Legislative Assembly of Manitoba

HEARING OF THE STANDING COMMITTEE

ON

STATUTORY REGULATIONS AND ORDERS

Chairman

Mr. Warren Steen
Constituency of Crescentwood

Friday, July 7, 1978 8:00 p.m.

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

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HAIRMAN: Mr. Warren Steen.

omination and Election of Mr. Steen as Chairman. (Agreed)

R. CHAIRMAN: To the members of the committee, we have five bills that are before as: Bill 38, ıe Marital Property Act; Bill 39, The Family Maintenance Act; Bill 40, An Act to amend The Provincial ıdges Act(2); Bill 41, An Act to amend Various Acts Relating to Marital Property; Bill 42, An Act amend The Queen's Bench Act.

The Clerk has a number of names of persons that which to appear as delegates. I would ask l persons who wish to appear on any one of those five bills if he or they would come forward ıd add their names to the list that the Clerk has. Otherwise, I would have to read off the)-some-odd names of the people and see whether they're here. —(Interjection)— To the Member r St. Johns, it has been indicated to me by the Clerk of the House that he thought he could handle easier if persons wishing, who are not on the list, came forward or saw him at the back of the om and were added to the list.

The Member for Selkirk.

R. PAWLEY: Mr. Chairman, earlier today I had requested of the House Leader that consideration e given to delaying this hearing until such time as the Minister responsible, the Attorney-General, ıuld be present, because I am not convinced of the maximum benefit of briefs being presented the absence of the Minister responsible for, in fact, each and every one of the bills that are before ; this evening. That request was rejected. I think, Mr. Chairman, there should at least be some ınsideration given to those that are on the list tonight, that in the event that they wish to present eir brief when the Attorney-General is present, that they be allowed to stand down so that they ın present their brief while the Attorney-General is present.

I want to just further add that I know that inconvenience has been caused, I think that could ave been prevented by insuring, when the meeting was scheduled, that the Attorney-General would e present, and I do believe that when the meeting was scheduled on Wednesday, that consultation ith the AttorneyGeneral would have so indicated that he would not be available for tonight's meeting. is other meeting, I'm sure, is very important but this meeting could have been re-scheduled in der that the Attorney-General be present to hear each and every one of the briefs presented. lo say, Mr. Chairman, that the minimum courtesy would be to stand down any brief from anyone ho wished to present their brief while the Minister responsible for this proposed legislation was esent.

R. CHAIRMAN: To the Member for Selkirk, I would say to him that the Attorney-General is out the province on government business, as he does know, and that Hansard does reproduce the ımments made by each and every individual that do appear before this committee, but as Chairman, would be more than happy to allow anybody who wishes to appear before this committee, who ishes to appear tomorrow, when the Attorney-General will be present, to take leave and appear morrow. But I might point out to the Member for Selkirk, that we do have the Premier, we do ave the Government House Leader and we do have three other Cabinet Ministers here, and if his ars are that we do not have sufficient government representation, that those persons that wish make their presentation in front of the Attorney-General, I would be glad to move their names ack and we will hear them tomorrow or perhaps next week if the committee is carried on at that ne. Is that satisfactory to the Member for Selkirk?

R. PAWLEY: Mr. Chairman, I want to just say to you that I don't believe it's sufficient to say at the Attorney-General will have an opportunity to read in Hansard that which has been said

this evening. The importance of the presence of the Attorney-General is to listen but also to gi him the opportunity to question those that are providing briefs to the committees so that he c analyze a face-to-face question and answer process on an analytical basis the representations th are made. That can't be done from a mere reading of Hansard next Monday or Tuesday of th which has been indicated tonight.

Now, if the Chairman, is indicating that he is prepared to stand down anyone that is listed un such time as the Attorney-General is present, then I would, if the Chairman is guaranteeing th to us, that he is prepared to do that, then I would think my colleagues and myself would be agreement.

MR. CHAIRMAN: To the Member for Selkirk, the Chairman, would say right here and there th there are no guarantees that we have 54 persons that have indicated through the Clerk that th wish to make presentations and be represented.

If a particular person who is on the early part of the list would prefer to be void until tomorro when the Attorney-General is present, I would be more than pleased to move that name down the list, but I'm not going to give you, or any other member of the committee a guarantee th we are going to sit for days and days and days until the Attorney-General is present when th particular individual wants to appear. Is that fair enough.

MR. PAWLEY: Mr. Chairman, I thought that the Attorney-General was to return later on this evenin I didn't think it was a question of days and days.

MR. LYON: Mr. Chairman, on that same. . .

MR. PAWLEY: Now, Mr. Chairman, I believe I still have the. . .

MR. CHAIRMAN: The Member for Selkirk.

MR. PAWLEY: What I wanted was some assurance that no one this evening would b inconvenienced to the extent that they would have to present a brief while the Minister that w responsible was not present. Now it may be that we have no difficulty, but on the other hand, am not sure of how many of those that wish to present briefs tonight would have preferred to that when the Attorney-General was present.

MR. CHAIRMAN: The First Minister.

MR. LYON: Well, Mr. Chairman, on the point raised by the Member for Selkirk, it is rather a nov idea in the Cabinet form of government that a particular Minister who happens to have carriag of a particular bill must, of necessity, be present, at all times, when the bill is being discusse That has never been the precedent of this House and so far as I am aware if there were a vo taken on it, it certainly would not become the precedent of the House. We operate under a Cabin form of government in which there is responsibility by the Cabinet and by the members of th government in the caucus for bills that are brought before the House. Members from time to tim may be discommoded by virtue of illness, by other appointments, by the multitude of duties ar responsibilies that they have to carry out. So there can be no guarantee at any time on any matt appearing before any committee of the House that the Minister having the carriage of the bill w at all times be present. That is nothing new in this Legislature.

The Attorney-General of Manitoba happens to carry about three other portfolios. He has a nu of other responsibilities in the overall carrying out of his duties to the people of Manitoba. He happer to be engaged today on what I think even the Meer for Selkirk would agree is a fairly comprehensiv and responsible task, namely, preliminary discussions with the other Attorneys-General of Weste Canada and the other Ministers responsible for discussing the new constitutional proposals th have been brought down by the Federal Government. That I regard as an important task and h was asked to go at the behest of the Premier of Saskatchewan, who laid on the meeting som weeks ago, and I asked the Attorney-General to go as the Chief Law Officer of the Crown to th meeting, the date of which was tentatively set recently for this night.

Now, as to the coincidence of this night with the appearance of the Attorney-General in Saskatoc attending to his other responsibilities, the government at no time can give any guarantee to mee of the public or those wishing to make representations as to when a particular bill is going to b before a committee. That to a large extent depends upon members of the Opposition, because the are free, of course, to debate the bill so long as they wish in the House. It happened by the fluxic of time and by the kind of debate that took place, that the bill in question or a series of the bil that are here tonight, the major bill, the debate on it was completed, as I recall, on Wednesd

vening, and as a result 48 hours notice being the usual requirement, this evening was set for the rst of a number of briefs to be heard on the bill.

So I would not in any way, Mr. Chairman, make any apology whatsoever on behalf of any member f the Cabinet, either of this government or of any other government for that matter, for not being ble to be present throughout the whole of hearings on any particular bill, no matter how important ıat bill may be in the eyes of the governnt or in the eyes of people who are making representations n it. . That would be an unreasonable requirement. Therefore, I think that the Chairman is being xcessivel reasonable, if I may say so, in suggesting that those persons who may wish to stand own until the Attorney-General appears. That's a suggestion that he has made. I would make the ırther suggestion that persons wishing to make submissions on the bill should feel quite free to o so tonight, because there are at least five members of the Executive Council here. There are ıembers of the Attorney-General's staff. We do operate in a Cabinet form of government, in which ıere is Cabinet responsibility for bills that are brought before the House. That being understood y everybody, the absence for two or three hours of the Minister having the carriage of the bill : a matter of no great moment.

IR. CHAIRMAN: The Member for Selkirk.

IR. PAWLEY: Mr. Chairman, in reference to the comments by the First Minister and indication ıat it was the opposition that determined when the meeting would take place, that certainly is not ıe case, or any inference to that effect. The decision to hold the meeting tonight was that of the ɔvernment. We could have proceeded with business of the House this evening, and for the life f me I don't know why, in view of the fact that the meeting in question was arranged some weeks go — I don't know the exact day or night in which the First Minister was aware that the ttorney-General would not be present this evening — but there is no doubt in my mind that on /ednesday we could have proceeded with House business tonight and have proceeded with the usiness of this committee tomorrow.

I just want to indicate that to the Chairman and, again, with the caveats that were mentioned arlier insofar as those that wish to present their briefs, be given an opportunity to do so when ıe Attorney-General is present.

IR. CHAIRMAN: The Member for St. Johns.

IR. CHERNIACK: Well, Mr. Chairman, I just wanted to note that the Premier said that it was a ɔvel thing to expect that the Minister having the conduct of a bill should be expected to be present. must say that it is most unusual in my experience for the Minister having conduct of a bill not) be present — very unusual — and I think the First Minister, who doesn't count too well either - must admit that I have been around about as long as he has been around, in terms of experience this Legislature, and I assert to him that it is most unusual for the Minister having conduct of bill of major consequence, as I believe these bills to be, not to be present.

Now, that's unfortunate, and I think he will suffer, or the legislation may suffer, because of his ɔsence. And it's unfortunate that it was a mix-up in the planning of the session and of the committees ıat the House Leader was not aware of the intended absence of the Attorney-General for this vening. —(Interjection)— Well, it's a mix-up if the . . . I would assume that the House Leader, ho plans pretty carefully, Mr. Chairman — in my experience, I have found that he plans pretty arefully — had he known that the Attorney-General could not be here this evening, I think that e would have rearranged the schedule so as to accommodate to that fact.

Nevertheless, Mr. Chairman, we are here. All members of the Committee are here, and there a substantial delegation present to make representations. As long as they know that they will ave to rely that those who speak today will have to rely on the reportage which may take place) inform the Attorney-General of what they've had to say, then by all means, if they are prepared) go ahead that's fine. I don't think you're being excessively reasonable, Mr. Chairman, I think ɔu're being reasonable to accede to the suggestion of Mr. Pawley, that they be given a choice. think that that is right, that they should be and then I think we can proceed, noting with regret) the part of some of us, that Mr. Mercier is not here tonight.

R.CHAIRMAN: The First Minister.

R. LYONS: And also, Mr. Chairman, for the record . . . with whatever humor you wish to not at the Minister is engaged on government business, on a matter that is, I suggest of equal ıportance, at least to the people of Manitoba, namely the Confederation of Canada. MR. HERNIACK: Mr. Chairman, on that point, I would think that the Attorney-General is absent on ısiness which I assume is of utmost importance, and that's why I would say that the First Minister

who's given him apparently four portfolios, which involves him in much more work than he ca obviously handle for tonight anyway, that a proper arrangement of the scheduling would have mad it possible for us to use Friday evening for some other legitimate government legislative purpos and have proceeded with this tomorrow morning. However, I say we should proceed, recognizin that Mr. Mercier is, I'm sure he's not partying somewhere, but he's on business as the First Minist says, and will be here in the morning.

MR. LYON: Notwithstanding the usual snide comments of the Member for St. Johns, Mr. Chairma I do find one element of his comments that I can agree with. I suggest that we get on with th business of the committee.

MR. CHERNIACK: Having set the tenor , Mr. Chairman, I would agree that we should procee as the First Minister suggests.

MR. CHAIAN: To the Member for St. Johns, I have been informed by the Clerk that we shoul establish what a quorum is, and to the Government House Leader, would you move a motion tha we have a quorum.

MR. JORGENSON: I move that the quorum be one plus half the membership. (Agreed)

MR. CHAIRMAN: The Member for Selkirk.

MR. PAWLEY: Mr. Chairman, in view of the size of the number of people present tonight, surel there must be some means by which chairs or some further accommodation can be provided fc the convenience of the public.

MR. CHAIAN: My other question to the members of the committee is that as chairperson, I woul suggest that we establish some rules as to how long a particular individual can speak. The Ministe without Portfolio responsible for the Task Force.

MR. SPIVAK: Mr. Chairman, I would move that we follow the precedent set in Law Amendment with a time limit of 30 minutes for a presentation.

MR. CHAIRMAN: The motion has been put forward by the Minister — the Member fc Selkirk.

MR. PAWLEY: Mr. Chairman, I believe that at the last set of hearings there was a rule simila to that, but the understanding was one that would relate to the length of time reading the brie that there could very well be a considerable question and answer period that would exceed th 30 minutes period. Also Mr. Chairman, I do belive that a certain degree of latitude is required, becaus some of the representations may very well be that which represent organizations and the complexit and the nature of the brief may at certain times require some flexibility on the part of th committee.

MR. SPIVAK: Mr. Chairman, I move that the briefs be presented no longer than 30 minutes, an that did not of course include the questioning that would occur afterwards. I think if we make decision on that, we can follow the precedent that has been established in Law Amendments, th committee has flexibility if a brief has to be extended by the very nature of the brief and we ca deal with it at that time.

MR. CHAIRMAN: Is that agreeable to the members of the committee? (Agreed) The Member fo St. Johns.

MR. CHERNIACK: Mr. Chairman, it's clear that the brief itself is not to exceed 30 minutes, th question period goes to whatever period it goes.

MR. CHAIRMAN: Can we have another motion from the members of the committee that th proceedings be transcribed? (Agreed) The Member for Selkirk.

MR. PAWLEY: Mr. Chairman, again, surely there's some way we can convenience the member of the public. There are a lot of chairs present. Couldn't the Sergeant-at-Arms make sure tha everyone standing has a chair?

R. CHAIRMAN: I have been informed by the Deputy Clerk of the House that there are no additional ɔaces back there in which they can put chairs.

R. CHERNIACK: What about the side chairs?

R. CHAIRMAN: Well, the side chairs are usually reserved for members of the Legislature. I will ke direction from the Government House Leader.

R. JORGENSON: Let them occupy those seats. 8MR. CHERNIACK: Mr. Chairman, there must ɜ 50 chairs in this room that are not occupied, surely we could accommodate them by bringing e press desk forward or permit them to sit at the back of the room. But surely there aren't as any MLAs as there are chairs here.

R.CHAIRMAN: To the Members for St. Johns and Selkirk, we are at the will of the committee, ɲatever their wish is.

R. CHERNIACK: Mr. Chairman, do you want a motion on that, that we provide additional chairs the side and the rear of the room? I'll move it, Mr. Chairman.

R. JORGENSON: Mr. Chairman, we don't need a motion, let them occupy the chairs that are ailable.

R.CIRMAN: I would suggest to members of the public that if they see some vacant chairs at ɐ sides of the table grab them quickly.

I have been presented with a list from the Clerk of the Legislature's Office of persons wishing make presentations. As I mentioned earlier, there are a number of persons that perhaps have ɨt recorded their names with the Clerk's office or the Clerk or the Acting Clerk. As I mentioned ɔo earlier, the Attorney-General isn't present tonight, but anyone wishing to make presentation ɲile he is present may defer until tomorrow or until some other time. So, therefore, I will go with ɜ list that has been presented to me. There are likely persons present who wish to be added the list. They can be added to the list through the Clerk of the Legislature. The Government ɔuse Leader.

ɮ. JORGENSON: Mr. Chairman, I just want to add one rider to your suggestion that those people ɜt want to defer can do so tomorrow, that there's going to be no one presenting briefs here tonight, d that the committee meetings were concluded as long as the evening is occupied in the ɜsentation to briefs. I don't care in what order, they can arrange amongst themselves in what ɹer they appear, but we are going to carry on the hearings tonight.

ɮ. CHAIRMAN: To the Government House Leader, I was under the impression that we would that and that if there was a particular individual that would prefer to delay their presentation til tomorrow, we would try and accomodate them, but all we can do is try.

The first person, from the Manitoba Teachers Society, Mr. Ralph Kyritz.

ɮ. KYRITZ: Thank you, Mr. Chairman.

I'm speaking here on behalf of the Manitoba Teachers' Society and on behalf of teachers. The ciety has been involved during the past few years in promoting the equal status of women, both ide and outside the teaching profession. The Society's Status of Women Committee organized rkshops on the elimination of sex bias from local and provincial programs and has been actively olved in in-service work with teachers. Towards this end, the Society is in favour of laws that ɔmote equality and which tend to lead to the development of the full potential of all citizens.

I would like to point out to the Committee that other than parents, teachers are in the most ect and consistent contact with students. As such we are most painfully aware of the psychological ɜcts on students caused by either strained family relationships or by family break-ups. While ɔroving family relationships is outside of the realm of the law, we suggest that the effects of family ɜak-ups may be alleviated if provisions are made in legislation for expedient and rapid solutions the inherent problems. Therefore, we believe that lengthy court battles are detrimental to the dents' welfare and would be in favour of legislation which reduces recourse to the courts in as ny situation as is possible.

The Society agrees with the principles espoused by Bills 38 and 39 but we are concerned with ne of the details.

With the permission of the Committee, Mr. Chairman, we would like to discuss each of the bills ɲarately. To start with, in its general intent, Bill 39 establishes the equal rights and equal

of the partners in the marriage. We appreciate Section 5(2), which recognizes in law the contributio made by the spouse who is employed in the home. We also support the mandatory exchange c financial information (Section 6), the obligation of the partners to mutual support and the provisio for reconciliation.

However, we are concerned with some provisions. We question Section 2(2) which allows a cou to deviate from the principle of mutual support. Support is a matter of necessity and should nc depend on the conduct of either partner. Where the conduct is so "unconscionable as to constitut obvious and gross repudiation of a marriage relationship", we suggest the marriage should b dissolved and its assets distributed fairly. However, for the duration of the marriage the partner must support each other. The Society would note that in business partnerships it is the contributio to the business and not the relative conduct of the partners which determines the sharing of asset We suggest in the marriage both spouses make equal contributions: One in earning the externa income, the other providing the legally recognized domestic service, and therefore we suggest tha conduct should not deny the earned right of either partner.

