Legislative Assembly of Manitoba

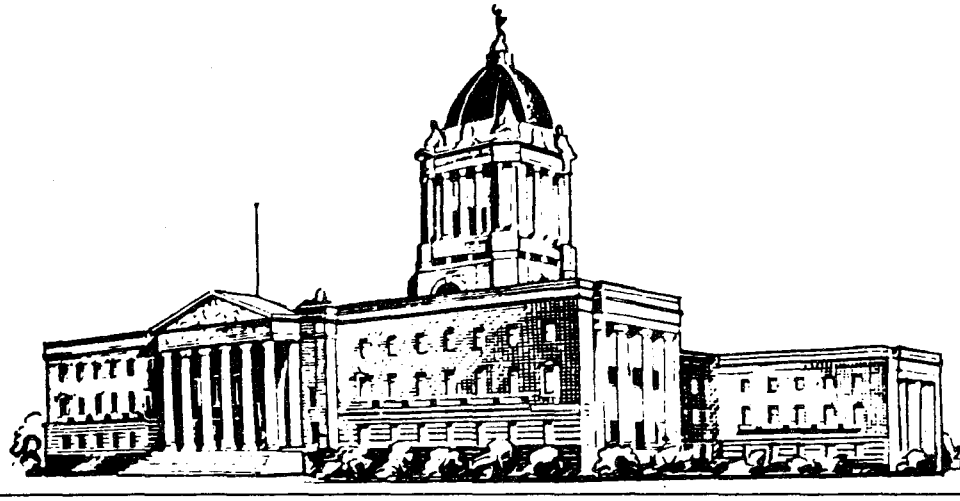
HEARING OF THE STANDING COMMITTEE

ON

STATUTORY REGULATIONS AND ORDERS

Chairman

Mr. Warren Steen
Constituency of Crescentwood



Saturday, July 8, 1978 10:00 a.m.

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IR. CHAIRMAN, Mr. Warren Steen.

IR. CHAIRMAN: Will the committee come to order? When we broke off last evening, it was agreed y the committee that we would start this morning by calling Georgia Cordes, who had made it nown last night that she wished to make her presentation when the Attorney-General was resent.

EORGIA CORDES: Thank you very much, Mr. Chairman. I appreciate very much being able to resent my submission with the Attoiney-General, Mr. Mercier, present.

I appreciate the opportunity to appear before you today to submit my views in consideration f Bills 38 and 39. I thought I might best preface my specific remarks about the bills with some ısight first about my personal motivation and concern.

I am a wife and mother of two preschool children. After graduation from secondary school I ɔent three years employed in the labour market performing a cross-section of part-time and full-time ıbs, including waitressing, architectural drafting, and the proverbial secretarial jobs. At the same me I financed my own way through university. After three years of independent living, I married t the age of 21 and continued full-time employment for six months. I helped to support my husband hile he studied in a technical training program.

Following this, both my husband and I pursued our university educations further. I received my laster's Degree. I then became employed on a full-time basis for two years, doing social group ork with all ages of people. The money from that job supplemented that of my husband. wages ıade it possible for us to purchase our first home. Later my wages made it possible for us to buy :her homes for rental purposes, launching my husband into what is now a considerable undertaking investment and entrepreneurial enterprises.

As often happens, we decided to add children to our family after seven years of marriage. Three onths before our first child was born I left the paid labour market to labour at home. I have been bouring full-time in this multifaceted career ever since.

I can quite candidly report that I have used, by far, more of my personal resources, effort, patience, ıeer strength and willpower in this 168-hour work-week occupation for the past five and one-half ɜars, raising our family than were ever required of me in any full-time labour market employment. ıat is not to say I was never used to hard work, for I have received several awards in my adult ɜars in recognition of my efforts in employed and volunteer positions.

Conservative estimates place the value of the functions I perform to be worth at least $10,000 ɜr year during the course of a marriage. In addition, research has shown that, if their total value ɜs included, the services of homemakers would account for a significant economic worth of one-third the Canadian Gross National Product.

While fulfilling all of the family functions of homemaking and child care, I have been active in ımerous volunteer capacities in Winnipeg for over five years. Though I am the sole company partner my husband, it is he who continues to unceasingly direct the large majority of his efforts into anaging our substantial business activities, while also holding another full-time employed position. ɔgether we both are developing assets: our home environment, children and income.

I am one of a growing number of women whose husband supports my right to choose a career ıttern for myself, in the same way that I support his career decisions. I live in a lovely home, have personal car and personal monies regularly received from my husband without my even having ask. In fact, my husband is so enlightened that two years ago, viewing me as an equal partner marriage, we mutually agreed to a formal marital partnership contract. It provides for immediate ı-50 sharing of the total of all of our marital assets, including both family and commercial sets.

You might be asking yourself, "So why is she here today? Even without the marriage contract

she has it made."

My answer? It is a sad commentary indeed that as a couple before our marriage we were n given any indication, neither through our schooling nor from others we may have respected, regardi laws which reflect the relatively low status of homemaking in marriages. When I was younger I nev dreamed that there were laws which did not recognize husband and wife as legal equals. I presum there was equality between spouses — how naive.

It is also a sad commentary that such unequal laws ever existed. Just imagine how they ha reduced the legal worth of the enormous marital contribution of perhaps your mother ar grandmother, not to speak of your wife, to a mere pittance. I have vowed that my ' children shou not have to marry into family law which socially alienates husbands and wives. The inequity of fami law allows no basis currently for continuing mutual respect and independent security.

Recognition of my marriage as a legal partnership is more than a "paper right". It h strengthened our self-worth and thus individual contributions to our marriage. It has al strengthened our relationship and our commitment. What is most significant to me as a result our equitable marriage contract is that my vital, productive and valuable contributions of hom management and child care to our marriage are recognized and legitimized to be equal to t essential income provision contribution of my husband. I do not have to be earning an income n be developing commercial assets in order to be an equal marriage partner and to gain some measu of economic independence. I am no longer a dependent possession of my husband, a harmf tradition traced from feudal times to the present through our common law.

The method of immediate sharing of our assets in their entirety has worked well for us. It interesting to note that my husband has been able to accommodate any tax implications immedia sharing was supposedly to have borne. Creditors' rights have been protected by special provisi in our document. Neither our commercial assets nor commercial position have been jeopardize as a result of our immediate sharing.

There is no doubt that I am responsible for virtually all of the homemaking and child care functio at home, which significantly frees my husband to pursue his goals in life. There is no doubt th I benefit from my husband's commercial income, which helps me tremendously to pursue my goal Our marital contract will not economically penalize either of us for the functions we mutually ar privately allocated in our marriage partnership beginning over 12 years ago.

Current family law and Bill 38, by virtue of their Separate Property orientation and powers judicial discretion, would indeed penalize me for the functions I perform in my marriage. The Separa Property philosophy recognizes and rewards only the monetary contribution function in marria and not the economic value of a non-earning spouse whose primary responsibility is hom management and child care.

Ironically, most wives would presume that, as long as their marriages were continuing witho major problems, their husbands must be satisfied with them as marriage partners. What a sho to find out at the time of marriage separation that one's husband thought a great deal less of h — in fact, about 38 percent less. I base this claim on statistics which reveal that the average lump-su property settlement awarded to Manitoba women in recent years has been 12 percent of the husband's net worth, 38 percent less than equality.

01-01 In my previous remarks, I have endeavoured to stress, among other things, three principle They are that women are unique independent persons who can be responsible for their ow lives; marriage is an equal partnership between spouses and unpaid work performed in th home is an equal and vital contribution to marriage. These three principles are basic for th development of equality in human rights for women in our society. They should also be ve evident in Bill 38, but they are not. I believe that, if passed, Bill 38 will not change the depende status of married women.

I commend the government for presuming equal sharing between spouses. Now it mu act further to see that the legislation guarantees equal sharing. I would first suggest that the be a preamble to Bill 38 outlining to the court the general intent and direction of the legislatio It should clearly state the philosophy of equal 50-50 sharing between spouses in recognitio that both spouses contribute equally in their family roles to the marriage and thus to th development of all that the family values.

Secondly, I would suggest that this Law Amendments Committee please research an produce a fair evaluation concerning the workability of the instantaneous community property regimes in a number of jurisdictions in the United States. I have yet to see an such in-depth evaluation in either the Manitoba Law Reform Commission's report on fami law, or the Family Law Review Committee's report. No one, to my knowledge, has produce evidence answering why such equal sharing regimes could work well for both public and priva interests in the states of California and Washington, but not in Manitoba.

There were several submissions to Law Amendments Committee approximately one year ag which detailed the California marital regime. I trust that you will hear more about this in other curre

bmissions. It behooves each of you to be aware of all factors in your present considerations. herwise, your deliberations will guide us no further ahead of our current antiquated family w.

Regarding foreign assets. In Section 11 of The Marital Property Act, I strongly suggest that the ording be changed from "may" to "shall." Only then will all the family assets be properly considered any accounting and division.

With respect to deferred sharing of family assets, Section 12. I am discouraged that the vernment has not deemed immediate equal sharing of family assets to be desirable. It is especially rd for me to understand why, in view of the fact that my marriage is managed by what appears be a workable regime, not to speak of the many U.S. examples. Let me pose an example of w Bill 38 will determine sharing of family assets, only in my example it is the men who are the tims of discrimination in marital inequity. How would you feel if the law told you that you had e right to enjoy your children, whom I consider to be a marital asset, during your marriage, but legal right to guardianship? And you ask why? According to the directions set out in Sections 2), 6(3) and 12, in my analogy you would have no legal right to guardianship because you were t the person who gave birth to your children.

Does my example sound fair? Does it reflect any kind of equal parental partnership? I am sure of you would answer "no." What is more, you are probably abhorred having such an example t before you, yet this is what Bill 38 says to me about presumed equal sharing of family assets. my money does not purchase a family asset, then I will not own, and therefore will not have legal cess to control or management of that asset. I can only use and enjoy it during my arriage.

Section 12 turns a presumption of equal sharing during marriage into the reality of a separate operty marital regime during marriage — taking us no further ahead of our existing law today. ction 12 denies the majority of married women much more than a psychological right or paper ght. Section 12 denies the majority of married women freedom from their present dependent onomic status resulting from their marital contribution.

If the principle of equal partnership during marriage was paramount, the government could at ast make an attempt to see that the principle is realized. The ostensible obstacles of tax implications d creditors' rights are red herrings in a sea of inequity. Nevertheless, these so-called major stacles can be easily overcome. Amendment can be made to tax legislation, creditors can easily ange their policies where necessary, to accommodate equal sharing legislation, while at the same ne protecting their own interests. These alleged obstacles are merely being thrown to the public the government, hoping to appeal to our society's concern for the rights of creditors while burying y concern for equality of rights between husbands and wives in marriage.

I urge that all family assets, including the regular family income in the form of cash or a cheque, equally owned and equally shareable between spouses during marriage.

With respect to judicial discretion to vary equal division of commercial assets, Section 13(2), ere may well be a presumption on the part of the government of equal 50-50 sharing of both mily and commercial assets at marriage termination. However, the wording of the legislation has en to it that equal sharing will be the exception rather than the rule when Bill 38 is enforced. ction 13(2) completely obliterates the presumption of which the Attorney-General speaks, reducing illusory hopes to a nonentity.

If you look closely at Section 13(2) you will find 11 mile-wide loopholes, each of which spouses, wyers and judges can use to vary equal sharing of commercial assets. The opening statement ows for variation "If the courts are satisfied that a division of those assets in equal shares would inequitable having regard to any circumstances the court deems relevant." If you think about s, everything possible, including the kitchen sink, could conceivably be dragged up as an excuse vary equal sharing.

The courts need to be given very precise narrow guidelines for considering variation of equality tween spouses up to the time of their separation. Unfortunately, the 10 points following in Section (2) do not provide any help; they all should be deleted.

Point No. (a) under 13(2), "The unreasonable impoverishment of either spouse of the family assets" already taken into account under Section 6(6) through 6(9). Item (b), "The amount of the debts d liabilities of each spouse and the circumstances in which they were incurred" is previously nsidered in Section 10(1). The government is suggesting in Items (a) and (b) that some form of ult could also possibly be attached to the spouse who is responsible for the occurrence of such ents. You have already provided recourse for the offended spouse; why must fault be considered well?

