Legislative Assembly of Manitoba

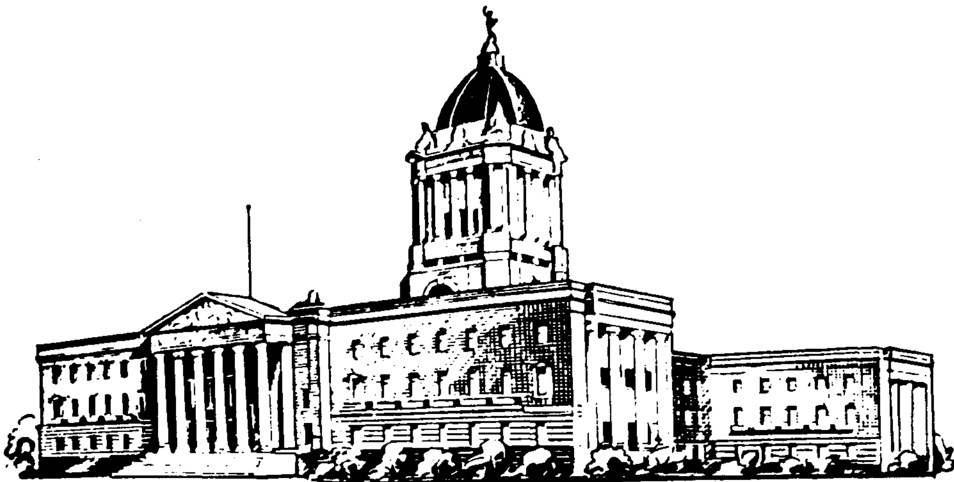
STANDING COMMITTEE

ON

STATUTORY REGULATIONS AND ORDERS

Chairman

Mr. Warren Steen
Constituency of Crescentwood



Wednesday, July 12, 1978 8:00 p.m.

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

Hearing Of The Standing Committee On Statutory Regulations and Orders

Wednesday, July 12, 1978

ime: 8:00 p.m.

HAIRMAN, Mr. Warren Steen.

IR. CHAIRMAN: Would the Committee come to order please.

Since we have six members which constitutes a quorum, and they're all from the one political arty, should we dispense with the rest of the delegations and go on with the bill, clause by clause? age by page? We'll go back to the. . .

The first person on my list is Mary Jo Quarry. Is a Mary Jo Quarry present? To the delegate, 's listed on my paper that you wished an evening session, therefore I take it for granted that you aven't been here for all of the. . .

IS. QUARRY: Yes, I have been here for most of tue sessions, it's just

IR. CHAIRMAN: You have. Then you're familiar with our 30 minute time limit.

I /S. QUARRY: I am.

R. CHAIRMAN: All right. Would you proceed please?

S. QUARRY: While preparing this brief for this Committee hearing, I noticed a note in an etiquette ɔlumn, the other day, which someone wrote in and said, "Dear Miss Manners: Why is it considered 'oper that at a wedding you offer congratulations to a groom, but best wishes to a bride?" The ıswer was, "Because of inequality in the marriage laws," which I thought was a good point.

When I spoke to this Committee last November, I remember saying that I very much hoped that e new legislation which came down and which the present government was going to bring in to place the Acts they had suspended, would be a genuine reflection of their principles, rather than ıe which offered a sort of token placed to those principles, but sort of imbedded them like inestones into bills which failed completely to implement them legislatively. I am disappointed to e that the latter is precisely what we have in Bills 38 and 39. I can only extend my sympathies those members of the Committee who are of the government party, who are going to be caught a double bind by this legislation.

On the one hand, you may be visited by some of your constituents who take violent exception the principles of equal sharing in marriage which are enunciated by the bills, and you are going have to deal with their objections to your government having passed these bills.

On the other hand, those of your constituents who believe in the principles and who genuinely elieve the incoming government's promise last October or November, that the principles would maintained in the new bills and the old ones were only being repealed for the sake of legislative ousecleaning, you're going to find I'm going to be angry and disappointed. I hope that you're visited some numbers of delegations of at least the latter at some points during the next three years. e been wondering if that's the reason why so few members of the government party, as a matter fact, so few members of either three parties in the Legislature, chose to speak on these bills ıen they were before the House, since they perhaps represent concerns to a broader range of nstituents that most people have than a number of other specific bills which are before the gislature.

Coming so late on the list of speakers, I'll be able to shorten my presentation because there no need for me to repeat the same objections that various other speakers had. I have the same jections most other speakers have had to the inclusion of fault or conduct in division of either operty or maintenance.

I was surprised to note, or no, I suppose not surprised, I was interested to note that some vernment members expressed surprise and some annoyance that there were a number of

for the Committee that were bitter and angry, which sounded very betrayed. And I really wond(gentlemen, and Mrs. Price, what the framers of these bills expected. You are, after all, saying the women of the province, we are now in a position to make the first changes in Marital Proper Laws in the last 50 or 60 years, the first major change since The Married Women's Property A(We recognize that these are necessary because of the vast way of social changes and econom changes that have taken place, the differences between how people conduct their married lives ar the expectations they have for their futures in the 1970s and in the 1920s. Now in recognition these changes and the inequalities that have been built into some of the old laws, we are goir to give you new laws, and you've said to the women of the province, this is what we are goir to do. We are second to none in our admiration for the jobs women do inside marriage; we thir that they are, you know, the pillars of the nuclear family, and we applaud the institution of tl stay-at-home mother. However, once you as a woman cease earning income and contributing to your family, and all you are providing your services, you will lose your right to share in the decisio made in that family regarding your economic survival, regardless of how intimately that affects yo future and your childrens. Mind you, when your marriage breaks up, you're going to be held liab for half the debts incurred during that marriage regardless of the fact that you had no say in incurrir them. When your marriage breaks up however, in recognition of the importance of your role preserving your family, and allowing your spouse to be free to earn income, we are going to gi you half of the assets, the marital assets that you have accumulated.

Marital assets are defined as those assets in a family which don't tend to be worth very mu(money, and which you are probably not going to want to be able to sell even if you could sell ar live off them, because you need them for your day-to-day life. We're going to give you half of th value of those, unless, of course, your husband contests this and your husband's lawyer does better job than your lawyer of convincing a judge that there is an extraordinary nature of the asset or some peculiar circumstances to your family situation, that would make it unjust. We're also goir to give you half the value of the commercial assets, defined as those assets in a family which ter to be worth any amount of money. You have a right to share equally in those, unless your husbar requests that this be varied, and unless his lawyer is able to do a better job than your lawyer i of convincing a judge that he ought to take advantage of the lengthy list of invitations presente to him by the bill to vary that sharing, but going to recognize your equal rights to property in th marriage.

If you find yourself in custody of your and your husband's children you have a right to app for maintenance from your husband and you will get that maintenance because the court has t make a Maintenance Order. However, there is a remote possibility that your husband may be ab to convince the judge that that maintenance ought to be or something in the order of $1.00 a ye: because you have performed what is known as a gross and obvious repudiation of the marriag contract, whatever it is that those words come to be found tc mean in the course of cas law.

You can' however, apply for support for your children even if you don't get any for yourself an your husband will have to pay support for his children until they reach age 18, assuming, of cours that he has the means and assuming that if he has the means, he is willing to do so or if he not willing to do so, that you are successful at chasing him down and making him pay for the suppo of his children on a monthly basis until the youngest is 18.

Gentlemen, this is what you are providing for the women of the province. I'm surprised that yc would have thought that these two bills would be acceptable.

I take particular exception that the property bill does not provide for immediate ownership an management of assets. I also object to the fact that the property bill imposes an arbitrary distinctic between commercial and family assets. I will discuss these in reverse order.

I must agree with all the other speakers who have been unable to understand why a bill whicl as we keep being told, provides a presumption of equal division of all assets that is almost ironcla goes to such lengths to separate those assets into two piles. On the one hand, we have fami assets which, in most cases, will be relatively less valuable than the commercial assets and in mar cases will have little absolute value either. To vary the sharing of those assets, the judge is invite in 13(1) to consider any extraordinary financial or other circumstances of the spouses or th extraordinary nature or value of any of their assets. On the other hand, you describe commerci assets, those of a business or farm, or those which represents savings or life insurance or pensio rights, in short, those which represent the way any prudent family that is lucky enough to hav disposable income will deal with it. To vary equal sharing in those instances, the judge is invite to consider the long list of factors with which we are all now familiar, as well as the catch-all claus at the end.

I would like to take a hypothetical family which finds itself with an asset of an extra $1,000 whic it feels it can spare from day-to-day living. If that family chooses to spend that $1,000 on second-hand car, an addition to the house, some new furniture, it becomes a family asset and

s considered in one light in terms of sharing at the end of marriage. If they decide, however — ınd in effect that is in most cases if the husband in the family decides — that it should be reinvested n a family business or a family farm, that it should become savings or an investment, or an RRSP, hen it's considered a commercial asset and although we've been continually assured that the resumption of sharing is equal for both, because the rules governing the sharing are so different, nost of us see no reason to assume that the actual practice of sharing will be the same.