Section 3 also raises some problems. It seems that the right of the supported spouse to "periodi reasonable amounts for clothing and other personal expenses" is unusually restrictive in view c Section 5(2), which places a value on domestic service.

The Society realizes that Section 3 guarantees only the minimum level of personal disposabl income and that a mutual agreement could increase this amount. However, in the absence of an provision in Bill 38 for the joint ownership of family assets during a marriage — with the exceptio of Section 12(e) — that is the section having to do with dissipation, the supported spouse has n legal access to any family income other than these personal expenses. The Society submits tha they could buy this Section, if after subtracting personal expenses of both spouses, that the remainin family income were to be shared equally. But in the absence of equal sharing, we submit that th minimal provisions for clothing and other personal expenses should be increased, it is not sufficientl large.

The Society also questions Subsection (j) of Section 5(1). Section 5(1) indicates the condition which a court could consider in determining enforcement orders. Subsection (j) notes that the lengt of time that the marriage has existed may be considered as one reason affecting the order. Th Society maintains that support should not be dependent on the length of time of the marriage; neithe the obligation to support a spouse nor the need of a spouse to be supported increases with th longevity of marriage. And as such we suggest that rights to equality to support, not with divisio of assets, but to support should be independent on the length of time of the marriage.

Parts II and III of Bill 39 provide generally acceptable and fair enforcement procedures for chil support and for the other provisions of the bill.$

Unfortunately, experience indicates that the supported spouses may encounter difficulties nc in obtaining, but in collecting court-imposed settlements. Therefore, the Society proposes that th government consider increasing the penalties noted in Section 25(3) and in Section 26. We sugge that a $500 fine or a 30-day jail sentence in terms of today's costs is not sufficient to enforc compliance with the orders. An alternate solution may be that the government might wish to purus more effective inter-provincial enforcement procedures or possibly they should establish governmental collection and disbursement agency.

With respect to Bill 38, the Society commends the government for including bank accounts use for family household expenses in the definition of family assets. The Society also appreciates th principle established in Section 6(2) and 6(3) giving spouses the "equal right to the use and enjoymer of" the marital home and family assets, but submits that this principle should have been extende to include the right to joint ownership. We are also happy with Section 6(6) to 6(9) which reduc a number of options which the spouse has a greater access to assets may have utilized to circumver a fair sharing of resources.

However, we consider Section 13(2) as a problem area. This Section empowers the courts t vary from the equal-division principle for commercial assets. The liberal definition of commerci assets and the extensive judicial discretion may detract significantly from the equal division princip with undesirable results. We fear that the expectation of judicial discretion may increase the utilizatio of the courts by some spouses, while on the other hand, the fear of litigation may prevent othe spouses from seeking the dissolution of an intolerable marriage with the result that children w continue to be exposed to severely strained family relationships.

Although the judicial discretion in Section 13(2) should be reduced, the Society proposes tha in one respect the power of the courts should be increased. Section 6(1) prevents the vesting c "any title to or interest in any asset of one spouse in the other spouse." We are afraid that unwillin to break up a sound business, the courts may award the previously supported spouse a unrealistically small share of the value of a business. Therefore, the Society recommends that cour be allowed to impose shares or partnerships in a business where a fair cash settlement woul otherwise not be achievable.

If I may simply state it in other words, Mr. Chairman. I am talking basically here about family ssets, which may be just one large business which is difficult to separate, and where also on the ther hand a large cash settlement to the supported spouse may incur too large a liability on the usiness. In such cases, I am afraid that the courts might then give a smaller cash settlement in rder to keep the business alive. In that case we suggest a joint ownership or partnership or some iare in the business might be an alternate way of doing it.

While the Society agrees that some limited judicial discretion may be necessary to dispose of ie commercial assets, it is opposed to such discretion in the division of family assets as proposed Section 13(1). By definition, family assets are those assets which were accumulated through the iforts of both partners. Therefore, both partners should have an equal share and no exceptions iould be allowed. It may be argued that by virtue of Section 13(1), the courts may allocate a greater iare to the spouse who raises the children. However the need for support should not be confused ith the right to assets. Bill 38 determines the division of assets, Bill 39 defines support. Therefore, ection 13(1) of Bill 38 should mandate the equal division of family assets and Bill 39 should legislate imily maintenance if necessary.

The Society is thrrefore concerned that lengthy litigation during a marriage break-up may have dverse effects on children. Litigation can be reduced if fewer exceptions are provided in law. ' lthough litigation may be necessary in the division of some commercial assets, especially large ies, the Society can see no purpose in subjugating family assets to the litigation process.

The Society realizes that the number of court actions could be reduced and the limitations of ie law could be circumvented if all spouses were to sign agreements designating the disposition assets, which is the present provision in the law. Ideally, such agreements should be executed the commencement of marriage or prior to the emergence of disputes. However, in the absence an extensive informational or educational campaign, it is unlikely that a majority of spouses will ndertake such preventive measures.

Some spouses, full of hope at a commencement of marriage, may consider such agreements s sort of a lack of trust in each other. Others may be ignorant or uninterested in the detailed ovisions of the law when such provisions are deemed to be unnecessary, and as such we submit at the law must protect those who cannot reasonably be expected to protect themselves. It would e unrealistic to expect partners in a new marriage to make adequate provisions for the eventual eak-up of the marriage. And for these reasons we suggested the points we made just cently.

Therefore, in conclusion, the Society proposes that maintenance should not be affected by relative nduct or by the length of marriage; that the right to co-ownership should be extended to include e period of marriage; that the extent of judicial discretion in a division of commercial assets should e reduced; and that a division of family assets should not be subject to court action. And we believe at if the government were to agree to these, the number of litigations affecting family break-ups ould be reduced and that is our concern; namely, their effect on children.

Therefore, Mr. Chairman, Ladies and Gentlemen of the Committee, I am very grateful for having is opportunity to make this presentation to you.

R. CHAIRMAN: Any questions from members of the committee? Mr. Cherniack.

R. CHERNIACK: Thank you, Mr. Chairman. Mr. Kyritz, there are just a couple of questions I would e to ask. I note that in the main your recommendations are so far not acceptable to government. nerefore, I just want to deal with two relatively minor matters.

On Page 2 you deal with the exchange of financial information, and since the teachers' group an employee group, I am wondering what your reaction is to the change that is proposed in this w from the existing law on the statute books, which provided, as I recall it, that not only must spouse give information of income to his or her spouse but that the employer and the accountant the earning spouse is also required to give that information on request. This is not included in e present proposed legislation, except by a special application to the court, an Order of the ourt.

As a representative of an employee group, would you say that the teachers would object to their nployer being required to give information to the spouse.

R. CHAIRMAN: Mr. Kyritz.

R. KYRITZ: Mr. Chairman, I would probably say that you're asking for a . . . employer to give information; I could see nothing wrong with the court action in order to liberate that. So I don't ink we could see an objection to going to court first, before the employer gives up the ovision.

MR. CHERNIACK: Okay, the next question, Mr. Chairman. On Page 5 you refer to Section 6(1) of The Property Act, Bill 38, and possibly somebody from government would better interpret it for you what 6(1) refers to, but you speak of it in relation to business and a share in a business, and I sort of related it to 6(3), which I read "together" means that each of the spouses have an equal right to the use and enjoyment of a family asset but that spouse who is a registered owner of any of the family assets is free to sell it.

In other words, if there is, let's say, a summer home which is a family asset, they both have a right to joint use of it under 6(3) but in spite of that the person who actually owns the summer home may proceed to sell it without reference to the spouse. So I see it in relation to the family assets and not business. Would you care to comment on your reaction to my view of it?

MR. KYRITZ: Mr. Chairman, I . . .

MR. CHERNIACK: I'm sorry, Mr. Chairman, I'm not referring to a legal interpretation, I am just asking what should the principle be. Do you see a difference between the right to ownership of a family asset during the term of the marriage, as compared with business?

MR. KYRITZ: Mr. Chairman, I think our brief stated already that family assets should be jointly owned during marriage, in any case. So I cannot really see any point in what you are saying. What I was attacking in Section 6(1) was that where a marriage breaks up and the court makes a settlement that the court should also have the right, as I mentioned earlier verbatim, should also have the right to impose some kind of share in the business, if that is the best way of settling.

MR. CHERNIACK: Thank you.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Chairman, through you to Mr. Kyritz. Mr. Kyritz, one question on a technicality. On the bottom of Page 4 your brief says in the second last sentence, "The liberal definition of commercial assets and the extensive judicial discretion will detract significantly from the equal division principle with undesirable results."

I noticed that in your presentation to the committee you delivered that contention as "may" rather than "will". You said that that definition "may" detract significantly. Since the Attorney-General is more likely to be reading the transcript of these committee hearings than the individual presentations that are before us at the present time, I wonder if you would clarify that point of whether you have changed your position. I think you would agree there is a significant difference between "will" and "may".

MR. KYRITZ: Mr. Chairman, you're probably correct. I guess in either case you're talking about detraction from the equal division principle. "Will" is a futuristic term in this case, predicting that something will happen in the future; "may" is the same thing. I'm not that hung-up on either word I will stand by the . original "will" if in fact that's what the text says, and I don't think it will make that much difference, especially since the next two sentences explain why in fact this would occur namely that people would go more often to their courts and therefore, of course, there would be more court actions.

MR. SHEAN: Well you would agree, Mr. Chairman, that the use of the term "well" is more declamatory and more definite, and you are standing by that position in your submission, which you intend will be read in transcript form, and I'm sure will be read in transcript form, by the Attorney-General.

One other question, Mr. Chairman, relating to the Society's contention and position having to do with the consideration of the length of time of a marriage. This was an area that generated considerable concern for many of us when the original legislation was being considered under the previous administration a year ago. There were some strongly held views and in fact, at that time if memory serves, there was consideration debated as to whether the length of time of marriage should be one of the circumstances to be considered in situations that would be dealt with under this legislation. Would you not agree that the length of time the marriage can have, provided it is a fairly extreme length of time, can have some significant effect and impact where the capacity of a spouse to support himself or herself is concerned, by virtue of the fact that that particular spouse might have been out of the work force, out of the market, so long as to have incapacitated himself or herself to compete effectively?

MR. KYRITZ: Mr. Chairman, I agree with that. The point is that is covered. I would say all those

tuations for the length of marriage may affect the spouse's ability to once more enter the labour ıarket, all those situations are covered in the previous sections. What we are ıngth of marriage as one particular item is not necessary in the legislation because what we are ılking about is only the right to support, not the right to division of assets. That is why we suggested ıat in this case, (j) could very easily go out without losing anything from the legislation. That's why differentiate between the support. I did not make that same argument in terms of division of ssets.

R. SHERMAN: I understand that, but you do make that clear differentiation or distinction when ıpport is being considered.

R. KYRITZ: Yes.

R. SHERMAN: You obviously feel that the same imperative does not apply in those two tuations.

R. KYRITZ: In support, I can see no reason why whether a person was married for two months for 20 years, what that has to do with their right to being supported and to living normally. The ıggestion you made earlier is, I think, covered under (h) and every other suggestion I have heard ɔm people up to now have been covered by the previous sections. Tha's why I tend to believe at (j) is not necessary and I'm afraid that the court might take this as maybe the sole discretionary ause, because a court may take any one of those, and that's why I would prefer not to see that ıction in there, because the other ones take care of all the situations. That's the only point we're aking.

R. SHERMAN: Thank you, Mr. Chairman.

R. CHAIRMAN: Are there any other questions to Mr. Kyritz? If not, thank you, Mr. Kyritz.

R. KYRITZ: Thank you, Mr. Chairman.

R. CHAIRMAN: The next person on my list is the representative of the Junior League of Winnipeg, s. Pat Cooper, or Marjorie Trenholm. For the Hansard, would you please identify yourself.

S. PAT COOPER: I'm Pat Cooper from the Junior League of Winnipeg. The Junior League of innipeg has advocated on behalf of a just and fair family law for two years. Our efforts have been ıited to written submissions only. We have not sought interviews with MLAs, nor with specific ıbinet Ministers. We have not lobbied physically nor participated in demonstrations.

My coming before you with a public brief from the Junior League of Winnipeg is a first for this ıditionally very conservative organization. This brief represents the opinion of some 200 women ıo have debated at length for two years the basic principles they want to see embodied in the w Manitoba family law. Our brief is not only on behalf of the women of our organization, but behalf of all citizens who are unable to cope with the unresponsive bureaucracy and who need sistance in securing what is required for a healthy life.

Our political system is not composed solely of elected representatives. Interest groups and ɔbyists abound. Those with power, money, influence, knowledge, status are able to protect their hts and interests either through their own interventions or by hiring professional spokepersons act on their behalf. However, the poor, the disadvantaged, the uneducated and the unskilled are s adept at representing their interests and protecting their rights.

For 50 years the Junior League in this community has worked quietly on their behalf. However, s organization has been slow to discover that the intention to do good is not enough to ensure ıt good is actually done. The Junior League volunteers now want to know that their labours make difference, an impact. We therefore come forth with our first public submission in 50 years. I'll al with The Marital Property Act first, Bill 38.

The Board of the Junior League of Winnipeg **ommends the Government of Manitoba for not accepting the recommendation of the Family Law Review Committee regarding unilateral opting out of equal sharing of marital assets. The Junior League feels it would be unjust to create a law which does not apply equally to all Manitobans as well as contradicts your stated belief of marriage as an equal partnership.**

The Board of the Junior League is concerned, however, that in Bill 38, Section 6(1)(2)(3), the

owning spouse may still arbitrarily make decisions concerning the disposal of family assets othe than the home, which is now protected by The Dower Act. By stating that the non-owning spous has no management rights during the course of marriage, means that the marriage is not an equ partnership. The Junior League is concerned that the non-owning spouse has only two recourse to exercise his or her right to an equal division of assets, that is, the break-up of the marriage t assert rights to property, or prove dissipation.

The Junior League concurs with the arguments for immediate sharing of the family home as state by the Family Law Review Committee and the Junior League believes the same arguments are relevar to sharing of family assets. The report refers to the right to share family assets as "paper rights satisfying a "psychological need." The Junior League cannot agree with this assessment. If famil assets were immediately shared, the rights of the hitherto non-owning spouse would be real rathe than perceived and this reality would further the contention of the legislation that marriage is a equal partnership. The recognition in law of co-ownership does much more than satisfy psychologic need. It legitimizes the principle of equality of marriage partners.

The perception of difficulties as stated in the review committee's recommendations in th implementation of immediate sharing ought to be reason for solving them rather than for denyin equality of asset ownership during marriage. The Junior League cannot accept that Manitoba is nc equally endowed with legal ability as California, for example, where community of property and joir management are in force.

The right to share in the property of the income-earning spouse does not arise from mutu participation in the judgment and skills required to earn the income that produced the propert The right to shared participation in the economic property benefits accruing to the spouse wh specializes in financial provision arises from the fact that the other spouse, although under no leg compulsion on the basis of sex, has voluntarily assumed the income-earner's portion of the domesti responsibilities, thereby freeing the earning spouse to devote full time to the enterprise of earnin money. Property sharing is not based on a contribution of economic skills or judgment to th income-producing activity, but rather a contribution of time by the domestic spouse to dischargin the domestic and parenting responsibilities of both spouses.

The Board of the Junior League of Winnipeg would like the wording of Section 11 concernin foreign assets changed from "may be" to "shall be".

The Board of the Junior League of Winnipeg is deeply concerned with Section 13(1) and 13(dealing with judicial discretion to vary equal division of family and commercial assets. The broa judicial discretion allowed repudiates the principle of marriage as an equal partnership, a princip upon which revised family law must certainly be based. This is a reversion to the status quo. is because judicial decisions have favoured one spouse over another that a 50-50 sharing in th law is being recommended by law reform commissions across the country.

In Manitoba, wives receive 12 percent of their husband's net worth upon divorce. I understan that that is not a figure that came from any realistic survey or a survey that could be relied upo Itis unlikely that this will change in the near future.

The Board of the Junior League is concerned that the broad judicial discretion as outlined i 13(1) and (2) will cost dearly in financial and emotional terms. One of the objectives of any la is to enable people to know with some degree of certainty what are their rights and obligation A broad discretion carries with it the inability of either lawyer or litigant to predict how that discretio will be exercised by a particular judge on a particular set of facts. Judges are only human — the vary widely in their views on the weight to be given various factors. Marital breakdown does nc usually bring out the best in people. Fairness and selfishness are not commonly noted. It is therefor obvious that the amount of litigation and its cost in financial and emotional terms will inevitab increase due to the broad discretion given the court in this Act.

The Junior League of Winnipeg in March, 1978, voted by a three-quarter majority vote to acce the need for narrow discretion as a fail-safe device, to give protection in unforeseen and very unusu cases. To extend the discretion significantly would do violence to the spirit of the Act and the publ commitment of this government to the basic principle of equal sharing.

The Family Maintenance Act, Bill 39.

The Junior League of Winnipeg is concerned with Section 2(2) which introduces a wide consideration of conduct in the decision of the amount of support than was contemplated in th original bill. Though it is obvious the government is attempting to limit fault to extreme cases is still left unsure as to what case laws will develop around "obvious and gross repudiation of th marriage relationship." Fault is seldom, if ever, one-sided in marriage breakdown. Fault should b considered in only very extraordinary circumstances in setting maintenance payments. Maintenanc should be based on need and ability to pay of both spouses.

The Junior League of Winnipeg is very concerned that enforcement proceedings must b improved. Maintenance payments should be made a debt to the court with automatic enforcemei proceedings. Consultation with the Federal Government should be set up immediately to expedi

)cation of defaulters, through access to addresses through social insurance numbers or through ıcome tax returns.

Section 25(1): An order under this Act "may require" the person against whom it is made to eposit a specified amount in court or to enter a bond — should be changed to ' "required" — ot made a matter of choice.

Thank you.

IR. CHAIRMAN: I thank you very kindly for your presentation.

The next person is from the Young Women's Christian Association, Dianne DeGraves.

IS. DEGRAVES: Mr. Chairman, honourable members, I am Dianne DeGraves from the YWCA.