Item (c), "Any spousal agreement between the spouses" is previously considered in Section

Item (d), "The length of time that the spouses have cohabited with each other during their

bears no relationship to the equality of contribution by each spouse to the marriage, and therefo no relationship to equality in the division of all assets. Bill 38 will economically penalize depende non-earning spouses in short-term marriages. Item (e), "The length of time that the spouses ha lived separate and apart from each other during marriage" is considered in Section 12(c) to so extent. That section allows for a right to equal division of assets between spouses "where the spous have been living separate and apart from each other for a continuous period of at least 6 mont . . . "

It appears that you are damned if you do and damned if you don't! If your marriage is unhap and you and your spouse live apart for six or more months, you both will finally have a theoreti right to equal portions of the assets. Except then the judge can turn around and, considering yo separate residence, vary the division of assets and maybe economically penalize you because yo perhaps, moved out of the marital residence first. Any attempts at reconciliation will be thwart by this section of Bill 38.

Item (f): "The date of acquisition of each asset" suggests that expensive assets purchased ne the end of the marriage by an earning spouse should not be equitably considered as betwe spouses. This does not take into account the presumption of equal sharing during the course the marriage, and the government knows this.

Theoretically, the entire family could have been struggling for years on a meagre budget, all t time saving for a special acquisisition — such as a small business. But if the marriage were end shortly after the purchase, the owning spouse would be able to claim the majority interest that asset. The total family effort would not be considered.

Item (g): "Whether either spouse has assets to which this Act does not apply by reason of th having been acquired by way of gift or inheritance and the value of those assets" has suppose been answered in Section 7, which states that gifts and inheritances are not subject to equal divisio But the government is here further suggesting that Bill 38 will indeed apply to gifts and inheritanc Gifts and inheritances will be taken into account as reason to vary equal division of assets.

Is it fair to say that, because you have inherited a sum of money from your parents, you th can have no legal half-interest in your marital assets to which you contributed equally? I am su fair-minded people would agree that this would be neither fair, equitable, nor a recognition marriage as a legal partnership. This allows gifts from a donor to one specific recipient to be lega used as a subsidy to the recipient's spouse by increasing that spouse's interest in the marital asse The Family Maintenance Act, not The Marital Property Act, is the appropriate legislation where the matter of financial resources at marriage termination should be assessed.

Item (h): "The nature of the assets" is very biased in its implication. It appears to refer to s stereotypes as they relate to marital assets. Commercial business buildings and stock, farms a other real estate might be regarded as masuline assets, particularly noting that it will be marri men who will largely have complete title to such items. I am hard pressed to produce any examp of equally valuable assets the feminine nature of which would be sufficient to vary equal divisi of commercial assets between spouses. (Perhaps only the children might enter this category.) Aga it will be the non-earning and/or non-owning spouse who will be penalized by this provision. It not relevant to the presumption of marriage as an equal partnership.

Item (i): " The effect of the assumption by one spouse of any housekeeping, child care or oth domestic responsibilities for the family on the ability of the other spouse to acquire, manage, mainta operate or improve any commercial asset" need not be present in this section if the governme is truthful when it talks about belief in the principle of marriage as a legal partnership. After a this section states the essence of progressive marital property law reform. The effect of t performance of such duties can not be arbitrary; the effect is an equal (50-50) contribution marriage.

If this section (i) is not deleted, it tells me that there is no belief in the partnership princip It directs a judge to decide the value of the marital contributions of most married women. Our soc and judicial bias favours financially productive labour as opposed to unpaid labour. This bias al reflects sexual stereotyping, all of which ensures that homemakers will continue to lose in t courts.

Let me pose another illustration using Section 13(2) to show how two of the above loophol can be used by the courts to vary any presumption of equal sharing away.

Based on my previous example of reverse discrimination, suppose you had no legal guardiansh of your children. You and your spouse have ended your marriage. Only at that point are y theoretically granted consideration of equal guardianship, in spite of the contribution (direct indirect) you have made toward the maintenance and nurturing of your children during your marriag You begin to think that you have finally attained the ultimate equal status of legal parenthood, whi you have worked and hoped for over many years.vg

But wait — there is a catch! Your wife has applied to the court asking that your status of eq parent be varied. Why? Because according to the directions in Section 13(2), it would be inequitat

ır you to be considered an equal guardian based on two circumstances: (h) nature of the assets, ; well as (j) circumstances relating to the acquisition, preservation, and improvement of the ssets.

So you have your lawyer explain this shocking situation to you. It seems that, as a member of ıe Manitoba Legislature, you had to spend a large portion of your time away from home over the ears. Your wife spent a considerable portion of her life raising the children during your government ervice years, and you did not. According to Section 13(2)(j), you should no longer have equal access ı the children because you did not contribute equally to their birth, preservation or improvement. ccording to Section 13(2)(h), the "nature" of the children as assets could be regarded as feminine mply because more women devote their careers to rearing children than do men.

And to top it all off, what judge in her right mind would rule in your favour? After all, legal ·ecedence has established that the absence of your visible contribution to the bearing of the children ıd to direct child care far outweighed the value of your wage earnings to the family, not to speak your service to Manitoba.

How fleeting was your equal parent status! And here you had presumed all along that your wife ıpported your career and had understood why you had to be away from the family so much. You ıd trusted . your wife, not to speak of the law, to ultimately grant you what you had expected nce your first child was born — equal status. Well, tough luck, Joe. But you should have known hat your rights were before you were married. Besides, the children must not have meant that uch to you; otherwise, why would you have not spent more time with them?

This analogy most likely appears gross and unconscionably unfair to all who hear it. But, except ır the fact that the sexes and assets have been reversed, this unconscionable unfairness has been ıd will continue to be legally inflicted on Manitoba married women in Bill 38.

I wish to correct an impression left by the Attorney-General on May 29th in the Legislature. He ated that "most people's assets are composed only of family assets." I strongly disagree. The mily paycheck is still considered to be a commercial asset. As well, most people have some form savings, however meagre they might be. I would say that most people have some form of ɔmmercial asset.

Very simply, I urge that all commercial assets accrued during a marriage should be equally shared the termination of marriage, except in rare hardship cases — period. To allow otherwise reflects ıd perpetuates the premise of inequality in marriage.

Critics will answer me, if they are honest, by saying, "To heck with equal partnership! Whoever itiates and toils in commercial undertakings deserves to reap the full profits alone."

I suggest that spouses directly and indirectly subsidize their partners through their various marital ɔntributions. I suggest that the large majority of women toil with proportionately little direct help ɔm their husbands when raising their children. Yet those women are not screaming to have sole ;cess to the children. I suggest that a wealth of resources from the marital partnership are heavily vested in order to develop even a modest commercial asset.

These resources from the marriage include at least one spouse's considerable time devoted away ɔm the family, while utilizing the spouse at home to assume the responsibility for homemaking ıd child care functions. Such marital resources also include numerous efforts, abilities and emotions ı the part of both spouses, as well as family moneys and some lean years before a commercial ;set becomes income producing.

It violates one's sense of justice that any one spouse, usually the wage earner, can use any and of these marital resources with no intention nor legal expectation to return the products of those sources to the contributing partner in the marital relationship.

With regard to retroactivity, I commend the government for providing that Bill 38 will apply to married persons resident in Manitoba. Only in this manner will current injustices which now exist marriages be rectified. Many major laws were retroactive, including human rights and income x legislation, the Dower Act and the Married Women's Property Act. Equality and democracy should ɔply for all, not just for those of one sex or one generation.

With regard to contracting out, I commend the government for allowing only mutual contracting ıt of the Marital Property Act. Unilateral opting out would not have supported any principle of ıuality in marriage, not to speak of any sense of partnership.

With regard to judicial discretion, there should be no provision in the Act to allow a judge to ve more to one spouse than the other, except in rare hardship cases. To do otherwise destroys e intent of any progressive legislation. Unfortunately, history and the recent monitoring of court ses has generally revealed that neither family law nor judicial discretion have recognized women independent beings of economic worth who share in a marriage partnership based on equality. ɔth government and the judiciary will continue to elevate discrimination against women to the level principle in Bill 38. This must not be allowed to continue. The equal sharing presumption in Bill must be an assured provision with very limited judicial discretion if Manitoba expects to change statistical average to 50-50 sharing rather than 88 percent versus 12 percent sharing.

With regard to Bill 39, The Family Maintenance Act, our current laws governing marriage ha their origin in English common law stemming from the Magna Carta. During the middle ages wom were chattel, the property of men to which they were related. Women were not considered perso in the eyes of the law. They were not considered capable of controlling their own lives and, henc were something to be protected.

The economic status of women was determined by the status of their fathers or husbands. Th status as women was determined by their sexual and reproductive capacities.

In feudal times marriage was an exchange of services: the husband protected and support his wife in exchange for her exclusive services. Not only did men own their women, men al possessed all control over marital property. The family lineage and property was passed from o generation to the next through male heirs. Thus it was essential that paternity was free from doul To guarantee this it was necessary for the male property owner to have exclusive rights of sexu access to his wife. No such restraints were placed on the husband.

This double standard has been perpetuated through the ages, evident even in the existing Wives and Children's Maintenance Act. In that Act, wives still are the victims of blantant discriminati if they are considered guilty of a sexual indiscretion. Husbands are not subject to su discrimination.

The vengeful continuance of the fault concept in Bill 39, I contend, is a perpetuation of the earlie principles and common law relating to marriage. Although Bill 39 has overtly eliminated the sexu double standard, it has not overcome this government's hang-up with wives who reject th husbands.

Those who support retention of the fault concept believe that pursuing recrimination in pub is a legally necessary way to punish people who have committed no criminal offense. I say the is no moral or criminal code in Canada which calls for the legal punishment of spouses who repudia a marriage. Repudiation of a marriage takes place when marriages are on a shaky foundatic Repudiation of a marriage is recognition that the marriage has broken down. Legal backing whi supports a public recrimination procedure for wrongdoing between spouses can sever possibiliti for any hoped-for reconciliation.

Finding fault bears no relationship to the reality of the stages of human relationship, least all mututal understanding, respect and love. Finding fault forces increased litigation, not to spe of increased trauma and unnecessary emotional scarring on spouses and children when marriag end. It does not allow for a realistic decision based on human needs.

As one source phrased it, "Fault gives direct financial motives to pursue recrimination in publ Retaining the fault concept presents almost insurmountable obstacles to the development appropriate legal policy for the family. Family policy should focus on the economic and soc implications of marriage breakdown, premised on finding fair constructive solutions."

As a society guided by Christian principles, we have to re-examine the origins and purpose the fault concept in our culture. Its retention poses many harmful contradictions. The fault conce must be eliminated from Bill 39.

Surely the purpose of maintenance acts from the time of their origin has been to secure necessa support for dependent wives and children. The onus of the responsibility for such maintenance h primarily been on the economically independent husbands. Welfare, and ultimately the taxpaye were viewed as a last resort for family maintenance.

However, current statistics show that over 70 percent of maintenance awards in Canada are some measure of default. We as taxpayers are forced to provide support for women and childr in need, either because the wife's non-criminal conduct has dictated their poverty, or because la of government enforcement has dictated such poverty. This is an injustice to spouses in need, children, and to me as a taxpayer if husbands and fathers have an ability to provide support

The onus is on our government to totally revamp its procedure for collection and enforceme of maintenance awards. Our government should help initiate such procedures on a national scal as well, in order to facilitate out-of-province collections.

Part IV Enforcement of Orders of Bill 39 is an insult to the concept of mutual maintenance betwe spouses. I wonder if Part IV, as it is written, would be facing us today if men were the prima recipients of maintenance awards? I am sure it would not.

Ultimately the characteristics of Bill 39 combine to offer little or no help to dependent spous in need. Bill 39 provides women with a newly acquired responsiblity to support and maintain th spouses during marriage. It also provides for women the obligation to attempt to becor self-sufficient within a reasonable time after marriage breakdown. Yet lack of adequate enforceme procedures will ensure that the dependent spouse — usually the wife's — right to maintenan is artificial. The independent husband still will have his income, employment, job skills, fringe benef and work experience when marriage breakdown occurs. This is not equality of rights.