I would like to add my voice to those number of other people who have asked for some explanation rom the Attorney-General, which we're disappointed that we haven't received yet, as to the rationale or why those assets should be split. If you genuinely wish to allay the fears expressed by the people vho have been appearing before you about your intentions in the way you have treated the assets ınd the exceptions that you have listed for how they should be shared, I would suggest that you ould do this in two ways.

In the first place, you make no distinction between the assets. Commercial and family assets hould all be considered those assets that a family accrues, that two people who are married ccumulate through joint efforts, allowing the usual exceptions of gifts and legal damages. I would uggest that in 13(1) you tighten the instructions to the courts by saying, after the words grossly nfair or unconscionable, "having regard to proven gross non-contribution to the marriage" or some imilar wording, and that you give whatever further instructions are necessary to make clear that ne court is not to use this clause to evaluate the relative worth of one person's contribution during ne marriage to another's or to apply the same archaic double standard that we still see as sexual ehaviour of one partner as opposed to the other. I think this would go a long way toward assuring nose of who fear that, among other problems.

The wording of this section on discretion will mean that this new law perpetuates the attitude nat marriage is to be, among all of its other definitions, an exchange of sex for money. We were ot reassured the other night when, although it was in the discussion of maintenance, Mr. Mercier sked Berenice Sisler if she did not agree that a case of adultery between a wife of unspecified ge and a youth of 20 was gross and obvious repudiation. You see, our concerns all the way through ave been that one person as opposed to the other's sexual conduct in or out of marriage were anslated into dollar terms. The fact that that was the first example that sprang to his mind in ttempting to convince someone that property ought to be varied in a marriage, that in that case, ell in that case that maintenance should not be available but that as well property ought to be aried, worries us a lot.

To go back to my suggested amendment to that clause, it would seem to me that this would ake care of those extreme circumstances, which I agree exist, the horror stories that we all seem know one or two of, which I agree seem to indicate that in some rare circumstances an exact reakdown of assets 50-50 is not fair. I would specifically think it would take care of the situation e all talked a lot about last June. In that case we had an alcoholic husband who had been a lout, believe, who had contributed nothing to the marriage, it was said, and we had great sort of legislative ympathy for this poor wife who had kept her little home and children together by dint of her own ffort, had done all of the child . care and all of the housekeeping and provided all of the money nd it was felt she really ought to be able to have things in her own name without having to share ith this worthless husband and that if the marriage broke up, she ought to get a good deal more ıan half.

Well, I would agree on the grounds that if you can prove — and I would want that to be closely roven — that someone has failed utterly to perform any of the normal functions which take place families, either the child care, or the home management, or the provision of finances, then I would e an argument because that person has essentially damaged the family's economic security, that ıere is an argument for varying the property settlement away from its 50-50 state. Again, I would ıink that the obvious public interest that both people be left with enough to live on would evail.

I've been trying to think of other examples where it might be fair to vary 50-50. An example as brought up the other day of someone who consistently endangered the family's financial status gambling. All right, again. Some specific activity which would put the family's economic security danger, or had dissipated assets, I see that it is right that a judge should have some discretion vary the sharing of taking that into account. I would hope that any such section would be so osely worded however, that the judge would not have discretion to use that to apply any other aluation of the relative contributions to the marriage.

As to equal management: I've been personally delighted to hear at this session of this annual ent that we have person after person appearing before the Committee urging that all assets should managed equally by both partners during a marriage, because a year or so ago, I was the only ıe requesting this. I feel much more secure now.

In my previous presentations before this Committee, I've made somewhat lengthy presentations aling with the way that community property systems operate in the aid of the United States, which

have them. Out of deference to the people who have now heard this routine three or four time: I will not make a lengthy presentation, because they are available in past Hansards. I'd like to brief summarize for the benefit of people who aren't familiar with the fact that these systems d operate.

At present, upwards of 40 million people in the United States have been living, since about th 1850s or thereabouts, under a system of marital property known as community of property, in whic briefly, all assets acquired during the marriage are divided equally at divorce with the usual exceptior of inheritance of legal awards, etc. Until 1972, this was in every state community managed by th husband rather than by both partners. Various states over the course of years had brought in statute which applied restrictions or limitations to the power of husbands to manage the community proper solely.

In California, for instance, which is the jurisdiction with which I am most familiar, since 189 husbands have acquired their wives' written consent to give away community property; since 191 they have acquired joinder — that is, both signatures — for sale of real property, real estate, ar since 1911 wives have had control of their separate earnings and separate property. In 191 Washington became the first state to change the husband-managed statute to an equal manageme requirement. Since then, all of the other eight states, except Louisiana, have followed suit in vario forms although the regimes differ from state to state as to how they define property and manageme rights.

Under a new system of equal management, each spouse may deal with all of the asssets owne by either party or acquired by either party, including wages, salary, investment income, as if it we his or her own. In some states, California notably, Idaho as well, I believe several of the other the obvious difficulty of dealing with the equal management of clause when a family business farm is involved, is dealt with by a statute which simply waives the equal management provisio when only one spouse is engaged in the normal course of a business. This eliminates the red herrir that's been going around for two years, about how equal management means that you need get signatures from every one and their wife, every time you wish to sign a purchase order. It simp isn't true; it doesn't operate that way in the states that have this system. I would assume that th would have had the same concerns about commercial survival as everyone here has. Some stat actually don't have that provision and I have no information on how it's working.

In California, all community property is reachable for debts of either spouse. Washington h a different system which recognizes some separate debts and some community debts. I have specific information from Washington on how they define separate or community but I would assun offhand, that a regime like that would take care of the situation we heard about the other nigl where a husband has been able to significantly impoverish his family by having to pay off a no which he had co-signed without his wife's knowledge or consent.

Because I listened to a number of submissions last year, a lot of which although they seem to mention community property systems, didn't seem particularly knowledgable. I tried contacti a couple of authorities in those states to find out, to answer some of the obvious questions th seemed to be arising during the hearings. I spoke to Dean Harry Cross, who is the Dean of La at the School of Law at the University of Washington, and is as well the resident authority community property in the states, to ask him if their equal management statute, which by then w five years old, had produced any particular problems, any change in the amount or pattern litigation, any changes which was inclining the Legislature to look again at the statute. He said n there had been none, it didn't seem to change the way most people conducted their lives.

I spoke as well to the presiding judge of the Superior Court of Los Angeles, which handles seve thousand support and divorce cases per month, to ask him if again there had been any chan in the amount or pattern of litigation, because of a concern people had expressed that no fam would be able to carry on under an equal management system, because one person had to able to make the decisions and that we would be providing ourselves with more marriage breakdowr if we didn't have the system we have now. He said as well, no, there had been no change in t pattern, and he didn't see why anyone would think there would be.

I'd like to deal with the Attorney-General's public objection to an equal management statu His first objection that no other province has instituted such a program, that he does not thi we should be in front, I find less incredible. We've been assured that all of us with our suspicio about how judges have judged in the past are irrelevant, because after all, those judgments we made where presumption of equal sharing did not exist; the judgments will change because n there will be a new law. Well, I assume that means that Manitoba's law in its presumption of eq sharing of both family and commercial assets, is going to be unique, i.e. it will be the onlv o of the provinces to have that. If the government is not concerned about sort of sticking its provinc head up over the barricade in that sense, then I don't find the argument that they can't do it another sense incredible.

Tax problems have already been dealt with and I understand that it's largely withdrawn as

bjection. Creditors rights, I would suggest that if the government is seriously interested in nplementing this system, that there are now seven states which have between five and three years orth of experience dealing with creditors' rights, that these states are . . . well, that information s surely accessible to the Attorney-General's office and I would be very interested when I finish the the Attorney-General would inform us whether he has made any contact with either the state ar associations or the judicial system in any of those states, to inquire as to how they are handling ne problem of creditor's rights. As to the final objection that, allowing both partners within a marriage qual management rights of their assets would be an unwarranted interference in people's ves.

I'd like to tell you all or point out to you, although I'm sure it's quite obvious, interference in ur private lives is all around us. Every law that restricts what anyone can do, effectively interferes ith their choice.

For people in the labour force right now, their choices about what they wish to do are coloured y one thing, the fact that the economy provides roughly a million fewer jobs than there are people ho would like to have them. This tends to determine for people what jobs they will choose, if any, ather than what jobs they want on the basis of their interests or their ambitions. For a couple, oth earning a salary and both working, this, while an annoyance, is not maybe not an insuperable roblem and they probably still do have a fair amount of latitude over their own lives.

However, as I'm sure you are all aware even in this technicological day and age, couples quite equently find themselves about to be parents when that was not precisely what they'd had in mind. think you'd also agree, that whatever good things are involved in a family finding itself with children, ou also have to realize that once that happens a lot of your options close down, where before oth parties were engaged in jobs and both earning salaries, they now have to make the decision f how to handle raising those children. I'd suggest that, only in the rarest families which include vo highly salaried professionalso, is the family unit going to be able to support two fully employed xtremely busy people, and still do a credible job of raising young children. We aren't supplied with iat many people whose goal in life is to be housekeepers and nannies for other people; the extended imily system is not what, I keep hearing, it once was and people are finding that they are forced make a choice of both parties engaging in part-time work, or one party remaining fully employed hile the other quits work altogether.

