just want to ask a question on one specific, relating to the discussion that Mr. Peltz had with, I believe, Mr. Pawley about the fault aspect in the present legislation, that is, that no fault is considered in the question of separation, but fault may be considered at the time of adoption.

MR. PELTZ: Custody order.

MR. PAWLEY: Thank you for that. Yes, custody. That in the case of custody then there can be a question of fault arise which would carry with it the same unpleasant kind of debate that was described by Mr. Peltz. My experience was extensive at one time — not now. Would it be fair to say — and I speak now from my experience — that custody discussions are a very small fraction of the separation trials that take place, that is, that there is more involved in the fault-finding aspect under an order for separation under the Wives' and Children's Maintenance Act than there is under custody simply because custody is less often fought over? Is that a fair statement as of now?

MR. PELTZ: I don't know if I can really answer questions about, you know, the overall type of issues which come up. I know that most cases are not contested. Most cases are consented, and . . .

MR. CHERNIACK: You mean custody cases?

MR. PELTZ: Custody or other aspects.

MR. CHERNIACK: Yes, all right. That's fine. Thanks, Mr. Chairman.

MR. CHAIRMAN: Mr. Wilson.

MR. WILSON: Mr. Peltz, I was hoping that I might be able to lead you as a layman — not as good as Mr. Green did in some of the questions — but Mr. Green alluded to the fact that the Manitoba Bar Association was a political association and that a certain president had not contacted or got in touch with all of the particular members. My question to you is that if the Legal Aid Staff Lawyers' Association has about, what, 20 or 22 members on staff, did you contact all of those people?

MR. PELTZ: Yes, as I indicated in my submission, the procedure we followed was to have a resolution drawn up along with a background paper or brief — some five or six pages — in fact, I have it here —(Interjection)— if I can just finish. That background paper with the annotation you see on it, "for discussion only," was circulated amongst our members, including our out of town members. There was then a meeting called, and it actually had to be postponed once because of the snowstorm. And we eventually did have a quorum and have a meeting, and adopted a resolution, also a course of action, including an appearance here, and the resolution was then circulated in minutes to the association members. And after that was done, then a press release was issued, and this appearance was made.

MR. WILSON: So a quorum could be 10 out of 20?

MR. PELTZ: A quorum is five.

MR. WILSON: A quorum is five out of 20 or 22? How many members in your Legal Aid Lawyers' Association?

MR. PELTZ: I'm not sure of the exact number. Something — 35 or 40.

MR. WILSON: So, in other words, five lawyers could have made a decision for 40. The reason I ask that because . . .

MR. PELTZ: No, it's not strictly fair to say that because, as I said, we have a problem with out of town members, and so as the president, I'm normally in touch with them. I make an effort to make sure that they have material before them so that they can call in. For example, you probably are aware that we've been involved in collective bargaining for a contract and we had to consider as an association various proposals and counter-proposals that were being made with government negotiators, and we follow the same procedure. A meeting would be held — we never had the full membership out — usually a small number — but people would communicate with myself or send proxies in. As long as everyone was receiving material such as the latest government offer on pay on other issues, then we felt that everyone had been consulted and had a chance for input.

MR. WILSON: Can I ask you another question? I notice Mr. Cherniack couldn't afford to belong to the Manitoba Bar Association. Does the government pay your fees or do you pay them yourself?

MR. PELTZ: For the Canadian Bar?

MR. WILSON: No, the Manitoba Bar Association.

MR. PELTZ: It's the same association — Manitoba branch. No, I pay my own.

MR. WILSON: Right.

MR. CHAIRMAN: Any further questions? Thank you, Mr. Peltz.

MR. PELTZ: Yes. If I could just make one concluding comment. I notice some of the other witnesses were asked about membership and perhaps I should say for the record that I'm not a member of the NDP, and our association has members of all parties in it.

MR. WILSON: The point that I was making is that yourself and four others could make a decision for 40.

MR. CHAIRMAN: Order. Committee members, I have a matter I would like you to deal with. A letter has just been handed to me by the clerk and I read it for your information. "As Speaker No. 27 on this list, I want to suggest to you that some of us are here at considerable inconvenience to present for the second and third time a reiteration of our members' position. We're still minding the kids. Could you consider this in moving this discussion? " Signed, Terri Gray. We're only now dealing with number 24, so she's number 27.

MR. CHERNIACK: Well, Mr. Chairman, if numbers 24, 25, and 26 waive in favour of Ms. Gray then. . .

MR. CHAIRMAN: Or at the mercy of the committee. I call Terri Gray then.

MR. CHERNIACK: No, Mr. Chairman . . .

MS. TERRI GRAY: Excuse me, that was not the point of my message to you, Mr. Chairman. I was simply suggesting that because a number of us, including myself — but that was not the point — that I was a person who was asking for special privileges. It's more than me. But a number of us have been here and if I could take this opportunity to remind the members of this committee that we are here for the second or third time at considerable inconvenience, that in fact there are children here, not for any other purpose but because we have no other place to have them cared for on a Saturday, that you do keep this in mind, that this is why we are here, this is what the family law is all about, and this is what, I hope, the discussions again that we are going through would focus and centre on, and not get sidetracked. Thank you.

MR. CHAIRMAN: I thank you. I call Vic Savino.

MR. VIC SAVINO: Yes, Mr. Chairman, before I start I would like to point out that there is another person here who I don't believe is on your list, who has a brief to make, and he was unable to get hold of the Clerk of the Court yesterday, and if it's possible he would like his name added to the list at this point.

MR. CHAIRMAN: Pardon? I was being interrupted here. Excuse me. Can you repeat your comment, sir?

MR. SAVINO: With respect to the ordering of people which we were just discussing, there is another person here who wishes to make a brief. He was unable to get hold of the clerk yesterday afternoon, and he would like to be added to the list, if that's possible. I'd like to request that now.

MR. CHAIRMAN: Could I have his name, sir?

MR. SAVINO: It's Mr. John Field.

MR. CHAIRMAN: Thank you. That's on Bill No. 5?

MR. SAVINO: That's correct, Mr. Chairman. Mr. Chairman, lady and gentlemen — and I was going to say ladies and gentlemen sort of out of habit — however, I'm not yet able to do so with respect to legislative committees and that may say something about the necessity for this legislation that we are considering today.

I come before this committee as a member of the legal profession in Manitoba, a member who also happens to be a salaried lawyer working for the Legal Aid Services Society of Manitoba and also a member of the Legal Aid Lawyers' Association.

I come before this committee, members, because I am concerned. I am concerned about mainly two things. I am concerned about the effect of Bill 5 on the clientele of Legal Aid Manitoba, that is, the clientele that I deal with every day. And I am also concerned about the reasons that have been expressed for bringing Bill 5 before the House. I think that it needs to be said that the debate which has been raging across the province over the last number of weeks is not as one-sided as you and the public have been led to believe. Now we've been through the question of the Manitoba Bar Association — I don't want to dwell on that question anymore — but I think it should be clear in everybody's minds that not all lawyers are in favour of Bill 5. Not all lawyers are confused about the Family Maintenance Act and the Marital Property Act. I might say that most lawyers are locked into the old legislation as was pointed out by some of the women speakers last night. I might also say that it's been my experience with my colleagues that they do not like change. They do not like radical change in the law. And this is a traditional position of the legal profession, and I think that should be something that the committee is very aware of.

I was going to say more about lawyers and about Mr. Mercury's statement but I think that, given the discussion that took place before between Mr. Green and Mr. Peltz, I shall leave out that part of my submission and move on. But before I leave that point I should point out that I am not a member of the Manitoba Bar Association, and if I were asked at this point to be a member of the Bar Association I would consider it not an option that I would want to take. I understand, Mr. Wilson, that questions are asked after submissions.

A MEMBER: That's not for certain. If we don't want to ask questions, we don't ask any questions.

MR. SAVINO: Thank you, Mr. Enns. All right , I will move on gentlemen. My second reason for appearing before this committee — my first one was to talk about the question of lawyers — is the

effect of this legislation, Bill 5, on my clientele.

Our clientele, as you're probably aware, are the have-nots of our society who cannot afford the services of a lawyer but who nevertheless experience a great deal of difficulty with the law. A few weeks ago our association sent a letter — that is the Legal Aid Lawyers' Association — sent a letter to the Honourable Attorney-General, who I notice has returned, expressing our opposition to Bill 5 because it would repeal already existing and operative legislation, namely, the Family Maintenance Act, which was legislation advancing the position of the clients of Legal Aid Manitoba. In a letter, we raised some very specific concerns with respect to the negative implications of having the Family Maintenance Act in place, replacing it with the old Wives and Children's Maintenance Act, and then replacing the Wives and Children's Maintenance Act with a revised Family Maintenance Act. So in a short six-month period, we will have four changes in the laws of maintenance in this province, the laws of maintenance and family protection.