The inclusion of the fault concept will ensure, as in the Middle Ages, that dependent spous — usually wives — will be economically penalized on a proportionately greater scale for non-crimir

nduct, while independent spouses — traditionally the husbands — will suffer proportionately less. e position of the average husband in the employed labour market will assure his financial security er separation. The position of the average wife in the home labour industry will assure her financial ecurity. This is not equality of security.

With respect to obligation to support children — Section 12(1), I urge that the wording in Section (1) be changed to say that "Each parent of a child has an equal obligation", rather than "the ligation".

I commend the government for adhering to a recommendation of the 1970 Report of the Royal mmission on the Status of Women calling for equality between sexes with respect to mutual ligation to support and maintenance during and after marriage. I also commend the government focusing its guidelines in Section 5(1) on realistic criteria relating to need and ability to pay. rther commend the government for stating that spouses have an obligation after separation to e all reasonable steps to become financially independent.

You must understand that for too long married women haveccarried their equal share of any sponsibilities toward a marriage without insurance of any equal share of rights in marriage. The atus of Women report states "that real equality cannot exist without economic independence." at is why a Marital Property Act which promotes and insures equal sharing during marriage is essential step in creating a base of economic independence for women who labour in their homes. l 38 does not promote equality during marriage because the bill remains on a separate property ndation. Thus Bill 38 . can be in no forefront position as long as it fails to create a base of onomic independence for married women who labour in their homes.

I plead with each of you as spouses, as parents and as legislators, to ask yourself why Bill 38 d Bill 39 are being introduced. If your honest answer is, to reflect marriage as a true legal rtnership between equally contributing spouses, then the major changes I have discussed are vital these family law bills.

I fear that in this legislation you have merely perpetuated what has gone on before, that is, in e eyes of the law, financial contribution to the marriage and a financial extraction from the marriage pear to be the essence of marriage itself. You have not legally recognized, nor given credit for, any significant meaningful way, any other forms of contribution to the marriage partnership. The vernment is dreaming if it thinks it is strengthening the family unit with these pieces of legislation. ouses who are not employed can and will still end up the losers. This offends my sense of justice d it should offend yours.

It is your duty as representatives of thousands of women in each of your constituencies, to not smiss the concerns we bring to you. Each of you must use your own integrity to make sure that e necessary alterations are made in these bills to eliminate sexual inequality, and to make sure at any presumptions of equality are made ieal. Do not be fooled into thinking that equitable means ual; it does not. Equal means exactly the same in measuring; equitable means just and fair. Equity women in family law is decided subjectively by a judge; equality for women in family law can ly be an objective fact in legislation enforcing 50-50 division of all marital assets between ouses.

In closing I wish to quote from a book entitled, "All We're Meant To Be," a Biblical approach Women's Liberation. The authors state, in a chapter which asks, "Where Do We Go From Here" 'We should have learned from the history of slavery and racism. Sixteenth Century Spanish eologians formulated a natural law theology for inequality in order to enslave Indians. They declared at each person has a most appropriate social function; these biologically distinct individuals are stined by nature to be slaves, a condition beneficial to them and to society. Southerners of the ited States used similar arguments to keep blacks in slavery. To argue that women are equal creation but subordinate in function is no more defensible than separate but equal schools for e races. For men, it is true, women's liberation will mean a loss of power; but it will also mean new sharing of responsibility. Autocrats have no place in a democracy."

Thank you.

R. CHAIRMAN: Mr. Cherniack, would you like to ask the representative a question?

R. CHERNIACK: Thank you, Mr. Chairman. Yes, I would, Mr. Chairman. May I say, Mrs. Cordes, at this is an outstanding presentation, in my opinion, and therefore there is not too much I want ask, but there - is one very small point that I would like you to elaborate on. At the bottom Page 18 you refer to Section 12(1) of Bill 39 suggesting that the words "an equal" replace the rd "the" — each parent of a child has an equal obligation. I accept the point you make, but lon't quite see the nuance of distinction between what you're suggesting and what is already in e bill. Could you elaborate then, on why you feel think that . . .

MRS. CORDES: Well, it appears to me the way that it's worded that again the court could deci how much of an obligation each parent has, and it's my feeling that initially it should be view as an equal obligation between both parents, and then one can look at the resources that the parer have. Perhaps the husband may or may not be in a position to provide more of the financial resourc towards the maintenance of the children after marriage breakdown; perhaps the wife may be a position that she would maintain the children on a daily care basis. I'm saying initially that t judge should assume that there should be an equal obligation, because I feel now, without stati equal obligation, that again, the judge could decide, for various reasons not given here, as to h that obligation should be varied between spouses — philosophically he can decide that that shou be varied.

MR. CHERNIACK: Well, what you then, I assume, package in the concept of equal obligation, r only financial but also emotional and physical support that is needed, because there will becor an equating here between the financial contribution on one part and the emotional, as I say, a the actual care, the physical presence of the other spouse, which is of course likely, after a separati has taken place, that there would be different . . . So, you're saying, it should say equal, equ obligation to provide for the support, maintenance and education. It seems to me that if you want to spell it out to the extent that I believe you do, you would then want to add to it, "bearing mind the fact that included in this concept is the non-monetary aspects of . . . "

MRS. CORDES: Well, I don't think that would hurt at all. I think that section needs to be spell out a little bit more clearly. I do not have suggested wording to that effect, but I think we agr on much of it.

MR. CHERNIACK: Well, I appreciate your having brought it to my attention anyway because I had thought of it.

Now, coming back to the beginning of your brief, at Page 4, you refer to your own arrangemer with your husband and comment that creditors' rights have been protected by special provisi in your document and that commercial assets and commercial position have not been jeopardize This is something that people talk about; they say, "Well, I can't get credit if my creditor kno that I may lose half my assets." That's been said often by people who try to raise the issue, if to make it appear that there would be a tremendous obstacle to business operations. Could y elaborate a bit on why you feel that it is not an obstacle?

MRS. CORDES: Well, first of all, it's been our experience in two years — and certainly my husbanc experience in his dealings with financial institutions — that has been no problem in any way. No I've got the agreement in front of me; I'd be willing to read to you those sections that have do with possible tax and creditors' rights implications. With your permission I'll just read it, there not very much here, not too many. One that sheds a little light in this area says that — and I' not taking these in any necessary order — "each partner hereby assumes joint liability for all existi debts of the partners. Each partner solemnly declares that so long as the marriage shall subsi any property, real or personal, acquired by one partner shall be held by that partner in trust f the two partners jointly, and that he or she will hold, administer or dispose of such trust proper as a prudent businessperson, in good faith and in the best interests of the two partne jointly."

With respect to taxes, I believe, "in the event that the partners are advised that a transfer property from one to both names may result in the imposition of additional tax upon one or bot or would have some other financial disadvantage, then by mutual consent the property may rema in one name only, but shall nevertheless be and remain held by the partner in trust for the tv partners jointly, and shall not be encumbered or disposed of without the consent of the oth partner."

And then there is another section; "in the event that a partner has acquired property or an intere in property which cannot be transferred into the joint names of the parties, as, for example, certa kinds of pension rights, then that partner shall nevertheless hold such right or interest in its proceec in trust jointly for the two partners. In the event that the partnership should be dissolved, any su right or interest shall be evaluated and taken into account as between the partners, and the oth partner shall receive the equivalent in money or other partnership property, of one-half of the n value of the right or interest."

"And, the agreements and declarations herein contained are not intended to apply only a between the partners and not to affect their obligations to the Minister of National Revenue or a other taxing authority or third party. In the event that any tax liability shall be incurred in the eve of a dissolution of the partnership then such liability shall be borne equally between the partne

ıt of the partnership assets."
Those are the sections.

R. CHERNIACK: Thank you, Mrs. Cordes. That, of course, is an agreement that protects the rights each of the parties to the agreement. It does not in itself protect or give further guarantees to creditor, either existing or potential, because they are not parties to the agreement.

RS. CORDES: No.

R. CHERNIACK: What I want to understand is whether in your business affairs you have found ıy difficulty in getting credit?

RS. CORDES: Absolutely none.

R. CHEIACK: May I ask if you have had occasion to apply for credit?

RS. CORDES: Oh, yes.

R. CHERNIACK: All right. May I then conclude . . .

RS. CORDES: And I've co-signed bank loans, too.

R. CHERNIACK: I didn't hear clearly.

RS. CORDES: I am called in to sign bank loans; I have been before, and I am after the ;reement.

R. CHERNIACK: So that it is clear that since there is an equal ownership or a partnership 'rangement that your creditors are made aware of that fact, and would be anyway, I suppose, hen they ask for any kind of security that is in both names. So that the practice is that your creditors, ;eing aware of it, are asking or demanding that each of you sign the obligation documents?

RS. CORDES: Yes. I can really detect no change from before we had the contract and during e time that we've had the contract, in creditors' responses; no problems.

R. CHERNIACK: The only thing is that you are now required to sign some documents that you ight not be required to sign otherwise?

RS. CORDES: That may be the case. All I know is I sign a lot of them; I sign a lot of documents. try to sign a minimum of them, but . . .

R. CHERNIACK: Well, on the other hand, it has been suggested by some people that there would ; an obstacle in the operation of a good business if it were necessary at all times to obtain the)proval of the other spouse.

RS. CORDES: I do not have to sign everything, I know that.

R. CHERNIACK: Now, the point I'm making is that documents of creditors, . or other parties) a financial transaction, might request you to sign. You could refuse to sign, and that then means,) some people, that it would prejudice their efforts to carry out a business transaction.

RS. CORDES: Yes, I could refuse to sign; I have refused to sign on some occasions, but I feel at if I am viewed as an equal partner in the marriage — and we're discussing the assets of the arriage — that I should have the right to be party to discussion of how finances are handled, ıd be able to have some kind of decision. Now, I don't invoke that power very often; I do it with great deal of consideration and usually it's when my husband and I are in agreement.

R. CHERNIACK: Mrs. Cordes, would you please confirm that you and I did not agree that I would ;k you that question, nor that you would give that answer.

RS. CORDES: No, I have not talked to you; no.

R. CHERNIACK: Thank you.

MR. CHAIRMAN: Thank you very kindly. The next person on the list is Janet Paxton. I might menti to the person that we ran seven minutes overtime with the last presentation. Would you try to confi yourself to the 30 minutes?

MS. PAXTON: Good morning, gentlemen, and thank you for the opportunity of speaking w you.

Now, I agree wholeheartedly with the statement made by some Conservative members that t proposed family laws now being debated are much better than those passed in June, 1977. Havi met members of the government personally I have found many of them to be charming, intellige and completely reasonable people to talk with. However, I am wondering how to assimilate this w the fact that they did not finish the statement. The new laws are better, but they neglected to spec for whom they are better.

They are better for some prospective businessmen who were almost in a state of shock at t prospect of having to reveal and share their total assets with their spouses last June. Some we crashing around looking for anonymous bank accounts, I understand. They are better for lawye the public will now need in even greater demand. There will be a lot of business for them. T skills of a lawyer will be all-important, whereas with the laws passed last June we would not ev necessarily need a lawyer. Women will still have to literally take food from children's mouths in ord to pay lawyer to obtain what should be taken for granted as their natural right, an equal amou of all assets obtained during a marriage.

They are better for all the men who were so frightened at the prospect of not being able control their wives every move and thought, through their stranglehold on the purse-strings. TI is particularly true if she was a non-income-earning spouse, and you know, they might have be pleasantly surprised to learn that she would not run off in 10 different directions, as so many see to fear, if released from their control through the finances.

They are much better for the businessmen who wish to protect themselves from creditors putting 100 percent of their assets in the wives' names. And you know, the average Manitoba when he owes a bill and he doesn't pay it, he has his goods retrieved from him. Why should peop have this special concession granted to them because they have more money, they have the lawye to advise them how to protect their goods? People should pay their debts, and I have a feeli that the majority of Manitobans are being required to suffer under the old laws or inequity so th this can be done.

These laws are no longer a dog's breakfast; now they are a cheater's second chance, wife-batterer's boon, and a Scrooge's saving grace. Many men are good husbands and they do on their wives, however, the other kinds were no doubt wiping their sweaty brows when t Conservative government repealed the equal sharing laws. It was a close call. It is a bitt disappointment to those who have worked so hard to attend meetings, prepare briefs, take tin from their own personal lives to work for just and equal marriage laws.