The purpose of the Young Women's Christian Association of Canada obligates its member ssociations to oppose in justice, to respond to need, to effect social change. As a result of this bligation, the YWCA of Winnipeg, a member association with a membership of 4,000, responded) the Working Paper of the Manitoba Law Reform Commission in the spring of 1975. Since that me it has responded at every opportunity afforded the public for input in the area of Family Law eform. They YWCA has taken part in a considerable number of lobbies with government members, ıcluding Premier Lyon and Attorney-General Mercier. All of these efforts were undertaken after ıorough research and deliberation.

In keeping with our interest and concern, the YWCA wishes to make known to the government s apprehension regarding Bills 38 and 39. It is not difficult to become entangled in a lengthy iscussion of peripheral details of the legislation. For this reason we would reiterate, at the outset, ıe principles which we believe are absolutely essential to Family Law Reform.

The first of these principles is that women are independent human beings of economic worth ɔssessing economic capability. This is a departure from the ageoold concept of women as property f or dependent upon their husbands or fathers. The second of these principles is that marriage a partnership: not only a social partnership in which people live together providing caring concern ıd conveniences for one another, but also a partnership in the true sense of the word — an ɔnomic and legal partnership as well as a social one.

Equally important is the acknowledgment that the roles in marriage of home management and, here applicable, child care, are vital and therefore of equal value to the role of wage-earning. ccordingly, all the products of a marriage must be shared equally between spouses.

The rewards of a marriage are many. A large share of them are invaluable and cannot be ırchased with money. No one would deny one spouse access to children of a marriage simply ecause that spouse's role is not performed in the area of child care. Likewise, access to the material ɔquisitions of a marriage ought not to be denied to a spouse because that spouse's role is not ɛrformed in the area of wage-earning.

If equal sharing is not desired by those entering a marriage we would suggest there are two ternatives open for those not wishing to share equally. Such persons may mutually write their own arriage contracts, or they may choose to stay single in order to keep what they acquire for ıemselves. It is not acceptable that the self-centered interests of these persons should dictate the ınor of legislation governing marriage.

The institution of marriage is basic to society as we know it. Most individuals enter marriage ɛlieving that sharing is basic to the institution. Many spouses have found to their surprise and ɔrrow that the view of family law is otherwise. It is because of recognition of the inequities in that w that we are here today.

We commend the government for its recognition that all assets, including commercial assets, ıould be shared by partners of a marriage.

We commend the government for stipulating in Section 12 of Bill 38 that spouses have a right an equal division of assets.

We commend the government for its stand that the legislation should apply to all Manitobans, ıd for its rejection of the concept of unilateral opting out of the legislation.

However, the YWCA is distressed that other areas of the legislation introduced by the government ll not allow for the implemenation of the principles of marriage as an equal partnership, the equal ılue of the role of home management and child care to the role of wage-earning, or equal sharing assets acquired during the course of the marriage. These principles, we submit, are not inherent Bill 38 by virtue of the fact that the legislation allows for broad judicial discretion in the sharing commercial assets, and that the legislation defers sharing of any assets until marriage breakdown. hat the legislation says to marriage partners is: Your marriage will be a partnership in the eyes the law when your marriage breaks up, maybe. It all depends on the judge deciding the ıse.

One reason given by the government for not including immediate sharing of family assets in Bill ı, namely that no other province in Canada has immediate sharing, is a hollow one. One of the

deficiencies of the reports of the Manitoba Law Reform Commission and the Family Law Review Committee, and of those responsible for producing and presenting Bill 38, is the lack of adequate consideration of jurisdictions in which joint community of property is the law. Such deficiency has been pointed out to both the present and previous governments on several occasions.

The other reasons given by the Attorney-General for deferring sharing are equally unconvincing. Tax problems, creditor's rights, and interference in the lives of married couples are poor excuses and beg the issue. In early April the Minister of Finance of Canada indicated that technical changes will be made to the Income Tax Act to accommodate provincial laws governing marital property. Legislation can be written to indicate that immediate sharing will take effect contingent upon action of the Government.

Creditors who acted in good faith were not liable under June, 1977, legislation. Third party liability was limited to fraud or collusion. The indebtedness was an obligation between spouses.

The excuse that the government is loath to interfere in the lives of cohabiting married persons is the most puzzling reason of all. Any legislation is an interference in people's lives. The point is how that interference affects people. If it results in inequality, it can justly be called undesirable interference. If, on the other hand, it results in equality, it is difficult to believe that fair-minded people would regard such legislation as interference. Present laws interfere in married persons' lives People marry thinking they are entering a partnership, only to find that the law imposes a regime of separation of property, not one of equal sharing. The YWCA welcomes interference of the kind that promotes the principle of marriage as a full and equal partnership.

There are those who argue that immediate sharing is a "paper right" satisfying a psychological need. For those marriage partners enjoy economic independence, immediate sharing may well be an illusion. For those who do not enjoy economic independence, the right to share is a reality that legitimizes equality in marriage. Most married women are financially dependent and do not have an equal voice in family management. Immediate sharing of family assets is an essential step towards partners having the right to an equal voice in marriage.mm

Simply because some difficulties are foreseen in immediate sharing of family assets is not sufficient reason to disregard doing so. This attitude is unworthy of progressive legislation seeking to redress the inequities in the present law. Both the Manitoba Law Reform Commission and the Family Law Review Committee recommended immediate joint ownership of the family home. If immediate sharing was viewed as both desirable and possible in the case of the marital home, it is difficult to understand why it is not desirable and possible for all family assets.

An equally distressing area of the legislation is that governing wide judicial discretion of sharing of commercial assets. Why are family assets subject to a limited judicial discretion while commercial assets are subject to a discretion so broad that it virtually eliminates equal sharing? In law, the specific overrules the general. This means that a consideration by the courts of Section 13(2) Discretion to Vary Equal Division of Commercial Assets will result in a different decision in each case. The introductory clause gives the court the right to consider "any circumstances the court deems relevant", coupled with ten wide-open exceptions to equal sharing. The presumption of equal sharing in Section 12 is an example of a "paper right", a right which disappears as the court weighs all the factors the law requires to be weighed as evidence.

The YWCA is concerned that broad judicial discretion in the sharing of commercial assets will result in increased litigation. The lawyer of any client owning commercial assets would not be performing professionally if advice was not given the client to contest the case, given the exception to equal sharing.

The YWCA is also concerned because the history of judicial decisions in the area of family law has discriminated against women. The equal value of work contributed in the home to that performed in the labor force will not be recognized by the court. We are concerned that this discrimination will continue. Section 13(2)(i) refers to the "effect" of housekeeping, child care, and domestic responsibilities on the ability of the other spouse to acquire any commercial assets, but does not direct that such work be regarded as an equal contribution.

Any spouse associated with developing commercial assets is using the resources of the marriage partnership in his or her aspirations. These resources include at least one, but most often all of the following:

(a) moral, emotional, intellectual and/or physical support from the other spouse as well as any respective related hardships,

(b) most likely a great deal of time spent away from the family,

(c) homemaking and family management functions most likely contributed by the other spouse thereby freeing the time and responsibility of the income provider,

(d) most child care and parenting functions, unfortunately in our society, are largely pushed onto the mother as her primary responsibility, again freeing the father even further,

(e) in most cases, family monies and assets are used as capital or collateral to acquire and/or develop commercial assets,

(f) the "lean" years in the development of commercial assets can often see the family do without arious necessities,

(g) spousal support through fostering business contacts, friendships, and social events to promote ıe commercial development,

(h) spouse's co-signature often required by the bank in order to obtain loans.

Strangely, Section 13(2)(i) makes no mention of the spouse who fulfills the roles of home ıanagement and child care and, in addition, earns wages in the labor force. Over 60 percent of ɾomen in the labour force in Manitoba are married women. A recent release from the United Nations ıdicates that married women in the labour force continue to do 80 percent of the work done in ıe home. The wages earned by these women, if not used as a direct contribution to the acquiring f commercial assets, are certainly an indirect contribution when used to pyy household and child are expenses, while the wages of their husbands are freed to acquire commercial assets.

Because the legislation continues the regime of separation of property during the course of the ıarriage, the name on the title to the asset will determine ownership. Because the legislation does ot presume that marital role functions are equal, the penalty will fall on the spouse who remains ı the home and whose name does not appear on the title. Because the legislation does not make ɛference to work other than "domestic", the penalty will fall on the spouse who performs the roles f home management and child care while also working in the labour force and contributing to family ıpport. This is no change from the present laws and, given the exceptions to equal sharing in ill 38, the "presumption of equal sharing" the Attorney-General has emphasized becomes a figment f imagination.

The YWCA is deeply concerned that the concept of fault has been reintroduced into the Family laintenance Act. First, clarification is needed concerning two points. Section 2(2) along with Section 1) seems to apply to conduct both during the marriage and at marital breakdown. Is it the intent f the government that Section 2(2) apply during marriage? Section 5(1) has broadened the area factors to be considered when making a maintenance order to include ". . . all the circumstances the spouses. . ." and not only the 10 factors listed. Does the government intend that conduct spouses is a circumstance to be considered by the court?

The net result of allowing fault to be considered in granting maintenance orders is that the ɛpendent wife suffers. It rarely happens that the courts increase maintenance orders because the ısband is at fault. However, if the wife is at fault, maintenance is reduced or denied altogether. ow many economically dependent wives have access to a lawyer to press for their right to aintenance? It is generally accepted that faul finding in separation procedures bears a large easure of responsibility for the poor collection record of maintenance orders. In Canada over 75 ɛrcent of maintenance orders are either not collected or not collected in their entirety.

The Attorney-General expressed concern that no-fault maintenance would be a foul example to ıildren of a marriage; that children would be influenced by the fact that the court did not punish parent financially because of conduct in marriage. The YWCA finds this argument unrealistic in at children are not likely to concern themselves with the amount of maintenance granted one parent ɔm the other parent except insofar as that amount may be insufficient for the support of the recipient ıɾent. This insufficiency will most likely be felt directly and/or indirectly by the child, a situation ıtagonized even more if the parent with reduced maintenance is forced to go on welfare.

On the other hand, the damage done to children who must testify against parents is well known. ıe parent 'at fault' nevertheless continues to be the parent of the child. This adds to the burden guilt, insecurity and emotional upset the child experiences when the marriage of parents breaks ɔwn.

The process of fault finding is inhumane and serves to increase litigation and to justify self-seeking ngeful motives. Its retention in the Family Maintenance Act serves only one purpose - to punish. is human to ascribe blame when things do not work out as one may have planned. But to give ɡal backing and encouragement to the mutually destructive process of attributing and establishing ame upon marriage breakdown is counterproductive and cruel. Contesting spouses will be forced endure added prolonged hostility in order for the court to attach a monetary value to a visible t of fault.This entire process is irrelevant and bears no relationship to the present needs of those ouses when the marriage ends. The need for maintenance arises from the functions performed the marriage. To deny support where there is demonstrable need and ability to pay burdens the ɛpayer needlessly with a responsibility that principally belongs to the partners of the ıɾriage.

The YWCA understands that the reason the government party voted against the Family ıintenance Act last June was because the Act did not make adequate provision for maintenance llection. For this reason the YWCA is astounded that Bill 39 does nothing to improve enforcement ɔhniques outlined in the suspended legislation of June 1977. This is an area of Family Law that ɻuires immediate attention and the YWCA of Winnipeg urges the government to make collection maintenance orders a priority. The fact that a great majority of maintenance orders are in some

measure of default flies in the face of justice — particularly for women.

The YWCA entreats the government to reconsider its stand that family assets not be share equally during marriage. We request that family assets be shared immediately, in order that th law view marriage positively as an equal partnership while the marriage exists. The law must no view marriage negatively — as a partnership only when the partners are going their separat ways.

The YWCA appeals to the government to enact legislation with honesty and integrity, legislatio which considers all assets similarly, whether family or commercial. To this end judicial discretio must be limited if equal sharing is the goal.

The YWCA urges the government to eliminate fault in the determination of maintenance order and to provide for adequate enforcement techniques in the collection of maintenance orders.

With these changes, Family Law in Manitoba will be fair, just and equitable to both marriag partners. Without them, little progress will have been made.

Thank you.

MR. CHAIRMAN: I might mention to all persons present that we must conduct ourselves in th same manner in this committee as we would in the House, and that is that we must not hav demonstrations.

Are there any questions to . . . —Interjection)— As one person said, that's only for th strangers.

Are there any questions to the last person that last spoke before us, if not I will call on Georgi Cordes.

MS. CORDES: My name is Georgia Cordes.

Mr. Chairman, it's my impression that the purpose of these public hearings is to receiv submissions from citizens for the purpose of improving proposed legislation. I would think that an such improvements would, in all likelihood, have to be initiated, in this case, by the Attorney-Genera Therefore, I strongly object to the absence of Mr.Mercier from tonight's proceedings.

Mr. Chairman, I would prefer to present my brief when the Attorney- General is present, howeve because I do have pre-school children, I'm not in a position to allow my name to be put at th end of the list of submissions, thus never being sure of when my presentation will take place. Sinc I do bear the major responsibility for daily care of my children, you can understand difficulties tha can arise for securing adequate, full-time child care during the course of these hearings. Therefor I request that my name be put at the first of the list when the Attorney-General is present hopefull tomorrow.

MR. CHAIRMAN: I might say to the person making the presentation that that is up to the will c the committee as to whether your name goes first on the list for tomorrow or at the end of th list that is in front of me. The Member for St. Johns.

MR. CHERNIACK: Thank you, Mr. Chairman. We've heard four delegations, and this is the fir that has made this request. I would move that we comply with the request and agree that she b heard at 10:00 o'clock tomorrow morning assuming the Attorney-General will be here.

MS. CORDES: Excuse me, could I ask the gentleman passing out the briefs, if he could pleas collect them, because if I don't present tonight, I'd rather have them with me until tomorrow. Sor about that.

MR. CHAIRMAN: To the members of the committee, what is your wish?

MR. CHERNIACK: I made a motion, Mr. Chairman.

MR. CHAIRMAN: To the person making the presentation, I would say that at 10:00 tomorro morning, you will be first.

MS. CORDES: Thank you very much, Mr. Chairman.

MR.CHAIRMAN: The next person on my list is Ruth Brown. Is there a Ruth Brown present?

MR. CHERNIACK: There sure is.

MR. CHAIRMAN: Mr. Cherniack says, "There sure is."

RUTH BROWNE: Before I begin my presentation, I would like to add to the mention made by those people tonight, to object strenuously to the calling of these hearings on such an important subject during the absence of the Attorney-General. I will continue with presenting my brief because Mr. Mercier has heard my suggestions in several different forms. However, I cannot help but emphasize that this legislation, I believe, will be the most important that this government will deal with. It is probably the most significant that has been dealt with since women have obtained the right to vote in 1916, and in view of that, I believe it should have been given consideration in setting the hearings. I had hoped to appear before you today to congratulate you on the introduction in the Manitoba Legislature of just and equitable family laws. It would have given me great pleasure to have no criticisms to make concerning Bills 38 and 39. Regrettably, this is not the case.

However, I would like to mention the good before the bad.

You are to be commended particularly on four points in your legislation:

First, you have provided for sharing of all assets, not , just sharing of family assets, thereby recognizing the value of the contribution made by the spouse who cares for the home and family, to the acquisition of assets. That all assets acquired during the marriage should be shareable is just and equitable.

Second, you have rejected the insidious provision, favored by some, regarding unilateral opting out. To introduce such a clause, would have left unprotected those who stand most in need of protection — wives in long-term marriages. The provision that you have made recognizing existing agreements and allowing mutual opting out is fair and reasonable.

Third, you have left intact the factors regarding setting of maintenance contained in the suspended legislation — most notable financial need and ability to pay of both spouses. I also support the idea of encouraging spouses to become financially independent.

Fourth, you have made the law applicable to all Manitobans, whether married before or after the coming into effect of this Act. Like unilateral opting out, an unequal application of the law would have worked injustice on those most in need of the law's protection. Here endeth the congratulatory section.

Many Manitobans, including myself, are dismayed to find ourselves here again — Family Law hearings have become, it seems, an annual event in Manitoba. So long as legislators continue to ignore public demands for justice in family law, so long will we continue to appear before you. Rest assured, we will not disappear!

When you suspended the legislation passed last June, you assured the public that the suspension was for the purpose of "cleaning up" the legislation. You have certainly cleaned it up — in doing so, you have swept some of the principles right out the door, principles which, we were assured, you would not alter.

I would like to address myself to three of these "swept-out principles": (1) immediate sharing of family assets; (2) broad judicial discretion in sharing of commercial assets and; (3) the re-introduction of conduct as a factor which "may be considered" in determining spousal maintenance.

The immediate sharing, or right to sharing, of family assets — the home, the furniture, family car, etc., has been dismissed by your review committee, among others, as a paper right. It is no such thing.

Marriage should be a partnership of equals — socially, psychologically and economically — during its course. If we are to recognize that partnership in law, as well as philosophically, then that presumption must be written into the law. It is not good enough to presume that most marriages are, in fact, equal partnerships. They are not! The spouse who earns the money has the power, whether he is a benevolent ruler or not, and this is not the issue. The fact that he has the power to be a despot, however kind he may be, is the issue.

Trying to describe to the feelings engendered by a state of dependency to a group of men who are not dependent and who are not likely to be dependent, is a difficult undertaking. Mrs. Price, perhaps you can help us in this particular instance. Pardon?

MR. CHERNIACK: She may herself be independent.

MS. BROWNE: She is now, but I think at one time she was not.

The following analogy may help you to conjure up the feelings evoked in women by their dependent situation. Remember when you were seventeen? (The age may vary but the condition existed for most of us.) You were approaching adulthood, feeling independent, but still very much dependent on your father for support.

When you needed money, you were probably going to get it, but you had to ask. When you wanted to use the family car, you probably could get it, if you didn't ask too often, but you had to ask. When you needed a new suit for graduation, you were probably going to get it, but you had to ask.