Part-time jobs are notoriously hard to find, notoriously underpaid, lacking in fringe benefits, even r professionals, and I come from a teaching background, part-time teaching or other professional ositions again are notorious for being . . . part-time jobs in terms of salary, but full-time jobs in rms of involvement and responsibility. Few parents have the opportunity to make those sort of ioices. The general pattern, as I'm sure most of you are aware, in our society is that one person ontinues to be employed full-time, often at a job that he may not like and he may not realize what e wants to do, but having a dependent wife and children tends as well to limit the options for working person. Normally, the wife on the other hand finds herself at home with children. She ops earning income. Under your bills she will immediately lose the legal right to share in the decision aking in her family. She puts herself at great jeopardy in terms of her future economic ecurity.

She hasn't got many choices as to how she lives her life. If she returns to the labour force in) or 15 years, even if she is still in an existing family, she will have lost 10 or 15 years with her b experience, of job skills, of seniority and all the rest that goes with that.

I suggest that that argument about legislative interference in people's lives is invalid.

When I sat in these hearings the last couple of years, I noticed that of course, as usual, the ont table was occupied totally by men — pleasant change — the audience was occupied totally women, because they tend to be the interested parties —(Interjection)— That's true, a pleasant iange as well. And because I listened to that sort of side conversation more than I listened to at sort of side conversation, I'm aware that because men and women in our society tend to be rced into totally roles starting in school and all through their lives, the gulf of misunderstanding ecomes absolutely insuperable. And I have certainly read, certainly heard some men discuss the ct that, after all, there there they are, doing what they are supposed to do. They are working all week, aybe they are working at two jobs, they're breaking their backs to provide their wives and children th everything they need and most of what they want, and are absolutely appalled to hear the rt of discussion that goes on about liberation, not being able to understand what it is that their ves want to be liberated from, feeling themselves in more need of liberation.

The women, on the other hand, — I know this is a partly arbitrary distinction, but is largely ie — know about the other side. They know about the loneliness and the isolation of their lives; ey know about economic dependency all their lives long and what that does to them; they know out the very derivative lives that they are forced to lead by enjoying other people's complishments instead of their own. I find it quite miraculous that some people on either side manage to bridge the gap and acquire some sort of understanding of what motivates both sides.

I think, however, you ought all to be able to relate to a situation that has been common to all o us, and that is being dependent children in our parent's homes. Please think back for a momen to the time when you all were dependent children in your parent's homes. If you lived in sort o normal, relatively secure circumstances, you probably had enough to eat, enough to drink enougl to wear, a roof over your heads and whatever else your family could provide for you. As you grev older, you had specific duties to do in the household, for which you probably received a persona allowance for your own needs. You were able to use and enjoy whatever household goods ther were, as long as someone didn't sell them out from under you. If you stayed at home when yo were an older child, or a young adult, particularly if you were involved in a family business or farm, you may well have made a significant contribution to the economic welfare of your family b your labour on a farm or your labour in a home, which freed someone else up to earn mone outside.

If you were old enough, you might well have even been included in family decisions and aske your opinion by your father as to what he might do in a particular business or economic decisior You were pleased to give it, but if you think back, you also knew that being provided with wha you needed was maybe automatic. Anything that you really wanted might have been slightly les automatic. You did have to ask and you also understood that you had to generally stay on th right side of the rules. If you were asked your opinion about a business decision, you gave it, bu you certainly didn't expect that your father ought to be obligated to follow your wishes; after a while you might be a meer of the family — a happy member of the family, and even a valued mee of the family — you were still a dependent, and you lived on someone elses money, legally.

That's precisely the dependent state which you are maintaining in your bills by refusing to grar equal management rights to these people that you presume to see as equal adults in a marriag situation. I don't know how members of the government which will pass this legislation intend t answer the questions of their constituents, particularly their female constituents who understan the implications of this bill. After all, here you are presenting the first major change, as I said, i legislation regarding family marital property in fifty-odd years and this is what you are offering

MR. CHAIRMAN: Can I interrupt the delegate and say you have now exceeded your 30 minute by about three or four minutes. Are you near finished.

MS. QUARRY: Sorry. . I am reasonably finished.

MR. CHAIRMAN: Would you permit questions? Any questions from the members of the committe to the delegate? Mr. Parasiuk.

MR. PARASIUK: Ms. Quarry, did you present any material to this review commission? Were yo asked to present any material because I know that reading the transcript of these hearings befor you are the one who seems to know most about community property in California and other America states.

MS. QUARRY: Only by default. No, I didn't make any special presentation because whatev information I had to provide was on the record through the presentations before the Law Amendmen Committees and as well, you know, all information that I've gathered has been gathered by m as a non-lawyer and as a non-law student in my spare time on Sunday afternoons from the la library at the University of Manitoba, plus what I've gathered by picking up the phone and makir a couple of lucky contacts. I'm quite sure that any practicing lawyer or official who wanted to fir that information has far more resources than I at gathering it as well as more ability to, you kno to interpret it legally.

MR. PARASIUK: So the report of the three person commission that reviewed family law didn't real get into this whole matter of community property as exists in California and other American stat to your knowledge.

MS. QUARRY: No.

MR. PARASIUK: Thank you.

MR. CHAIRMAN: Any further questions? Seeing none, thank you very kindly. Mr. Cherniack.

MR. CHERNIACK: Ms. Quarry, there are two points you mentioned that struck me. The first o when you described the very likely situation within a family where they have $1,000 saved up a they have to make a decision and indicated the decision to invest this $1,000 into — I forget yo

example but let's say a piece of furniture or into a savings bond — I hope a Manitoba savings bond — would make all the difference between a commercial and a family asset. I think you've been here throughout most of the presentations and you heard Mr. Schulman today say that he didn't see much difference but then he said, he did see that there would be a difference between an inequitable situation and an unconscionable situation. With all the wisdom you've acquired by listening to what's been going on, can you sort of distinguish between the two in terms of helping you decide whether or not to make a good and advantageous investment in a Manitoba bond or buy a television set which you may or may not need? Do you have any idea of how you would approach that as a wife.

MS. QUARRY: I'm afraid to guess. Well, my concern all the way through whenever we use words like "conscionable," is that that's a value call. I'm concerned that the legislation is specifically because it is using value loaded words like gross, obvious, repudiation, unconscionable, that we are appealing to — well we are not in this legislation giving a judge sufficient explanation as to the intent of the legislation which will leave it very open to his interpretation. In terms of making my own personal decisions, I probably feel myself reasonably securely married (a) in the first place, nonetheless, before I left the paid labour force, I made a point of making sure that I had a very saleable skill to which I canprobably return on a moment's notice should the occasion arise. I also don't have a spare $1,000. If I did, I would probably tend to invest it because I'm tight with money. I suppose I'm one of those people, and you know this may be a real failing in the legislation too, that doesn't believe that the situation of a marital breakup is ever going to occur to me. I realize that that's true of most people to whom it does happen, so I would make my decision perhaps not very rationally, but that's what it would be.

MR. CHERNIACK: Well, if you were to invest it then you might, in the light of this quarrel in your mind between what is inequitable and what is unconscionable, you might decide that you would like that investment to be in both names.

MS. QUARRY: I might well do that as a matter of course. As a matter of course, without any reference to law, we have most of our major assets in both names anyway.

MR. CHERNIACK: On the other hand, this legislation doesn't give you a say in management so you really couldn't make that decision, could you?

MS. QUARRY: Well, that's right, you see, it would have to be my $1,000. The likelihood of it being my $1,000 at this point is slim. That's precisely my objection that I don't feel seen as an equal in the eyes of the law when my labour is valued but not in money terms.

MR. CHERNIACK: But you've been told by lawyers that when it says "shall consider all the circumstances including the following," that really means "but nothing else." That really means you are told by lawyers that where it says, "all circumstances including the following," that it really means, "only including the following,and not anything else." You've heard lawyers say that to you.

MS. QUARRY: Yes, I've heard both things.

MR. CHERNIACK: Do you buy that?

MS. QUARRY: I'm not in the position to buy or not, not being a lawyer, you know, I feel considerable discomfort entering into a debate on the turn of phrase like that.

MR. CHERNIACK: Well, this legislation would make you get involved in entering into it, wouldn't it?

MS. QUARRY: That's true. Actually I suppose if I felt strongly enough, as a matter of principle, I would choose to opt out of the regime and set up a separate marriage contract and I'm sure I would have no difficulty persuading my husband that we ought to do that as a matter of principle. My concern is that I am one of the lucky women; most people are not.

MR. CHERNIACK: You will recall that Miss Arpin indicated that she thought it would be better to have a contract than rely on this legislation. I think I interpret her correctly.

MS. QUARRY: Oh, well, certainly.

MR. CHERNIACK: Yes. Which means that to people who have some educated knowledge c impression of the legislation, that they might opt to have an agreement rather than rely on th law. Is that a . . .?