I am a relative novice at it. Only two years ago I attended a meeting here and realized wh was happening with the family laws. I almost wish I had not, because once your eyes are open you can never look back, not stop seeing the injustice which exists in these laws, particularly f the females. The effects on them and their families is traumatic. Sometimes the hurt lasts a lifetim Though I have seen a lot of the effects I have never realized what the real cause was; it was t fact that the laws have been designed by males, for males, maintaining the double standard the way.

I used to feel that my case was extraordinary, having been separated; that somehow or oth I must be a worthless individual, that it was a natural course of affairs that life should be so diffic for me because of a marriage breakdown, while it was relatively pleasant and unemcumbered f the father of my children. There was the nagging thought that probably I really had deserved th situation. It was not until I listened to the other people here, learned from talking to some of the what had happened in their case. . . . statistics regarding maintenance being paid only 25 perce of the time across Canada, that I realized what was happening — the lights went on. I was n an unusual case. In fact I was more fortunate than most in that I had received maintenance paymen for the contribution to support of three children. It was from some other speakers and knowledgeab women, such as you heard make presentation last evening and just prior to me, that the messa came off. We, the female partners in the marriage were being ripped off on a massive scale. TI powers that be, the legal profession, were aware of it all along and that is what is shocking.$$

Society, as a whole, has treated the female, who sought separation from her spouse, as a lepe a person to be punished, hammered into the ground with poverty and tossed onto the garba heap of low income living or welfare. What did it matter if the judge gave her a subsistence allowan for her and her children to live on, she had had the almighty nerve to ask for a separation a

erefore deserved what she got — almost nothing. The same applied if her husband wanted a paration — she was the loser.

Now, I brought examples up to meet Mr. Mercier, and unfortunately I had to go to Vancouver cause my mother was ill but I had many more ladies lined up to meet with you and Mr. Mercier ry kindly took his extra time to listen to some of the ladies. And I think that they gave you good amples of how this very moment the laws are not working for women. .

Last year all tha,- was to change. The government, under the NDP, threw out those musty tiquated laws and brought in the best legislation in Canada. We always liked being Manitobans d now we could be especially proud of our legislators.

The Conservative government was voted in and immediately reinstated the antiquated marriage ws, while not mentioning this plan as part of their election platform. Yet ladies at meetings at e YWCA stood up to tell groups of women there how they had been promised hands-down by eir MLA in the Conservative Party that they would support the family laws as passed in June. ne lady described how her MLA had stood in her hallway and written on her election pamphlet guarantee that she should go ahead with her separation as they would support the new laws if ected. She did, and was wiped out.

Women who have left their homes and spent much personal time on this work do not take things e this lightly, though David Young's essay on bureaucracy says to get the dirty work over with the first two years and throw in the good things the second two years. He does not know women ry well. We shall not forget. We have nothing to gain and have no reason to lie to each other.) stories such as that womans are burned and recorded into our minds to be played back in e voting booth, much as the supporters of family law legislation had by tactic agreement not wished allow the legislation to become a political issue, it cannot now be overlooked because of the ay things have occurred.

Perhaps the members of the Conservative government feel you have done well with these new lls. However, at the time you repealed them, you calmed everyone's trepidation with a statement at only the cumbersome wording would be corrected, that 50-50 principles would be unaltered. ow, I don't know if others share my feelings, but I find I am not so angry about the laws presently ing debated right now in their present form, and I don't like them at all, as I am about being eated as though I am a moron, and that is the truth. We are asked to believe that nothing in e principles of the last bills has been changed. It is like being asked to look at a blackboard d agree that it is white. To say that there is any resemblance to the laws passed last June is insult to our intelligence. Society has always obtained its slave labour from the uneducated. You ll have to go back to allowing girls to attend school only until Grade 6 if you want to carry on th this male Utopia. Yet, would you want that for your own daughters?

With the events since repealing of the bills, we are not about to feel secure because of your atement that these laws will be equal, because now they say there will be a presumption of sharing, gardless of all the other strange little additions we now note. What we had asked for and got st June was the guarantee of equal sharing; that is what we want to see now. Why is that word uarantee" not used instead of "presumption"?

Here are the points I note in the new bills which I do not like. I am not a lawyer; I read them a lay person. I didn't have time to really discuss them point-by-point with anybody with legal owledge.

All right, on the maintenance bill, while you insist that fault must be considered when arriving quantum of maintenance, there is an anomaly here. While there is the punishment factor built by possible reduced maintenance usually received by the female, there is no fault factor applicable consideration of sharing of commercial assets, usually the male domain. This means that a female ouse's right to maintenance could be seriously limited if she were found to be a flagrant adulteress. nd somehow I cannot see any judge not considering that as unconscionable conduct, but a male ouse could have a harem and it would not affect consideration of determining his share of the mmercial assets, where the real money is. Nowhere in that list of considerations the judge must ke into account in the commercial assets sharing does it mention fault can be a consideration. hy is it applicable then to the portion the female will receive in the majority of cases, which is e maintenance payment.

While you may argue that it does not mean a judge would not take fault into consideration when termining sharing of commercial assets, the way the points are worded, the judge may or may t choose to do so. That is not justice for the female spouse, not by any means, it is the continuation laws written by males for males. If you are going to insist on inserting fault, then the first thing e government must do to guarantee justice then is establish a massive private detective agency ely available to the public. You see, the housewife and mother who suspects that she may have oof of behaviour on the part of her spouse, which repudiates the marriage, is pretty well blocked m obtaining that proof, particularly if she is a non-working wife. You have not allowed sharing family assets during the marriage, so she is penniless unless her husband wishes her to be

Men who wish to trip the light fantastic usually make sure their wife has no more than about fi dollars in her purse at any given time, in case she would have enough funds to get out of the hou and accidentally discover him in his revelries. She would never have enough money to hire a detecti to follow him. The only other alternative she would have, perhaps, is a long blonde wig and affa bicycle to try and follow him herself. That is because you have made proof of fault so very importa to her and her children's future survival as financially independent citizens of Manitoba.

On the other hand, it is not too difficult for a male spouse to obtain proof of repudiation the marriage contract. While he is mobile in his work, meetings, etc., she is pretty well stationa at home. While he may be happy with his work, his business friends and his girlfriend, she m be becoming worn on the edges. Having no money of her own with which to make decisions abo what she can do for the day, having no idea where her husband goes when he stays out late night while she raises the children alone, her behaviour may change. She may become nasty ar unco-operative, charge up accounts, perhaps buy new clothes to gain his attention. She may becor neglectful of the house, the children and herself.

Finally, the male spouse will come home, after a threeabsence, and announce he wants separation. Now, this thought had occurred to her several times, too, over the years but she didr have the money to go to a lawyer and find out what she could expect in the way of maintenan and she doubted if she jumped in his lap and asked him for the money if he would give it to h if she explained why she needed it. But, see, he wants the separation now; there will be mon for that purpose. And she is not that disappointed; it hasn't been that much fun.

In court, though she has suspected all along he has had indiscreet affairs, she has absolute no proof of this. The male spouse, on the other hand, can relate to the judge how she has ma his life miserable for him and the children by her completely shrewish behaviour. If he manag to win the sympathy of the judge, the judge will perhaps decide that he deserves more money his pocket and she deserves less money in her maintenance. This will be particularly true if the ma spouse has stated he wishes to take advantage of the reconciliation clause for a period of one mont They may go to the counsellors, etc., but in private he may make absolutely no moves to reconci with her. Of course, the next time they are in court, she will say, "No, she does not wish to reconci with him." The judge may just drop another $75.00 in her maintenance award for that refusa

It should be noted that if a couple goes for a separation, one or other have usually thoug about it — at least one of the parties — for many years before it actually comes to pass. If th are going to reconcile, nobody could stop them from doing so at a later date. A reconciliation mig be more logically forthcoming if a couple does not have to air their dirty linen in court. We strong hope that the government will recognize this all-important fact.

Also, if you feel fault should be such an all-important factor in establishing the quantum maintenance, hopefully the government should be busy building extended psychiatric child ca facilities, because we most certainly are going to need them. It is all the more likely now they w be called upon to testify against their own parent. Proof of fault may be only obtainable in th manner. The strain in the home is unbearable. We had hoped to eliminate that by eliminating t fault factor.

If it means enough money to feed them with the mother or father, whichever the custodial pare may be, may have to allow this to happen, but it is a terrible strain for children to go throug What is the real purpose behind this fault factor, then? Will it make that much difference in t long run to the amount of maintenance paid? I can see it only as another means of keeping t female spouse under control during the marriage. While the male's behaviour will not affect his rig to commercial assets, the female's behaviour will affect her rights to maintenance payments. The is nothing just or fair about that situation, nothing new either. We are back to square one.

I felt at the time of my separation that the judge had been totally unrealistic in the amount moneys awarded. With having to pay $100 to a sitter, and having three children aged 11, 10 ar a year-and-a-half old, the judge said $175 would do me just fine. Now, it was actually ludicrou in view of the costs that I had facing me, yet we had decided not to go into the reasons for separatir in t courtroom, so I definitely had not been found at fault. All I can think of reading these bi now is, what in the world would have happened if I had been found at fault? No doubt I wou have been required to pay my spouse $100 a month, as well as support our three children.

I read somewhere that 90 percent of the separations the husband had been judged at fau where it was contested, and yet the women had received next to zilch for their maintenance awar We are prepared to forego proving the husband was a meany in favour of receiving 50 perce of the assets required or acquired during a marriage. That will be more satisfactory and mo practical. Nobody can say for sure who was at fault in the marriage, though at the time most partne are equally convinced the other is totally responsible for the marriage breakdown.

Lawyers are the only people who can profit from this situation, especially where there are limit assets. They will be paid out in litigation costs. The person who can hire the best lawyer will r doubt win the case, rather than the person who really would be at fault, if you could study it f

whole year. . I strongly urge that you remove this from the bill.

Marital Property Act: I strongly recommend that family assets be considered shareable during e marriage, otherwise the whole principle of equal sharing has been ignored. Because I know too any women I've met, by the time they get in the court room, there are no assets according to e husband. They have been transferred, sold, hidden — how can you apply for an equal share something that isn't there?

I can not use the words I would really like to about this bill, I will just say, "It's sheer nonsense." e division between family assets and commercial assets, it is transparent, crystal clear, that the ercial assets are set aside like a crown jewel to be won only by the male victor. Granting the oman half the family assets with no question of judicial discretion sounds good, but, in effect she uld end up with almost nothing. If they have not bought a home, but always rented, there is nothing r her to automatically share in there. If he has never bought a camper or opened a family bank count, there is nothing for her to share there.

Particularly in a marriage which has been slowly heading towards a breakdown, a couple often es not replenish household goods. She may not have the right to sare the car, if he claims he eds it for work, then it becomes a commercial asset, so she may end up with only an automatic aring of the furniture. She will have half the old fridge, half the old stove, half all the wornout ods which she did not bother to replace since the beginning of marriage. Since you will not allow spouse to have information about income, etc., without a Court Order, as I understand it, we e back to the same problem of the spouse who has no money to obtain one. How can she ask e judge for a reasonable share of half of something she does not even know exists?

Commercial assets are her only hope of having something realistic to start supporting herself th, and I'm rather concerned about the Hansard that I read, where Mr. Mercier gave an example how marital assets would apply. He described a couple who started an insurance company, I lieve, where the male spouse decided to veer off into another line of work altogether, and he scribed that as an example that, when the marriage broke down, it would be logical that she uld more or less keep the commercial assets she had earned with her career by staying on with e insurance company, whereas he would keep the assets he had earned with his career. And mebody asked him, what would happen though if he stayed with the insurance company and she d stayed home as a homemaker, and, as I recall, Mr. Mercier replied, "Well then, she would be titled to 50 percent of the assets." And what is the message there? It means that if a woman es out to work and a man goes out to work, they are both going to keep their own income — that it? And the woman who stays at home, however, would receive 50 percent of the man's come. And seeing that the woman always get a lower income than the man it could end up a eat injustice. But I may be wrong, Mr. Mercier.