Married women who do not work outside the home are still in that position through their adul life. Can you imagine yourself at age 35, 40, 50, 60, still in that position?

It does not matter how generous a woman's husband is, she is still in the position of that teenage — she must operate within the rules acceptable to the spouse with the power or risk having he request refused, no matter how reasonable it may be — she still has to ask!

Women are contributing economically to their families and to society by the work they do responsible, adult work. This contribution should be recognized throughout the course of th marriage, as entitling them to equal rights in the decision-making and the acquisition and dispositio of the family assets. If you do not provide for equal ownership, the dependent spouse is place in an inferior position, with no say in the management of important family assets.

The only recourse a dependent spouse has under your legislation during the course of th marriage, is to prove dissipation. A spouse dealing with assets against your wishes, does no necessarily mean that you can prove dissipation, so there is no legal recourse — if you have n title in law to an asset, you have no say in its disposition. To declare an interest in assets then the dependent spouse must separate and ask for an equalization. The law should not require spouse to take such drastic steps to assert claim to what is rightfully theirs by virtue of their contribution to the marriage.

On May 29th, Mr. Mercier said in the Legislature that there would be deferred sharing of a assets. Immediate sharing of family assets would have tax implications, creditors' rights would b threatened, and something — I'm not sure what — would happen to security required by banks Maybe it was going down the kitchen sink, but it didn't seem to be explained.

Mr. Chretien announced in his April budget speech, that the tax laws would be revised to provid no capital gains penalties deriving from inter-spousal transfers of assets, made in accordance wit provincial marital property laws. And I emphasis that last thing because I think that's a significan point. The budget has now received Royal Assent. Those were typed before this was passed. Ther is now no reason why immediate sharing cannot be included in this bill; the problem of tax implicatio is an excuse, not a reason. If this Legislature does not make provisions for immediate sharing betwee spouses, transfer of assets made during the course of the marriage will not be made in accordanc with provincial marital property laws, and hence will be subject to capital gains. You are creatin a problem for spouses who do wish to transfer assets by omitting the provision for immediat sharing.

You are not unduly interfering in the lives of married persons living together, since they are fre to opt out, if they mutually agree to order their lives in ways other than equal.

Creditors' rights must not be threatened. What about dependent spouses' rights? Under th suspended legislation, and under your proposed bills, creditors' rights were honoured before an sharing took place. What's the problem? If an ongoing marriage is a partnership, each partner ha the right to pledge the credit of that partnership. This is not new or different. Creditors have alway collected from whichever spouse is available, and they weren't particular about whose name wa on the title. The only time a creditor's rights would be questioned, would be if that creditor ha participated in fraud. Surely this is only just.

As concerns bank security, I fail to understand why immediate sharing of family assets become a problem. Business has not ground to a halt because of the provisions of The Dower Act. Loan are still made, repaid, or called with the attendant penalties, within The Dower Act provisions. Bot spouses should have the right to have some say in the management of the family assets. One spous should not be able to deal unilaterally with these assets.

The suspended Marital Property Act in no way gave a non-owning spouse management right to any commercial asset. The owning spouse would still have had the same rights as always, t deal with a commercial asset. If marriage breakdown occurred, the non-owning spouse acquire a right only to a payment of money equal to ½ the net value, or increased value of the commerci asset. Again, creditors' rights came first. What further protections are needed? The debt occurrin as a result of marriage breakdown is a debt between the spouses, not against the commercial asse Where is the problem?

I suggest that these things are not reasons for avoiding immediate sharing, but excuses.

Mr. Mercier implied, in that same speech, that Manitoba couldn't bring in immediate sharin because no other province had done so so. Why couldn't this government have honoured the fir part of its title — progressive, instead of the last part — conservative. You have the chance t be a leading, influential government in keeping with Manitoba's past history in the field of women rights. I hope you do not miss the opportunity.

The legislation presented in Bill 38 provides for limited judicial discretion to allow for hardshi cases in the division of family assets. This provision recognized the partnership of spouses. Wh then, have you seen fit to change that provision when considering division of commercial assets I think that you have made this different provision because you do not believe that women ha a right to share equally in commercial assets. In spite of Mr. Mercier's claim that presumption

equal sharing will change court decisions, the wording of the phrase "if the Court is satisfied that a division of those assets in equal shares would be inequitable having regard to any circumstances the court deems relevant including . . . " makes it virtually certain that few women will be deemed to have made a contribution entitling them to an equal share of the net value of the commercial assets.

Let me hasten to add, this is not a personal criticism of judges. Rather, it is a recognition of the societal conditioning of judges, the legal precedents which judges must consider, and to quote the Manitoba Law Reform Commission's report: ". . . one judge's sense of justice may be bound up with technicalities which do not fetter another judge's view of justice, and which moreover, may not be in accord with the social policy of the law." A body of jurisprudence will, of course, develop, but how will it go? Your list of factors is not a limiting list, but an expansionist list, leaving room for a creative lawyer to introduce just about any factor she or he can think of. If it doesn't fit anywhere else, it will certainly fit under 13(2)(j) — a catch-all clause, large enough to accommodate any and all objections to equal sharing.

Every case will have to go to court. Indeed, if I were petitioning under this Act and my lawyer didn't go to Court, I would think that she or he was negligent. Is this what you want?

May ii remind you of Mr. Justice Judson's remark in Thompson vs. Thompson (1961) ". . . If a presumption of joint assets is to be built up in these matrimonial cases, it seems to me the better course would be to attain this object by legislation rather than by exercise of an immeasurable judicial discretion. . ."

"Immeasurable judicial discretion" is just what you are providing in Bill 38. Of what relevance is the nature of the asset? Are farms and businesses male assets? Is a female asset a sewing machine? What are you considering in this factor? Why is the date of acquisition important? It was either acquired before the marriage, during the marriage, or after separation. You have already covered dates of acquisition in Sections 3 and 4. The only relevant factor that I see is Section (13)(2)(i). This factor should be part of the basic philosophy of the Act and written as part of the preamble, outlining the partnership philosophy.

Finally the introduction of broad judicial discretion keeps us in the situation of there being no certainty as to the rights of sharing assets. It will propogate the adversary nature of settlement of property claims.

Again, I would like to quote the Manitoba Law Reform Commission's report:

"It would not be surprising in a commercial or professional partnership, for example, that whereas the slothfulness or poor business judgement of one partner would be the cause of the other partner taking steps to terminate the partnership, yet the deficient partner would nevertheless still be entitled to his or her agreed upon share of the value of the partnership assets. One would not expect those partners to go running off to some tribunal to complain about what a difficult partner each other had been. The assets are divided and each partner is free to meet life's exigencies alone or in partnership with others if willing and able to do so."

Mr. Mercier has said that there are cases where a wife may deserve more than 50 percent of the assets. We are not interested in more than 50 percent of the assets. Indeed, I think that Mr. Mercier would be hard-pressed to give us case history from English jurisprudence — which he quotes — which has broad judicial discretion, illustrating situations where the wife was given more than 0 percent. We are asking that we be assured of an equal share of the assets, no more, no ess.

The limited judicial discretion provided in Section (13)(1) should be applied to the division of ll assets. (13)(2) should be abandoned.

As I mentioned, I am generally supportive of Bill 39. I believe that spouses should be mutually upportive, and that they should have mutual obligations for support of their children, support in ll its forms, not just financial. The factors affecting the order are reasonable and relevant to the etting of maintenance. Financial information should be mutually available to the spouses, and each hould attempt to become financially independent if at all possible.

The provision for occupancy of the family home, the interim order provision and the provision or lump sum payment are good provisions. I would like to see Section 25(1) amended from, "An rder under this Act may require. . ." to read, "An order under this Act shall require" to either eposit a specified amount with the Court or enter a bond to guarantee a backup for defaulted ayments. This would be a step toward improvement of the enforcement procedure.

I am very disappointed to see the introduction of this bill with no improvement over last year's ct in enforcement proceedings. Since this was one of the reasons given for your entire caucus oting against last year's Family Maintenance Act, I could scarcely believe that this bill was virtually nchanged from the suspended legislation. Since we have been informed that an in-house committee currently investigation this problem, I will say no more on enforcement proceedings at this ne.

I do have a great deal to say about the introduction of conduct as a factor in the setting of

maintenance.t$

It has been generally agreed by Law Reform Commissions across Canada, the majority of the MLAs with whom I have met over the past year, and those groups lobbying for changes in maintenance provisions, that maintenance serves two basic purposes: it provides support for children of the marriage and for the spouse who is caring for them, and/or it provides short-term support for a dependent spouse who is re-entering the labour market, or long-term support for a spouse who is unable to become self-supporting. That is, maintenance should be based on need and the financial situations of both spouses.

If you have accepted these basic assumptions in providing for maintenance, there is no room for introduction of conduct as a factor. Your position seems to be that there must be some room for moral judgments to be made. That is, society must be able to wreak vengeance upon an offensive spouse.

You seem to think that if you penalize the spouse who grossly repudiates the marriage relationship you will somehow make that person better, imbue that person with a sense of responsibility, with a resulting flow of satisfaction to the innocent spouse.

Maybe I am overly cynical but my response to that line of thinking is immediate and short. It won't work. To suggest that a spouse who has been cruel, unfaithful, brutal, uncaring, and irresponsible to the extent indicated in Section 2(2), is suddenly going to become responsible remorseful, a reborn human, is utterly ridiculous. You are much more idealistic than I, if you believe that this transformation will occur.

Suppose that the sinner is a mother. According to my interpretation of 2(2), she would have to be a vile person to have maintenance payments reduced under this section. If she is this type of person, what do you suppose her reaction will be? I predict that her reaction would be to say something this effect: "Well, if I'm not going to get the money for looking after these kids, the hell with it, let him do it."

If, on the other hand, the male spouse is the transgressor and he is assigned higher maintenance payments because of his gross conduct, what will he do? I suggest that he will leave town, never to be seen again.

Mr. Mercier, though, interestingly enough, has assured us that the male transgressor will probably not be assessed a higher fee and this is an astounding revelation to me. He is reinforcing the the double standard and I would have liked to have him here to tell me if that is what he really means to say.

You can say that the children should be shown that irresponsibility doesn't pay, that society does not condone it. I have had a great deal of experience with angry, hurting children, as victims of just the situations to which you are referring. Believe me, the destructive relationships existing between these children and the deviant parent will not be alleviated by the course of action you suggest. You will simply reinforce the deviant behaviour and exacerbate an already damaged relationship.

I do not wish to condone the behaviour you suggest should be punished. I simply believe that your remedy will be ineffective. Furthermore, it will introduce a potentially harmful factor, of which the chief victims will be the children involved in the marriage breakdown.

There are remedies available within the terms of the factors listed in 5(1) to vary the amounts of money awarded to the so-called "innocent spouse." I would like to refer to only one of the cases from British law, to which Mr. Mercier referred in defining gross conduct, that of Jones versus Jones. Mr. Jones attacked his ex-wife with a knife and wounded her, for which he was incarcerated. The couple owned a matrimonial home, which under our law would have been equally divided. On the wife's application for maintenance, the judge could rule under Section 8(1)(a) that all or part of the husband's portion of the home be transferred to the wife to satisfy a maintenance award. Obviously the man will be unavailable to make any other kind of maintenance payment.

After looking at all the cases of British law supplied by Mr. Mercier, I believe that the satisfactions you feel necessary are already available under the factors in 5(1), without introducing this vague undefined section on conduct.

I believe that I have dealt with most, if not all, of the objections raised by critics of the suspended legislation. Can you answer all my questions and criticisms of your proposed legislation?

I believe that the suspended legislation embodied principles which established marriage as a partnership of equals. You said in December that you would not alter these principles, but you have done just that.

I hope, by the conclusion of these hearings, you will have prepared an amended bill for presentation to the Legislature, a bill that reinstates the principles embodying just and equitable family laws.

Thank you.

MR. CHAIRMAN: Mr. Cherniack.

CHERNIACK: Thank you, Mr. Chairman. Ms. Browne, may I deal with a few matters in your brief? tly, on Page 4, you raise the point which I would like some elaboration on and possibly other people have studied law will be able to elaborate on it when they make their presentations. As I understand view, if under the law of Manitoba there was immediate vesting of assets in a marriage, equally, then e would not be any capital gains tax exigible upon the vesting taking place.

BROWNE: Right.

CHERNIACK: Then you are saying, as I interpret it, that if a person, a spouse, now that there is gift tax law in this province, wishes to share a substantial asset, a business or an apartment block the other spouse, in doing so would invite taxation. What you are then saying, and you are saying some certainty and I just want to confirm that that is so, that a gift of a substantial asset under present law with the proposed bill before us, would result in taxation, whereas . . .

MS. BROWNE: Capital gains taxation.

MR. CHERNIACK: Well, that's still money. . . . Whereas if the law provided for immediate vesting, then it would not. . .

MS. BROWNE: Well, that's what I understand the Federal Government's proposal to be.

MR. CHERNIACK: One other point, Ms. Browne. Then it would still, I should

MR. CHERNIACK: One other point then, Ms. Browne. Then it would still, I should think, if there s a separation, a court proceeding and a judicial order involved in that vesting, then there would not be tax payable by the division of assets as between the parties. In other words, it seems to me that, from your interpretation, a couple has to go through a fight of some kind, real or supposed, o be able to pass a substantial asset from one to another without being involved in capital tax. That's your interpretation?

MS. BROWNE: That's my point.

MR. CHERNIACK: I move, then, to another point on Page 6. You deal with Mr. Mercier's clain hat the presumption of equal sharing will change court decisions and then you quarrel with that hought by quoting that "if the court is satisfied that a division of those assets in equal shares vould be inequitable, having regard to any circumstances the court deems relevant, including. . ." nakes you feel that this is not the case, that indeed there would not be a presumption that the :ourt would provide for equal sharing.

I thought I would draw to your attention an exchange that took place the day before yesterday)etween Mr. Mercier and Mr. Green at the conclusion of the debate on the Marital Property Bill vhere Mr. Mercier quoted a judge in the Silverstein case in Ontario as saying, and I quote, "I am :onvinced that the Legislature did not intend the court to be entitled to exercise any broad discretion o divide family assets in accordance with what an individual judge may think is fair and equitable n a particular case. The property law in this province. . . " — this is Ontario — ". . . is of vital nportance to married persons and in my view that law not only should be but is in fact now clear nd precise. He should exercise his power to part from the rule of equal sharing only in clear cases vhere inequity would result. . ." He went on and elaborated.

Mr. Green then asked whether Mr. Mercier was prepared to put into this bill before us, those ery words, that is, the words of the judge, to provide that equal sharing should be the rule and nat there has to be substantial inequity for the court to change it. Mr. Mercier did not rise to the ccasion to accept the suggestion that said — I think I explained already that in a case already ecided which does not have the presumption of equal sharing of commercial assets, that that is ne very interpretation that he has given to it. In other words, I interpreted Mr. Mercier to have aid that he believes, based on this judgment of the Ontario judge, that a court would find that qual sharing is what is expected except in inequitable cases, clearly apparent inequitable cases, nd therefore he did not think it was necessary — this is my interpretation of his failure to agree o Mr. Green's proposal — did not think it necessary to make the change. Do you have any comment n that?

MS. BROWNE: Well,I respectfully but strenuously disagree with Mr. Mercier. He may certainly have ne very best of intentions but I believe that under the judicial discretion clauses as they are set o in this proposed bill, the family assets will very definitely be divided 50-50, unless there are gross nfairnesses shown. If you remember from last year, our inevitable drunken spouse and so on. I

think that 50-50 will be the rule in family assets, but I do not think that 50-50 will be the rule in commercial assets because of the very breadth of scope provided in those listed factors, plus which that is not all that can be considered. It isn't even limited to 10 factors. Those are only to be included. Any factor can be included.

Now, I think I mentioned in my brief, I feel that the lawyers will be honour bound to go to court with every client to see what will be acceptable and after a couple of years, the cases won't perhaps lessen but I think they will maintain. The litigation will be endless, forever, under this setup of clauses. So I would like to think that that's what will happen, but I really don't think it will.

MR. CHERNIACK: Finally, Ms. Browne, on Page 10 you refer to The Maintenance Act and you are critical of the interpretations possible on Section 2(2) of The Maintenance Act as to conduct. Then you are suggesting that there are remedies available under 5(1) to deal with what you refer to as the innocent spouse, and then you quote this Jones case.

MS. BROWNE: Yes.

MR. CHERNIACK: Again, I should tell you that Mr. Mercier made a point of indicating that there seemed to be some disagreement on the NDP side of interpretation as regards 5(1) and 2(2) and he was quite right in that Mr. Green had indicated that he believed that conduct was not to be a factor to be involved under 5(1), and only a factor as to quantum under 2(2), whereas I contended that there would be two kicks at the cat, one under — I withdraw that, I don't like that analogy — there would be two opportunities for the court to get involved to exercise judicial discretion on conduct. One is 2(2) as to quantum, where there is sort of a limitation on it, and then I contended that there was a wide discretionary powers as to conduct under 5(1), and you, I think, will be pleased to know, as I was, that Mr. Mercier made it clear that he believed that 5(1) did not enable the court to review conduct, that the court was limited to 2(2), that under 5(1) there would have to be an order without reference to conduct of either spouse, and he invited — and I requested that since I for one didn't accept that so clearly stated as he intended it to be, he agreed that he would consider a proposal for an amendment. I have ready an amendment which I would like to read to you to get your reaction to whether or not you think that would clarify what you and I apparently think is an interpretation in disagreement with Mr. Mercier.

MS. BROWNE: This would come under what section?

MR. CHERNIACK: 5(1).

MS. BROWNE: Okay.

MR. CHERNIACK: And what it would do, is to strike out the words where the court "shall consider all the circumstances," strike out the words, "shall consider all the circumstances," and replace it with the words, "shall not consider the conduct of the spouses but shall consider all other circumstances." You might think about that and indicate whether you think that might make more clear . . .