The repeal of the Wives and Children's Maintenance Act on November 14th; the replacement of it with the Family Maintenance Act; the repeal or suspension, if you wish to call it that, of the Family Maintenance Act in December or January whenever Bill 5 is passed — and I, quite frankly, hope it's never passed — and its replacement again with the Wives' and Children's Maintenance Act; and then the repeal of the Wives and Childrens Maintenance Act at some future date yet undetermined; and its replacement with a revised Family Maintenance Act.

Now earlier some of you asked Mr. Peltz if we are confused. I say to you, we are very confused. And we find it most difficult to advise our clients of what their rights are or might be in the future in this climate.

Our position gentlemen, and my personal position, is that there is no need to tinker at this time with the Family Maintenance Act. It is a good law and there have been no good reasons advanced by anyone why it should be killed after its birth, so to speak. This is a position which we expressed to the Honourable Attorney-General. I have to say that I, as one of the members of the Legal Aid Lawyers' Association, was quite disappointed in the answer which Mr. Mercier gave us. Rather than dealing with the substance of our position, Mr. Mercier questioned why we had not consulted with our executive director who he stated has made statements indicating that Legal Aid would go bankrupt because of this legislation. Now I'm not going to comment on Mr. Larson's statement, I'll leave it to him to clarify that statement.

I was here last night during the debate when it was suggested that certain people be asked to come before this committee and if you want that question clarified about what the executive director's remarks were, I believe Mr. Mercier has a letter from our executive director, and I believe it might be advisable to ask him to appear before this committee and express exactly what it was that he is concerned about.

I am concerned though that the substance of our position was not dealt with by the Attorney-General in his reply to us. And we have been having a difficult time trying to find the rationale for Bill 5, the rationale for the repeal of the Family Maintenance Act. Not having received that rationale from the Attorney-General directly, I tried to pick up on more of the Attorney-General's correspondence with other groups that were opposed to Bill No. 5 that might enlighten me. And I've been trying to follow the debate in the press and in the House when I'm able to attend and what I've found is that the following objections have been put forward by the government as its rationale for repealing both bills.

Tax problems: well gentlemen, in my own brand of humour, in response to Mr. Mercier's question about our failure to consult with our executive director, I might respond, why did Mr. Mercier categorically state that the tax problems were so difficult without consulting with his colleagues in Ottawa? Those colleagues seem quite prepared to make the necessary amendments and small changes in the tax legislation. And I might ask also, Mr. Mercier, why he did not consult the tax lawyer who advised the previous government on this legislation.

Other problems which the government and opponents of this family legislation see with these acts are the difference between federal and provincial laws, the effect on pension plans, the effect on creditors and financial institutions. I will try to deal with each of these in their turn and I'm going to put the emphasis on The Family Maintenance Act as that is the emphasis that Legal Aid lawyers are interested in.

Before I deal with those concerns I want to deal briefly with a concern which Mr. Mercier expressed to one of the women's groups as a reason for Bill No. 5. Mr. Mercier wrote to them that he' concerned that a spouse may obtain a separation order under The Family Maintenance Act without reasons or grounds and then require the other spouse to join in an accounting and equalization of the commercial assets under The Marital Property Act. Gentlemen I'm very concerned about this statement. Mr. Mercier seems to be implying two problems when he makes this statement.

I. There's some notion of unjust enrichment for one spouse being able to take the other spouse for more than he or she should be able to.

2. There is an implication that the removal of fault from the determination of maintenance questions is a bad thing and is going to result in some kind of injustice.

With respect to concern No. 1, the concern that some women or men are going to be able to take their husbands or wives for more than they should be able to. I'd like to refer you to Section 5 of The Family Maintenance Act, and Section 5 deals with the factors affecting an order, the factors which the

judge must consider in granting an order under The Family Maintenance Act. And I refer you to Section 5(j), the length of time that the marriage has subsisted. Now if Mr. Mercier is concerned about gold diggers marrying somebody for his money and then going out under The Family Maintenance Act and The Family Property Act and taking him for more than he's worth, I refer him to Section 5(1)(j). The length of time the marriage has subsisted is a relevant consideration.

I refer also to Section 5(1)(k), the circumstances under which the separated spouses are living and the liklihood that those circumstances can reasonably be expected to affect the financial status of the spouses whether or not those circumstances are conducive to reasonable efforts being made by the dependant spouse to become financially independent. Now I call that "the kitchen sink clause". It covers just about everything including fault, by the way. If the judge wanted to bring fault into it he could consider it as the circumstances under which the separated spouses are living.

And finally I refer you on that point to Section 5(1)(e). Any contribution of a spouse — sorry I mean 5(1)(f) — the amount of any property settlement made between the spouses. Now, Mr. Mercier's concern about a Family Maintenance Act order followed by a Marital Property a Act order. A Marital Property Act order would be a property settlement. A property settlement is relevant in a consideration of an order being given under The Family Maintenance Act.

I refer you also to Section 22 of the same Act. An order made under this Act may require the parties to the proceedings to return after a specified interval to a judge of the court from which the order issued for a review of the provisions thereof and upon the review the judge may vary or discharge the order. So if a maintenance order was given under The Family Maintenance Act later an accounting was taken and an order given under The Marital Property Act, the judge who is hearing The Family Maintenance Act application would be aware that there's property involved. Under Section 22 he could make the reviewable order. That person could then be brought or that case could then be brought back before the Family Court judge who would vary or discharge the maintenance order after the property settlement had been made.

That concern dealt with, I'd like to deal with the second concern. And in conclusion on the first concern I would just like to say that I cannot see how the situation that Mr. Mercier's concerned about can arise. I refer also to Section 4 of The Family Maintenance Act, which I'm sure you're all aware of, that is the section that deals with financial independence. Notwithstanding Section 2, a spouse has the obligation after separation to take all reasonable steps to become financially independent of the other spouse. So I think there are protections for the kinds of concerns that Mr. Mercier has expressed on my first point.

With respect to the second concern, the fault problem, I'm even more worried about what Mr. Mercier has said. The government has said it supports the law in principle, although Mr. Sherman's remarks and now Mr. Mercier's give me some reason to question that. The major principle in The Family Maintenance Act is that the legal relationship between separated parties is to be governed by the factors set out in Section 5 of the act — those factors that I just referred you to — and not whether or not one of the other parties is at fault. And why should fault be a consideration, children or no children, with all due respect to Mr. Sherman? It has been my experience that under The Wives and Children's Maintenance Act that fault results in some very absurd and cruel situations. Where, for example, on a literal interpretation of the act, a husband who himself commits adultery does not have to pay maintenance to a wife who has committed adultery, even if he beat her up every day, because you could have grounds of cruelty, but if the wife commits adultery she doesn't get an order. So the husband can go out and commit adultery having beat up his wife every day of the marriage and the wife can't get an order for her own maintenance.

The fact is, members of the committee, the fault only operates as a factor to deprive needy women of maintenance and support thereby requiring the state to support the enhanced position of the husband further by making welfare payments to the wife. That is a situation of a large number of Legal Aid clients. There are many reasons why fault should not be a consideration and I'm not going to belabour them here; I'm sure you've heard them from the women's groups.

I am just going to deal with one more. The one that has been advanced by the government and people who have been opposed to the new family law when they say that since fault is a consideration in the divorce laws it must be a consideration in the maintenance laws of the province. I submit, gentlemen that this is a fallacious concern.

Firstly, I should point out that over 40 percent of divorces in this country are pursued on the basis of Section 4(1)(e)(1) of The Divorce Act. That is, the parties have lived for three years separate and apart and the marriage has permanently broken down. That section of The Divorce Act makes it possible for people who want to be realistic and civilized about the breakdown of a marriage to go through the courts without having to call each other the bad guy or the good guy.

Of the remaining 60 percent of divorces a very large percentage of them are proceeded with on an uncontested basis because both parties want to be done with the dead marriage and get on with their lives without reference to fault except as a technical requirement in a divorce petition which can be brought before the three years have expired if there is fault.

It has been suggested that because The Family Maintenance Act eliminates fault it will encourage more people to go for a divorce sooner. I suspect, gentlemen, that just the opposite is true. That with no-fault laws governing the situation and with those same laws allowing the parties to enter into a separation without regard to fault, but rather with regard to the needs of the respective parties and all the factors involved in their situation, all of those factors in Section 5, more people will be inclined

to go for no-fault divorces under the three year separate and apart provisions, because nobody likes to drag their dirty laundry through the Court of Queen's Bench. Because this law will allow them to go through those three years in a position of relative equilibrium it will also tend to stabilize the situation at the time the divorce finally does come before the court. Because by the time that three years of equitable separation have passed, most of the issues will have been settled between the parties and the divorce will become a formality. Which in most 4(1)(e)(1) divorces it is now.