Would you please advise us what provisions are made in these bills to ensure the wife can trace cessive gifts, because I know of people who have been unable to prove the existence of assets, hough they were there just the year before the separation occurred. That may be a big oblem.

A woman who is past president of The Federal Advisory Council of Ontario visited Winnipeg few months ago. She said the laws in Ontario are turning into a disaster for women. She is now lvising them not to make mortgage payments entirely out of their own paycheck, but to ensure at their spouse shares in those payments. Already unscrupulous spouses are learning that they tomatically share in the family home on marriage breakdown, but the female spouse will have contest and fight to prove her right to share in his bank account, RRSPP pension plan, and ivate properties bought in his name, etc. Mr. Mercier should not ask us to follow the laws set t in other provinces, since for various reasons, reports are filtering back that the women do not el they have achieved equality in family laws.

Manitoba had the best laws last June, 1977, and we would like them back again. We are grateful at you have reconsidered your position regarding unilateral opting out; it would be great if you uld reconsider your position regarding all the other points brought out by those who advocate r complete equality in financial status in marriage.

I cannot believe that politicians started out as young people with any other motive but to serve ople — they wanted to help their fellowman and woman also. Have you ever started rummaging rough a drawer and suddenly wondered what it is you were searching for? Can it be that now u have reached your goal, as one of the highest members in political office, you have forgotten y you first wanted to reach it? Politicians have a responsibility to all citizens, and not just the osperous businessmen of the community. By the changes you have made, one could suspect that ese bills were written with those businessmen first and foremost in mind.

A little cleaning lady at work, who speaks broken English, being recently from Italy, said, Conservative Government Family Laws no good." Now, if even she understood this, then word spreading, and on election day, the vote of that lady and the prosperous businessmen make them equal footing. Thank goodness!

it is hoped that the Conservative Government will reconsider and amend these bills. It will b obvious that while they believe in the right of the individual to advance themselves financially, th believe in free enterprise, they obviously do not believe in equality for females. We do not feel th you have given us laws here — you have given us a grey mist — and we are going to enter th court room having no idea how we will emerge.

Mrs. Myrna Bowman, a qualified Family Law lawyer, said, as the laws are presently written sh could not advise her clients what to expect in a court room. That is wrong.

This is your opportunity to be regarded not as the rich man's fantastic people, real human being who care politician, but as for all the citizenry of Manitoba. I know you are all anxious to go awa with your families on holidays and you are putting in a lot of extra time here, but while you a away, I would ask that you all keep in mind that there are many families in Winnipeg — wome and children — who have never had a vacation for five years, have no hope of having a vacatic for years to come, because they have never been granted equal sharing or any justice on marriag breakdown. Thank you.

MR. CHAIRMAN: Are there any questions of the delegate? Seeing none, call the next person. M Cherniack.

MR. CHEIACK: I thought I'd like to ask Mrs. Paxton a question.

Mrs. Paxton, your brief is clear and your advice is clear, but accepting the fact that your advic will not be taken by the majority of this committee . . .

MRS. PAXTON: Why not?

MR. CHEIACK: Because the Conservatives have made up their minds about this legislation to large extent and . . .

MRS. PAXTON: I believe that everybody has an open mind. They are all intelligent people her — surely it's an educational process — everybody learns as you go, and surely if he listened t all these brilliant people who have been ahead of me, I certainly couldn't offer much technicall that will influence your thinking. Because there are a lot of women who aren't here, but they ar interested in it. They aren't up waving a flag because they have a husband at home, and it's kin of a strange situation. Even the best married men, I've been really surprised, the most happily marrie men who adore their wives — you can see that they get nervous. My own son said to me, "That' crazy, you mean she'd get half my business if she met somebody else and went with him?" An I said, "Well, Bob, for centuries women have accepted the fact that their husband could meet anothe person and take off with 100 percent of the business." We've been pretty good about this, yo know, so I think it's a learning process and I don't believe that the Conservative MLAs are an different from any other MLAs, it just takes exposure to the wishes of the public.

MR. CHERNIACK: Well, Mrs. Paxton, since I'm in a hurry and can't wait for all of us to attai the level that you look forward to, I'm thinking more specifically of any changes that we might b able to persuade the majority of committee to make in the legislation that has been brought befor us.

So I am looking at the aspect of conduct. You will recall under the existing legislation whic is now on the Statute Books, there is no opportunity in deciding on maintenance, for the court to look into the question of who was at fault during the marriage, and as a result th breakdown.

MRS. PAXTON: That's right, yes.

MR. CHERNIACK: But the present law invites the Courts to go into the question of fault durin marriage. Now , with all that you're aware of that goes on in marriages, could you try to relat the justification for going into the cause of breakdown as being a punishment or a benefit to eithe the husband or wife in the payment of maintenance? That is the one specific on which I would lik to hear from you. Do you understand my question?

MRS. PAXTON: Yes, I understand what you're saying. And to tell the truth, I debated whether should make a few comments that I had wanted to make, and I thought no, that sounds as thoug I'm a trouble-maker trying to make some women feel uneasy. But when I was married I was completel green. I thought people got married and they cleaved only unto each other, and it was not unti I was a separated woman, living on my own, that I found out this isn't always the case. I know many married couples are very very happily married, and they do stay together; however, I have

ıet married men who like to have affairs on the side, and don't like their wives to know about . And I believe that any women, living on their own in today's society, would agree with me.

Now nobody is condemning — you know, there's little things that apply — I'm sure female spouses ɔo are sometimes not playing the role they should. But the problem is, the creativity and the niqueness of the ideas of some of the stories I've heard to convince me that a man was not married, think must equally apply at home. You know, the creativity to convince his wife he's living like saint out of the house. So bringing fault into it is not necessarily just, because it's not always case of who is at fault as much as it's a case of who got caught . Now, that's one thought. If ɔu want to talk about justice, that's just one thought, and maybe it's a silly notion, but it is a ıought.

But the other thing that bothers me is, I believe it takes two people — you start out very much ı love with each other, it's a very sad thing when a marriage does go bad, and it's a very hurting ıing. I'm sure, even now, looking back on my own marriage breakdown, I'm really not sure what appened, or who was at fault, to tell the truth.

At the time I was sure it was all my husband's fault, and now we're friends. He was over, we ad coffee, we talked to each other, and I think it was just too bad we were put in that adversary osition at that time, because in the two or three months before we went in to get a separation, ıat's when the most damage was done, irrepairable damage. You say terrible things to each other ıat you can never take back later, and I believe that, if possible, if a separation is going to occur, should occur with as much dignity between a couple as possible. The children shouldn't hear eople screaming and yelling at each other. And when you know who is at fault is very very important, nd the lawyers make a good point in letting you know when you're dredging up everything from ıe back, trying to prove to him that he was the one that did that and you didn't do that. So, it's bad system; the whole thing is sickening and we've got to get it out of there.

IR. CHERNIACK: But Mrs. Paxton, I am thinking now in terms of how much the maintenance rder should be. What should be the amount paid by the husband to the dependent wife? Mr. Mercier as proposed that very serious — well, why guess at what the proposal is? The bill says that in etermining the amount the court may look at course of conduct that is so unconscionable as to ɔnstitute an obvious and gross repudiation of the marriage relationship. That is, in determining ow much shall be paid.

IRS. PAXTON: Right.

IR. CHERNIACK: And since you are a person who has told us in the past that you managed to ecome independent, financially independent, after a period of time, I refer you to Mr. Mercier's ords where he said on this question, "The question arises as to why include conduct as a factor ı determining a maintenance order. I think the response is unanimous to exclude conduct in etermining an order for maintenance would simply be unjust, that an individual ought to be held ɜsponsible for his or her own actions is an accepted concept, and the concept of individual ɜsponsibility is the fundamental part of the law of tort, criminal law as well as other areas of the ɔmmon law, including other aspects of family law."

Now, I mention that in order to have you react to the tbought that a man who acts in a completely nconscionable manner so as to constitute an obvious and gross repudiation of the marriage ɜlationship — and I don't know what that would mean, you may have your own ideas — should ave to pay more than is necessary to support his wife according to their standards because of ıat; or the converse, if the wife, who is dependent, behaves in such an obvious and such a bad ay as to constitute an obvious and gross repudiation — I don't quite know what that would be, nd you have your ideas.

IRS. PAXTON: No, nobody does, no.

IR. CHERNIACK: But then the suggestion is that she would get less than would be otherwise ayable. I'd like you to comment on that, since you've lived through that kind of an experience nd know others who have.

ɜRS. PAXTON: Well, I believe that it's illogical, totally illogical, particularly if there are children ɔncerned, to punish the family, you know, it's like a reward if you can prove that spouse did ɔmething — punish those children, you know, is what you are doing, and in so many cases of arriage breakdown there are children. When a couple has been married about 25, 30 years, there ·e more commercial assets, hopefully, which could be spread around so that the maintenance itself . . . You know, I can't see a judge telling a man he's got to pay even more maintenance than ɜ would have before because he was found at fault. But I can see a judge punishing the woman,

if she was found at fault, with a smaller maintenance payment, somehow, I can. And I feel it's punishing the children, taking food out of the children's mouths, you know, because the mothe did something wrong.

Now, if you want to compensate — I sat down and figured it out last night. If a man were t pay his wife for child-care services at the rate she must pay a day care service, for eight hour a day, I figured out for three children it came to $1,125 a month, on a 24-hour daily basis, fc only 28 days; that's February. Okay. Now, even if she was at fault or not, I mean, they've bee getting pretty free babysitting from the wives so far, haven't they, while they're out doing their ow thing, on a marriage breakdown? And many men can't even stop long enough — if they do vis with the children it's four hours on a Saturday afternooon, so it doesn't interfere with their soci life at all. Meanwhile, she stays home with them Saturday night. I know, Christmas dinners and s on, my children usually went over to my husband's, but New Year's Eve I could be pretty sure I' get them, you know.

So, the woman is providing a service that's an unpaid service when it says right in there, "o mutual obligation for support of children." Now, that supervision of children is a necessity unde the law, if they're under age 12. If his wife weren't there to look after those children he'd hav to pay a babysitter on a 24-hour basis, so, she's giving him free babysitting and it's pretty expensiv if you pay for it. So, even if there's fault for the female I believe the judges have undercut female all along; they will continue to do so. I think allowing fault to be put in there is just another loophol that maybe a man's going to save his skin.$

MR. CHERNIACK: Mrs. Paxton, one other aspect dealing with during a marriage. There is a chang from the previous law that was passed last year and what is now proposed in relation to joir ownership of famiy assets; that is, joint ownership of the home, of a summer cottage, of the ca the furniture, whatever is used within the family.

MRS. PAXTON: For the family use, yes.

MR. CHERNIACK: The change now being made is to exclude that and say that there is not joir ownership unless there is a breakdown and separation.

MRS. PAXTON: Oh, yes. That's what I was trying to say.

MR. CHERNIACK: And what has been said by some is, "Don't let the government interfere betwee my wife and me while we are married; we can work things out our way. Don't walk into our househol and tell me and my wife how we should relate to each other." And this goes further, this goe to the use of the family cheque, the payroll, the paycheque. This would relate to the assets I'v mentioned; it would relate to knowledge as to what the earnings are. Under the law that has alread been passed it says that a wife is entitled to know what her husband is earning, and vice versa Our law, the one that is being brought in by the government today, is that a wife is entitled t ask, but she cannot obtain the information unlsss she goes to a court and gets the court to orde the information. What is your reaction to that?

MRS. PAXTON: I was aware of those points you brought up, and as I said I was most upset abou them. I don't know, maybe I bypassed it — I did have it in my brief — there must be sharing c family assets while the marriage is going on, because a wife on her wedding night doesn't say t her husband, "Now, I'll share the marriage bed with you, I'll cook, clean, and bear your childre for you when our marriage breaks down."