MS. BROWNE: I would have preferred — I'm not disagreeing with your amendment, but when I was writing this, I thought of suggesting that one way of wording section 5(1) would be to have a limiting set of factors, rather than an expanding set of factors, as it's now written, so that you could word it to the effect that the judge shall consider "the following factors," that's a limiting list.

MR. CHERNIACK: You may recall that in the legislation which we passed last year which is still on the statute book, we are saying, "shall consider only the following factors," and conduct was or was not in there, depending on interpretation.

May I suggest, then, Ms. Browne, that you and maybe other people who have a similar idea pick up from where I left off with Mr. Mercier, and draw or conceive of some kind of an amendment that could be proposed to assure that what you want, and what he says he wants, which seems to be the same thing, to remove conduct from 5(1) as being a factor, is indeed removed to your satisfaction, and let us have it. We'll be around for a little while.

MS. BROWNE: I'd certainly be pleased to do that. And so will we.

MR. CHERNIACK: As a matter of fact, Mr. Chairman, I wonder if I can conclude by wondering how often Ms. Browne has been in this room dealing with this matter, and I wanted to have her

ssurance that in three to four years from now, she will certainly be back in this room to review nanges to the legislation.

S. BROWNE: I have been here on three occasions in this room; I have been in the Legislature n about 103 occasions on individual visits, along with a few of the rest of our delegation; I will e here as long as I can walk up the steps, if that's how long it takes.

R. CHERNIACK: We'll run the elevator for you.

IR. CHAIRMAN: Mr. Green, do you have a question?

IR. GREEN: Since Mr. Cherniack is going to a good source to get legal advice since you've been round so often, you certainly will be in a position to give it. I am somewhat concerned here with, nd I'd like to get advice from you also with regard to professional responsibility, which has been ealt with by yourself and the brief from the YWCA. You say every case will have to go to court. If I were petitioning under this Act and my lawyer didn't go to court, I would think he or she was egligent." Now, I presume that you are saying that this will happen, where the parties don't agree n 50-50. You wouldn't be presuming your lawyer is negligent if the parties agreed to accept the 0-50 split.

IS. BROWNE: Oh yes, if you can accomplish an agreement. But if I am not quite happy with the greement, I would say, "Get in there and do what you can."

IR. GREEN: I'm not objecting to that. I'm merely indicating that the cases that would have to o to court, in your view, or where a lawyer wouldn't be behaving properly, is if he advised the ife not to go to court if there was a disagreement as to 50-50, then the lawyer would advise her iat she has a chance to collect 50-50 in court. That's what you're saying.

IS. BROWNE: That's right.

IR. GREEN: Now, the previous statement, and I guess this is unfair, but since we're all getting egal advice from you I'll pursue it . . .

IS. BROWNE: It's too bad I'm not a lawyer and then I could charge you.

IR. GREEN: It is a little bit more disturbing in terms of, again, my professional responsibility. It's aid here that the lawyer of any client owning commercial assets would not be performing irofessionally if advice was not given to the client to contest a case.

IS. BROWNE: Where are reading from?

IR. GREEN: I'm reading from the, I told you, this was unfair.

IS. BROWNE: All right.

IR. GREEN: I'm using your knowledge, I would have liked to have asked the question from the ady from the YMCA, I think it was Mrs. DeGraves. . .

IS. BROWNE: It's the YW and it's Georgia Cordes.

IR. GREEN: I'm merely indicating that I am treating the equality of the sexes so I. . .

IS. BROWNE: She embraces he in this case.

IR. GREEN: She embraces he, that's right. That's nice, too. The remark here is that the lawyer of a client owning commercial assets would not be performing professionally if advice was not given o the client to contest the case. Now, assuming that a man wanted to, or a woman wanted to, so that we're quite clear, a spouse was agreeable to accepting a 50-50 sharing, would you say that a lawyer was behaving unprofessionally if he advised the client, in spite of that, that he should go o court and try to get more?

IS. BROWNE: I don't know whether I would call him on the carpet on a professional basis for iim not advising to go for more. I think it's a lawyer's responsibility to explain, beyond any shadow

of a doubt, the consequences of the action of his client.

MR. GREEN: A lawyer who said that there is the possibility of contesting, but advised a husband for instance, or a wife, that you have the right to contest but I would recommend to you that you not contest. That wouldn't be professional misconduct, at least I hope not.

MS. BROWNE: Not as I can see it.

MR. GREEN: Thank you.

MR. CHAIRMAN: Any further questions? Mr. Axworthy.

MR. AXWORTHY: Ms. Browne, we are having to address some of our remarks to the ghost of Mr. Mercier tonight, in the hope that he will read this transcript . . .

MS. BROWNE: It's rather difficult.

MR. AXWORTHY: . . . and I'd like therefore, to ask you some questions based upon an exchange that he and I had on The Property Sharing Act when we debated about the reasons he gave for not including immediate sharing of family assets.

First, we contended over the tax issue, and I would like to read to you a transcript of the Hansard when he said, "The Honourable Member for Fort Rouge said that tax problems are solved. Mr Speaker, I suggest to him that they have not all been solved. The problem with respect to the principal place of residence under The Income Tax Act has not been resolved, although the Federal Government, to their credit, have taken some steps in their amendments." And then he goes on to deal with the question of creditors. Can you elaborate upon your statement that there is no inhibition based upon the income tax law to prevent the immediate sharing of assets? Is Mr. Mercier right when he says there are still problems related to that?

MS. BROWNE: Well, I think the problem that he is referring to can still arise, but that's with individual spouses. It's not as a result of the wording of The Income Tax Act. If you have a cottage and a home, each of you have the right to claim one as a principal residence, and therefore it's not subject to capital gains. That's correct, is it not.

MR. AXWORTHY: Right.

MS. BROWNE: So if you transfer half of each asset to the other party, thereby each of you owning half of each place, then you lose your ability to have double principal residences. Now, as far as I'm concerned, that's up to the individual spouses. They can't have it both ways, I guess, is what it boils down to. If they want the freedom provided through the principal residence thing, then they can't have the freedom provided through the equal owning of each asset.

MR. AXWORTHY: Okay. So your feeling is that based upon the reading of the Federal Income Tax changes, that there is no major inhibition or barrier to the implementation of this, based upon income tax problems.

MS. BROWNE: Not that I can see. Not that I have heard from any . . .

MR. AXWORTHY: In fact, I'd like to go one step further. You said in your brief, actually turned the argument around, that if the immediate sharing was not implemented, there could be creating a problem for spouses who do not wish to transfer assets. Could you explain that a little bit further, just to make sure the Attorney-General understands it when he reads the . . .

MS. BROWNE: Supposing I owned a cottage and I wanted to give half of it to my spouse. If I did so, under our existing laws, then that half would be subject to capital gains. And it will remain so if this proposed bill becomes law.

MR. AXWORTHY: I see. Thank you. Now, on the question of creditors, which was another reason given for not doing the immediate sharing of assets. In your brief, you state that, again you're reading of it is that creditors would have first lien on any assets in any event. In your discussions that you have had with Mr. Mercier, because he didn't really elaborate in debate on the House what he meant by that, can you indicate to us what rationale was given on this question of creditors? What is it that he objects to?

MS. BROWNE: As far as I know, the only objection I've heard, based on creditor's rights was not rom Mr. Mercier, but from people such as the Chamber of Commerce, and one man from, I forget vhich bank so I won't take a guess, who was writing in a farm newspaper. And they seemed to eel that the farmer's right or the businessman's right to pledge credit would be affected by this egislation, because it would possibly, if the marriage broke down, be subject to a settlement, and hey seemed to feel that that was a terrible threat to credit granting.

MR. AXWORTHY: A third point, and again if I can just take the time of the committee, Mr. Chairman, ›ecause I think it's important in terms of going over these reasons. On this question that Mr. Mercier aised, another reason for not doing the immediate sharing in assets is, he didn't want to unduly nterfere in the private lives of citizens, and I would quote, he said, "Mr. Speaker, I have indicated quite clearly this position of our government. We do not wish to interfere in the private lives of :itizens of this province to any undue degree." This is the part I would like you to comment on, Ms. Browne. He said, "the real problem has always been deficiency in the common-law or marriage ›reakdown, not for married couples living together. This Act meets that problem that has been raised n the common-law, Mr. Speaker, and resolves that matter." In other words, what the Attorney-General is suggesting is that the problem only deals in marriage breakdown and :ommon-law relationships and has nothing to do with the ordinary, or ongoing marriage relationship. Can you give us evidence or citation to dispute that contention?

MS. BROWNE: If you're asking me for a court case, no, I can't give you . . .

MR. AXWORTHY: No, just really acting more from your experience, dealing with these kinds of . .

MS. BROWNE: From dealing with people who speak to me, yes, I can give you very strong reasons or believing that immediate sharing should take place, thereby recognizing the right of the spouse hat doesn't earn the money to the assets acquired during the marriage. I think that I mentioned n my brief that the dependant spouse is subject to the control of the earning spouse. Now, it may ›e a very gentle control. It may not be a harmful one. But in many cases, it is. I'm sure that all ›f you have heard, in your constituencies, stories of wives who are beaten and they still stay with heir husbands, and you can't imagine why they would stay there. They stay because they have ıo money to do anything else. They can't take their children and go anywhere because they have ıo money to do so. They won't go and leave their children, so they stay. That's why women should ıave a right during the marriage.

MR. AXWORTHY: How would the existence of those equal rights during marriage assist in the kind ›f case that you enumerated?

MS. BROWNE: First of all, if the spouse who is title holder wants to sell the car without the consent, she has then a legal right to object. Now, she doesn't. He can sell it. As long as he doesn't participate n fraud he can do anything he likes with the asset that he owns and she has no right to ›bject.

MR. AXWORTHY: Okay, Ms. Browne, thank you. I think that deals with that part. The other question had was on the issue of discretion, and agai,, we had an exchange which I won't bother to read :o you, but the gist of it was that if there is a presumption built into the legislation, then the likelihood, according to the Attorney-General, is that equal sharing will occur. I took issue with that and tried :o refer to cases in our jurisdictions. Do you have any evidence to indicate that where there is a wide latitude of discretion, even though presumption is built into the legislation, that there is or sn't a tendency of the judges to give equal sharing or unequal sharing? What evidence is there ıvailable?

MS. BROWNE: Well, there has only been one case reported that I have read that comes under ıny thing like this kind of legislation, and that's the Ontario legislation and it's the case that was referred to here tonight that Mr. Cherniack mentioned. And in that case the family assets were divided 50-50, indeed, because the case is put fairly firmly for a 50-50 division of family assets but the :ommercial assets were no where near 50-50. I worked out the percentage and I forget what it s. It was about 30 percent, I think. It's that high.

MR. AXWORTHY: In jurisdictions like New Zealand, do they have a presumption of equal sharing ›uilt in their legislation?

MS. BROWNE: I don't think it's written in. It's not written in directly, I don't think, in Great Britai and I don't think it is in stralia either.

MR. AXWORTHY: So there really isn't any other comparison that we can use to judge. . .

MS. BROWNE: Not an identical comparison, no.

MR. AXWORTHY: Okay, thank you, Ms. Brown.

MR. CHAIRMAN: Any other questions to Ruth Browne? Mr. Sherman.

MR. SHERMAN: Ms. Browne, , I am not a lawyer and I don't have legal training. I'm asking fc direction and an opinion from you on this point. Picking up on a point that was discussed by M Axworthy, on Page 4 of your brief, where you make the contention that if we don't make provisio for immediate sharing, then transfer of assets, etc., will be subject to capital gains.

I'm not quarreling with the arguments that you advance for the concept of immediate sharinç What I'm trying to get at here is an understanding of the legal difficulties which you are suggestin will result from the legislation as it's currently worded. You say that we're creating a problem fc spouses who do wish to transfer assets by omitting the provision for immediate sharing. I confes I don't understand what you mean by that and I think there may be others present who have similar difficulty.

Are you differentiating when you talk about transferring assets? Are you differentiating specificall between transferring assets and bestowing of or conveying of gifts, for example; that's one questio I would ask.

MS. BROWNE: I am referring to inter-spousal transfer, where there is no exchange of money. S if I wanted to give, without charging money to my spouse, a family asset, I could not do so withou being subject to capital gains.

MR. SHERMAN: Well, when you say that transfer of assets, etc., will be subject to capital gains are you advising us that that will apply in all cases, that transfer of any and all assets — we'r talking here about family assets, presumably, not merely commercial assets — will always be subjec to capital gains?M!

MS. BROWNE: Well, that's up to the Federal Government. I am speaking only about their forgivenes of transfer between spouses and it must be done. It was to me very specific, it must be done i accordance with provincial marital property laws in order to attain this forgiveness of capital gains Now, all of the other aspects of capital gains, I wouldn't venture a guess on, because there's roll-ove provisions when you pass the family farm to the son and all that kind of thing, and I don't war to get into that. All I'm saying is that the Federal Government has provided us with a means whereb spouses can transfer property between them without incurring capital gains, and if you don't provid for the possibility of that taking place under a provincial marital property law, then it can't happe free of taxation.

MR. SHERMAN: But this provincial government has provided a means whereby you can, with you spouse, or I can with my spouse, transfer or . convey or bestow or gift anything we want to dc without incurring taxation.

MS. BROWNE: Well, I'm by no means a tax expett, but I understand that your removing the gi tax does away with provincial gift tax, but as far as I can see it doesn't have anything to do wit Federal Capital Gains Tax. I'm certainly pleased that you have done away with the gift tax but tha still leaves the Federal thing as it was.

MR. SHERMAN: Okay, thank you, Mrs. Browne. One other point on your — on Page 8 of you brief — in the first paragraph you challenge the Attorney-General on the basis of your search c case histories from English jurisprudence and again, as a layman, I put to you my understandin that we're really comparing apples and oranges here. I stand to be corrected on it, but when we'r talking about English jurisprudence, we are talking about a situation here in Manitoba where you pursuing the object of 50-50 sharing, and there's no presumption of 50-50 sharing in English la or English jurisprudence. So, I'm not quite clear, I don't clearly understand why you would resor to the evidence in English jurisprudence records on this particular point, because we're dealing wit areas where different presumptions exist.

MS. BROWNE: Well, I couldn't agree with you more, Mr. Sherman, these are Mr. Mercier's cases that he presented to the Legislature.

MR. SHERMAN: But you have drawn on the same source throughout your brief, you've drawn on the same sources.

MS. BROWNE: I merely referred to those in order to refute his use of them. I don't agree with his use of them. I think that it's a mistake to transfer from one area of jurisprudence to another.

Furthermore, these cases that he mentioned are dealing with division of assets and he's used them to deal with the setting of maintenance. So, there's some more — I guess those are peaches and pears.

MR. SHERMAN: Well, Mr. Chairman, in this particular portion of your brief to which I've referred, we are talking — you and the government are debating the issue of conduct here — you are not debating the issue of assets. We're debating the issue of conduct.

MS. BROW: That's right, exactly. That's my point exactly. The cases that were presented to your Legislature are the cases to which I am referring here, and they were dealt — in English jurisprudence — they were dealing with division of assets, but they were used, I believe, to illustrate what was to be meant by gross repudiation of the marriage relationship. I submit that they are inapplicable for two reasons.

First, that they're from another jurisprudence and secondly, they are applying to division of assets, and not to setting of maintenance.

MR. SHERMAN: Well, I have to pursue the point further with my colleagues and certainly with the Attorney-General. I don't see that it makes any difference in this case, Mrs. Brown. We're only talking about the conduct aspect, but I appreciate your information and I'll certainly study it in that context. But I can't, at this moment, distinguish for myself or see where there's any — see what the difference is between the position you're trying to make here, and the position that troubles me when we're concerning ourselves purely with conduct. However, I will certainly pursue it with the Attorney-General.

MS. BROWN: Thank you.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: Ms. Browne, first, insofar as Mr. Sherman's earlier comment that his government had eliminated the gift tax and therefore it no longer applied. I think you would concur that when we passed our family law legislation, the previous government, that there was a specific provision that the gift tax would not apply as a result of any of the consequences of our legislation.

Now, could I ask you, Ms. Browne, in respect to immediate sharing of assets, you indicated that it would be nice if the Conservatives would emphasize the "progressive" rather than the "conservative" part of their party name. There have been considerable movements in the direction of immediate sharing of family assets, not only in parts of the United States but also in Western Europe.

MS. BROWNE: Yes.

MR. PAWLEY: Now, can you tell me, Ms. Browne, from many of your studies, how those laws have worked in practice?

MS. BROWN: They have worked very well in West Germany, in the Scandanavian countries. I believe Greece has an equal partnership arrangement, a limited form of partnerships, and they have worked very well according to all the reports that we read on them. They have not resulted in great amounts of litigation. They have not resulted in public outcry about injustice. As far as I can see, they work extremely well.

MR. PAWLEY: Thank you.

MR. CHAIRMAN: Any further questions? If not, thank you very kindly.

MS. BROWNE: Thank you.

MR. CHAIRMAN Women's League, Representing the Catholic Women's League, Provincia Council, Evelyn Wyrzykowski, is she present?

MRS. EVELYN WYRZYKOWSKI: Mr. Chairman, I have our Provincial President, Mrs. Shirle Scaletta, with me. May she present at the same time?

MR. CHAIRMAN: Yes.

A MEMBER: Your an act?

MRS. WYRZYKOWSKI: Good evening. Mr. Chairman, sometimes were known as Tweedle Dee an Tweedle Dum.

This is our sixth presentation to the committees dealing with changes in the Family Law i Manitoba since December of 1976.

We have spent considerable time studying the report of the Family Law Review Committee an the subsequent Bills 38 and 39 introduced in the Legislature a couple of weeks ago. The followin is our considered opinion on a number of specific issues, which we hope will be of benefit to yo in your deliberations. First, Bill 38, The Marital Property Act.

Opting Out — We concur with the decision to retain the right of couples to opt out from th provisions of legislation contained in The Marital Property Act. We strongly believe that mutual optin out is a just method. We also see in this piece of legislation the possibility of promoting necessar dialogue between spouses when making decisions. In our view, laws which provide more reason for developing the 'mutual' decision process have greater value than those which promote an 'easy unaccountable way out'. The clause dealing with "Mutual Optig Out" could be an instrument t foster beneficial dialogue between spouses.