I submit that quite the opposite of what has been suggested about the elimination of fault will be true when it comes to The Divorce Act. And I suggest, also, that there will be less contested divorces and there will be less litigation at the expensive level of The Court of Queen's Bench. I would even go further and suggest that the old law is the one which encourages expensive litigation and injustice. I will give you an example.

I have a client who is seeking a separation from her husband. The husband is committing adultery with another woman. She can't get a separation order under The Wives' and Children's Maintenance Act unless she can prove cruelty. Some judges might consider the husband's adultery to amount to cruelty, some might not. That is, if the woman can afford to gather the evidence to prove the adultery she might get an order under The Wives and Children's Maintenance Act if adultery is regarded by the judge as amounting to cruelty. The woman is seeking maintenance from the husband. The husband takes the position that the woman can have possession of the family home and its content but no maintenance and if she's going to go for maintenance he's going to sell the house. So even though the economic imbalance between the parties is rather substantial there is no way that this woman, having spent almost her entire life in the care and feeding of her husband and their children, can earn enough at her age to live in the manner that she has become accustomed. And so, gentlemen, my advice to this woman has to be, well' he won't agree to an equitable separation under the provincial law and we might get cut off under the provincial law because we might have trouble proving grounds, so I have to recommend that you petition for divorce on the basis of your husband's adultery and pursue a maintenance order of periodic payments or a lump sum. This is the only way that we can balance the inequalities. That, to me, gentlemen is unnecessary litigation. This woman does not want a divorce at this time, she wants a separation but she wants an equitable separation and under The Family Maintenance Act she'll get one; under The Wives' and Children's Maintenance Act she will not get one and there will be unnecessary litigation.

Now if the The Family Maintenance Act were to continue in effect, she would probably get her equitable separation without going through the expense, the tax expense, payers in this case, and the emotional turmoil of a divorce action in The Court of Queen's Bench. In fact under the new rules in The Family Maintenance Act I suspect that the result would be a consent order in . the family or county court with the husband agreeing to an equitable separation, recognizing that the rules have changed.

MR. CHAIRMAN: May I remind you, sir, that you have five minutes left.

MR. SAVINO: Yes, Mr. Chairman. This is but one example that I've given you, gentlemen, of the unnecessary litigation that is going to be generated by Bill No. 5. Let me now come back to the basic position that I'm putting forward to this committee. The debate over the family law has become altogether too much a partisan one. We are in a polarized debate. It is an all or nothing debate. There has been no compromise on either side. Well, gentlemen, I would like to propose a compromise and I would hope that if any member on either side of this committee finds my compromise acceptable that he would move an amendment to that effect.

My compromise is this: Most of the negative feeling about the law has been with respect to The Marital Property Act; I see no serious criticism of The Family Maintenance Act. The Marital Property Act is not yet in effect, The Family Maintenance Act is and it is a good law. My compromise is this: Leave The Family Maintenance Act alone. There is one amendment which I would like to see which I will refer to later. Having done that you can review The Marital Property Act in the context of keeping the basis principles and bring it back before the legislature at the earliest possible moment. You can also study the effect of The Family Maintenance Act over that period and if amendments are necessary you can bring them in at the same time as you bring The Marital Property Act back. But give the The Family Maintenance Act a chance. It can and it will work and I suggest it will work to the benefit of all Manitobans and will allow for more equity between separated spouses. It will reduce unnecessary litigation and it will show the people of Manitoba that the legislative process can work that there is a reason for this committee meeting and on that point I should like to relate a very brief experience.

Just after this act went through the legislature I managed to get a copy of a memorandum that was being circulated in a downtown law firm about the Family Maintenance Act and the Marital Property Act, and these were all very prominent lawyers who were studying the legislation, and the opening statement in that memorandum went something like this: "The Family Maintenance Act is a example of an Act that started off with horrendous draftsmanship, but that ended up as being a pretty good Act because of the legislative committee procedure." And I would suggest to you that Bill 5 is horrendous Act if it's going to go through in its present form and that there must be some compromise, and that there's no need to polarize over this issue.

Finally, in conclusion, I would just like to deal with the question, "What is wrong with the Famil

Maintenance Act?" I believe that Mr. Peltz has dealt with the question about what is right. The list of criticisms of the family law goes like this: poor draftsmanship, taxation problems, its effect on pensions, federal government legislation necessary to make it work, rights of creditors and others will be adversely affected, it's opposed by some judges and lawyers. So far as poor draftsmanship is concerned, I haven't heard any criticism of the poor draftsmanship of the Family Maintenance Act. And when you compare it to what has been called the hogs! banquet of the Wives and Children's Maintenance Act, it is a masterpiece in legislative draftsmanship.

Taxation — what taxation problems are there with the Wives' and Children's Maintenance Act? Spouses will continue to be able to deduct the payment they make to the dependent spouse from their income tax.

Pensions — what effect does this law have on pensions? None, I would suggest.

Federal legislation is necessary? What federal legislation is necessary? I pointed out the linkage between divorce and maintenance laws. Divorce laws of the federal government, maintenance laws of the province and separation laws, and the fact that the Family Maintenance Act, in its practical effect, links up very nicely with the practical realities of the divorce laws in place in our society today.

Rights of creditors? Show me how the rights of creditors are affected by the Family Maintenance Act.

Opposition of judges and lawyers? We've spent enough time on that already.

I am coming to the end of my submission, Mr. Chairman. I would like to refer to one more benefit of preserving the Family Maintenance Act, if I may. Mr. Peltz has referred to many; I've referred to some in passing. I recently received a letter from Mr. Spivak, as I am an employee of the government, requesting me to make submissions as to government efficiency in keeping costs down. Well I have a suggestion. If this committee were to recommend to the House that the Family Maintenance Act remain in place, you will save the government money in three ways:

(1) Mr. Houston, Mr. Anderson and Mrs. Bowman will have to spend less time in considering and reviewing the legislation — I understand they're being paid by the hour;

(2) those people who of necessity require Legal Aid services to obtain their equitable separations will be put to less litigation, not more, and therefore you will save money from the litigation that will undoubtedly arise because of the four changes made to the law, the four changes that are proposed by Bill 5, which are going to be taking place in the short period of six months — I suggest to you that is going to cause more litigation than you can ever imagine would be caused by the Family Maintenance Act;

(3) with more people obtaining equitable separations with adequate maintenance, you will have to spend less money on welfare not to mention the incredible social costs of forcing so many women with children onto the welfare rolls because they cannot obtain equity under the Wives' and Children's Maintenance Act.

MR. CHAIRMAN: Your time has expired, sir. How much longer have you got?

MR. SAVINO: Well, I'm just about finished, Mr. Chairman. I would just make one or two very brief comments on the Marital Property Act. I would not want my remarks, or Mr. Peltz's remarks, to be considered as a rejection of the Marital Property Act. We think that that debate has been presented very well, and we — I personally, at least — believe in the principles of the Marital Property Act. But I believe at this time there has to be some compromise on Bill 5, and the Family Maintenance Act is in place, so let's leave it in place. If you want to review the Marital Property Act, review it, but bring it back with its principles still there.

I should point out that I have a concern about the Marital Property Act and the rationale that has been advanced for it, too. Tax problems, pension problems, federal legislation, and so on — all of those things that we've been over. It seems to me that with the Marital Property Act, we're changing a fundamental operating principle of law in our society. And when you change a fundamental operating principle of law on your society, institutions have to adjust. Institutions like the tax collectors, institutions like financial institutions, institutions like pension plans, and so on. They all have to adjust to the fundamental change in principle. So if the criticism of the law is that the institutions have to change, then the criticism is of the principle. I would hope that the review is not a review in principle. I would hope that the purpose of the review would be to make the institutions more easily adjust, perhaps give them a little bit more time, and perhaps the government might announce what to expect, so that the institutions can begin to make their adjustments, including the institution of the legal profession, who have to give advice to their clients during this period of great uncertainty. And with that I conclude my remarks.

MR. CHAIRMAN: Thank you, sir. Mr. Pawley.

MR. PAWLEY: Mr. Savino, I wanted to just trace back to some comments you made earlier, and I don't quite understand them. You indicated that a husband could beat his wife up on a daily basis and commit adultery, yet the wife wouldn't be able to collect. Now, maybe it was the other way around and I just didn't . . .