Now, another thing, an employee would not accept a job if the employer said, "Well, look, thi is the offer I'm making. While you're working for me I'll give you board and room and a few bit of clothes here and there, but don't expect any wages unless I shut down my business some day. Now, not knowing if the employer is going to be bankrupt or not by the time that business shut down, what employee in their right mind would accept that job? And that is what men are askin of women if they ask them that there should be no sharing of family assets unless there is a marriag breakdown. Anybody who says that it's intrusion on the privacy of the home is a male chauvinis wanting to keep the wife under control; that's the only reason that they could make that statemer or objection, because it is denying the woman the equal partnership. We're not going to say ever marriage is going to break down, and hopefully, even when there is a happy marriage, a woma is not going to have to feel like a 12-year old asking her daddy for $5 all her life, and wonderin if he will approve of her deciding to want to purchase this — all her life — it's ridiculous. Yo don't grow as a person you just shrivel up and die. Okay?

MR. CHAIRMAN: Thank you kindly Mrs. Paxton.

Ms. J.M. Anderson-Johnson.

S. ANDERSON-JOHNSON: I personally would like to think that in this day and age individuals arn from their life experiences. Sometimes these lessons in life, as they are, carry hurt with them, ıt these are often the best-remembered and most lived by. As one of the many children who have ırvived a marriage breakdown I also learned that the law does favour one half of the union more an the other, and that it is only by the persistence and strength of one parent that some form family unity is preserved.

I am presenting this brief on behalf of myself and my brother in protest of the system which ɔes not come to the aid of women like my mother, who are forced by necessity to make a new e of their own. In our specific case it seemed that at every turn we ran into a brick wall of disconcern ıd a lack of knowledge. We left hurriedly in the threat of physical danger. Police, when called, d nothing to lessen our fears or provide for our safety. Upon leaving we finally obtained a separation ıreement, at which a maintenance payment of $50 per child, per month was decided. There were so verbal promises of extra help stated at the lawyer's office. After four payments these ceased. llage municipal officials and the church were sympathetic but could not offer any concrete ıggestions to help our situation.

Again, the lawyer was contacted to see if we could legally enforce maintenance. He advised against gal proceedings because my brother and I were no longer infants. He also cautioned my mother at she could be responsible for court costs, therefore, my mother chose to accept the responsibility parenting and supporting us, both economically and psychologically. -

This brief is intended to show that many women, like my mother, discover that looking for help ɛcomes an exercise of futility, and finally reach such a level of frustration that these efforts are ɔandoned. We felt maligned by a social system that could not even grant us the human right of ɛrsonal safety, and instead, gave a feeling of patronization in even looking for it.

Trying to collect maintenance payments also gave this feeling. Between the costs of supporting ıildren and retraining for a viable economic profession, many, like my mother, must cope with e realization that even though maintenance payments are legally bound there is nothing in the w to enforce it.

Some MLAs who represent the rural areas are disinclined to believe in the need for updating mily law simply because they do not hear about it in their constituencies. I am sure they can ɔpreciate the reality of the fact that there are few people who would phone up their MLAs to help 2:00 o'clock in the morning. I would suggest that perhaps you can check around, because there e very many people in rural areas who have nowhere to go.

These family law bills do offer some relief for the problems, but I urge you not to overlook the ct that there is much more to be done. If what is needed is to hear from all the people who have ıd to cope with marital breakdown I hope they will all come forward and explain it to you.

Thank you.

R. CHAIRMAN: Are there any questions? Mr. Cherniack.

R. CHERNIACK: Mr. Chairman, I do. I'm sorry, Ms. Anderson, I was slow in asking for the floor ɛcause frankly, I was somewhat moved by the way you said it, I think your mother deserves a eat deal of congratulations if she had, in fact a role in your presentation.

One point you made which I want to explore. The Maintenance Act provides for an order to ɛ made and that includes the prohibition of a spouse entering the premises of a separated wife. ɔu have suggested at two in the morning, how do you get help? Are you saying that you cannot ɛt police protection?

S. ANDERSON-JOHNSON: Not easily.

R. CHERNIACK: Did your mother have an order, a court order?

S. ANDERSON-JOHNSON: No, we didn't have an order, but we phoned the police on the night ɛ left, because, it definitely was not safe. But the RCMP from Selkirk didn't even show up and e town police decided that maybe they should take him home and put him to bed. And things e that happen often.

R. CHERNIACK: I am sorry. Was that one instance, or have there been instances after the paration?

S. ANDERSON-JOHNSON: No, that was the last instance; the one and only.

MR. CHERNIACK: I see. All right. Now, what you have described is a situation that makes m feel kind of helpless, because you say that improved family law would assist, and I'm not sure i what way this new law would have helped you or your mother. And the old law — I feel kind c frustrated about that. .

MS. ANDERSON-JOHNSON: Well, it would have helped if we would have had maybe som maintenance payments to help out. My mother went through a whole retraining career in universit simply because she was not trained for any other job. Renting a house and supporting two kic and having to use a car, and you know other things like that, is not something that come cheaply.

MR. CHERNIACK: Well, in The Maintenance Act there is a section of which reads that a cou may order a person to deposit a sum of money in court or to enter into a bond to make th maintenance payments.

It has been suggested that the section be changed to a court "shall" order, would that hav made any difference in your situation? In other words, was your father capable of making a payment Did he have assets?

MS. ANDERSON-JOHNSON: Yes.

MR. CHERNIACK: Well, if there had been an order made, a requirement that there should be bond posted which would be his personal pledge, or a specific sum paid, do you think he coul have done so and would that have helped?

MS. ANDERSON-JOHNSON: It might have helped, but if anybody really wants to skip out o maintenance payments they can always just leave the province.

MR. CHERNIACK: Did that happen in your case?

MS. ANDERSON-JOHNSON: No. What you don't realize is that for every woman and children, c any spouse who tries to get something done — maintenance payments two months after you leav don't help much, you've starved to death already. It's just that every time you turn around ther is always somebody there saying, "What am I supposed to do? Here's five bucks," you know. An it's total degradation of the family unit to force part of that family unit to take a short trip throug hell is basically what it is, and you keep overlooking the fact that only rich people get divorce but that's not true.

MR. CHERNIACK: Could there have been a situation that would have been more helpful had ther been a distribution or equalization of the ownership of assets in that?

MS. ANDERSON-JOHNSON: It doesn't matter. Even going for, say, half the value of the hous First, the house has to be sold, and it's like pulling teeth with pliers. Getting furniture out of th house can even be a hassle. The list is so endless that it doesn't really matter, it's just on an on and on, and it doesn't stop even after a divorce is finalized or a separation agreement finalized.

MR. CHAIRMAN: Thank you kindly. The Coalition on Family Law, Alice Steinbart.

MS. STEINBART: I have copies of my brief here. Mr. Mercier, we are glad to see that you're bac but the Coalition is still critical of the decision of your government to hold these hearings on July weekend, particularly one that is in conflict with a major annual event, the Birds Hill Folk Festiva We are critical, /e, not because of our own convenienc I know some people have misinterprete that saying, "Well, you want to go to the lake and you don't want to be here." We're here. We'r critical because of the public. The public will not have the same access on a July weekend as would on a different kind of a weekend. I know we have had hearings before in October, Novembe May and I think the beginning of June last year, until about June 4th; those weekends are differer from a July weekend.

We are also critical, of course, because the hearings started in our absence. We know that yc had an important meeting to attend, but this is also an important meeting and we had asked tha you put it over to Monday, which would have allowed people to be here.

The Coalition on Family Law supports The Marital Property Act and The Family Maintenanc Act passed in June, 1977, by the previous government. The Coalition's position is that these Ac must not be repealed and this position is supported by many individuals and the followir

manitoba Action Committee on the Status of Women
Voice of Women
Canadian Congress of Women
UN Association
A Woman's Place
Manitoba Teachers' Society
Women's Liberation
Manitoba Librarians Association
NDP Status of Women Committee
Liberal Association of Manitoba
YWCA
University Women's Club
Provincial Council of Women
Diocese of Rupertsland
Federal Advisory Committee on the Status of Women
Provincial Organization of Business and Professional Women's Clubs
Winnipeg Council of Self-Help
Committee for Women Artists, Winnipeg
Manitoba Association of Social Workers
Women's Institute
Manitoba Association of Registered Nurses
Law Union
Manitoba Federation of Labour
Manitoba Division of Canadian Union of Public Employees
Manitoba Association of Women and the Law

In the fall of 1977, you suspended The Marital Property Act and The Family Maintenance Act, nd for the purposes of this brief and in keeping with the principle of calling a spade a spade, shall refer to this legislation as the good legislation and Bills 38 and 39 as the bad legislation. Vhen you suspended our good legislation, you said that you did not intend to change any of the rinciples of equality. Bills 38 and 39, however, do change the basic principles of the good legislation. here have been five main principles which have been attacked by opponents of the good legislation, amely, 1) all assets acquired during marriage, including commercial assets, be shared equally; 2) ıe family home and family assets be equally owned during the marriage; 3) the new law apply equally ɔ all Manitobans — no unilateral opting out; 4) all assets be shared equally with only limited judicial iscretion to allow unequal sharing in rare hardship cases; and 5) maintenance should depend on eed and not fault.

You have watered down or eliminated three of these five principles of equality, namely, 1) the ımily home and family assets are not going to be equally owned during the marriage; 2) maintenance ill be reduced if there is fault, even if there is need; 3) commercial assets will not be hared equally, ıe wife will receive less than one-half.

Let us look at these principles of equality which you said you would not destroy, but which you re now trying to. First, the family home and the family assets will not be owned by the couple uring their marriage, but only if there is a separation. Your government has said it believes in the rinciple of equality and that marriage is an equal partnership. Bill 38 does not say marriage is n equal partnership. Bill 38 says there will only be equality, at least in respect to the family home nd the family assets, if there is a separation.

It is obvious that there is a vast difference between equality in marriage and equality only if ıere is a separation. So what are your reasons for legislating inequality?

Mr. Chairman, I would be prepared to continue when the members are prepared to listen. I am till waiting for the members to listen.

IR. CHAIRMAN: Would you carry on, please?

IS. STEINBART: I will carry on when the members are prepared to listen.

IR. CHAIRMAN: Well, who are you waiting for? The Attorney-General is sitting here listening.

IS. STEINBART: I believe that Mr. Domino is not paying attention, and I believe he is a ıember.

R. CHAIRMAN: Mr. Spivak.

R. SPIVAK: Mr. Chairman, just on a point of order, I think that the conduct of the meeting is

entirely in your hands and I do not think it's in the hands of the witness. With all due respect, think that she has a right to make her presentation and we certainly have a right to listen, bu she has no right to dictate as to the conduct of any individual member. And that is really in you hands, if we are not proceeding in the normal way, then you can certainly advise us; if we are I think we should just continue.

MR. CHAIRMAN: Ms. Steinbart, would you continue on?

MS. STEINBART: Yes. So what are your reasons for legislating inequality? The Attorney-Gener in introducing Bill 38 for second reading said that it was due to tax implications and creditors' right What tax implications? The Federal Government in its latest budget has said that the Income Ta Act is being amended so that there will be no tax implications on equal sharing. So why do yo rely on theaargument of tax implications? Well, the Attorney-General has told us privately that h still feels that there is one tax implication. I disagree with him. However, he says that if the goo Marital Property Act is reproclaimed a couple cannot claim two principal residences — the city hom and the summer cottage — and thus avoid capital gains twice.

Let's examine this tax implication. A couple could still claim two principal residences. They coul opt out by agreement from equal ownership of the city home and the summer cottage and eac own one and each claim one as a principal residence' Ts, there is no capital gains. So where ar the problems? They never existed.

The second reason given by the Attorney-General is due to the problems with creditors' right Mr. Mercier, of course, has never been more specific because this problem evaporates as quickl as the tax implications. Again, let's look at it. A creditor, before the good legislation was passe may have lent money to a husband to purchase a car and put a chattel mortgage on that car. Doe the creditor suddenly lose half of his security because with the good law the wife would own ha the car? No. In California, where all the assets are equally owned by the couple during the marriag each spouse has the right to deal with their joint property. In Manitoba, by the laws of partnershi each partner can make the other partner legally liable or responsible. My law partners can dispos of our assets and I am stuck with that decision even if I don't like it or know anything about i In the same way a husband or wife can deal with the family assets, can sell or rent or mortgag the assets. The purchaser or creditor does not have to obtain the consent of the other spous but the spouse who sells or mortgages must account to the other spouse immediately, and nc just on separation. The third party or creditor is protected. The creditors' rights are protected, ther is no problem. It works. What is amazing is that despite these two examples, that is, Californi and the law of partnership in Manitoba, you are unable or unwilling to allow equality i marriage.