MS. QUARRY: Oh, I think maybe particularly legally educated people or people who have bee already burned once might choose to set up a legal contract. I still find it very difficult to envisio people sort of in the normal frame of mind in which one is when one embarks upon a marriag choosing to, in effect, cast doubts on the prospective honesty and justice of the prospective spous by insisting that they should have a contract. I would think only the most, either educated c emotionally secure people would chance doing that. I don't think that applies to the vast majori of people.

MR. CHERNIACK: I suppose it might be fair to say that giving credit to the advances of th Conservative Party that considering what the law is today with the suspension of the legislation la year, that even this is better than what we've had before.

MS. QUARRY: Oh, yes, I would consider that it's a potential advance over the old law. I'm su that a presumption of equal sharing is a strong thing and that it will be overturned with some difficult I'm just sort of also convinced that the more substantial assets are, e which also means the long term the marriage is, the greater will be the motivation to people to make sure that they are ab to get a variance of that sharing and that that will precisely hit older women who have spent the married lives doing what they were expected and told to do by society and their husbands, an find themselves at age 45 or 50, unmarried, essentially unemployable, or certainly if they hav accumulated no job skills by that age, probably cheated out of a fair share of what has bee accumulated over a long marriage, perhaps receiving no maintenance, or little.

MR. CHERNIACK: Which leads me directly to the second point I wanted to discuss with you. Yc said something in your main presentation about a price being put on the conduct of the partie a monetary value being established, and I think that's pretty clear. The Attorney-General said clear that the quantum in a maintenance order will be assessed in the light of, and then the words g on as to relating to conduct. You said there seems to be a price placed on the conduct, and occurred to me to look I found neither in this bill nor in the legislation on the statute books no are there the kind of circumstances discussed that should be looked at in determining custody a child, that there are in determining how much money to pay a person. And it suddenly struc me, I admit to you, that that seems peculiar, that we in our wisdom as legislators are called upc to describe the kinds of circumstances that should be considered by a judge in deciding wheth or not to make an order, and how much, and there is no guideline set out as to how to determir who shall have custody of a child in a marriage.

MS. QUARRY: Well, I'd agree altogether. I think it's unfortunate that something like a marria breakup, usually where there is going to be a custody problem of young children, has to becor such a financial situation, but it clearly does, and very many women have found to their chagr that it's more than anything else an economic problem.

MR. CHERNIACK: Thank you, Mr. Chairman.

MR. CHAIRMAN: Any further questions? Seeing none, thank you very kindly.
Manitoba Action Committee on the Status of Women, a two-part brief . . .

MS. ENGEL: Mr. Chairman, I have been requested by Anne Jackson from the Canadian Congre of Women to change places with her because she has to be somewhere later this evening. Wou that be all right with you? Then I could still present this evening. I think she's number 9 and I' number 4.

MR. CHAIRMAN: Oh, I see, all right.

MS. ENGEL: Is that all right?

MR. CHAIRMAN: Sure, that's fine.

MRS. JACKSON: My name is Anne Jackson and I represent the Winnipeg Chapter of the Congre of Canadian Women.
In our former submissions to this body regarding revisions in family law, we stated that o

ıupports the principles of democratic laws of marriage, equality in case of divorce and inheritance, ›quality in the right of ownership, and equal rights and responsibilities in matters concerning children, ıll of which, if enacted, will advance the stability and well-being of the family, the core of our ›ociety.

A marriage which is truly an equal partnership is bound to be beneficial to parents and children ılike. We still maintain that this can only be achieved to its fullest through immediate community ›f property during marriage. Nevertheless, we are happy to see that the government, through Bills ›8 and 39, left intact the following principles, which is part of the Coalition on Family Law we ›upported then, and which we still support, and for which we commend you.

The application of the law to all Manitobans, the rejection of unilateral opting out, the recognition hat all assets, including commercial assets, should be shared by both spouses. However, we are ›xtremely disturbed to find that in the new legislation there is deferred sharing of family assets. 'his we find totally unacceptable, as it negates the whole idea of partnership during marriage.

With regard to the sharing of commercial assets, there is allowance for such broad judicial liscretion that the concept of 50-50 sharing disappears completely. We heartily agree with Mr. Murray ›mith who, in the course of his submission, questioned the necessity for division of assets into family ınd commercial. One wonders whether indeed you are legislating for business or for marriage.

At this point, I'd like to break from my formal presentation and discuss the situation of the older voman in relation to the family law. I am rather hesitant in doing this, but I'd like to offer my own ›xperience. I have been married for 40 years. Prior to my marriage, I worked for 10 years supporting ny family. When I got married, I assumed that my husband and I saw eye to eye on a lot of things, ›ut somehow or other, we never did get around to discussing the relationship, money, etc. etc., o I was due for a rude awakening. I found that my husband didn't have the ideas that I thought e had. He was the one who felt that he had to control the purse-strings, and he put me in the ›osition where I had to ask for grocery money, money for anything. After sort of a battle, I finally ot to the point where he gave me an allowance. This went on for a number of years, and finally, got to the position where I felt that I had to do something about improving my economic position, o I used to go out and — I was, by the way, trained as a stenographer — I used to go out and vork for Office Overload, but I had to do it secretly, because I didn't know what the consequences vould be. As a matter of fact, one time I had a very boring job typing tax rolls or something, and had to manage to be home before he got home so that he wouldn't know what I was doing. This robably sounds very silly to you but if you knew my husband you would understand he was a ery domineering sort of person and I, by nature, very timid. However, timid as I was, I still felt nat I had to do something about my situation.

In the meantime, my husband, who was a professional man, became manager of a company, 'ith shares in the company, and I, at the same time, decided I was going to get a full-time job. o I went out and got a job as a school secretary. Of course, he didn't approve, and he made very, very big fuss about this and threatened all sorts of things — threatened to go to my employers, tc., etc. Anyway, at that time I was talking things over with a marriage counsellor, hoping that would sort of be able to do something to improve the marriage relationship, and when I told him 'hat was happening, he said, — just about as much as said — I mean, marriage counsellors don't sually tell you what they think you should do, but he said, "Well, if you give your job up, that'll e the end. You'll lose whatever independence you have."

I was forced to leave home because things became very unpleasant, stayed away for a month, nd finally he came and asked me to come back, and told me that he wouldn't object to me going › work. Well, at that time, I thought that was good enough, but I realize now that I should have eld out for more than that.

I continued to work. He had retired voluntarily. He got tired of what he was doing and he took is shares out that he had in the business and invested everything in bonds. Now this is where come to the point of family and commercial assets. I was voluntarily retired three years ago, so ow, you see, my position is this: that I have the old age security; I have a very small Canada Pension ecause I wasn't earning enough to make it any larger than it is. He has his old age security; he as a Canada Pension; but he has much more coming in than I have. The point is, where does ıat leave me? I have no part in the management. He has his own bank account. We have a joint ccount, but what goes into this joint account? Just the housekeeping money, that's all that goes to our joint account, which is empty by the end of the month.

So the reason I'm bringing this out is, that with this new law the way it stands today, I'm not etting anything, I won't be getting anything out of this marriage. If I stay, I don't get anything; I leave I don't get anything, because we have practically nothing. We have a joint ownership in ıe house and that's about all.

Anyway, I just thought I'd bring this forward, because there are probably more women my age this situation and I thought it would be good for the committee to know the circumstances. So I just go on with my brief for my organization.

Again, in determining Maintenance Orders, fault has been introduced once more, whereas in th bill enacted by the former government, need was the determining factor. In spite of the fact tha the former bill was criticized by one member of your government in particular for inadequate provisio for the collection of Maintenance Orders, there is no provision in the new bill to ensure this collection We still believe that the government should take the responsibility for paying maintenance t qualifying recipients until orders are processed. The example given by a young woman here th other day shows there is a crying need for such an agency to set set up. We strongly urge th government to reconsider this legislation and to amend it so that it provides for immediate sharin of family and commercial assets with limited judicial discretion — and as regards maintenance, th elimination of fault and the provision for adequate collection procedures.

May we remind you that the whole process of revising Manitoba family law was born in thi very room ten years ago with the formation of the Manitoba Committee on the Status of Wome with which I personally was involved. This, as you may recall, was appointed by the Robli government. I would like to take this opportunity to commend the many individuals and organization for the excellent quality of the briefs they have presented. I am sure that if Nellie McClung wer to suddenly appear today, she would be proud of the many who have taken up the struggle wher she left off.

We are on the eve of 1979, International Year of the Child. I would like to quote to you Principl II of the UN Declaration of the Rights of the Child:

"The child shall enjoy special protection and shall be given opportunities and facilities by la and by other means to enable him to develop physically, mentally, morally, spiritually and sociall in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of law for this purpose, the best interests of the child shall be the paramount consideration." A goo equitable family law would be a big step forward in ensuring a happy life for Manitoba children In the third year of the United Nations' decade for women, with the world plan of action to accelerat the process of equality for women, we can make a good beginning. Let us show the world tha in Manitoba we don't have to wait another seven years for this to happen, by passing a family la that truly reflects equality between men and women. Let's do it now. Thank you.