MR. SAVINO: No, under the Wives' and Children's Maintenance Act, if a husband does beat his

wife, that's cruelty. But if the wife subsequently commits adultery, she's barred from obtaining benefits, from obtaining maintenance for herself. She may obtain maintenance for her children, which is Mr. Sherman's position, but that's what the law already is.

MR. PAWLEY: Right. I didn't realize that was the sequence by which you were describing it. Could you offer to me any estimate of the share of maintenance action that is undertaken by members of the Legal Aid Lawyers' Association in the province?

MR. SAVINO: As Mr. Peltz pointed out, I think that's a question you would have to ask Legal Aid administration. I believe that something like 70 percent of our work in the whole Legal Aid plan is domestic law and, as Mr. Peltz pointed out, staff lawyers handle a considerable proportion of the domestic end of it.

MR. PAWLEY: Are you aware of many instances where maintenance is not being obtained and the mother or wife is receiving welfare because of the existing provisions of the Wives and Family Maintenance Act?

MR. SAVINO: Pardon me, Mr. Pawley, I didn't catch that.

MR. PAWLEY: Are there many instances that you have knowledge of of wives, mothers having to go on welfare because they're unable to obtain maintenance because of the defects in the Wives and Family Maintenance Act?

MR. SAVINO: I am aware of situations where that may occur. The cases haven't been completed yet because we're wondering what law we're going to complete it under.

MR. PAWLEY: No, but I mean under the old law, under the old law. Is it a substantial proportion of cases in which there's an inability to prove grounds for the maintenance, thus the mother or wife ending up on the welfare rolls?

MR. SAVINO: Can I suggest that the situation that is more likely to occur is that there would be a negotiated settlement in that kind of situation. And, you know, there is some civility to the negotiations between lawyers despite the provisions of the Wives' and Children's Maintenance Act, but the wife would probably be offered a lot less than what is equitable in that negotiated settlement, and, you know, if I were involved in that kind of a case, I wouldn't pursue it to court because I would know that we couldn't prove our grounds. If we're weak on grounds, then you go for a negotiated settlement.

MR. PAWLEY: Is the difference then usually resolved by an application to the welfare department, municipally or provincially?

MR. SAVINO: Yes, the difference between what the husband doesn't pay for maintenance and what the wife receives, up to what she needs to live on, is made up by the Department of Socia Services.

MR. PAWLEY: Are you aware of any final orders that have been granted under the Family Maintenance Act?

MR. SAVINO: I'm aware of one. Mr. Peltz was involved with a case, I believe, where . . .

MR. PAWLEY: That's in Winnipeg here?

MR. SAVINO: Yes.

MR. PAWLEY: Fine, thank you.

MR. CHAIRMAN: Mr. Parasiuk.

MR. PARASIUK: Thank you, Mr. Chairman. Have you yourself filed any applications under th Family Maintenance Act?

MR. SAVINO: Yes, I've filed four applications so far.

MR. PARASIUK: How have you found that experience compared to the experience of filing simila applications under the past Act?

mr. SAVINO: Well, you know, we're in the learning process at the moment on this new legislation, and so there's a certain amount of learning that has to go on in drafting these applications, but I've found it to be a much better way of dealing with the problem, setting out the factors that exist between the parties that you're aware of, not having to be concerned about fault and so on, and I've found the negotiating environment is a lot better, except there's this confusion in the law right now, and that's presented some real problems.

MR. PARASIUK: So it's the confusion with respect to the government's actions that is creating difficulty, but in technical terms the Act is operable and it's operating quite well. I've asked that of other people and those people who have responded have indicated that they in fact have filed application, and they find that it's working well.

MR. SAVINO: Yes, no question. Much better system.

MR. PARASIUK: So there is no problem with the Family Maintenance Act whatsoever.

MR. SAVINO: Not that I can see. Well, there is one problem. There's a section in the Act that equires financial disclosure during the marriage, but there's nothing in the Act that requires inancial disclosure after separation. I think that the Act could be strengthened by amending it to nclude a provision to allow financial disclosure after separation. There is provision for examination or discovery, interrogatories and so on which can be expensive, but if the obligation were there :learly in the Act to disclose what the financial position of the other spouse is, there would be less ieed for examinations for discovery and interrogatories.

MR. PARASIUK: But you wouldn't recommend repeal of the present Family Maintenance Act in ırder to possibly get that type of amendment. . .

MR. SAVINO: No, I certainly would not.

MR. PARASIUK: You mentioned also the possibility of some type of compromise with respect to roceeding with the Family Maintenance Act. I had in the House raised the point that no technical roblems seem to have been encountered with the Family Maintenance Act, and the government has ndicated that they are in agreement in principle with both the Family Maintenance Act and the larital Property Act, so I couldn't conceive of any particular reason why the government didn't want o proceed with the Family Maintenance Act, and I thought when we got into Law Amendments ommittee that I might hear some technical reasons why we shouldn't proceed. I think of all the awyers that have come forward so far, and they've been asked questions on this and I've tried to eliberately ask the same questions to the lawyers, no one has expressed any difficulty in a technical ense with the Family Maintenance Act. So I think that certainly your suggestion does warrant some onsideration. Thank you.

MR. CHAIRMAN: Mr. Wilson.

MR. WILSON: Yes, Mr. Savino, you gained my admiration when you indicated that you may be esponding to Mr. Spivak's request, and despite pressures from some of your lawyer friends, you've dicated you're going to spell out how to keep these costs down. I'm interested in a clarification and ossibly your comments. You indicated that there'd be more litigation or unnecessary litigation, and rough Queen's Bench, and you mentioned under the way it is now if it's left alone, it stays in family ourt, the Family Maintenance Act, which of course would have a smaller tariff than Queen's Bench. n interested in the area of keeping fees down, and could you give any indication, if it was left alone, hat type of reduction in Legal Aid staff do we look for?

IR. SAVINO: Well, Mr. Wilson, I think with the unemployment situation that we're facing this nter, we should probably be looking at an increase in Legal Aid staff.

R. WILSON: I see. And how about your comments pertaining to litigation going through Queen's ench?

R. SAVINO: What are you referring specifically to?

R. WILSON: Well, you said that under the present situation, there'd be the three year span, and oving fault and what have you is very expensive litigation through Queen's Bench, and I was oking possibly for an answer, do you think it should be in that pew, if I can use that expression, or in at court? Do you think it should be in the family court or where?

R. SAVINO: Oh, I think the Family Maintenance Act as it now is is quite adequate in terms of form, at the family court with an option to go to the county court is quite adequate. My expression of ncern about Queen's Bench was that with all of the uncertainties that are occurring with Bill 5, as a

result of Bill 5, there's going to be — lawyers are going to say, "Well, we're not going to play around with the separation laws. If there's grounds for divorce, we'll go for divorce, because that's our only certain remedy." And that's expensive. I was also pointing out that there are situations where a wife may not be eligible for maintenance under the Wives' and Children's Maintenance Act, but she may be eligible for divorce, and so she will pursue a divorce before she pursues a separation, and if you take fault away, that won't happen.

MR. WILSON: Well, if these changes are so wonderful — as you say, you're in a learning process — can you envision that the government will be recovering a lot of the legal fees that normally are paid by the taxpayers from the husbands since you're able to get them into court a lot easier?

MR. SAVINO: As a rule, we request costs in applications that we make before the court, and if the husband is able to pay, the court orders him.

MR. WILSON: Thank you.

MR. CHAIRMAN: More questions? Thank you, Mr. Savino.

MR. SAVINO: Thank you, Mr. Chairman.

MR. CHAIRMAN: I call Ann Jackson.

MRS. ANN JACKSON: Mr. Chairman, Mary Jo Quarry is going to speak. I can't stay.

MR. CHAIRMAN: I beg your pardon.

ANN JACKSON: Mary Jo Quarry will ue taking my place.

MR. CHAIRMAN: Okay.

MARY JO QUARRY: My name is Mary Jo Quarry. I am representing myself. I have three major objections to the action taken to defer the Marital Property Act and the Family Maintenance Act. The present government, I would suggest, has no mandate to tamper with these bills since they were never made an election issue. The evidence upon which they're being dismissed as unworkable is very flimsy and the concerned public has had no reassurance that the principles of the bills will be maintained, because there's been no public discussion as to what those principles are.

To deal with the first question, there was of course considerable public discussion of this entire issue last spring. The bills were passed in the closing hours of the legislature on a somewhat split vote. At no point in the following election campaign was the question of marital property reform ever made an issue by either party as a matter of fact, but certainly not by the present government party. The leader at no point in his election speeches implied that one of the things a new government would do would be to defer or repeal The Marital Property Laws.