Tax implications and creditors' rights are red herrings. You are trying to pull the wool over ou eyes. The Attorney-General when confronted, during our interview with him, with the facts that ther were no problems on equal sharing of the family home and the family assets, then resorted to th argument that equal sharing of the family home and the family assets on separation gives wome enough protection; that there is no need to have equal sharing during the marriage. That, of cours is simply not so.

Bill 38 gives the husband the right to do whatever he wants with the family assets without an say from the wife. It doesn't matter what she wants. That is not protection. And for many wome the option of breaking up the marriage to get her share is simply not acceptable. Th Attorney-General has pointed to Section 6(2) and 6(3) of Bill 38, which gives the wife the right t use and enjoy the property, and to Section 6(6), 6(7) and 6(8), dealing with dissipation, excessiv gift, and selling for less than fair market value as examples of protection of the wife and as reason why equal sharing is not necessary.

Let us examine these sections. Section 6(1) gives the husband the right to do whatever he want with the famiy home and the assets, although the wife, under The Dower Act, still has the righ to say no to a sale or mortgage of the home. Section 6(2) and 6(3), the wife can use and enjo these assets as long as her husband has not sold, rented or mortgaged them. As soon as the husban decides to sell, rent or mortgage, the wife loses her right to use and enjoy. Section 6(2) and (3 are meaningless. Some protection.

As for dissipation, gift and sale for less than value, these definitions are extremely narrow s that there would be very little protection. A husband can, in many instances, sell, rent or mortgag an asset without that being dissipation, and in many instances, give away assets without that bein excessive. ' . Again, some protection! So the last of your reasons for denying equali evaporates.

The Review Committee has argued that the right to own property during the marriage is a pap right, and therefore does not need to be granted. That is not true. It is a substantial right and is for the very reason that it is a substantial right and not a paper right that the opponents wa

ɔ deny it to women. You have all heard the rumour which has been going around the province ıat the good law meant that men had to share their businesses with their wives and that the wives ⁄ould have a say in how the businesses would be run. In fact, the good law never said any such ıing, because that was so substantial a right so scary to men who might have to give up control, ɔ share ownership that even the NDP backed off and would not accept it. The right to own during ıe marriage is no paper right, it's the real thing.

The Attorney-General, in arguing against equal sharing during marriage on second reading, said, nd I quote: "there is also the question of whether governments should interfere in the lives of ıarried persons living together, whether or not they are responsible enough to make their own ecisions . . . " Another red herring. The old law which Bill 38 is re-legislating and which Mr. Mercier ; arguing for, interferes grossly in people's lives. Whenever a couple marry, the law imposes a ıarriage contract. That contract says that this couple will have separate property. It does not matter ıat the couple when they marry intend to enter upon a life e together and so vow during the marriage eremony, that they intend to share everything. The law (Bill 38) will interfere anyway and impose separation. Why do you assume that on getting married, a couple is now or will under Bill 38 ıe able to plan their life together? Where do you get the idea that the present law and Bill 38 re not interfering in people's lives? What do you think a marriage license is — just a means of aising money for the state? A marriage license has legal implications. It imposes a legal status nd a legal contract on a couple. It means that the husband who is out earning the income owns verything, while the wife, who is at home looking after the children, owns nothing, because she as no money to buy anything. The only way she gets anything is if he gives it to her — the law f gifting. If her name is on the house title, he is deemed to have gifted one-half of it to her. If ıere is no title, as with the family furniture, then it becomes a matter of evidence whether he intended ɔ give her part of the stove, fridge, chesterfield, etc. A very dicey situation, and sometimes very ifficult to prove. That is the Irene Murdoch law — no gift, no money, no ownership — and that ; the law Bill 38 is setting up. The wife must either pay for it with her own separate money (not is) or it must be gifted to her. And you think that is not interference in people's lives?.

Perhaps you think that's fine; he can always give it to her if he wants, and that because he as the right to give, there is no interference. What about her? Do you ever see it from her point f view? Where are her rights when the law says you do not own because you have no money, nd your right to own depends on his largesse? It does not depend on your marriage, on your ontribution, or on your devoting your life to home and family, on your belief that you are sharing. hat is not interference? Your refusal to legislate equal sharing during marriage flies in the face f the intention of the parties and equity, and contradicts your own reasoning. This argument, like our others, holds no water.

So, if all the arguments you have given us as to why there should be no equality during marriage re groundless, where does that leave you? It leaves only one possible conclusion. Bill 38 does ot allow equality during the marriage because you do not believe in equality during the ıarriage.

The second principle in the good legislation which you are destroying is that maintenance should e based on need and not fault. Bill 39 has re-introduced fault — a limited fault, but fault nevertheless. means that while the defaulting spouse will not be denied maintenance completely, maintenance an be reduced so that that spouse's needs are not being met. Presumably, the opposite might e true, that the spouse who does not need maintenance can get it. However, the realities are that ıis section will be used to reduce maintenance to a woman who needs it, and not to give it to woman who does not. I have many times heard lawyers in Court argue that a woman should be enied maintenance or maintenance should be reduced because she is at fault. I have yet to hear ıe argument that the man should pay more because he is at fault. Those are the realities of the ituation.

The purpose of maintenance is to provide support to the spouse who needs it. The purpose f maintenance is not to act as a reward for the good spouse or punishment for the bad. The purpose f maintenance is not, as the Attorney-General argued on second reading, to provide an "example" ɔ the children, to influence the children as to "the individual and collective responsibilities in ıarriage." The purpose of maintenance is to provide support.

The Coalition envisions three common examples of where maintenance would be required: (l) ɔr a mother with young children who must stay home to look after those children; (2) for a woman ho has, because of the marriage, been out of the workforce for some years and therefore requires ıb retraining; and (3) for a woman who has been in a long-term marriage, has not been in the orkforce and is approaching retirement age. Maintenance for a young mother and for re-training ould be short-term. Maintenance for the older woman would be long-term, for the rest of her life. fault were introduced into any of these situations, it would distort the whole purpose of ıaintenance.

Let us go through the examples. Mr. Mercier, in introducing fault, listed a number of cases. One

of them, West against West, was used by the Attorney-General as an example of "gross and obviou repudiation of the marriage" — as a flagrant example that could not but rouse people to feel thi woman doesn't deserve maintenance. In that case, the husband purchased a new home and th wife refused to move into it with him. She continued to live with her parents and he went to liv in the home. They maintained their marriage, however, and subsequently had two children. Finally the husband decided to separate after six years of marriage and the Court of Appeal in Great Britai said the wife's behaviour was a gross and obvious repudiation of the marriage, although she wa given custody of the children.

Under the fault system in Bill 39, this woman would receive child maintenance, but an maintenance she would receive for herself so that she could stay home and look after her youn children would be reduced, perhaps even to the nominal sum of $1.00 per year (and thes $1.00-a-year sums are now very common). This would mean she and her two young children woul not have enough money to survive. Is that what you want? Exactly what example is this going t set for those two young children? Are they going to feel better? Is it going to help them that th court has said their mother has set "a foul example?" So foul an example that she has been give custody? Are these two children going to be better off because the Ccourt has upheld "the individua and collective responsibilities involved in marriage?" Mr. Mercier, you have been citing this exampl in your public interviews. We suggest you look again at your fault provision and this case from th point of view of the consequences.

In Hansard, and speaking on fault, the Attorney-General quoted the Review Committee as sayin "no-fault maintenance flies in the face of what ordinary people perceive as justice, fairness an common sense." The trend today is towards no-fault, in particular, no-fault divorce and no-faul separation. The Coalition, which speaks for a large number of individuals and organizations, support no-fault. In view of this, what evidence do you have that the public wants fault? There has bee no evidence of a groundswell in support of fault in the way the Coalition supports no-fault. Th evidence does not come from the Review Committee. They don't represent anyone excep themselves. So where do you get the idea that people want fault? Do you just feel this in the marro of your bones? Gut reaction, or man's intuition? Or do you have some evidence?

The Attorney-General in arguing for fault on second reading said "the idea of no-fault maintenanc removes an element of individual responsibility from the law that relates to the behaviour betwee the spouses . . . " The Attorney-General, of course, refers to assessing responsibility for marriag breakdown and not the responsibility to support a spouse who needs maintenance as a result o the marriage. The question is, why is responsibility for the marriage breakdown given more weigh than responsibility to support?

There's two responsibilities here — why is the responsibility for marriage breakdown supersede by the responsibility to support? Or, to take the question further, why is the assessment o responsibility for the marriage breakdown tied in with money? What possible relationship is ther between the two? If you feel such an assessment of the responsibility is necessary, then let th judge make the decision, but make sure it does not affect maintenance. Or, even another questio if responsibility is so important, then it's possible to tie it to the right to obtain an order for separatio provided always, of course, the right to receive maintenance is not affected, that the spouse ca get an order for maintenance without getting an order for separation.

Considering all these questions, and solutions, it appears that the key is money — maintenanc — that the unarticulated major premise (to use the words of the Review Committee) is that th husband must be protected from paying maintenance to that bitch.

Under The Wives' and Children's Maintenance Act, a husband had to pay maintenance to hi wife and his only protection or loophole was fault. If he could show fault on her part or no fau on his, then he was free. There is, however, no need to continue this protection for the husbanc because he is already adequately protected by The Family Maintenance Act. The Act says a wif will not get maintenance unless she needs it, and she must prove her need. Even more than tha she is obligated to try to become financially independent as soon as possible, and before she get maintenance, she will have to show the judge why she is not financially independent. Therefore in the hypothetical example which the Attorney-General cited to us during one of his meetings wit us — the woman, on a whim (on a whim, no less) who runs off with the milkman may not nee maintenance because the milkman is supporting her, or she is financially independent. Therefore it would be unnecessary to consider whether she has repudiated the marriage.

The Coalition is opposed to fault-finding, as it is not possible to blame only one person. It take two to make a marriage, and two to break it down. On the surface, it may look like one perso is at fault, but how can any outsider truly know what went on in the privacy of that home? Ho can anyone truly know what drove the defaulting spouse to repudiate that marriage so obviously If you feel that one person would leave a marriage on a whim, then you don't understand huma needs and hopes and desires, because people don't treat marriage that casually. Maybe on th surface they do not want to reveal their hurts or needs, but they are still there. No one shoul

e saddled with blame for marriage breakdown, because that marriage did not work.

The Attorney-General, on second reading, gave a list of a number of cases dealing with fault Britain. There has, unfortunately, been some confusion about these cases, as some people have terpreted them to mean that fault is all right and that everything is clear and will cut down on igation. That does not follow. These cases show only one thing — that the words "gross and ɔvious repudiation" have been considered in British cases and these cases may or may not be llowed here in Manitoba, but whether they are followed or not, in the meantime there will be creased litigation in Manitoba on this point while our courts decide whether to follow these cases make their own precedents.

Last November, when you suspended the good legislation, you said that you would not change ıy of the principles in the new laws. That was part of your promise. On May 29, 1978, on second ıading, in summarizing Bill 39, the Attorney-General, in Hansard said, "I believe, Mr. Speaker, there e relatively few other changes in principle. I believe the real principle involved in the change in ıis particular piece of legislation is the introduction of conduct as it may relate to the quantum maintenance." This is an admission by the Attorney-General that you are attempting to do the ery thing you said you would not, changing the basic principles of our good legislation.

The third principle which you are destroying in our good legislation is the principle of equal sharing all assets acquired during the marriage, except in rare hardship cases where there would be nited judicial discretion. Bill 38 has retained equal sharing of the family home and the family assets, ut commercial assets, that is the bank accounts not used for family maintenance, bonds, businesses, ırms, revenue homes, pension plans, are not going to be equally shared.

The Attorney-General has said that there will be equal sharing, that Section 12 provides a resumption of equal sharing which will only be varied if the judge finds it inequitable, having in ıind all the circumstances of the case and considering factors (a) to (j). That does not sound so ad at first glance, but let us look at it more closely than a glance. Section 12 says there is to e equal division of all assets. Section 13 deals with the exceptions, the buts, maybes and ifs.