MR. CHAIRMAN: Thank you, Mrs. Jackson. Would you permit questions?
Mr. Mercier.

MR. MERCIER: Thank you very much, Mrs. Jackson, for presenting your brief. We had this afternoo — I don't know whether you were here or not — a presentation by a lawyer in the City of Winnipe with respect to Section 13(2) in which he stated that the distrust of judicial discretion which is inheren in the position of opponents of Bill 38 is entirely unjustified and concluded that the case will b rare where the presumption of 50-50 sharing will be overturned. I don't know whether you had th opportunity to hear that particular brief and the lengthy discussion of cases dealing with presumption in other matters in domestic relations, and I wondered if you had any comments to make on tha presentation.

MRS. JACKSON: I didn't hear all of the brief, but I myself feel that I wouldn't want to rely o judicial discretion. For instance, if I and my husband were involved in such a thing, I could jus see how he could convince a lawyer that he does everything around the house. And I must admi that he is handy, he does all sorts of work around the house; he feels that I don't do very muc and I should be happy and thankful for what I get for room and board. Therefore, I would like t see it written into law — and I'm sure that if it were written into law — forget about judicial discretion that even people like my husband would take notice.

MR. CHAIRMAN: Any other questions? Thank you very kindly, Mrs. Jackson.
The Winnipeg Chamber of Commerce, Richard Shead. How's that for timing, Mr. Shead.

MR. RICHARD SHEAD: Thank you very much, we're right on time. It's my pleasure, ladies an gentlemen, as a member of the executive of the Winnipeg Chamber, to present to you their thought and comments upon the proposed legislation dealing with family maintenance and with The Marit Property Act.

MR. PARASIUK: On a point of order, Mr. Chairman, who is speaking? I don't see this person o the list here.

MR. CHAIRMAN: We have a revised list that the Clerk issued at the start of this afternoon.

MR. PARASIUK: Which number is it?

IR. CHAIRMAN: He is number seven on the revised list. Numbers six and nine swapped positions, o we will do seven, and then eight, and then we will go back to 6. While I have interrupted Mr. ;head, I might remind him that the committee does have a rule that we try to follow, and that is 0 minutes for presentations.

IR. SHEAD: I should be well within that, Mr. Chairman.

IR. CHAIRMAN: Thank you. Would you carry on, Mr. Shead.

IR. SHEAD: The Chamber, as a community organization, is concerned obviously, not only with robably its most foremost image, and that is the business and economic welfare of the city and s people, but obviously have always taken an interest in any major social or economic issue that as come up in the City of Winnipeg. Obviously, due to the nature of this legislation, the Chamber ; concerned about it because it falls into both those areas.

The Chamber struck off a task force of seven persons in early March, and basically the brief 1at has been handed in to you and the one that I am presenting tonight, is a result of about two 1onths' deliberations and basically, because it did most of its deliberations prior to the legislation eing put into the House, it addresses itself to the report done by the three-person committee ppointed by the government. To that extent, it attempts to address itself to certain deficiencies 1at it saw, certain omissions that it saw in that brief and to the extent that the bills are carried 1rough or those in fact have been changed in the new legislation, it either accepts or still feels 1at there are changes to be made.

As perhaps a prelude to reading the brief itself, which is not that long, perhaps I might just utline some of the principles which the Chamber does endorse and obviously, therefore, you will e able to feel whether or not we in fact support the present legislation or whether we feel that ome of the principles are subject to scrutiny.

The Chamber obviously does support a need for a change in the law, a definition in the law 1at has been lacking to date, and I don't think anybody would take issue with that. However, the hamber is concerned that in the worthwhile attempt to find the most ideal and equitable system hilosophically, that some temperance be given in respect to making the system workable, that the onsequences of the legislation be carefully thought through before the legislation and its principles re finally embodied. The problem obviously one runs into is that there are always areas of iterpretation, areas of consequence that perhaps cannot be foreseen by anybody, and that is why 1e legislative procedure is an ongoing procedure. But again, we stress the need to carefully look ito the consequences, not only of the rights of the marital spouses as they are set out in the gislation in its final form, but also rights of third parties. And as part of the brief, we address urself to this issue, especially in the area of financial disclosure where, in fact, in order to disclose ne's financial position, both asset and liability, if one is in business then obviously one cannot o that without in fact exposing or in fact bringing into the limelight interests and financial positions f others. This is something which appears to have been overlooked in any of the legislation that as been brought forward to date.

The Chamber disagrees with the basic principle of equal sharing as a right and suggests that 1e correct principle is one of fair sharing, not equal sharing. Now, you might say that this is a ifference without a distinction, but to the Chamber, it is a very important distinction in that to art from a premise that one has equal division and then to have to either negotiate or prove in ourt; that in fact it should be something else; in fact might prove as big an injustice if in fact it ever went either before agreement or before a court, than to say nothing. Whereas if the principle nbodied in the legislation is one of the fair sharing and all of the relevant tests and factors are rought into the legislation, then certaintly each party has an equal opportunity to prove whether fact equal sharing is right or whether or not it is something else.

Coupled with this principle of fair sharing, the Chamber feels that the legislation as proposed date, either in the former legislation which was suspended, or in the proposed legislation, is lacking enshrining or embodying the value of the conduct of the spouse that maintains the family home 1d in fact takes care of the family unit. The Chamber doesn't necessarily believe that it is one economic addition or arithmetic, it is one of recognition of an input, of a value to the ongoing arital relationship, and nowhere do we find a clear enough definition or recognition of that inciple.

Conduct, the Chamber endorses, is relevant in two areas and is not relevant in a third. The hamber feels that conduct is relevant in assessing not only the right to support of a spouse but so the quantum of that support. The Chamber believes that conduct is relevant in determining e issue of division of assets. The Chamber feels that it is not relevant when dealing with the principle support of the children of the marriage.

Application of The Act: The Chamber believes that the proposal both in the former legislatioı as drafted and in the present proposed legislation is still too technical, too vague, and is still subjec to obviously future legal interpretation which may leave parties either in the legislation or out o the legislation until the law finally evolves. The Chamber would recommend three specific rules tha would govern the application of the Act, and obviously each of the rules is addressed to a conceri that the Chamber has as to its application.

Firstly, in its application to existing married people, resident in Manitoba at the time the legislatioı becomes effective, the Chaer endorses the right to opt out within six months or it will apply, an we are talking about a unilateral opting out. In respect to new residents that come into Manitob after the legislation comes in force, the Chamber endorses the same six month right to unilaterall opt out, otherwise it will become applicable.

In order to try and not change the property or marital property rights of people that were marrie outside the province and become temporary residents in the province due to job transfer, whatever the Chaer recommends that there should be a ten-month residency requirement before being abl to apply for an order under the legislation.

Now that basically is by way of background as far as the principles the Chamber feels strongl on and now I will present the formal brief itself which is not very long.

The Winnipeg Chaer of Commerce has reviewed the report of the Family Law Review Committe composed of Myrna Bowman, Rudy Anderson and Ken Houston, Q.C. respecting The Famil Maintenance Act and The Marital Property Act. The existing Acts themselves were considered an several briefs and commentaiies w:-re reviewed on these Acts. The members of the Winnipeg Chae of the Commerce that conducted this review were David Newman, Doreen Bullen, Norm Coghlar Evelyn Diell, Harry Friesen, Ollie Landega and myself. TF250

In respect to The Family Maintenance Act, it is the recommendation of The Winnipeg Chambe of Commerce that the government enact The Family Maintenance Act along those lines recommende by the Family Law Review Committee. We agree with the unanimous viewpoint of the Revie Committee that unrestricted no-fault maintenance is not a good or just principle.

In the report on The Family Maintenance Act, Mrs. Bowman expresses two views which ar different from Mr. Anderson and Mr. Houston which the Chamber feels are meritorious of furthe consideration.

The first of these is that an employer or business partner should be obliged, if asked, to disclos to the spouse of an employee or partner financial information about the earnings of the employe or partner spouse. Subject to certain qualifications the Chamber also agrees with the principle tha one spouse should disclose to another information about the income and net worth of the first spouse However this gets us into the area of encroachment into the rights of third parties. As mentione previously, in order to properly assess a spouse's financial position as to his assets and liabilitie one must obviously know if those assets and liabilities are in some way tied in with another persor not involved with the marriage, what that relationship is and what his participation and liabilitie are. Therefore, we would recommend that a specific provision be included in the Act that if a judg on an application feels that this type of information is relevant to making a fair determination a between the spouses, that in camera hearings be authorized and, in fact, the judge be authorize to put before himself whatever information he feels necessary but not before the spouses, merel before the spouses' representatives and the judge himself. And that, in fact, in respect to any finding or any evidence put before him that that not form part of the formal record.$

The second view that the Chaer wishes to draw to your attention is a view expressed by Mr Bowman that a separation agreement providing for a release from liability of a spouse for suppoı and maintenance which was fair in the circumstances when it was made should not be subject t a court order for support and maintenance merely because the spouse who released the other fror paying maintenance through improvidence or misfortune becomes a public charge unless the partie in either the agreement or the award have permitted such a review. The Chaer would refer yo to Mrs. Bowman's reasons as contained in Pages 13 and 14 of the Review Committee' Report.