In addition, the sort of complaints that you have been presented with as to why these laws are unworkable are very flimsy. I attended both the November and June hearings of the legislative committee last fall and spring. I also attended the Law Reform Commission hearing between the issuing of their working paper and their final paper. I noticed at the first two of those hearings that there were very few legal briefs presented against the question or the specifics of marital law reform. Suddenly with the June hearings when it began to look as if this wasn't going to be just another in a series of discussions about which we could all sort of philosophically agree but that it might in fact lead to real legislation which might affect real people' there was a spate of legal submissions against the legislation. You were told that the commercial structure of the province of Manitoba would collapse. You were told that there were tax problems which were insurmountable because they involved the federal government as well as the provincial government. You were told that, among other things, six businesses employing up to 1,000 people were going to leave the province the day the Acts were proclaimed because they couldn't operate under this system.

I made a submission last spring which I'm not going to repeat in full but I would like to at least touch on the major points. I don't know if all of you are aware that what The Marital Property Act calls for is a sort of deferred sharing system of marital property. At the present time to the south of us, 4 million people, approximately one-fifth of the population of the United States, is living under just such a system. They have lived under it for up to 120 years. It is a sort of deferred sharing, husband-managed community property sort of system, in place in the states of California, Washington, Nevada, Idaho, Arizona, Texas and Louisiana. In that time, of course, you are aware that substantial volumes of commerce have taken place. People have run farms; they have run businesses. Salaries have been earned and spent. Children educated. Marriages have taken place; they have broken up etc. Clearly the system has worked there. In 1967, the first of those states began looking at reforming what they called a "husband-managed" system in the direction of what they called an "equal-managed" system which meant that either partner had equal management of marital assets during the course of the marriage; that the assets were divided equally if the marriage ended in separation or

divorce. By January, 1975, all but one of those states had put in place a system of equal management.

I would like to explain to you briefly how that works, particularly in California and Washington which have very similar systems. Property acquired before marriage and brought into the marriage by either partner is considered separate as is any property acquired by either partner through will or legal award. All other property is considered community, which means it belongs to both partners regardless of which brings it into the marriage. It is managed equally by either partner. Either of them may deal with their joint community property as if he or she owned it, with certain requirements as not being able to give gifts without consent of the other spouse or to encumber household goods. As well, most states normally require joint consent for the transfer of real estate because it usually involves the major part of a community's investment. As well, in those two states and several others, the statute has a clause which says if only one person is engaged in the operation of a business or farm which provides a livelihood for both people, then the joint management statute is waived. Which means if one person is involved in a business, a farm, a legal partnership in which the other person does not participate or work, then management is not shared between the two people. The person involved in the business does the decision making.

Washington State has had this sort of system in place since 1972. The State of California has had it in place since 1975. Neither of those states has witnessed any sort of flight of capital. As well, because they are bordered by states which have entirely different legal setups, means have been worked out to facilitate interstate commerce, the system has continued.

Last spring, after hearing a number of objections raisedby some of the legal profession and some non-lawyers to the workability of the bill, I talked to, among others, Dean Harry Cross who is the Dean of Law at the University of Washington, to ask him if in fact a system of equal-managed community property had presented them with an increase in litigation or an increase in the amount of marriage breakups or any general legal difficulties. Dean Harry Cross is, by the way, the author of the last majority of journal articles relating to the property operations in Washington, so I assume would qualify as the resident authority. He assured me there were none, that all property including wages brought into a marriage by either partner were shared, that because the law was enacted, the other systems had had to adjust to it but that they had considered it to be a philosophic necessity in terms of recognizing marriage as an equal partnership and felt that whatever adjustments were necessary would have to be made.

I also talked to Judge Christian Marquis, who is the presiding judge in the Superior Court of Los Angeles, to ask him as well if there had been any change in the amount or pattern of litigation in the state. He said none. He seemed surprised that I should be asking the question and concluded that the new law had done nothing more than recognize the way most people organize their married lives and he felt that the law ought to be at least as sensible as most people were.

As my third point, I'm concerned that we have had no reassurance from the present government, except in the vaguest terms, that the principles of the bills — well, we have been assured that the principles will be maintained, we just haven't had any discussion on what in fact those principles are. There has been little open discussion as to what "equal" means; what "partnership" means. I would certainly hope that those who will be involved in drafting the bills which will be introduced hopefully in the spring to replace the present bills, will have an open debate among themselves as to what principles they wish to bring in in the legislation. If they agree that the present law is unjust, that they will not be swayed by the arguments of people who are going to find bringing justice into that legal situation to be an inconvenient or a financial cost any more than people who might have objected when slaves were freed in the United States would have been paid attention to. After all, those people had a substantial financial investment in those people and I'm sure were quite upset that they were going to be relieved of their financial advantage over someone else. I can also imagine the arguments that went on when legislatures in the United States and Canada were looking at women's suffrage. I'm sure a number of people who had substantial business establishments were concerned because after all they had made an investment and they had set up their business under the understanding that the law would operate in a certain way and now by extending suffrage as well as the right to run for public office to another whole half of the population, you were substantially changing the ground rules on them. I would hope that those involved in drafting the legislation would not be swayed by these sort of self-serving arguments.

In closing, I would like to point out to you that the women of the province of Manitoba who, thanks to the last major legislative change in our direction, now compose half of the electorate as well as half the population, may not have been totally aware of what was going on when this bill was being debated last spring and when it passed, but a lot more of them know about it now and a substantial step backward in spring is going to be seen by a lot of people as exactly that, something that has been taken away. When the legislation comes back, I would hope that it really represents the principles of the people who were drafting it and does not come with a sort of pious preface that says that, "Well of course we are in total agreement with the idea of marriages and equal partnership; we are second to none in our admiration for equal partnerships, only we don't know any way to make it legislatively possible because it's so entirely complex." You have to the south of you a complete example of how this system can work.

Now, to my knowledge, having sat through most of the hearings last June, none of the legal representatives who spoke to you then had made use of any of that information available to you. The Law Reform Commission did not have the States' statutes. I looked through their bibliography. It's

about a third as large as things that I have gone out and Xeroxed myself, never mind read, and this is acting as a private citizen who was doing this on top of several other jobs. The statutes are obtainable by writing to the state legislatures. They are also appended to the Law Reform Commission report from British Columbia which came out in January of 1975. They are also available in the Federal Law Reform Commission report which has been out for, I think, at least that long. They are also available in numerous journals available at the University of Manitoba law library which tend to quote extensively from the statutes . As well, the resources of state bar associations are available for clarification as to how specifically they have dealt with whatever difficulties may arise.

Now, all these sources, by some sort of curious coincidences, were missed last year by the Law Reform Commission, by all the lawyers who spoke to you. I would suggest that they are available if you really wish to see how this sytem works. If you are not interested in how that system works, there should be at least some sort of forthright statement of that fact when the new legislation comes in.

MR. CHAIRMAN: Thank you. Questions? Mr. Parasiuk.

MR. PARASIUK: Ms. Quarry, you seem to be about the only one who has actually looked at the empirical situation in the . . .

MS. QUARRY: This is true, yes.

MR. PARASIUJ: . . . State of California and you are a lay person appearing before us. You do conclude in this that it is working quite well in California. How long has it been in place in California?

MS. QUARRY: Well, a deferred sort of system, such as these bills, this bill I suppose in terms of property, has been in place for 120 years. When California became a state, they adopted the essentially Spanish property rules which set up a sort of deferred community, equal management which is, I might add, leagues beyond where this bill went. This bill really essentially only called for deferred sharing of commercial assets, equal management of family assets, which tend really to not amount to that much. So not only do you have 120 years or so of experience that a deferred sort of system works, you have got six or seven years worth of experience in at least two states, both of which, I might add, have populations and consequently value of commercial transactions many times over the population of Manitoba. At any rate, you have evidence that an equal management system is perfectly workable if you wish to take advantage of it and use it to buttress the reassurances that we have had that this government does in fact support and see marriage as a partnership of equals.

MR. PARASIUK: So it's not some untried idea that hasn't been tried somewhere else? You are saying that it has been in place for something in the order of 120 years?

MS. QUARRY: Certainly, and the evidence is available. It just doesn't seem to have been used in any of the deliberations of the last two years.

MR. CHAIRMAN: Mr. Enns.

MR. ENNS: I don't really ask in a facetious way but I can't help but be somewhat intrigued by what one normally holds to be an ultra-conservative Spanish society, that legislation that has been heralded as superprogressive in the year 1976 of our Lord now is being indicated by this witness as hailing back to ancient Spanish custom and tradition in the case of family law that the state of California has enforced. Is that correct?