Deferred Sharing of Assets — In our previous submission of February 10th, 1977, which wa a written submission, we gave as our opinion that the immediate sharing of all assets would b unnecessary and cumbersome and stated we were in favour of deferred sharing of communit property in all areas except immediate family assets. We note the proposed law has deferred sharin of both family and commercial assets. We feel however that the immediate sharing of family asset has many psychological advantages for the spouse who remains at home — advantages that fa outweigh the small inconveniences which may result.

And a further comment, the ideal situation would be one where spouses are mature enough t agree upon the handling of family assets during the marriage, but to repeat, this is an ideal to b strived for. This being the case, the partner who is not contributing financially is often at a disadvantage when it comes to handling family income, sometimes to the detriment of the whol family.

If one spouse has no say or control over family assets, they will not be looked on as an equa partner in the marriage. It seems contradictory to the whole principle of marriage as an equa partnership to recognize that equality, only in marital breakdown.

Judicial Discretion: The principle of the new law is the recognition that marriage is an equa partnership, that both spouses contribute equally, and that all assets acquired during a marriag should be shared equally. We support this principle, and also agree that in some marriages both partners do not contribute equally, do not bear their fair share share of responsibility for the success of the marriage. This unequal sharing of responsibility is often the cause of marriage breakdown. We are pleased, therefore, to see that the new law does not support completely the 'no-fault' concept but recognizes that in many instances there is fault, sometimes serious fault, and that this fault should be taken into consideration when property is divided and maintenance sought. We support the fact that certain cases call for judicial discretion in the division of both family and commercial assets. We support the concept of limited judicial discretion where family assets are concerned and broader discretion for the division of commercial assets.

However, we question the proposed very broad grounds for sharing commercial assets as set forth in Section 13(2)(j), which leaves it so wide open as to endanger the principle of equal sharing. We understand that in other places similar wide powers of discretion has in most cases resulted in the non-financial contributing spouse receiving considerably less than 50 percent.

On Bill 39, The Family Maintenance Act — Financial Information: We note Section 6 and 7(1) that a court order is to be plied for when one spouse is in breach of the mutual obligation to provide financial information. We did not agree that an employer, bank, income tax office, etc., would be bound to give this information at the simple request of the other spouse.

On the matter of enforcement, we are very appreciative of the complexity surrounding the matter of enforcement of maintenance payments. However, we reiterate our belief that the time is overdue

r the State to take a much more determined and efficient approach to enforcing support ovisions:

(1) Because it is the State's responsibility to see that the law is enforced.

(2) Because only the State is in a position to deal efficiently with this problem. We are convinced at an effective system can only be built on inter-provincial and provincial-federal co-operation. ystems of successful enforcement procedures are working in some European countries. We, herefore, strongly urge the Manitoba Government to take the lead in bringing this issue forward other governmental jurisdictions, while at the same time pursuing in earnest a solution to our wn dilemma. We wish to re-state a paragraph from our February 10th brief to the previous overnment: "If our present system of collecting provincial Income Tax was producing less than alf of what was due, the government would move in the direction of radical changes in a hurry. there any excuse for complacency in the face of mass non-compliance with the law when it comes family support?"

On the matter of conduct: When asked by the previous government if we thought that fault should e a consideration in determining the amount of inter-spousal maintenance, we replied, "Yes, but nly in the situation where fault was gross and manifest."

We refer you to the Law Reform Commission's Report, Pages 23 to 37, specifically Page 30, ontaining the Memorandum of Dissent and Minority Position. We agree that in many marriage reakdowns it is almost impossible to weigh fault neatly, as the reason for the failure of the marriage so often a fairly even responsibility. But, where the conduct of one spouse is so unconscionable s to constitute an obvious and gross repudiation of the marriage relationship, then we agree that ie amount of maintenance should be determined accordingly.

We find it difficult to add anything more to what the Honourable Attorney-General said on Second eading in Hansard, Volume XXVI, and what was contained in our Appendix I attached to our ebruary 10th and June 1st submissions.

In the Appendix we suggested that it is essential for spouses and their children involved in family onflict be helped to discover the reason for the crisis, the cause of the breakdown if separation r divorce takes place. All of society benefits when each and any person is able to see the value f responsibility towards another especially in the family unit. The benefit to the family members also realistic in helping them to ease some of the pain and emotional problems accompanying eparation.

l reconciliation. S. EVELYN WYRZYKOWSKI: I would like to deal now with the concept of

IR. CHAIRMAN: Would you just identify yourself for the taping purposes.

IS. WYRZYKOWSKI: Evelyn Wyrzykowski.

IR. CHAIRMAN: All right.

IS. WYRZYKOWSKI: In Section 8, Subsection (3) and (4) is certainly a partial response to some f the concerns we have been expressing these past 18 months. In particular we refer to our June rief, which contained a description of what we understand to be Conciliation Court as existing in alifornia. More recently we prepared a summary, which each of you have received now, of the onciliation Service provided in the Family Court in Edmonton. At least I hope you received it. Have ou been handed that?

Since separation and divorce require a legal procedure, then the judiciary is in the advantageous osition to provide marital counselling services that are simple , direct and immediately available n application for Conciliation Services. We wish to make clear the distinction between conciliation nd reconciliation. Reconciliation may be one result of the conciliation counselling, but there are ther results instead of or as well as keeping the marriage together.

So I would like to just describe conciliation, which means working things out by discussion with ie help of a counsellor specifically trained for short-term crises intervention. The couple is helped explore their situation. They may decide to reconcile, to continue their marriage making the ecessary changes of attitude, habits, behaviour. Or, if their decision is to separate, then the ounsellor helps them to deal with the resulting emotional problems on an ongoing basis, and refers iem to an appropriate community service for long-term counselling.

Conciliation counselling has proven helpful in determining if separation and divorce are the answer r a couple in crisis. These solutions do not automatically end the suffering that is being experienced. ounselling helps in dealing with feelings of remorse and sense of personal failure that couples often ave. The problems of custody of children, support and personal problems, and adjustment are ften better resolved when the legal services are supplemented by counselling services. But this equires an appreciation by these two services of each other's abilities by their coined efforts.

I would like to refer you then to the outline as we have prepared it from the Edmonton Repor simply that the Family Court Conciliation Service there is within the court system, and all client are referred to it by a lawyer or a judge. It tells and explains how it is operating there. If you woul turn to the last page of it, it gives you a summary of the results of that Conciliation Service ove the past two years; the number of referrals from lawyers and judges totalled 925. They subtracte from those the ones who were immediately referred out for alcoholic or psychiatric services, an those who declined to accept counselling, which left a total of 712 couples. Now of the 712, 7 were reconciled; 180 couples whose marriages were threatened with separation remained togethe as a result of the counselling; tat was a total of 35 percent. Then 391 couples benefited from divorc counselling over the custody, access issues and personal adjustment problems. So those benefitin was a total of 54 percent. 52 couples showed no benefit from counselling, which was 7 percen 18 cases were still in process as of August 13th.

In addition to the above statistics they tell us that 153 closed cases were reactivated; som initiated by persons who had declined service when initially referred, and others because of a ne problem.

So that reconciliation is not the primary target of conciliation, and it is our concern that in th bill it is saying that the judge would determine to send a couple, recommend a couple fc reconciliation if he deemed it were possible, and I really suggest to you that that is asking a grea deal of the judge at the court situation. I understand from lawyers and judges that very often b that time there is no way they could see that a couple would accept reconciliation type counsellinç but conciliation is another thing.

Further, it is children who often are the forgotten ones in marriage breakdown, that can be spare some of the destructive impact through counselling involving them and their parents. Divorc terminates the legal bond of marriage, but does not end the parental relationship. Rather, it change that relationship.

Unified Family Courts which have been pilot projects in several areas of Canada have conciliatio counselling as one of the services within that court system. It is unfortunate that once again th St. Boniface Unified Family Court Pilot Project has been delayed. According to a news article, Justic Minister Ron Basford spoke to the Conference of the Association of Family Conciliation Courts i Vancouver recently. He said that unified family courts must be established, that they are now beyon the experimental stage and can be operating soon in every province. And he also said, " if th will to create them is there." Must we wait until April of 1979? Perhaps if more people understoo the value of unified courts, then the "will" could be strengthened.

As we understand it, the general objectives of the unified family court are: to encourage th understanding of the legal process and the individual rights of people; to consolidate the lega jurisdiction in respect to family and matrimonial matters in court, making it less confusing and les intimidating for the client; to protect the right and serve the needs of children involved in marita disputes; and to encourage community interest and participation in the resolving of suc disputes.

In another news article we learned that the Ontario Attorney-General's Department has said tha the Hamilton-Wentworth project has operated since July, 1977, and government officials, as wel as the clients and the court administration, seem to be happy with its operation. The main advantage is, "You get everything you need at one place or be referred out from that place." The Hamilto Court employs two full-time conciliation officers who take referrals from outside, attempt to get the parties to resolve their different disputes themselves, or at least narrow the dispute, or refer them to counsellors or outside social agencies. Seemingly, judges are available, but are regarded as a last resort.

We have supported the concept of Judicial Discretion all along. If we are to believe the hearsa that those with the knowledge have assured us that previous court decisions in Manitoba unde the existing laws have been fair on the whole, so we would anticipate that under the new laws ou confidence in the judicial system would be maintained. We earnestly believe that the judiciary wil be able to handle their responsibilities if they are given sufficient direction to carry out equitable judgment, based on the presumption of 50/50 sharing. Their task can be further expediated by a court system of conciliation counselling. The result should be the strengthening of families whc encourter the inevitable conflicts and crises of living together in a society caught in the struggle to change.

And just a final comment because we had brought this before the Committee of the previous government, that we are delighted to know that a Family Week is being held in Winnipeg from Septee 28th to October 5th, organized by a few family oriented groups and we understand endorsed by the City of Winnipeg, and the Provincial Government of Manitoba. This is the other kind of suppor that we believe will help families in Manitoba in a very positive way.

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

ι. CHAIRMAN: Thank you very kindly. Seeing no questioners, the next person to appear, Mona own. Is Mona Brown present?

ε. BROWN: Good evening. With your permission, I would like to request and my husband would e to request that he be allowed to present the brief with me. I will read our brief. It's signed the both of us on the last page if you will note and we're presenting as individuals, and we I both be willing to answer any questions you have.

ι.CIAN: Will you proceed, please.

ιS. BROWN: Members of the Committee: We, my husband and myself, are presenting this brief private citizens and as equal partners who are concerned about equality in family law. We reside a farm at Sperling, Manitoba. My husband is a full-time farmer and I am an articling student law.

We have both followed the movement to reform family law since its inception, when the Manitoba w Reform Commission was asked to study the area. In the past two years I have spoken to merous groups of rural people in southern Manitoba on the family law reforms. I have asked for eo the opinions and advice, and have found their response to reform to be extremely ιsitive.

It is with this background, and with the confidence that we are representative of a wide segment rural farm couples, that we make this presentation.

We will first deal with the basic principles of the legislation and will comment on specific drafting rors and problems later.

With regards to Bill 38 — the Marital Property Act, we would first like to commend the government r their foresight in requiring the laws to apply to all marriages in existence, but not separated, ; of May of 1977. We also compliment the government on the requirement for mutual opting out. ιilateral opting out would have made the reforms a farce and we are pleased to see the government cognized this. However, we note that there is no requirement for independent legal advice and ε would strongly suggest that the government amend the bill to incorporate a clause to this fect.

We feel we must express our concern over the change in the definition of the matrimonial home be only the house and immediate yard, as opposed to the 320 acres surrounding the house as εfined in The Dower Act. We feel this will create substantial injustice. Traditionally, farm families ive poor and die rich," because all the monies are tied up in the long-term capital investment ιch as land and machinery. Therefore, in general, farm houses can be worth a great deal less an those of their urban counterparts. Also due to the mobility problem, farm houses are not easily ιld or otherwise disposed of, thus further decreasing their value in comparison to urban ɔuses.

We find it very ironical that the very people whose plight started the family law reform movement, ose being farm couples like the Murdochs, (I refer to the Irene Murdoch case) are now going to ιceive less than their urban counterparts.

We note that the legislation still incorporates he Dower Act in it, Section 27, and question why e homestead definition as enunciated in that Act could not be used in this Act. We suggest that e homestead definition be used as the definition of matrimonial home, as it leads to greater equity ιd congruity.

The argument has been propounded that to use the homestead definition, with the 320 acres land, would split up the commercial farm operation and lead to forced sales. We disagree. Anyone ho accepts this concept cannot truly believe that marriage is an equal partnership. Provision can ε made for long-term payments. We are not advocating forced sale, we are advocating the ιcognition of the equal contribution of the spouses to the marriage.

We feel that the principles "that the work done inside the home is equal to the work done outside ιe home" and that "marriage is an equal partnership" are particularly applicable to the farm couple. 'e feel, if anything, that special consideration should be given to the peculiar and demanding role ιat the family farm wife plays in the farm operation, and that this could be particularly recognized ɣ the adoption of the homestead definition.

Further, we would suggest that in order to better clarify the intention of the legislation a preamble ιould be added to the Marital Property Act, enunciating those two basic principles. And when I ɜy those two basic principles, I am referring to the principle that the work done inside the home equal to the work done outside the home and that marriage is an equal partnership.

The second major change was the discarding of immediate community of property for family ɜsets, and replacing it with deferred sharing. This, to us, is not a minor correction of drafting errors - it is fundamental change in philosophical principles.

We believe strongly in the concept of community of property. It is not a radical system. It ha proved workable in various forms for centuries. Specific countries include: all the Scandinavia countries; Germany; Holland; France; Spain; Mexico; as well as eight states in the United State including Arizona; California; Louisiana; Nevada; New Mexico; Texas, and Washington; and a versio of the community of property system exists in the Province of Quebec under the civil code.

We feel that the instantaneous community of property system, with joint management rights mo accurately recognizes the concept of marriage being an equal partnership.

Some ask what purpose the adoption of such a system would obtain. We suggest that th implementation of instantaneous community of property would:

1. Eliminate some of the injustice of the present law, where one "partner" (so-called partne holds all the assets and the other must beg for a voice in the allocation of the family income

2. Eliminate the dissipation of assets by one spouse. For example one MLA told us of an exampl where a spouse had an auction sale, sold all the assets, banked the proceeds of the sale, and le the country with another woman leaving his spouse with all the debts. Instantaneous communit of property with joint management would have made such a case much more difficult t accomplish.$

3. With the incorporation of joint management, this system would act as an "affirmative action type stimulus, making each spouse more aware of the couple's financial arrangements and thu would facilitate the adjustment and responsibilities which the spouse is forced to assume upon th death of his or her partner. .

What I'm just going to say now isn't written into the brief that I'm presenting, the written brie but I would just like to add in this regard, I have had occasion to deal with certain people, wh on the death of their spouse, for example, with women who do not even know how to write a check and I think that an affirmative action-type program that will force individuals to at least becom aware of the general finances and what's going on within their partnership is essential in order t forego some of the turmoil and confusion that results when you try to go through an estate wit someone who doesn't even know what a cheque looks like. I would just use that as an exampl of what I'm referring to there.

4. Finally, it would serve to instill confidence and certainty in the spouse who does not presentl own assets. It would no longer be necessary for that spouse to rely on the court's discretion t secure an interest in the assets acquired during the marriage.

For these reasons we strongly recommend that the government reconsider its decision to dro the community of property system. Some say it is administratively unworkable. We answer that i there is the will there is the way. It has been made to work in many other jurisdictions, it can b made to work here.

We might add that under this Bill, the right to the use and enjoyment of the matrimonial hom and family assets given in Section 6, sub. 2 and 3 is no right at all, without instantaneous communit of property with joint management.

The next potential problem and I believe it is perhaps an oversight on the governmen 's par is that Section 12 does not allow for the right to equal division of assets upon death. As the Bi presently stands it is encouraging separation. If you separate you might be entitled to a one-hal interest in your spouse's assets. Whereas if you remain married to your epouse and he or she dies you are entitled only to your dower interest.

We are sure that the government does not want to promote separation and that this is merel an oversight. We would suggest that Section 12 be amended to add a clause with regard to th survivorship rights.

We would like to compliment the government for recognizing the presumption of equal sharing We agree with the limited judicial discretion given in Section 13, sub. 1 for the family assets.

However, we question why the government has chosen to broaden the judicial discretion fo commercial assets. Does the government want the Courts treat commercial assets differently fron family assets? It would appear so.

We urge the government to adopt the same limited judicial discretion for commercial assets a was adopted for family assets. To put it bluntly, Section 13, sub. 2 is a mess. The door has bee left open for a judge to consider any factor that he wishes to consider as the Section states tha a judge is to consider any factor he deems relevant including the following and then listing (a) throug (j), the ten factors.

Also, the clauses are redundant and ambiguous. What is meant by the sub clause "nature o the assets"? Could one argue that because one owned a family farm which has been in the famil for generations that it shouldn't be shareable? As a lawyer I would comment that I would feel i would be my duty to make that argument if I was representing a husband, spouse who owned a family farm. I feel it would be my duty to make that argument in court.

What about section 13(2)(g)? Should one spouse get less than one-half or more than one-hal simply because they have inherited money from another source? This seems inconsistent with th

ovisions in Section 7(3) that inheritances not be considered part of the divisible assets.

Section 13(2)(j) is so wide one could drive a truck through it. If the purpose of this clause is prevent forced sale of commercial assets do this by way of long-term payments as are set out Section 16.

This section will be a bonanza for family law lawyers and perhaps we personally could benefit ɔm it, but it will cause unnecessary litigation and cause uncertainty in the law.

Some might suggest that long-term payments aren't workable. We beleeve it will be the rare ıse that some set-up cannot be arranged. One potential area that we recognize as being a problem the family farm, due to the extreme inflationary value of land, particularly in southern Manitoba. e suggested to the Honourable Mr. Downey, Minister of Agriculture, and now suggest to the embers of Law Amendments Committee, that if you are concerned with this problem devise a rmula to get around it. Don't leave it to judicial discretion.