On The Marital Property Act, the Chamber basically has two propositions from which it ha operated. No. 1: Having said that there is need for clarification and definition in the law, and I thin this is probably the most legitimate criticism that can be aimed at the judicial system and th development of the law through the judicial system to date, it feels that basically there is no nee for a new Act. We have on the books The Married Women's Property Act and there is no reaso why statutorily enshrining the appropriate principles The Married Women's Property Act cannc become The Married Persons' Property Act.

We would recommend that a provision should be added in those amendments to ensure th the positive contribution of any spouse to any aspect of married life, whether in rearing the childreı in making the home, assisting in business or earning a living be recognized in a court in the eveı that there is a dispute as to the amount of entitlement of a spouse to a fair share of the asset

acquired during the marriage. The Chaer further recommends that the amendment shculd also provide that where it is difficult to establish what is a fair sharing between the parties that the court is given the authority to deem an equal sharing shall apply. The purpose of that amendment would be to alter the basic underlying principle from an equal sharing to one of fair sharing so that those who make a real and positive contribution to the marriage in any way will be given the assurance that they have a legal right to a fair division of the value of assets acquired during the marriage.

It is submitted that the deficiences in the present law are essentially that there has not been a sufficiently clear definition of the extent of the joint rights of married people to property acquired by either or both of them within the marriage.

The Chamber believes that once these type of amendments are made to The Married Women's Property Act, there is no need for a new marital property Act because basically the structure is in place.

The Chamber in addressing itself to this concern about the proposed legislation feels that the final legislation should therefore embody the following principles:

1. That contributions of all types and kinds to the marriage and the performance of each spouse in respect to their respective marital obligations be of prime importance in considering entitlement.

2. That the morality and other relevant aspects of the conduct of each of the parties also be taken into account.

Again, in respect of application of the Act, to ensure that existing spouses who have organized their affairs based on existing law governing spousal property rights, have an opportunity to preserve that basis if they so wish and to modify it by election rather than by legislation, suggest that the following matters be embodied into the legislation.

1. For resident married couples as of the date of the amendment coming into effect, they have the right to opt out for a period of six months.

2. For new resident married couples, after the legislation comes into force, a similar right to opt out within six months.

The intention of this would be that the two spouses of the marriage would have their property rights with respect to their assets acquired during their marriage governed by the law as it stood prior to the amendment but will be governed by the law of their solemnization of their marriage. We also recommend that actual residence for at least ten months during the year be also a requirement in order to ensure that people that are in Manitoba on a temporary basis do not have their property rights altered by virtue of an event in their employment that they are not able to control.

In conclusion, it is respectfully submitted therefore that the principle of fair division should be the underlying philosophy in the legislation, not the presumption that fair is equal. As I am sure you have been told before, in 99 cases out of 100, you may end up in the same place but we are talking about principle, not presuming the conclusion on each individual case.

I think that will end the formal brief and if there are any questions I can answer, I will try to do so.

MR. CHAIRMAN: Mr. Shead, would you permit questions?

MR. SHEAD: I will.

MR. CHAIRMAN: Sorry, I was listening to the Attorney-General.

One other question I had before I turn to members of the Committee, do you have additional copies of your brief.

MR. SHEAD: I don't have them with me but they certainly can be made available by tomorrow morning.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Mr. Shead, the Chamber of Commerce had, as of about a year ago, some 1,200 member firms I am told. I suppose it still has a very substantial membership.

MR. SHEAD: I believe, Mr. Cherniack, the membership this year is 1,200 corporate me 1,800 ers and some individual meers not related to any particular corporations.

MR. CHERNIACK: Many of whom are women?

MR. SHEAD: I believe the percentage of women meers is approximately 3 to 4 percent of our tot including the corporate.

MR. CHERNIACK: Only 3 or 4 percent of about 3,000?

MR. SHEAD: We don't have any restriction on them, that's all who have joined.

MR. CHERNIACK: It's an organization which is no restrictive in membership, surely?

MR. SHEAD: It certainly is not.

MR. CHERNIACK: But yet there are only 3 or 4 percent of your meership consists (women?

MR. SHEAD: That's correct.

MR. CHEIACK: Would that be reflective in your opinion of the percentage of women in the busines counity?

MR. SHEAD: I don't think so because the task force which made the recommendation to counc and the report was an unanimous one, was equally divided between men and women and obvious the task force was struck so that every aspect, both married, single, male and female had a dire input into the task force recommendations to the Chamber's council.

MR. CHERNIACK: You mean your seven-person task force was catalogued according to grouping and classifications?

MR. SHEAD: The council when it struck the task force was most concerned that equal input b made by all people interested.

MR. CHERNIACK: I see. I didn't hear the name of a labour lawyer or someone who is famou is that field but I guess Mr. Newman is, come to think of it. Mr. Shead, the task force then wa struck off by the council? What does the council consist of?

MR. SHEAD: The council is the body which is responsible for managing the affairs of the Chamb and, in fact, initiating programs that the membership feels are worthwhile of undertaking by th Chamber.

MR. CHERNIACK: I am probing to try and estimate the extent to which your brief has th knowledgeable support of your meership of something over 3,000 corporations and individuals

MR. SHEAD: Obviously I think it would be, you know, facile to say that 3,000 members read th brief and endorsed it. I think the fact that the membership elects council every year and if the don't feel that the council is taking positions, both economically or socially, that reflect th membership, that either they are not meers or alternatively the council is changed the followin year. Also in an organization of that size you obviously are not going to get unanimity, even clo to unanimity.

MR. CHERNIACK: That's fair game, Mr. Shead. Delegation of authority is recognized, there a 57 MLAs who pretend to speak on behalf of a million citizens of Manitoba. So you as a membe one of seven people, have the delegated authority to speak on behalf of the Chamber. That's corre and I don't quarrel with it.

MR. SHEAD: I have the authority to present the formal brief.

MR. CHERNIACK: But the brief is on behalf of . . .

MR. SHEAD: Absolutely.

MR. CHERNIACK: All right. So let's go on to some of the things you said. You spoke about condu being relevant in the division of assets. I wrote this down but I'm not sure you really said th You know I didn't have a copy of your brief. Were you speaking of conduct as being relevant determining division of assets or was it really on maintenance that you were dealing wi

MR. SHEAD: We are saying that conduct is a factor to be taken into account both in the area of support for marital spouses and in division of assets between the marital spouses. Conduct is not relative to entitlement, conduct, I would suggest, is relevant to potentially a disentitlement.

MR. CHERNIACK: Disentitlement.

MR. SHEAD: That's correct.

MR. CHERNIACK: So that it may not be — well I wouldn't try to put words in your mouth. Would you say that conduct of a moral concept, moral nature would be the kind of conduct that should be considered or are you relating more conduct to the accumulation of monetary or financial assets?

MR. SHEAD: I think you are talking about all conduct. I think the spousal relationship is such a personal one and such an integrated one, you can't separate the two.

MR. CHERNIACK: Well in the legislation proposed to us dealing with maintenance, the Attorney-General has included conduct as a circumstance which may assist the judge in determining quantum of maintenance. Do you agree with that concept?

MR. SHEAD: Yes, we do.

MR. CHERNIACK: Well the way I read it, although most people seem to read it that poor conduct by a dependent spouse disentitles that spouse to an amount that would be related to need would bring less than need. I read it that conduct, poor conduct, bad conduct on the part of the paying spouse would penalize him by making him pay more than his spouse needs according to the court's evaluation of need. Would you agree with that concept?

MR. SHEAD: We would not agree with that concept. As I said, I think conduct relates to disentitlement of the party asking for support, is not a reason for the other spouse paying more than a fair share, more than a reasonable amount.

MR. CHERNIACK: Let's switch now to accumulated assets and we're dealing with a person who may be a highly successfuly businessman whose wife did what is expected in many families where the husband is in business and the wife may be looking after the home, rearing the children, attending home and school, doing those social things that are expected of the wife of a businessman. We'll start with a presumption of equal sharing, but let's use your expression, fair sharing, but suppose that in addition to accumulating all these assets, he also gets involved in some immoral activities, immoral in the sense of — well, the most common, of course, is something like adultery or something which is considered reprehensible in society — would you say that he should become disentitled to a fair share of the assets, but rather receive less than what would otherwise be a fair share?

MR. SHEAD: You are talking about the fact that he has the majority of the assets, being the income earner.

MR. CHERNIACK: Well, I didn't really care much who had the assets in their name. I'm just talking about, here is a separation, there is a division of assets, there should be a fair division of assets. He has accumulated the money, all right, but his conduct is not moral or not considered to be right as between husband and wife, unrelated to the accumulation of the assets. Should he thus become disentitled to his fair share, which would be fair under circumstances other than the fact that he may have a mistress somewhere?