MS. QUARRY: Well, I'm not either an historical or a legal scholar and I couldn't trace for you back the rationale behind why the Spanish system set its property regime so. The fact just remains that — it may actually have been a coincidence that those particular states were a Spanish possession and that's why the legal system evolved as it did — the fact is just that it did.

MR. ENNS: So along with Cortez and De Franco, now adds the name of Howard Pawley as the attorney-general that leads in progressive family law.

MS. QUARRY: Perhaps only in an incidental way.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: Ms. Quarry, do you recall in discussions last June when we discussed the community property laws, an agreement or commitment that was given by the then government that part of the responsibility of a task force, which it was committed would be established by the then government, would include an evaluation of the community property laws in the various states in which they were working and reporting back to the legislators of this province to ascertain whether or

not progress should be made by us in that direction?

MS. QUARRY: Yes, I remember a specific discussion in that vein and I certainly thought that it was crystal-clear at the end of last year's deliberations that the Law Reform Commission had given at best a very surface look at how the systems operate.

MR. PAWLEY: Would it be your opinion that the present government should undertake to complete the commitment given by the previous government in this regard?

MS. QUARRY: It would be my opinion that the present government should either ascertain that it in fact does not consider that marriage should operate as an equal partnership and is not interested in getting into that sort of involvement legislatively, or it should decide that it is and take a full look at all the sort of property regimes available to it as all the other provinces have done. Most law reform commissions are looking at this sort of thing and are going to suggest legislation as well. Whichever one they deem does the best job of implementing marriage as an equal partnership, then that should be the basis of their new law, which is, as I recall, the same thing I said last year.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Ms. Quarry, while these studies are going on that you suggest could well be carried on, which law do you want to see in Manitoba until the studies conclude, the present law which is being cancelled by Bill 5, or the old law?

MS. QUARRY: I would certainly like to see the new law in place. I think largely most people to the light of Genghis Khan have at least arrived at a concensus in the last few years that the marriage laws as they exist are in serious need of reform. I think that clearly if you take away what you have now for at least a short period of time, which has a way of extending itself into a long period of time, in my experience this is the way legislation seems to work, you are simply left with the old law. Now, if you agree that the old law is a mass injustice, then certainly I would prefer to see the new laws left in place. Let the difficulties arise in case law and let them be dealt with as they occur as it seems to me you do with most other legislation.

MR. CHAIRMAN: Thank you, Ms. Quarry. I call Jean Carson.

JEAN CARSON: Once more into the breech, dear friends, once more stiffen up the sinews, summon up the blood. I know just how Henry V felt when he went back into battle. He was bone weary and he was fed up but he was still fighting. You know, I don't want to be here. —(Interjection)— Would you like the podium, Mr. Enns? I'm here simply because I feel I represent one special segment of the population. I'm older. I have no personal interest in this bill; nothing to win, nothing to lose. I have paid my dues; I've paid my succession duties. It's justice. But I simply have to say it again, I guess, because so many people on this committee have never heard it before. It's monotonous and I apologize to the people who have had to listen to it over and over again. I have been to every hearing there was, even the ones where we couldn't speak, where we just had to sit and suffer. It's really, I feel, a great imposition for us to have to do this. There are a lot of people who made presentations to the committee before who aren't here and I'm afraid they are the trusting souls who think that everything they've said has been noted and will be passed on for study to this committee. Now, I'm not that trusting, I'm really not at all sure that that will be done.

Perhaps before I go any further I should clarify who I am, what I am, / other than what you see. I belong to the Provincial Council, I belong to the Manitoba Action Committee and I belong to the University Women's Club and no, I am not a New Democra and I do not belong to the New Democratic Party, although I thank them from the bottom of my heart . . . pardon me?

A MEMBER: What about the Conservative Party?

MS. CARSON: Well I'm not really defining my positives, I'm defining my negative aspects politically. I'm grateful to that party because they introduced the progressive kind of law for which I have sought and worked for ten years and for which I have believed all of my life and I'm very grateful them because no matter what happens from here on in, a duly elected and duly constituted government of the province of Manitoba did introduce that kind of legislation and I don't think it can completely abrogated.

However, I have other questions perhaps I should answer. As far as the demonstration the other night, yes, I was there. As far as the commotion in the gallery, no, I wasn't shouting out. I was too busy conducting sort of impromptu seminars with the young women around me who didn't know anything about the House and who couldn't understand why they couldn't speak up in the gallery when such a commotion was going on down on the floor and I did my best to explain the democratic principle. I had a little problem but I did it. And out in the protest, the demonstration out front, yes, I was one of the ones who was yelling. We've already made presentations, you know. I feel this is the part of the duty of someone who believes as deeply in a Cause — capital C — as I do and for the chairman who

wants relevance from the podium, yes, I speak to Bill No. 5.

It worries me, it puzzles me and when I'm puzzled, I'm worried. Because we were taken completely by surprise by this whole thing, I've spent the last week going around talking to Cabinet ministers and I can't determine even from those responses where we are. Yes, we believe in the principle. No, this is not — the principles are not being reviewed but the people who are chosen on the Review Committee don't believe in the principles but are not draftsmen to do the only job that seems to be available for them to do and I'm puzzled, I'm very puzzled. And the reason I'm talking about my puzzlement and my worry and my concern is I'm afraid of what might happen in all this bewildering array of conflicting statements. I'm afraid that somebody about here is going to hand down an answer as to what is to be done and that people are going to say, yes, we'll do it. I believe that this is called solidarity, and we are going to get something that I don't want.

I think this legislation that we have, I'm not a lawyer but I've listened to all my friends who are lawyers and who seem to me to be making perfectly reasonable and confident answers to possible difficulties, that seems to me it can be dealt with. But I think, for the sake of these people , , I don't think a lot of these people, in fact from talking to some of them I know they haven't thought about these questions, and I want to tell them why I think it's so important. But I'll try to be brief and you're not going to have to question me — these are just my views — so there's not going to be any long question period.

The laws that we have lived under and are for many, many years are not, as Maxine or someone said this morning, Victorian, they'rearchaic. They stem from mediaeval law, Blackstone, in fact, where property was the concern and the male line was concerned and to achieve those two things, women were property also and the statement was that when man and woman married they are as one and the one is the man. And we've lived under those laws from those days to these. All that has ever happened has been that those laws have been amended and what we're talking about here is a total change in law and I think it's imperative.

In the marriage arrangement where the man goes out into the world, generally, and the woman stays in the home, what he does out in that world is rewarded monetarily but what the woman does in the home passes unnoticed. And whether we like it or not we live by the yardstick of the dollar in this society. The man gets the dollar out in the world. The woman in the home gets nothing; she has no economic recognition of her role, but some people are beginning to think about that. John Kennetl Galbraith has done some work. Another economist whose name I have forgotten, has done some Geraldine Gage at Penn State University has done a very interesting study called "The Dollar Value Household Work," and she points out that a woman who stays in the home from say, 25 to 65, even a the minimum wage, has produced work to the value of $250,000, a quarter of a million dollars in he lifetime. But no thought is given to thisand no thought is given to the fact that the work that she does the supportive work to society, to the home, if that were withdrawn, we wouldn't have the kind o society we know at all. We'd have an under-nourished society because women do most of the cooking. We'd have a pretty dirty bunch — I mean physically dirty, because women do most of the washing. We'd live in a totally different milieu because there would be no care of the home and no beautification of the home, but nobody pays any attention to these things and what we're saying i asking for the continuation of this law, is that this must be taken into consideration.

Obviously, the disposition of the legislators, all with one lone exception,men, is not for join management and we have not pressed too hard for that although Mary Jo has pointed out to you how it could be done. But we're talking about when the marriage breaks up. Women manage throughou the currency of their marriage, although with difficulty because they lead dependent and derivativ kinds of lives where they don't have much power of choice, where decisions are made for them an their decisions are frequently disregarded and they have a feeling of inadequacy. However, we're no talking about that. I think it's deplorable. I think we should, but we're not. We're talking about whe the marriage breaks down and this is where all the things I've been talking about in a woman's lif should be considered and that she shouldn't be left, as so many of these young lawyers have told you with nothing but the children. The man has a whole new life and the woman has half an old one, and just say to you once again, I have no personal stake in this. I have just a devotion to justice and I woul very much like to think that the government under which I live, also has a devotion to justice. Than you very much.

MR. CHAIRMAN: Thank you, Madam. Questions? Thank you. I call Terri Grey.

MR. CHAIRMAN: I call Susan Devine. I call John Field.

JOHN FIELD: Mr. Chairman, Members of the Committee, I would like to address some commen with respect to the Family Maintenance Act and advise its retention.