For example, in the farm situation the one spouse could pay the other spouse his or her one-half the operating book value of the farm at the time of the separation, on a long-term payment basis, ıd pay the rest — being the inflationary fair market value of the land — upon disposition of the nd. This would eliminate the problem of forced sale.

Therefore, if your operating book value of your farm land was $200 per acre, but your fair market ılue of the land was $400 per acre, one-half or 50 percent of the $200 would be shareable upon ıparation, under a payment plan, and the other one-half of the remaining $200 that is strictly flationary value, would only be shareable upon the disposition of the asset.

The spouse who has not yet been paid the one-half of the inflationary value can simply register caveat on the property to protect his or her remaining interest. This type of formula accomplishes e same goal with respect to the preservation of the asset without invoking wide judicial scretion.

Why are we against wide judicial discretion? Because it has not proved to be workable in other risdictions. The tendency in other jurisdictions has been to give no more than a one-third interest the wife, and even this is only in family assets.

We recognize that in these jurisdictions there are no presumptions of fifty-fifty sharing, although ew Zealand has recently amended their laws in this area. However, we are afraid, even with the esumption, that the judiciary will be loathe to allocate a fifty-fifty division of assets.

The case law from the other jurisdiction shows that the clearest of direction must be given to ıe judges before they will implement equality in matrimonial property disputes. We do not feel that ection 13 (2) gives that type of guidance.

We must remember that judges are only human and are subject to the same prejudices and ɔcialization factors as are the rest of the society. It will be extremely difficult for them to change ıeir views without specific legislative direction, and it will be necessary for some of them to radically ıange their views in order to enforce equality.

We would like to refer the members of Law Amendments Committee to a recent Manitoba Court Appeal case called Fedon and Fedon, decided February, 1978.

In this case the Manitoba Court of Appeal overturned the decision of the lower court which warded Mrs. Fedon a 50 percent share of the assets. The Court of Appeal awarded Mrs. Fedon lump sum settlement of one-third of the assets. The Court came to this decision even though ıey recognized that Mrs. Fedon was an exemplary wife for 23 years, as well as having raised four ıildren. She worked alongside her husband in their business and worked outside the home as well. ɔ quote from Mr. Justice O'Sullivan's judgment, "The husgand loves money, assets and property ıore than anything else in the world. To take any asset away from him would undoubtedly provoke great deal of emotion in him. I must not forget to take into account the fact that she, Mrs. Fedon, ıs worked with her husband and for the family as well and that since the beginning of the marriage ith the original intention of the parties to pool all their efforts and financial resources together ır the family as a whole. I do not, however, consider it advisable to give the wife any share in ıe auto electric business because then the husband will lose his incentive."

As you can see from the brief excerpt of this case, explicit directions must be given to judges order for them to enforce equality in matrimonial property disputes. Regarding the Silverstein ıse, I would just like to comment that I think that Ontario perhaps has a better setup in some spects than we do in that they didn't have a more progressive law that was suspended, therefore ıe judges in the case in Manitoba, I feel that they are going to feel that because there has been change and that commercial assets now have wider discretion than they did in the previous bill, ıat obviously the government does not have the intention that there should be a 50-50 sharing. ıerefore, I think that the Silverstein case, even if it were giving a 50 percent in commercial assets, ouldn't be applicable, or any Ontario case, because we are dealing under a different historical erspective here due to the suspension of the previous bills. I think that has to be taken into account. ıdges were aware of those previous bills; they were aware of the changes and that has to be their minds when they are making decisions in the future.

We would therefore again urge the government to adopt the limited judicial discretion in Sectic 13(1) for commercial assets as well as family assets.

There are also a few minor drafting errors to The Marital Property Act, Bill 38, which we woul like to point out to you at this time. Following in section form, and perhaps if you have your bil it would be easier for you to follow if you follow in the section form: Section 4' Subsection (2) doe not include any family assets in assets bought in contemplation of the marriage. We are awar as you probably are too, that many couples before they marry and in direct contemplation of marriag purchase large quantities of furniture, appliances, etc. We feel that these should be included in th standard marital regime if they were bought in direct contemplation of marriage, and we would as that the government amend this section to read as such.

With regard to Section 4, Subsection (3), we would ask that the words "actual" or "real" b inserted next to the word "appreciation" and "depreciation" such that no artificial income tax figur can be taken.

With regard to Section 4, Subsection (4), we object to the widening of judicial discretion in th sharing of negative values, due to the provision for an application to be made under Part 3 fc a court order to this effect. It is our position that if there is not to be joint management right: then there can be no sharing of negative values, and alternatively, if you were to give us join management rights and instantaneous community of property, it is our position that negative value should be shared.

Section 11 dealing with foreign assets at present reads that foreign assets may be taken int consideration in the accounting under Part 2. We would respectfully suggest that the "may" b changed to "shall" therefore making it a mandatory duty to consider all foreign assets in a accounting and division under Part 2. As we have already mentioned, Section 12 should have further clause dealing with survivorship rights.

As we have already mentioned, Section 13(2) should be deleted; Section 13(1) should read "discretion to vary equal division of assets, these being both family and commercial assets." Also Section 13(1) is badly drafted, as it takes into consideration the extraordinary nature or value o any of the assets. Does this mean that an art collection, for example, which might be of a extrordinary nature or value, would not be sharable? We would suggest that these words be delete such that the section would end with the words, "grossly or unconscionable having regard to an extrordinary financial or other circumstances."

These are the main drafting errors in the bill that we were able to find.

I would just note that for a government which said that they were suspending a bill in orde to change the drafting errors, that was a substantial number of major drafting errors.

As regards to Bill 39, The Family Maintenance Act, we were pleased to see that the governmen kept the onus on both spouses to become financial independent. We both feel this is an importan stepping stone to the attainment of true equality.

However, we were disappointed to see some element of fault brought back into the Law in Sectior 2, Subsection (2). We believe in maintenance based on need, not fault. We feel that it takes tw to make a marriage and two to break one as well. The allocation of fault in martrimonial proceeding is totally unrealistic and extremely arbitrary.

We have been led to believe that the conduct spoken of in Section 2, Subsection (2) must be extreme behaviour as has been interpreted by English Case Law. We hope that this is how the Manitoba courts will interpret this section. However, we still espouse to the principle that maintenance should be based on need and not fault, and would ask the government to delete Section 2, Subsection (2).

In the same regard, Section 5 dealing with factors affecting the order, it should read, "including the following and no other circumstances." If this is not amended, we feel that the criteria of fault might be allowed to be introduced in Section 5 as well. We are sure that this is not the government's intention and therefore suggest the above amendment.

Section 8 dealing with Court Orders, should again be a mandatory section reading, "a Court shall make an Order. . ." instead of "may make an Order."

We would like to compliment the government on recognizing the mutual obligation of spouses to support their children, in Section 12. We have always been of the belief that if one is to advocate the attainment of new rights, one must also be willing to accept new responsibilities.

We feel, however, that there may be a technical problem with procedure under this Act as Section 16 allows for a choice of forum and Section 24(1) states that an appeal lies directly to the Court of Appeal. There is no provision made for Examinations for Discovery, therefore if the forum chosen were the Family Court, with an appeal directly to the Court of Appeal, one could go to the Court of Appeal with very little evidence.

We would therefore suggest that an appeal lie by way of Trial *de Novo* to the County Court from the Family Court, thus keeping the Family Court process speedy and less costly, but allowing for adequate evidentiary proceedings before appealing to the Court of Appeal. This is a major drafting

or, I would suggest.

Section 21 has a potential problem as it does not specify who can make an application to vary discharge the Order. We would recommend that this section be amended to specify that it is parties to the Order that may make application to vary the Order.

Last but not least, we were extremely disappointed that the government, after having criticized previous government for not acting on the enforcement of Maintenance Orders, did not see to legislate with right to the enforcement of maintenance. There is little point in obtaining a aintenance Order if it is not going to be collectible. We must have better enforcement of aintenance and we would urge the government to implement legislation to this effect as soon as ssible.

In summary, then, we are pleased that the government is aware of the need for family law reform t we feel that the government has not gone far enough. We have made this submission with the st of intentions and we hope that the government will take heed to some of our suggestions. ank you for your time and attention.

. CHAIRMAN: Mr. Spivak.

. SPIVAK: I wonder if I can ask just a couple of questions, really to clarify the point on your ef on Pages 8 and 9. First, you are prepared to acknowledge that the law that existed prior to passing of this law — and I'm not talking about the law that was suspended — did not have presumption of 50-50 sharing on marriage breakdown?

. BROWN: Yes, we are.

. SPIVAK: Therefore, in one respect, the judgments that were presented here and the Case w that existed will in fact be altered if the Act is passed as it now stands without any amendments, cause in effect the Act will bring about presumption of 50-50 sharing on a marriage eakdown.

. BROWN: It's true that the Act will bring about presumption of 50-50 sharing. Whether it will er or change the views of the jugges who gave a decision such as this is another question.

. SPIVAK: Are you arguing now on the question of what the judges' views will be, or are you ing to argue on what the law will be? I understand you are either a graduate lawyer or you are practising lawyer, and I again ask you, for the Committee's benefit, if you are not prepared to ggest to the committee that if in fact the law is changed to a presumption of 50-50, if that in t becomes the law, the discretion that is available has an onus provision in which the party who eges not a 50-50 sharing is going to have to prove that a 50-50 sharing is not to be applied, the law is presumed to apply it. Is that correct?

. BROWN: I would agree with that and I would comment, though, that in that situation I would ticipate that under the law that you are about to ilement, going to the same three judges on Court of Appeal in Manitoba, that they would say, okay, there is a presumption of 50-50 sharing, onus is on Mr. Fedon to show why he shouldn't share the assets and then they will use 13.2(j) order to say exactly what they said in the present decision and determine that because this husband es money so much and he would lose his incentive, that the wife can't be entitled to a 50 percent aring.

What I am trying to show you by referring to this decision, and I agree with you that it will be different law, but what I am trying to show you is, this is the attitude of some of the judges sitting our highest court in the province, and if this is the attitude, how do you expect them to implement -50 sharing with the wide judicial discretion that you have given them? This is the point I am ing to get across, that you can't expect judges to totally change their philosophy. Now, even ou give them a presumption of 50-50 sharing, because there is no Case Law from any other isdictions, we can't refer to any cases on point. All we can do is look at what the judges have en deciding in the past, and wonder whether they are really going to give 50-50 sharing with ch wide judicial discretion.

. SPIVAK: But is not the onus on the person who is claiming that the 50-50 sharing is not apply? Is that not the case of the onus, rather than the person who is being challenged on the -50?

. SPIVAK: That's right.

MR. SPIVAK: In other words, in the case of Mr. Fedon, he would have the onus and not th wife.

MS. BROWN: That's what I said.

MR. SPIVAK: No, I think not. I think you said the opposite.

MS. BROWN: That's what I said.

MR. SPIVAK: The onus is on him.

MS. BROWN: Mr. Fedon.

MR. SPIVAK: That's right. So there is a presumption and there is the onus on the applicant.

MS. BROWN: Right.

MR. SPIVAK: That is not the law now.

MS. BROWN: No, it is not.

MR. SPIVAK: The judges who have made judgments dealing with family law matters have not ha to deal with a presumption and an onus.

MS. BROWN: I agree.

MR. SPIVAK: Now, in terms of your knowledge of law, where presumptions have been given an onus provisions have been applied, while there is discretion on the part of the court to make judgment or to make a determination, are you really prepared to say that those provisions of th burden of proof and the onus provision, plus the presumption, are really going to work against th concept of 50-50 sharing?

MS. BROWN: It depends on how much judicial discretion you give. I think in this case they wi work against the concept of 50-50. I hope I'm wrong, but we're giving these suggestions so tha we won't have bad law made in Manitoba again, and I feel they will work a hardship and I fee that 50-50 will not be given. That's why I am suggesting this. If I thought that they would give 50-5 with a mere presumption, then I wouldn't be here disputing that fact. .

MR. SPIVAK: The persons who appear before you, which was the Manitoba Provincial Council c the Catholic Women's League of Canada, said, and I quote, "We earnestly believe that the judiciar will be able to handle their responsibilities if they are given sufficient direction to carry out equitabl judgments based on the presumption of 50-50 sharing." Now, do you agree or disagree with tha statement?

MS. BROWN: I would agree that if they were given adequate direction, which I asked for in m brief, yes, I don't think adequate direction is defined in the ambiguous and conflicting terms tha you've given in 13(2).

MR. SPIVAK: Well, you've only really — you know, there are ten subsections. . .

MS. BROWN: I can go through every one of them and list all the ambiguities and the conflicts if you'd like me to.

MR. SPIVAK: But in your brief, you only presented about two or three.

MS. BROWN: That's right, as an example.

MR. SPIVAK: Those are only examples.

MS. BROWN: Would you like me to go through the rest?

MR. SPIVAK: No, but at this point, are you not trying to act as the judge who will have to exercis that discretion? In effect, the judge will have to exercise discretion on the wording as it applie

13(1) with respect to family assets, and the judge is going to have to determine on the application 13(2). And is it not a fact that really, your fear at this point is that the judge is having to interpret e law in a certain way, prior to an enactment of presumption — have in fact formed a basis of ecedent in which they have applied it in a certain way, and your assumption is that that precedent ll eventually follow in the interpretation that will take place.

S. BROWN: My assumption is that the philosophical basis of the judges will probably stay the ıme, and I base that assumption on the fact that the judges in Manitoba have the opportunity, e distinct opportunity, to decide the Fedon case different, because they had just had direction ɔm the Supreme Court of Canada and Rathwell and Rathwell, to that effect, and it wasn't the w. They had the ability to decide the case as Rathwell and Rathwell was decided, but they chose distinguish Rathwell and to follow Murdoch, and Murdoch, in my opinion, is bad law and I feel at we are going to still obtain bad law if you don't give clearer direction to the judges.

R. SPIVAK: Do you not believe that the judges will follow the will of the Legislature and ɜrliament?

S. BROWN: I'm not sure what the will of the Legislature is myself, because why have you changed and added all these factors?

R. SPIVAK: Can I ask something? Will you not agree that the will of the Legislature, if this is ɜssed, is that there is a presumption of 50-50 sharing. —(Interjection)— I'm asking the witness, n not asking the former Attorney-General. I really want you to tell me that you do not believe ɑt the will of the Legislature, if this Act is passed, is not a presumption of 50-50 sharing.

S. BROWN: I question it.mm

R. CHAIRMAN: Mr. Pawley.

R. PAWLEY: Ms. Brown, you and Mr. Brown live in the Rural M!nicipality of Morris. I know the ɨinister without Portfolio responsible for The Planning Act is present, and I would wish he would terrupt if I'm wrong in any of the presumptions that I'm presenting to you. Are you familiar with ıe new Planning Act insofar as it relates to the subdivision of land?

S. BROWN: I haven't studied it in detail and I wouldn't want to comment.

R. PAWLEY: Are you aware of applications in the Rural Municipality of Morris to subdivide building tes from the balance of farm lands? I believe Mr. Brown is indicating some awareness.

R. CHAIRMAN: Mr. Brown.

R. GORDON BROWN: . . . limitations placed on the subdivision of farm lands in the Morris ıunicipality.

R. PAWLEY: If I could, Mr. Chairman, just to acquaint you, that there is a restriction insofar as ıe subdivision of any farm land, any land less than 80 acres has to receive the approval of the anning authority. So I would refer you, Ms. Brown, to your brief on Page 3: "The argument has ɐen propounded that to use the homestead definition with 320 acres of land, would split up the ɔmmercial farm operation and lead to forced sales. It appears the government is concerned about ɪrcing a sale of 320 acres." We are dealing with homestead now defined, as you point out in your ɾief, Ms. Brown, of the house and the immediate surrounding property, one acre, two, three acres. re you familiar, from your personal experience in the Rural Municipality of Morris, as to whether not the planning authority has been approving of those splits in title or not?

S. BROWN: I see what you're getting at. I see what you mean. There could be a conflict in the lanning Act here as well. I would agree that there probably could, I would not say for sure because ɗon't have the Planning Act here to see the exact words. But I'm aware of the 80 acres subdivision ıle, and I see that there could be a problem in regards to — supposing the wife were to take ɐe house and two or three acres around the farm, and the husband would own the rest of it. It ould be, in fact, subdividing, and if he wanted to buy a house on the other part of the half section, ıen he would have to make subdivision application and that could cause a great deal of problems. would agree with that.

MR. PAWLEY: So what would you suggest as an alternative? Here we have a conflict. We ha a situation in which the wife could obtain a family asset, i.e. the house and adjacent property, b not the balance of the farm land, not be able to obtain the split in the title. What do you see a method of dealing with that?

MS. BROWN: I see the method of dealing with it — my suggestion here that we have the 3 acres, the definition of the marital home as in The Dower Act, as the definition that should be use and I think is the only equitable definition in dividing rural farm matrimonial property.

MR. PAWLEY: So you would concur that you see a great deal of hardship and potential confli in the rural areas in view of the provisions of The Planning Act and the provisions of this legislati which appear to be in direct contradi ction to the provisions of The Planning Act.

MS. BROWN: I would agree, they are in direct contradiction.

MR. CHAIRMAN: Mr. Axworthy.

MR. AXWORTHY: Mrs. Brown, you seem to have become a little bit of a student of the behavio of judges of the upper court of this province.

MS. BROWN: Perhaps I could just comment. I had the benefit, and unfortunately, due to the leng of time that it took the Legislature to go through second reading of the bill, a woman who w very knowledgeable in this area, Miss Freda Steele, spent the last year doing research and writir her Master's Thesis on matrimonial property, Judicial Discretion in Matrimonial Property Dispute in the Commonwealth Countries, and I had the opportunity of speaking with her at length. She w planning to present a brief herself but had to return to Ottawa before then. She was a reside of Manitoba until this past year, and I had the opportunity of speaking with her. I think I spe with a fair degree of confidence on some of these points, due to the fact that I know that her or full year of research backs my opinions on this matter.