MR. SHEAD: I think the problem you operate under when you ask the question in that way is that, if you are taking, for instance, adultery, the principles as I read them, embodied in the proposed legislation, relate to, in the maintenance area, obviously proper support and maintenance of the family, and in the area of sharing of assets, it doesn't involve that. It involves a breakdown of the marriage either for one person's behaviour or mutual agreement or abdication, whatever.

Given that there is a "gross repudiation" of the marriage relationship, I think then you are always going to have some form of conduct like that, whether it is abdication of the marriage, whether it is adultery, whether it is complete lack of emotion about the other party's feelings. So I don't think you can say that there would be a conclusion drawn from the fact that you bring conduct

into it that there would be a penalty imposed upon one party who is conducting himself or herse in that way. The basic principle is still fair sharing, and fair sharing stems from entitlement of th other party to the marriage. It does stem or start from whether the other party should be penalize or whether they start on the other foot, and that's the trouble with your question. You presuppos that it starts from a penalty and I don't think that's a fair proposition.

MR. CHERNIACK: It may be that my mistake was in correlating conduct with fault. What I mea by that is that we can have a scenario of a husband and wife who have acquired substantial asset mainly because of his efforts to accumulate the assets, her efforts to maintain a home in such manner as you would think The Women's Property Act ought to take into consideration, and I thougl you were suggesting conduct in terms of his having a mistress or her having a boyfriend, a love that that might affect what the court should consider the fair share.

MR. SHEAD: Yes, it should be taken into account.

MR. CHERNIACK: You say it should?

MR. SHEAD: We are saying that.

MR. CHERNIACK: Not only in maintenance, but also in division of accumulated assets?

MR. SHEAD: Yes.

MR. CHERNIACK: And that's the Chamber's view.

MR. SHEAD: Yes. For an example, if one party abdicates the marriage completely and within th time prescribed, after having abdicated the marriage voluntarily for whatever reasons they may hav decide to come back and ask for their fair share, or in the case of the proposed legislation a equal share, I think that party's conduct, that for a period of time voluntarily they abdicated th marriage relationship, should be taken into account in determining entitlement.

MR. CHERNIACK: Mr. Shead, may I tell you, in all honesty, that I have been involved in problen as a lawyer where I have seen many cases where a husband has accumulated all the assets in th family and has produced great wealth in the family and is an awful person in relation to his treatme of his wife. He has maintained the house and provided money for her clothing and for her comfc and for her food, but he has been a terrible person, including having a mistress, including beir pretty blatant about it, including treating her in a very reprehensible manner socially. But he ha all the assets; they are in his name.

You say that that kind of action would disentitle a person claiming a share in, but here I a talking about a man who already has it all and his wife is claiming a share.

MR. SHEAD: Well, his wife starts obviously from a proposition that she is entitled to a fa share.

MR. CHERNIACK: I want to suggest to you that on the basis of what the Chamber believes we are not talking about your belief — the Chamber believes that she starts at the bottom of tl scale trying to achieve a fair share from a husband who behaved such as I described, where I'm suggesting that even my interpretation of a fair share would mean that he ought to start tryi awfully hard to retain a half interest or a fair share under this legislation, because he has be behaving in a reprehensibele manner. Do you not accept that as being both sides of the coi

MR. SHEAD: But I think, with all respect, we're saying that because when you take the princip of fair sharing, you take our recommendation that specifically embodied in the legislation shou be an acknowledgement that the spouse that takes care of the home, that maintains the fam unit intact, which allows the bread-winner to go out and do his or her thing, should be given equ recognition as being a very valuable input. When you take into account our recommendation, th if there are no other obvious factors to otherwise determine what is a fair share, the judge authorized to deem it an equal share, we end up in the same place in most instances. What t Chamber is taking issue with is you don't start the parties from a proposition that fair is equ State the proposition as it should be, fair is fair, and it may end up as being equal. As a lawy I would hope that you would appreciate the difference of onus of proof and that type of thing is not a distinction without a difference.

ИR. CHERNIACK: Mr. Shead, you and I would be concerned about a philosophic approach, never nind our knowledge or lack of knowledge of law. You say that she should be able to claim entitlement)f a fair share.

ИR. SHEAD: She has an entitlement.

ИR. CHERNIACK: But I am saying that by the same kind of description of adverse conduct, he s still in the position of owning it all and still having to accommodate her up to the level of a fair ;hare' but not beyond it. You say that the Chamber believes that a person who behaves as eprehensibly as I have described and owns all the assets, would not be expected to give up more han an equal share if she cannot claim that a fair share is less than that.

ИR. SHEAD: What we are saying, Mr. Cherniack, is that conduct of the type that you describe)y the person who has all the assets, should not operate as a factor to operate as a penalty, to orce him to give up what would otherwise be a fair share, on the assumption that that conduct lidn't exist. That is what I am saying. That's where I'm taking issue with you.

ИR. CHERNIACK: Now I believe that you and I see it the same way, and disagree about it, but think that I understand you to say that the bread-winner, the person who has accumulated it, has o be subject to a division on a fair share basis and can use her bad conduct as a defence from jiving her a share that would otherwise be fair, but need not be concerned that his conduct would idversely affect his opportunity or his right to retain his half of a fair share. I believe you have ;aid that.

ИR. SHEAD: If half is fair.

ИR. CHERNIACK: If half is fair. So that his conduct, as the owner, is of no consequence, but her :onduct as a dependent spouse is of the greatest consequence. I believe you said that.

ИR. SHEAD: I am saying the Chamber's position is that conduct initially is important for lisentitlement, not for entitlement. If we are saying the same thing, then we are saying the same hing.

ИR. CHERNIACK: I think I'm saying the same thing. Do you disagree with me?

ИR. SHEAD: In principle, no, but you are using a fact situation that obviously is to add vantage o your interpretation, let's put it that way.

ИR. CHERNIACK: I have the right to give you those examples.

ИR. SHEAD: You do.

ИR. CHERNIACK: You have said that no-fault maintenance is not acceptable to the Chamber . .

ИR. SHEAD: Except in the event of children of the marriage.

ИR. CHERNIACK: Well, maintenance of children is something else altogether. I'm talking about ıe maintenance of spouse. The Chamber believes that no-fault maintenance is not good. We talked bout disclosure and you are now saying — this is another little aspect of what you said — that judge should be able to enquire into the assets of a spouse to the extent of prying into the affairs f his partnership rights, but shall not disclose it to the applicant spouse's lawyer.

IR. SHEAD: No, to the applicant spouse, but should make it known to the applicant spouse's ıwyer in camera.

IR. CHERNIACK: Are you suggesting that the lawyer acting for a spouse will be denied, not the ght, but the obligation to discuss with his or her client what is the information acquired through ıat secret, private in camera hearing?

IR. SHEAD: I am saying that we are recognizing, I think, two principles. The first principle which e don't see covered in either the former legislation or this legislation is a statutory acknowledgement ıat you cannot realistically determine a spouse's financial position where he has other involvements

with third parties without involving those third parties. Given that proposition, we then say that th Legislature must be very careful that while in the interests of properly determining the spousal party rights, they do not unduly infringe upon and expose the private affairs and matters of busines partners. We are saying that our solution would be an in camera hearing between the judge, th spouses' lawyers — it would not be on the record — and the judge would determine what is releva for the purpose of allowing the parties to continue the hearing with the necessary information. Bu certainly, all of that third party's affairs would not be laid bare for the spouse to see and anyboc else who is sitting in court to see. That, to us, would be an unjustified invasion.

MR. CHERNIACK: But you are forcing me to the conclusion that I, as a lawyer representing dependent spouse, will be entitled to hear what the judge is learning about the providing spous the bread-winner spouse's financial relationship as it affects his partner, and I could not go bac to my client to give information and get instructions on how to oppose that application.

MR. SHEAD: No, I am saying the judge would be authorized to determine what information h would allow you to release, in keeping with protecting the interests of the parties that are involve in the case, and the interests of the third party.

MR. CHERNIACK: So I as a lawyer will learn something which the judge will then say to me, yc have learned this but don't you dare discuss it with your client.

MR. SHEAD: I am saying the results you can discuss, but you cannot discuss or disclose certa details if the judge feels it is an unwarranted invasion.

MR. CHERNIACK: Do you believe that that's in consonance with a lawyer's instructions and ethi and requirement to serve his client being paramount, except from the standpoint of being an offic of the . . .

MR. SHEAD: There is no doubt that the lawyer has an obligation to be able to discuss his issu with his clients. I suggest that the Legislature also has an obligation to protect the rights of thi parties who are not involved in the marital relationship. This Legislature, to date, has not con to grips with that issue and whether you accept our solution or some other solution, the Chamber main point is, it is an issue to be dealt with.

MR. CHERNIACK: But the Chamber's point is saying that the Legislature should pass legislati denying a lawyer an opportunity to give full disclosure to his client.

MR. SHEAD: If, in the judge's discretion he feels that certain limited information would suffic and in the interests of protecting the third party it is not essential to the lawyer's position, ye that's our recommendation.

MR. CHERNIACK: So you are saying that that authority be passed to a judge so the judge w decide what a lawyer may or may not discuss with his own client.