You will appreciate that under the Wives' and Children's Maintenance Act, the wife is under a du in order to obtain an order to prove one or more of five charges. The beginning charge is convictio for assault. This of course, is seldom used. Second, she could charge and prove desertion ar whether a husband deserts a wife is often problematical where the wife, for example, leaves th matrimonial home. The wife to establish constructive desertion would have to show that she was le

with no choice but to leave. This of course is a burden of proof approaching the proof of cruelty. Thirdly, as you know, she can prove that the husband was guilty of persistent cruelty to her. Fourthly, she can prove that the husband is a habitual drunkard. As you may be aware, the evidence with respect to this subsection is rarely led on its own and is used in conjunction with cruelty.

The last ground of course is failure to support which in some cases may be a ground of cruelty or an element of cruelty, but it's clear that cruelty plays a major role in many separations either by implication, constructive desertion in conjunction with drunkenness, or as a ground on its own it is a central question in many separations.

The test for cruelty was established to be the same as that for divorce; authority for that is the case entitled Jones vs. Jones, a decision of the Manitoba Family Court. The major considerations accordingly, are as follows: each case must be determined on its own merit, and in cruelty cases, the question is whether this conduct by this man to this woman is cruelty; secondly, the cruel conduct must render intolerable the continued cohabitation of spouses ; thirdly, the act complained of must consist of more than those which merely illustrate the breakdown of a marriage and the incompatibility of spouses, more than inc/ompatibility has to be proven.

An illustrative case in this regard is Kowaliak vs. Kowaliak, another reported case out of the Manitoba Family Court. There it was found , as facts, that there were monthly arguments, swearing was a common occurrence, the husband and wife refused to speak to each other, that the marriage was unhappy and unstable. Those were proven facts. Children were involved, and in fact, one daughter testified. Upon these findings of facts, the learned trial judge, applying the test of cruelty outlined, could not find cruelty and the wife's application was accordingly dismissed. Several and many consequences flow from this state of law. Upon facts similar to the Kowaliak facts, a wife for example, may wish to separate for her own peace of mind or because marital conflicts are having severe detrimental effects upon the children but given the law, she moves and acts at her own risk. If for example she orders the husband out of the house, or leaves and takes the children to set up residence elsewhere, she may not be entitled to an order for separation, prohibition maintenance for herself, although of course she may bring an action under the Child Welfare Act

for custody and maintenance of the children. Assuming that the Wives and Childrens' Maintenance Act remains in force and assuming that a woman believes that she has grounds based on cruelty or constructive desertion, there generally is one course of action that follows. She usually qualifies for legal aid as most women in this province do, and will often select her lawyer from the panel and lay in information after discussing the matter with her solicitor under the Wives and Childrens Maintenance Act. Now it seems to be common practice that negotiations are entered into between the husband's solicitor and the wife's solicitor with respect to the possiblity of the utilizetion of a Consent Order under the Wives Act. Cruelty at this point in the case becomes a very crucial issue, not because the parties are separated, not because there is an issue of the parties getting back together if it's not proven, but simply because unless that crucial ground is established tothesatisfaction of a court there will be no maintenance payment, nor any other order under that Act.

The wife may often not wish to go through all the details of her marriage because of the emotional effect it has on her and because it is often very time consuming. She may wish to avoid causing further hostilities and for several reasons may instruct her solicitor to accept, during negotiations, a figure for maintenance upon a Consent Order which is less than that to which she is entitled. Solicitors of course, in this situation, are in a difficult position inasmuch as most solicitors I believe, should and would advise the woman to pursue the matter and attempt to prove cruelty with all the problematical consequences of that. On the other hand, a solicitor is bound to accept the instructions of his client. If his client takes the view that she does not want to dredge up the facts of the marriage

MR. CHAIRMAN: Order. May I remind you, Sir, that we are dealing with Bill 5, An Act to suspend the Family Maintenance Act and to defer the coming into force of the Marital Property Act and to amend certain other Acts and make provisions required as a consequence thereof. That's the subject matter before the Committee.

MR. FIELD: Thank you for that reminder. I would point out that the key issue with respect to whether or not the Family Maintenance Act is retained, is whether or not it will have beneficial consequences for the people of this province.

Now the key question as I see it from my practice, with respect to the workings of the Wives and Children's Maintenance Act is cruelty. Cruelty is the key in most separations. If cruelty and the operation of cruelty in negotiations has detrimental effects, then it should be disbanded or discarded.

MR. CHAIRMAN: Proceed, Sir.

MR. FIELD: In summary, given the problems which a solicitor may face in negotiating based on cruelty, based on the problems that are attached to cruelty, a number of results occur which could be

avoided by retaining the Family Maintenance Act as it stands. These benefits involve an avoidance of the increase in hostility as a result of no requirement of proving fault, decrease in the negotiation time with a view to settlement, a decrease in time and cost spent on the proof of cruelty if the wife instructs the solicitor to litigate the issue and it will also insure the maintenance of the act — a retention of the act will also insure that settlement more accurately reflect the merits of a case. Lastly, it will, by maintaining the act as it stands, one will avoid the maintenance of marital relationships which are unhappy, unstable and those situations described in the Kowaliak case.

In conclusion, and from my experience, I would suggest that the act as it stands now, is eminently workable and fair and a vast improvement over the Wives and Children's Maintenance Act. Those are my comments.

MR. CHAIRMAN: Thank you, Sir. Questions? Mr. Pawley.

MR. PAWLEY: Mr. Field, are you a member of the Manitoba Bar Association?

MR. FIELD: No, I'm not.

MR. PAWLEY: You are not then of course, a member of the subsection of the Manitoba Bar Association?

MR. FIELD: That's correct.

MR. PAWLEY: You are a member then.

MR. FIELD: I'm not a member.

MR. CHAIRMAN: Mr. Parasiuk.

MR. PARASIUK: Have you filed any applications under the Family Maintenance Act?

MR. FIELD: Three.

MR. PARASIUK: Have you found that you were able to proceed in a workable, operable manner under the new act?

MR. FIELD: Yes. Well at this point in time the applications are filed. The service has been effective on two of the three. I have already entered into negotiations with one solicitor and discussion with the husband's on one of the other cases. Of course at this point in time I am waiting for the 16 days to expire on those two, but from my experience so far with the Act, I cannot foresee any difficulty procedural or otherwise. Thank you very much.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Mr. Field, in relation to the three cases you have, you have not had to plead fault

MR. FIELD: That's correct.

MR. CHERNIACK: How do you interpret the situation if this law goes through? What will happen to the basis of your application?

MR. FIELD: Two of the three cases will be in severe jeopardy.

MR. CHERNIACK: Pardon?

MR. FIELD: Two of the three of my cases will be in jeopardy. Inasmuch as if the Wife and Children Maintenance Law is applied to these cases, the wife may not be able to establish grounds and obtain her order.

MR. CHERNIACK: Well, Mr. Field, you can, I trust, describe the cases without identifying them. ould you elaborate somewhat on the nature of the breach of their relationship. Will there be hardship caused to the party who has applied and fails because of the change in the law because the government going back to an old law.

MR. FIELD: I believe so, I believe that to be the case. I am a little leery in describing the fac surrounding . . .

MR. CHERNIACK: If I may interrupt you, Sir, I don't want to lead you into a way where it could be revealed, so I suppose I will just have to leave it at that, just to take it as is. There is nothing else yo

could add without revealing the nature of your case.

MR. FIELD: I would say that the facts of two of the three cases are somewhat similar to the Kowaliak case which I mentioned in my delivery earlier. In both cases there is severe marital breakdown, although it is questionable as to whether or not it's cruelty within the definition of Jones. .

MR. CHERNIACK: Could we just run through quickly the grounds that must be proven under the Wives and Children Maintenance Act? Could you correct me: habitual drunkenness, failure to support, desertion, cruelty . . .

MR. FIELD: Correct.

MR. CHERNIACK: . . . conviction of assault. Adultery is okay, you can commit all the adultery you ike without being subject to that unless it were interpreted to be cruelty, is that correct?

MR. FIELD: That's correct. That is my opinion.

MR. CHERNIACK: And that is the law that we are being dragged back into, is that correct?

MR. FIELD: That is my opnion.

MR. CHERNIACK: You say that two of your three cases may be in jeopardy.

MR. FIELD: That's correct.

MR. CHERNIACK: That red headed gentleman who just walked in . . .

MR. CHAIRMAN: Thank you Mr. Field.

MR. FIELD: Thank you very much.

MR. CHERNIACK: I wanted to draw it to your attention because you don't know what you are loing.

A MEMBER: We know very well what we are doing.