IR. CHAIRMAN: Mr. Domino.

IR. DOMINO: While we have this refreshing brief moment of silence here, I wonder if it would e order for me to point out to the lady who is presenting that it is her time she is using up, and ıat this committee only allows a certain amount of time and that members of this committee, as ll Members of the Legislature at all times have the right freely to consult with other members and ıat if she, as I take it, is offended by our consulting while she is presenting her brief, that she ıight consider the lesson that I learned as a school teacher some time ago, that it is very difficult) dictate to students or to any audience that they must pay attention. The best manner in which) do that is to present an intelligent and a reasoned and a very appropriate lesson to eople.

I notice that women are just as capable, I see, of being offensive and insulting as men can be)o . . .

IR. CHAIRMAN: Order please. Mr. Domino has the floor.

IR. DOMINO: I'm not quite sure if these remarks are even in order but I think they would be f assistance to the lady who is making her presentation because I'm listening and I may assure er most members of this committee are and that we are going, as we do for many different groups n various pieces of legislation, at all times we make ourselves available to listen to the comments ıat are made by the public and we'll continue to do that. We make reasonable effort to do this ut I don't think. . . Pardon me, that's good enough for this point.

IR. CHAIRMAN: Ms. Steinbart, would you carry on please. You have used 30 minutes but I will rant you some extra time. Please carry on.

IS. STEINBART: I'm glad, Mr. Domino, that it is just consultation and if that's the case, that's ne.

The family home and the family assets will be shared equally unless equal sharing is "grossly nfair or unconscionable having regard to any extraordinary financial or other circumstances of the ɔouses or the extiaordinary nature or value of any of their assets." It is obvious that these words re very limiting. There will be equal sharing except in rare hardship cases. The commercial assets, n the other hand, will be shared equally unless equal sharing is "inequitable" taking everything ıto account, not just the "extraordinary" things, but everything, not where it is "grossly" inequitable, ut only inequitable.

Now, of course, that may seem like a bantering of words, like splitting hairs, but that's what

lawyers do, and that is what the judges are going to do. They have to, because of the Rules Construction. Our laws on the Rules of Construction have grown up over the past centuries a they are going to be applied to Section 13 and the judges are going to have to find that the is a difference between Section 13(1) and 13(2), that there is going to be a difference between family home and assets and commercial assets, and the difference is going to be between equ sharing and unequal sharing. It is not going to be between equal sharing as opposed to equal shari because that is not a difference. There will not be equal sharing of commercial assets except rare cases. In other words, the exact opposite of the family home and assets.

The family home and assets will be shared, except in rare cases. The commercial assets w not be shared equally except in rare cases.

The Attorney-General, in a letter to the Editor of The Tribune, June 16, 1978, stated that t amendments to the legislation would make Manitoba's law better than Alberta's or Ontario's becau those two provinces had wide judicial discretion. The Attorney-General meant, of course, th Manitoba's narrow judicial discretion on sharing the family home or assets is better than Alberta or Ontario's wide judicial discretion. Or to put it more sily, narrow judicial discretion is better th broad judicial discretion. Finally, you have admitted it. But having admitted it, why do you legisla wide judicial discretion? Again, the only possible conclusion — you don't believe in equ sharing.

You all know what judicial discretion is. It means the judge must decide what he thinks is rig Section 13(1) allows very limited judicial discretion. Section 13(2) allows very broad judicial discretio You say you trust the judges. I'm sure you do because you know exactly what they are going do. In New Zealand and in Britain, the judges have broad judicial discretion in deciding how t property should be divided. In Britain, the cases have shown that on an average, a woman receive one-third and the man receives two-thirds. You all know this and you still want broad judici discretion, so the logical conclusion is that you want unequal sharing with the wife to receive les You have every reason to trust the judges. You have no reason to feel the judges in Manitoba a going to be any different from the judges in Britain. In fact, on the very question of fault, t Attorney-General listed only British cases, expecting full well that the judges here are going to exactly the same as the British judges and give those words exactly the same meanin —(Interjection)— You don't want them to have the same meaning? You know that Section 13(is going to mean unequal sharing.

The Attorney-General has admitted this by implication in second reading when he said Bill was better because it protected women's rights better, as now they can get more than half. Th is a classic statement, a classic red herring, a classic distraction, a very interesting bait to dang before our eyes. Mr. Mercier, why do you want women to have more than half of the commerci assets but not more than half of the family assets and the family home? Does it sound logical th a woman will get half of the home and the furniture but more than half of her husband's busines or more than half of the family business? Now perhaps you were thinking of instances where t wife had her own business; she started it; she built it up. Maybe you were thinking that she shou not have to share it. Why, because she is female? If that is the reason, then that is truly dangerou Or perhaps you use the rationale that she started the business and built it up and he did not wo there. That, too, is a dangerous argument, because the reverse would leave thousands of housewive in the same position they are now, in the same position as Irene Murdoch, with nothing.

Marriage is an equal partnership, each person contributes in his or her own way, perhaps earning an income or by looking after the home and family, or perhaps by doing both and tha as a result, there should be equal sharing. The sharing is based on the partnership; it is not base on who built up the business assets, nor on the value of the business, nor on the nature of t assets, nor on whether one person's work was more valuable, nor if one did more. It is based o the fact that marriage is an equal partnership, that the couple have joined together in married lif that they have given those years of their life to marriage to each other, each in their own wa That is the reason for sharing. It is quite possible that a wife may have her own job and the husban his business and they both are responsible for looking after the home and children. Does that mea that the wife does not share the husband's business? That is what the Attorney-General is sayin although he reversed the example.

You have, of course, all heard the rumour which has been going around the province to th effect that the legislation passed last spring would mean that a wife was going to get one-half the business, that she was going to have a say in everything, that this would cause horrendou problems and create a dog's breakfast. In fact, that rumour is not true. The wife, under the legislatio passed last spring, never got the right to own one-half of the business, not even on separatio What she got the right to was a money payment, an equalizing payment. She never had any sa in the business, so there could be no horrendous problems or a dog's breakfast. Even if she di have a say in the business, there would still be no horrendous problems, or a dog's breakfast. I California, the law provides for equal ownership of all assets during the marriage and not just o

iparation, and this includes business. Business still thrives in California; there are no horrendous oblems; there is no dog's breakfast. There is, however, unlike in Manitoba, equality.

The interesting point is that despite the example set by California, despite the fact that each you is aware of the California law because we have you told you about it individually and also rough these Committee hearings, that despite this, you stubbornly refuse to look at California's iperience. The Attorney-General, when asked last November during these committee hearings if e review committee was going to be instructed to investigate California law, replied no. Why? iere can be only one possible answer — you don't want equality; you don't want to believe it ords; you don't want to find that it works. If the facts get in the way, if the truth is inconvenient, en ignore it. That is what you have done.

Another rumour that has gone around the province is that with the legislation passed last spring, the event of separation businesses and farms would have to be sold, that the only way a husband ould pay his wife a half-share would be by selling the asset. That simply is not so, because the gislation provided that payments could be made over a period of time. If it took 20 years, then took 20 years, just like a mortgage. There would be no forced sale. In addition, when we visited u, we discussed the particular problems of farms which faced an inflated land value. As you are vare, in the last few years the value of land has skyrocketed, so that it would be impossible or most impossible to buy a farm and equipment today and expect to be able to pay for it from rming. Therefore, we suggested that on separation, two values be set on the farm, one at the flated value of the land, the other at the productive value. The wife would be paid her share based i the productive value, but in the event the farm was sold, then she would receive her half based i the inflated value. A simple, effective solution to the problem. It seems, though, that whenever problem arising in legislating new family law, there appears to be two possible solutions, one which olves" the problem by not allowing equal sharing and one which solves the problem and still ovides for equal sharing. You have opted for the "solution" which does not provide for equal iaring.

The Attorney-General has said you cannot look at past law to see whether the judges are going give equal sharing, because there was no presumption of equal sharing under the past law. He quite right, there has been no such presumption, but you can look at the judges, for they remain e same, and you can look at the present amendments.

On January 7, 1977, a decision was handed down in the Manitoba Court of Queen's Bench in don vs. Fedon. This case is similar to Irene Murdoch's, except that it dealt with city property id not farm property. The Fedons married when they were young, they had four children, and ey gradually over the years built up an auto-electric business. On separation, the wife applied Court for a declaration that she owned part of the property. Now, the Attorney-General says e cannot look at this case because it is part of the old law. But we can look at the judge's comment. ie judge, and he is one of those who will be deciding cases under Bill 38 said, "the husband ved money, assets and property more than anything else in the world. To take such things away om him would undoubtedly provoke a great deal of emotion." Does that alarm you? Does that mment ring warning bells? It should, because the judge went on to say that the husband would se all incentive if he had to lose any part of his business to his wife. And that reasoning falls ur square within your Bill 38 where the Court is required to look at any circumstances relating the preservation of any asset. And that would be a reason for unequal sharing.

What evidence do you require that Bill 38 is going to leave women with less than half of their e's work? The Attorney-General has suggested that perhaps in a year's time we could bring a nopsis of cases and you might review the legislation then, that might be the evidence you require. e are not going to bring you any sacrificial las. You have the evidence, you have all the evidence u want and it is precisely because you have the evidence that you are doing this. You have the idence in past cases where the udges have refused to j/ find equal sharing even though the avenue as open to them under the law of constructive trusts — an avenue which was suggested by three the nine Supreme Court of Canada Judges, including the Chief Justice, in the recent Rathwell se. The Attorney-General has said you cannot look at the past law because it was different. But u can, for the law allowing equal sharing is there — it is called constructive trusts — but the dges refused to use it. Does that tell you something? It should.

And you have the evidence of judicial discretion in Britain, and still you say judicial discretion ll be equitable. Well, you speak with a forked tongue. You do mean it will be equitable — to ose who do not want equal sharing, who want to keep all their property. But the lie comes in ien you want the public to believe it will be equitable to all. It is not, and you don't want it to

If you pass these amendments, this bad law, the Coalition will continue its work. The Coalition me into being in March of 1976, over two years ago. In those two years we have spoken to many iople and gained much support. We are prepared to continue approaching organizations, going their monthly meetings, to panel discussions, speaking with church groups, we will be in the

offices, at the hairdressers, in the supermarkets, and at social gatherings. It will all be done ve quietly, no demonstrations, no appearances on radio or television, no meetings with you. Just gradual, ever-present attack on your bad law and your hostility to equality. If you are prepared do as much work as we are maybe you will be able to counteract our influence. If you don't thoug then think of us at the next election. Maybe our effect won't be visible, maybe it can never l measured, but be careful of making the mistake of thinking that because you don't see us or he from us that we're not there.

In the meantime, for the rural MLAs in the Conservative caucus, we have already reached son of your constituents. A petition has been circulated and we are going to give you those name We are singling you out because, when the Coalition met with each of you individually, a comm response was that you had not heard from your constituents. So now you are hearing fro them.

We have petitions for Mr. McGill from Brandon West; I have six pages — five pages, anoth page was partially for his; I also have a nuer of other pages which he shares with some of tl other MLAs. I see that Mr. McGill is not here, perhaps I could pass that on to him later. Mr. McKenz — Mr. McKenzie is also not here — we have I believe seven pages . . .

MR. CHAIRMAN: I might interrupt the delegate and say that those persons you are naming a not members of the committee, and I might also mention to you that you are now 20 minutes ov the allotted 30 minute time period.

MS. STEINBART: Well, okay, I'll go quickly. We have petitions for Messrs. McGill, McKenzi Anderson, Galbraith, Ransom, MacMaster, Enns, Cosens, Blake, Banman, Orchard, Einarso Gourlay, McGregor, Brown, Hyde and Graham. Perhaps if I can just give you this, Mr. Jorgenso as House Leader, you will see that they are passed on.

MR. CHAIRMAN: The hour being 12:35, to the delegate, is it your wish to have the questions, there are any, from the members of the committee, at this time, or would you perfer to leave until after we take a lunch break?

MS. STIINBART: I'm willing to wait until after the lunch break.

MR. CHAIRMAN: All right. The committee is recessed until 2:00 o'clock this afternoon. Is th agreed? (Agreed).