MR. AXWORTHY: Thank you for the information. I wonder, in fact, if it would be possible for yc to obtain a copy of this Master's Thesis.

MS. BROWN: I've asked and it's being published, and until it's published, we can't obtain copy.

MR. AXWORTHY: I know those problems. Let me ask you this question, based on the comment that Mr. Spivak was making. We are trying to deal with this question of whether the clauses settin out criteria for judicial discretion will result in an equal sharing, or in fact, unequal sharing. Nov as the Act reads, there are two clauses, 13(1) and 13(2) which give very different grounds for equ sharing. One applied to family assets, which is using the words "grossly unfair or conscionable, and 13(2) which gives a much broader base for that. Do you believe, or would you have the opinio that because there are two very different sets of grounds upon which judges would then look t say, this is how I exercise my discretion — that in fact they would interpret that to say, on th one hand, we are dealing with a more equal sharing only when there is gross or unfair c unconscionable behaviour, and on the other, where the ground s are so wide, that that is a sign to really say that we're not interested in equal sharing at all?

MS. BROWN: I would agree 100 percent. That's exactly the point I was trying to make by bringin out the cases and by suggesting that the Ontario case law can't be applied here due to our previou history and due to the fact that there are different provisions in this Act.

MR. AXWORTHY: So the only way to make it have some expectation that the law will work i equitable fashion, is to have the two criteria for discretion to be the same. In other words, to us the wording in Section 13(1) in Section 13(2) as well. Would you agree with that position?

MS. BROWN: Yes.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: I'd like to ask one more brief question. Going back to the definition of homestea the 320 acres, those that have urged that the homestead be reduced for purposes of this legislatio to the house and an acre or two around the house, will point to the situation in the city, of th

orekeeper's house, which is his homestead, but not the store, not his commercial earning capacity, d will then say, wel why would the farm wife be entitled to 320 acres? I would like just to have ur reaction to that argument, Mrs. Brown.

S. BROWN: I don't quite follow the argument, could you just repeat it?

R. PAWLEY: The argument that is advanced for reducing the 320 acres down to an acre or two, cluding the house, is that you are then dealing only with the home, the actual home, not the earning pacity of the farmer, his acreage, such as in the city where you might have the storekeeper, with s home, but homestead does not in clude his actual store. So the government here is arguing at there is a consistency between their practice in town or in city with the businessman and with e farmer out in the rural points. So I would like you to advise me whether you feel this is consistent, ether you see valid reasons for a differential insofar as the businessman in town and the farmer t in the country.

S. BROWN: I do feel that it isn't consistent, and I feel that there are valid reasons for ferentiating. I think as I enunciated in my brief, the reasons that I give are firstly, that in general, d we have to speak in general terms as we're talking about the whole province here, farm incomes e not generally allocated in large amounts into building large, expensive houses, whereas, in neral, in the city the houses would be worth more money than those in the country. Secondly, cause of the mobility factor, you've got an older house on a piece of property, in the city it might ll for $30,000, $40,000; in the country, you can't move that house because it's going to be destroyed it's moved and nobody wants to move out to Boissevain or someplace out there, and therefore u can't move that house, so perhaps it's only worth $3,000 or $4,000. There's numerous factors e this that come into play, such that they make it unfair, so that a farm spouse is going to get s than what they would normally get in a town or a city.

And also I think, because there is a special duty and onus on the farm wife and on the sponsibilities that are played , a great many people have suggested, well, we can't have this gislation because it's going to destroy the family farm, and they thought that it was going to destroy e family farm because without understanding the law they thought it would encourage separation, ich I did not believe to be the case. But people suggested that this was the case and it was ing to destroy the family farm. Well, that only goes to show how important the farm wife is to e farm situation, and I think that we should recognize the special place and role that the family rm wife plays on the family farm. She does not just tend the children and work in the house and at. She raises a large garden, she works and drives to the field and combines, and as you can e from the Rathwell case and the Murdoch case and various other cases, she is as much a farmer, almost as much a farmer as the farmer himself is. And as my husband can verify, even those us who have outside professions, still have to drive combines and tractors every once in a ile.

So I think there really is a special role to be played there and I think it is really a slap in the e to the farm women to have the government not realize this role — in effect, they're giving em less than what they're giving the city women and the urban women, instead of giving them re, which perhaps they should get.

. CHAIRMAN: Mr. Pawley.

. PAWLEY: Mine would be a statement, rather than a question, so I won't breach your rules, . Chairman.

. CHAIRMAN: Mr. Cherniack, a question?

MR. CHERNIACK: Mr. Chairman, I remember when we had occasion to talk in this way with Ms. Brown and we talked about the philosophy of the concept amongst farmers as to joint ownership, husband and wife. I remember she was telling us then about her own parents. Now that Mr. and Ms. Brown are here, I'd like to explore a little more whether they detect a difference n attitude between the farm family and the urban family in relation to family assets. And I say that because there have been discussions in the past, statements made, from I think the rural oriented people, that the farm is something that should be passed to children rather than to the wife, that a farmer builds for his sons, not for his wife. That was some concepts that I heard expressed by some MLAs, and I would like to know if there's any noticeable change that might be better related to the urban family in terms of sharing as a concept now, without the benefit of these laws?

MR. CHAIRMAN: Mr. Brown.

MR. BROWN: I would like to say that for my personal feelings, what you're saying with regar to the passing of a family farm to a second generation as opposed to a wife, is in part true, far as my feelings go, that, I think, that the continued operation of the farm should have probab an equal priority with the division of that asset between the husband and wife. Not necessarily say to write off the wife as far as the asset goes, but I'm saying in terms of the inflationary valu of that land as opposed to the original cost basis, that possibly something could be done with regar to the inflationary basis. If the land was to be passed on to a child, possibly there would be son way around having the child pay more, in order that the mother or the father, whatever the ca may be, be paid off at the inflationary value of that land and therefore put that second generatio into a greater hardship or not as a competitive position as might have been the case if that inflationa value hadn't been incorporated into that asset.

MR. CHERNIACK: And that is the reason I assume that you suggested that the inflationary valu should be payable on disposition rather than in the long haul over . . .

MR. BROWN: At that time it can be readily seen whether it's an arms length transaction at th sale, or whether it's sold off to foreign interests or something like that in cases like that.

MR. CHERNIACK: I want to come back to the points that Mr. Pawley was talking about, th definition of the homestead. I have had so little experience in terms of farm operation that I' wondering if I'm right in assuming that the original law as to what was a homestead that relate to the 320 acres, was based on the fact that there's not much point owning a house on a far if it were not a viable part of some kind of a farm operation. I don't quite visualize that a perso would want to occupy — have a domicile, have home on a farm rather than in a town — unles they were using that home as part of the centre of the operation. I assume that was it, and if I' right, and you'll correct me if you think I'm wrong, did the 320 acres when it was first spelled ou many many years ago, have a different relationship to viabilities than it would now?

MR. BROWN: Well, certainly it does, although I have to say that three years ago that was the amou of land that I was farming and you have to start somewhere.

MR. CHERNIACK: So, you could start to build a farm operation with 320 acres? 8MF BROWN: Well, certainly, yes.

MR. CHERNIACK: Could you do with less?

MR. BROWN: It would be difficult.

MR. CHEIACK: Well, then, does that take us back to what your original contention was, that givin the wife a right to half of the house and the land contiguous to it, and not the acreage that woul go with it, there's really not much value to the spouse?

MR. BROWN: I wouldn't say so. I think that by taking a house off of a farm property, the hous doesn't add that much to any farm property. It's the property itself that a person is buying in mos areas of the province, and in some areas of the province that certainly isn't true, close to Winnipe where commuters and people like that are purchasing smaller acreages for the purpose of simpl a dwelling. On the province as a whole, this isn't the case and a house somewhere at a distanc from a major population centre isn't a very valuable asset on its own.

MR. CHERNIACK: Thank you.

MR. CHAIRMAN: No further questions? Thank you very kindly. Before I carry on to the next perso on my list, Janet Paxton, I would like to ask persons present, is there anybody who is present tha is from out of town, that for some reason or another cannot be present tomorrow, and if that perso is present, we would have to ask Janet Paxton to permit him or her to speak prior to Janet Paxtor Is there somebody from out of town that just cannot be back tomorrow? Seeing no one, I will ca Janet Paxton then. Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, this might be a good point to discuss when the committee shoul rise. Ms. Paxton, if we could find out from her how long she'll be, but I would guess that she wi be awhile.

R. CHAIRMAN: 6Mr. Jorgenson.

R. JORGENSON: I was going to say, Mr. Chairman that I would like to remain here at the ›nvenience of those who have come here to present briefs, but if there is no one else that wants present a brief tonight, I would suggest that Janet Paxton be the last one.

S. JANET PAXTON: Mine is very long. I was thinking I'd go home and cut it down to half, if ıu'd prefer to get. . .

R. CHAIRMAN: Would you prefer to take a little leave and come back in the morning with a ıorter brief?

S. PAXTON: Sure. I think you all need a good sleep occasionally.

R. CHAIRMAN: I would suggest that tomorrow morning at 10:00 a.m. when the committee convenes that Janet Paxton is second on the list. There was a person by the name of Georgia ›rdes that we agreed that would be first.
Committee rise.

)LLOWING LETTERS RECEIVED TO BE CONSIDERED BY THE LAW AMENDMENTS)MMITTEE:

:TTER NO. 1:
To the Chairperson and Members:
We are writing with respect to Bills 38 and 39, the Marital Property and Family Maintenance ›ts, recently introduced in the Legislature.
As residents of the rural area of Manitoba, and as women, we feel it is important that we take e time to express to you briefly, our concerns regarding the proposed changes in the Family Law ǧislation.
We are not an organized group of women meeting to bring pressure on the Legislature regarding e legislation, as are, we presume, many of the urban groups. However, we are concerned about e legislation and about what we assume to be a dearth of response from women living in rural anitoba — in very small communities — where women living on farms is the rule, rather than e exception. We feel we should present the Law Amendment Committee with our opinions, as ›men who are often not heard from, nor perhaps consulted by our legislators.
Our concerns center on Mr. Mercier's (and we presume, the government's) intention, in the family w legislation, to allow the court flexibility in order to deal with particular circumstances of individual ses (in regards to equal sharing of all assets). We feel strongly that the Act should be more clearly fined in Bill 38, Sub-Section 13, in order that the average person can interpret the meaning of e discretion section and thereby be able to decide if an amendment to the Act is desirable. The ›vernment insists that flexibility is a necessary and basic part of our legal system, but we are ncerned that it will give such wide discretion that equal sharing — though intended — will not ‹e place.
Since women have for so many years been unfairly treated in this aspect of family law, we find difficult to believe that in an unequal division of commercial assets, the courts will now be unbiased, pecially since the courts and judges involved are almost exclusively male.
We are also concerned that the present legislation defers sharing of all assets until a marriage eaks down — in stark contrast to former legislation which called for immediate sharing of marital me and property and family assets. We feel the principle of equal sharing begins with ırriage.
We are also very concerned and find it unfair that the size of the family homestead as provided the Dower Act (which guaranteed a farm wife a half share in the 320 acres immediately surrounding ɜ family home) has been changed, we understand, to now only include the family home and area mediately around it normally recognized as part of the home.
In regards to all of our concerns expressed, we wonder if the Conservative government is only ɜpared to pay "lip service" to the principle of equality in marriage, since the courts may well cumvent equal sharing under the guise of "discretion".
Women in Manitoba, and especially rural families, must be given a better deal by our elected icials.
We are neither in a position to fully understand nor quote from Bill 38 or 39 (although we have ›ies of the Acts), but feel our concerns for a more equitable world for women are better stated efly and concisely.

Since the Law Amendment hearings are not being held in rural Manitoba, we trust our lett will be received and read by those on the committee concerned about all of Manitoba.

We thank you for your attention to our letter.

Signed, yours truly,

Linda Burgess, Crystal City, Man.
Verna Menzies, Crystal City, Man.
Beverly Treble, Box 29, Crystal City, Man.
Louise Mullick, Box 151, Crystal City, Man.
Sandra Gardiner, Box 8, Crystal City, Man.
Patricia Colp, Box 32, Crystal City, Man.
Gail Jay, Box 126, Crystal City, Man.
Inga Andries, General Delivery, Crystal City, Man.

LETTER NO. 2:

I believe in the principle of equality in marriage and I support The Marital Property Act, whic provides equal sharing of all assets acquired during marriage, and The Family Maintenance Ac which deals with maintenance during marriage and on separation.

I believe that the following must become law and these principles must not be watered dow in any manner:

(1) all assets (other than gifts, inheritances and damages awards) acquired during marriag including commercial assets, must be shared equally by the husband and wife.

(2) the family home and family assets (which do not produce income) must be equally owne by the couple during the marriage and not just on separation.

(3) the reformed family law must apply to all Manitobans who are married and not separate before May 6, 1977, and there must be no provision which allows one spouse to opt out unilateral from sharing without the consent of the other spouse.

(4) there must be equal sharing of all assets acquired during the marriage and no provision allow a judge through judicial discretion to give more to one spouse than the other, except in ra hardship cases.

(5)maintenance on separation must be based on need and fault must not be considered.

Signed, yours truly,

Mrs. Mazie Hicks, Pres. W.I. Box 636, Boissevain, Man.

FOLLOWING ATTACHED:

We, the undersigned, do hereby indicate our support for the Marital Property Act and the Fami Maintenance Act, embodying the following principles, establishing marriage as an equ partnership:

(1) immediate sharing of family assets
(2) deferred sharing of commercial assets
(3) limited judicial discretion
(4) mutual opting out
(5) no-fault maintenance

Names: Hazel Wilkinson, Mildred Orriss, Marion Facey, Rita Preston, Luella Noble, Dorott Plunkett, Mildred Hammond, Bessie Patterson, Evelyn Patterson, Violet Kilmury, Mabel Ludgat Elmire Cuvelier, Annie Hammond, Marjorie McCausland, C. Howden, Mabel Holditch, Lila Ekiw

LETTER No. 3:

Dear Sir: Enclosed please find a copy of a brief which we sent to the Law Amendments Committe regarding Family Law Bill 38. The Marital Property Act and Bill 39 The Family Maintenanc Act.

We trust you will consider our point of view as you debate these issues.

Yours truly, Mrs. C.H. Westaway, Sec., Local 520, National Farmers Union.

BRIEF:

We, the members of the National Farmers Union Local 520, being farmers in the Swan Riv Valley, are presenting this brief to you in order that you may be fully aware of our concerns regardir The Marital Property Act, Bill 38, and The Family Maintenance Act, Bill 39, which are both no before the Law Amendments Committee of the Manitoba Legislature.

Regarding the Marital Property Act.

The bill now proposes that the sharing of both family and commercial assets be deferred un the time of marriage breakup. This is most unsatisfactory. No man is left with this type of econom insecurity. The wife's economic security would rest on the love of her husband and judicial discretio This judicial discretion even in the recent past has not dealt with the wife as an equal econom

·tner in marriage. The marriage where love and respect and generosity prevails has no need of islation to protect it. It is the one which is in difficulty which needs justice and protection. This islation gives neither. 13(j) virtually gives total judicial discretion in division of both family and nmercial assets. No man in his right mind would risk his economic security to judicial discretion ıast performance is any indication of the fairness and unbiased way in which it will be applied. ither should farm wives.

The recognition of equal sharing of assets during marriage is of extreme importance. Many a ıuse has been left at the mercy economically of a senile or paranoid partner, who through infirmity ɔersonality change turns against them. As the law is now proposed such a spouse has no economic ;urity unless they please their mate, which would be virtually impossible under these circumstances. one should be made to be dependent on the whim of any other human being, senile or otherwise. ıarriage is to be a workable partnership, it must ensure an equal economic return for each partner ɔughout marriage. Love should not be the only economic security that a wife receives at the ar.

Is it any wonder that intelligent, educated young women are reluctant to enter into traditional rriage and family life having had access to independent income. Common-law relationships are reasing rapidly and the divorce rate in Canada is increasing at an alarming rate. It has been d that economic equality of husband and wife during marriage would lead to marriage breakdown, ;ause of interference of the wife in the business affairs. We believe that to deny intelligent women ɔnomic equality and a share in the planning for their security within marriage is a major present ıse of family breakdown. For women to want to marry there must be a guarantee of justice within t marriage.

Regarding The Family Maintenance Act, Bill 39.

Section 2(2) returns the fault concept in alloting maintenance on the grounds that if conduct ;o unconscionable as to constitute an obvious and gross repudiation of the marriage relationship n there is a lesser obligation on the other spouse to share equally the economic value of the rriage assets. Traditionally, women subjugate their economic opportunities for the good of the rriage and family relationship. They have followed where their husband's job has taken them, ing a lesser paying job, if at all, in order to further their husband's career demands. They have ditionally taken time out for the raising of their children and have lost out on promotion and security if they choose to take on the role of homemaker. If they do work outside the home ; very often on a part-time basis which usually carries little advancement or job security. Even t which she does to assist her husband economically in his business is not recognized by the eral government either for income tax purposes or for Canada Pension Plan.

It is our contention then that even if one spouse is grossly at fault, which is often difficult to ermine, their financial interest in marriage is still valid. What partnerhsip at the time of dissolution es into account which partner was responsible for the breakup of the partnership in assessing ision of the assets? The economic losses suffered by women in marriage have for too long gone ecognized. The concept of a readjustment period or retraining period for either spouse, regardless fault is the only logical solution.

In conclusion then we urge the Law Amendments committee of the Manitoba Legislature to ıport the National Farmers Union Policy which advocates equal sharing during the marriage of h the family and commercial assets, which have been acquired during the marriage. The principle no-fault maintenance be recognized in cases of marriage breakdown.

Very limited judicial discretion be allowed with regard to the equal sharing of assets both during marriage or on marriage breakdown.

(Signed by)

Ted Wilson, President.

Mrs. C. H. Westaway, Secretary.

June 28, 1978.