MR. CHAIRMAN: I call John Atwell. I call Mrs. Laird. Sharon Granove, Pearl Cyncora, Ruth Pear, Charles Lamont.

MR. CHERNIACK: Gentlemen, on a matter of procedure, it's approaching 5:30 . —-(Interjection)— Well, he's the last person available, would it be understood that whoever has not come will have an opportunity to come when we meet again.

MR. CHAIRMAN: I am at the discretion of the Committee.

MR. CHERNIACK: On that basis I would say by all means. If it suits Mr. Lamont's convenience, he as been here awhile, I for one would be willing to wait. —(Interjection)— Well, no, I would suggest 'e are going to have to come back Monday anyway. Well, Mr. Chairman, if we are going to be brought ack tonight then I don't see why we should not break.

Mr. Chairman, I would like to make this suggestion, since there are no other delegates present and e don't know if any other delegates are coming back tonight, do we? I heard an indication to you iat one of the people is coming back on Monday. I'm sure we can't finish the Committee's work ıday, I'm sure that we are going to have to take it into Monday, anyway, so I would suggest one of vo things. The logical thing to me is that we hear Mr. Lamont, even if it takes an hour, and then break ır the weekend, but if the government which controls this Committee insists we come back tonight, ıen we ought to break now. Could we have a discussion on that?

MR. LYON: I think out of courtesy, Mr. Chairman, we should hear Mr. Lamont, because he is here, ıd then we can make a determination afterwards about tonight or Monday.

MR. CHERNIACK: Mr. Chairman, I appreciate Mr. Lyon's suggestion, but I think that if we, the embers, who have been here now two solid days including last night are expected, even possibly pected to come back tonight, then our own considerations should also be involved, and then we ıould know how we sit.

MR. LYON: Could we, Mr. Chairman, ask Mr. Lamont how long his presentation is going to be?

MR. LAMONT: Ten minutes.

MR. CHERNIACK: Of course, he doesn't know how long the questions are going to be.

MR. CHERNIACK: Mr. Chairman, is there any reason why we cannot settle our plans for this evening.

MR. SHERMAN: Mr. Chairman, on that same point of order, it is my understanding that Members of the Committee were notified that the Committee would sit Saturday morning, Saturday afternoon and Saturday evening. That should not strike Mr. Cherniack with any impact of surprise, that was the scheduled arrangement.

MR. CHERNIACK: May I remind Mr. Sherman that it was an arrangement at which there was an agreement made that Saturday would be the day when Committee would meet. That was by agreement, not by concession, because we are as anxious to get out of this session as anybody else, but that there was an understanding we would meet Saturday. I am not sure it was spelled out that it would be morning, afternoon and evening, and if I thought we could finish today by 10:00 o'clock, then fine. If the government House Leader believes that there is an understanding that we meet until 10:00 tonight, then I would not want to go against it, but in that case then we should break at 5:30, come back at 8:00, meet 'til 10:00, and then break again until the next session. I assure you, Mr. Chairman, that as far as I can foresee, we can't possibly finish this Committee's work today by 10:00 o'clock, but if Members want to sit this evening, I am opposed to it but I am willing to do it.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: My suggestion was pretty well along the same lines, that if we don't have any clear indication of anyone coming back at 8:00, then I think it would be reasonable to hear Mr. Lamont and then, those that did not respond to the call — find out if they are here Monday morning, because we are dealing with very short notice and a Saturday, and, I believe, a lot of people just didn't expect the hearings to proceed on a Saturday.

MR. CHAIRMAN: Well, I am at the mercy of the Committee. Mr. Cherniack.

MR. CHERNIACK: There is one other point I didn't make, Mr. Chairman. If Mr. Lamont is the only person prepared to present a brief for the rest of the day, and if we are going to do the courtesy to others to enable them to come on Monday, then surely we won't be able to enter into deliberation on the bill itself on the specifics until we've heard the Monday delegations, so what's the point of coming back at 8:00 o'clock in order to adjourn, because it seems to me that is what would happen. – (Interjection)— Mr. Chairman, we can't really start clause-by-clause until we've heard all the delegations. Is it the desire of the Premier to cut off delegations, let's find out?

MR. JORGENSON: No, what we will do, Mr. Chairman, is to come back at 8:00 o'clock — I think was generally understood that we would be sitting this evening, and if there are delegations here at 8:00 o'clock, we will hear them, if not then we will proceed to clause-by-clause.

MR. CHERNIACK: Well, Mr. Chairman, may I then understand what is the plan of the governmer in relation to those people who have not yet had an opportunity to present their briefs; will they b foreclosed?

MR. SHERMAN: I presume that the plan would be the same as was carried out when the legislatio was being considered last year. There were some people who were not able to fit their schedule int the Committee schedule, and if they can they do.

MR. CHERNIACK: Let's confirm that. What happened in the past, and everytime in my recollectic is that all delegations were heard before clause-by-clause consideration. Therefore, I believe that M Lyon and Mr. Sherman and Mr. Jorgenson are saying, in effect, that according to their plan there w be no delegations heard after today. I think that's what I hear them saying, if I hear it correctly, I wis they would say it.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: I would just like to point out, Mr. Chairman, my memory may be faulty, but I belie last June that our hearings extended over a four or five day period, it was quite a time space. Nc what is concerning me here is that we are dealing with very limited notice — Friday and Saturday or we've been sitting. There has not been an opportunity, really because of the short notice probably f some of those who indicated they wanted to make submissions to make themselves available, an would be happy to return at 8:00 o'clock to see if any of those that have indicated that they we anxious to present briefs were here. I don't want to foreclose them from appearing Monday mornir

MR. CHAIRMAN: I've spoken with the Clerk and he advises me that the only one is Terri Gray, who ndicated that she would come on Monday. She was here and she's the one who passed me the note ınd expressed her regrets that she didn't get a chance to speak. The rest, I've called their names :wice, and I think that's standard practice for the Committee so we could maybe find Mrs. Gray's elephone number and ask her if she could come this evening. I'll chair the meeting if you wish to call t.

MR. LYON: I suggest, Mr. Chairman, that it is quite clear that there is nothing unusual here at all. I ıave been before this committee for I don't know how many years. I chaired it for about eight. Some)eople indicate, from-time-to-time that they want to appear and they don't appear, there is nothing ınusual even though Mr. Cherniack would like to make a mountain out of it. The Committee, I would :uggest, should meet tonight at 8:00 o'clock. In the meantime, Mr. Reeves can phone the person in uestion who indicated that she still wanted to make a submission, advise her that the committee will ıe sitting tonight to hear submissions, and thereafter if there are no other persons wishing to make ubmissions, the Committee will go into clause-by-clause consideration of the bill.

MS. STEINBART: I know there are a number of people who would like to present on Monday as ıey could not make it today because there was such short notice, and I don't believe they would be ble to make it tonight, I don't know, I never asked them if they could make it tonight. And there are eople who would like to make presentations, I would say there might be at least five or six . . .

MR. LYON: Well, written ones can always be received.

MR. CHERNIACK: Mr. Chairman, Mr. Lyon is quick to cast suspicion on motives of . . .

MR. LYON: Well, no more quickly than you were when you were suggesting that the government as trying to cut off debate, which it is not trying to do, we are just following normal procedure.

MR. CHERNIACK: In view of the fact that Mr. Lyon has made the statement that the government is ot trying to cut off debate, I assume he means cut off delegations, and if he means cut off elegations and since there is an indication that there will be people ready to come on Monday and nce I would like to think that we are prepared to hear them, then I would like to suggest very strongly ıat it would be foolhardy to prevent these briefs being presented in order to save, what? — an hour's eliberation this evening, Mr. Chairman, because that's all there can be. And I might ask the House eader, who I think is pretty good on the rules, whether we are not now overstaying the time because I ink that, according to the rules we should have stopped at 5:30 and if we are called at 8:00, we must op at 10:00. So, Mr. Chairman, I am assuring you —(Interjection)— On the point of order, on the ocedure, I want to assure you, Mr. Chairman, that as far as I can see we will not finish tonight, but if e do get into clause-by-clause, we will thus prevent others from coming Monday.

MEMBER: Not necessarily.

MR. CHERNIACK: Well, that is the case, Mr. Chairman. Well then, is Mr. Lyon suggesting that we ll start clause-by-clause without having heard all the delegations and then go back to hearing legations Monday? If he suggests that, let's consider that possibility.

MR. LYON: Mr. Chairman, I suggest that the Committee rise and meet at 8:00 o'clock again, and the her people who want to be heard by the Committee be notified by the Clerk over the supper hour. If ey are here they will be heard, otherwise the Committee proceeds in its normal fashion.

MR. CHAIRMAN: Committee rise.