MR. SHEAD: That's correct, because a lawyer, as you have rightly pointed out, is also and probat primarily an officer of the court, as well as having an obligation to his client.

MR. CHERNIACK: I don't accept that. As a lawyer, I would say my obligation is to my client that's paramount — and it has . . .

MR. SHEAD: We certainly disagree on that principle.

MR. CHERNIACK: Well, it has to be related to . . .

MR. SHEAD: I speak personally, not for the Chamber.

MR. CHERNIACK: I speak in relation to the ethical requirements of serving a client and I thi that the Legislature would have to be awfully careful before it agrees to become involved in denyi a lawyer the opportunity or the obligation of being open with his own client, but you're saying tl you're prepared to give up that right in the interests of a third party.

MR. SHEAD: We're saying there are more than just the marital spouses rights involved and t Legislature has got to come to grips with that issue. Whether you accept our solution or anotl

solution, is obviously within your wisdom.

MR. CHERNIACK: Well, this member of the Legislature is not prepared to be as concerned on behalf of a third party as he is on behalf of a fair dealing between the spouses, so I guess we may differ on that.

Now, in the end, Mr. Shead, you are pretty critical of the legislation before us now. As I read it, the Chamber says, don't pass this legislation. The Chamber says, amend The Married Women's Property Act by changing its title and by recognizing that the contribution in a uome, the positive contribution of a spouse be recognized. That is the Chamber's position, is that correct?

MR. SHEAD: I think the Chamber is saying to this government what it said to the committee that was appointed by this government, as it said to the prior government when it introduced its legislation, that to the extent that both the report and the former legislation, and this legislation, does not enshrine the principles set out in our brief, yes, we criticize it.

MR. CHERNIACK: When the Chamber, in — I'm looking for a date —(Interjection)— On the cover?

MR. SHEAD: Are you looking for the date of the brief?

MR. CHERNIACK: I'm looking at a Chamber bulletin, which the Chairman thinks has a date on the top, but which I can't see . . . oh yes, on the bottom, January 1978, the Chamber said, headlines — "Chamber Scores Victories; Government Moves on Duties, Family Law" and indicates in the text that the suspension of the family law legislation, which includes The Marital Property Act, the Chamber's submission was presented to the Statutory Regulations Committee. It was suggested the Act was not concerned with fairness. The Chamber's submission concluded by noting that this bill, by being blind to equity, by dividing commercial assets according to said formula in marriage breakdowns, adversely affects the desirability of doing business in Winnipeg and in Manitoba. And the first paragraph reads: Last month's special session of the Legislature prorogued to the sound of loud cheers from the Winnipeg Chamber of Commerce which had encouraged the new government to hold the session in order to move on several pieces of legislation.t

Would you agree with me, Mr. Shead, that the next issue of this bulletin should say, "Chamber fails dismally in convincing the government to drop its adverse, unfair legislation." It seems to me that that would be in accord with your presentation today.

MR. SHEAD: Well, I think you're drawing a conclusion that our brief will have no impact. I realize your input into the Legislature, but I don't know that you speak for them and at least I think we would be careful enough to wait until the final legislation is enacted, and then we might release that kind of a bulletin, if we still had a disagreement in principle, yes.

MR. CHERNIACK: Mr. Shead, it was suggested to me by the Chairman, privately, that I sometimes attribute to the Conservative caucus certain intentions which may not be correct. I will now attribute to the Conservative caucus its intention to pass this legislation without very much change, and therefore, I must tell you that although I think everything that is said here has an impact, I would consider it a social disaster but a political success, if the Conservative Government took your advice. So I must tell you that I have very mixed emotions, but in the main I would rather the legislation passed than that they took your advice and put us in a highly favourable political light for the people of Manitoba.

Is the present law, today's law, and I mean, recognizing that the Conservatives suspended the legislation last year, does it not now, under The Married Women's Property Act, take into consideration the positive contributions of a spouse to the accumulation of assets?

MR. SHEAD: The line of cases, and now I am speaking personally as a lawyer, my feeling is that the line of cases that have come about over the last five, ten years, have consistently treated that as one of the factors. But I think the problem is that judges are human, and I think that the law from time to time needs direction, needs the benefit of basic principles from which discretion is exercised. And what this Chamber is saying is that we feel that the principles we have enunciated in our brief are the right principles from which a judge should operate.

MR. CHERNIACK: I really don't have it at hand, but my recollection of what Mr. Ken Houston said to us last year, when we were dealing with the NDP legislation was, — You don't need a change. The law today The Married Women's Property Law and the common law — today the law recognizes the positive contribution of a spouse to the accumulation of marital assets, and the only thing, and

I think I am quoting correctly, the only thing he proposed was that if we really felt it necessary we should establish a presumption of equal sharing in The Married Person's Property Act, and let it go at that.

But you are saying that you think that in addition to that, and when I say in addition I recognize you don't want equality you want fairness, the Chamber does anyway, that you're saying the positive contribution should be so stated in the law, which I don't think Ken Houston felt was necessary. However, you do say that judges are human, which seems to imply that judges need some direction from the Legislature and have to be prodded into changing certain judicial attitudes up to now. Is that a fair assessment of what you said?

MR. SHEAD: No, I think what is a fair comment is that because judges are human, and because every fact situation is determined or should be determined on its own merits, you are really caught between two principles. The first principle being that certainty in a law, by having all of the rules set out in legislation, is desirable, but I suggest not obtainable, because you cannot presuppose and you cannot presume that equal sharing is in fact fair in all cases; it is not. And if we're talking about providing a principle from which a judge should determine the facts, we're saying the correct principle is fair sharing. He may end up, in more cases than not, that that is equal, but it's a question of from where the judge starts, and that's where we take issue with Mr. Houston, if you quoted him correctly, that's where we take issue with the former legislation, that's where we take issue with the present legislation.

MR. CHEIACK: But I don't think that you have propsed that The Married Person's Property Act should say that there shall be a fair distribution of assets.

MR. SHEAD: Yes, we did, we suggested that the principles that we are enunciating could very well be enacted into the renamed Married Women's Property Act, and thereby avoid the need of a brand new piece of legislation. That was part of our brief.

MR. CHERNIACK: Well, may I conclude, Mr. Shead, thanking you for being forthright about this in expressing my great distress that my view of the Chamber's attitude is confirmed by your brief. Thank you, Mr. Chairman.

MR. CHAIRMAN: Mr. Mercier.

MR. MERCIER: Mr. Shead, in the beginning of your presentation, you made a comment about the legislation not recognizing the values of a female spouse. Am I correct?

MR. SHEAD: No, I believe, Mr. Mercier, the comment that I made was, not definitively enough recognizing, , I admitted it has recognized, we think it could be underscored in perhaps stronger wording.

MR. MERCIER: Where would you suggest, or how would you suggest such an amendment? Do you have anything particular in mind?

MR. SHEAD: Other than the principle, no, but if called upon, we'd be more than prepared to provide a supplemental brief with some suggested wording, if you think it would be of use.

MR. MERCIER: In the Province of Ontario legislation, Section 23(2), they have a section which reads subsection 2 of Section 23 states, "When in the opinion of the court, the public disclosure of any information required to be contained in the statement under subsection (1), which is a statement of financial affairs, if that statement would be a hardship on the person giving the statement, the court may order that the statement in any cross-examination upon it before the hearing, be treated as confidential and not form part of the public record." Is that the kind of amendment?

MR. SHEAD: It's the first time I've heard that wording, Mr. Mercier, but what does strike me the use of the word "cross-examination," that's seems to me to be somewhat restrictive. I certainly think that perhaps the idea is consistent with our suggestion, perhaps a slightly expanded protection is what we're asking for.

MR. MERCIER: Thank you. Mr. Shead, will you elaborate on the reasons why you feel spouses should have the unilateral right to opt out of the legislation?

MR. SHEAD: I think the basic premise from which the Chamber operates is that retroactive

or retrospective legislation probably would be more accurate, in any form is not desirable. It's an old cliche, but I think it applies as equally in this particular area of the law as any other, and given he fact that the law provides certain rights today, given the fact that there is existing legislation oday, we feel that it is not proper for any government to in fact in order to, in their minds, improve, change the course of a particular area of the law, to retrospectively take away rights upon which parties have operated, inter se, where it doesn't involve the public good, doesn't involve public safety, t involves a very private, personal, social, economic relationship. Based on that principle therefore, we feel that within a limited time, and obviously the time must be limited so that there is certainty as to rights, that people who presently are in Manitoba but who got married under perhaps different aw, should be entitled to maintain itself under that law, and people that move into Manitoba who were married and who resided in a different area with a different law, should by virtue of their employment or whatever is causing them to come to Manitoba, should be entitled to in fact remain, and decide to remain and govern their rights that way, that's the reason for the opting out. It's one of pure principle, should the government be entitled, in attempting to change and improve the aw, to force people who today have operated under one condition to in fact take the advantage of that benefit. Let it be their choice.

MR. MERCIER: I have no further questions.

MR. CHAIRMAN: Are there any further questions to Mr. Shead? Mr. Axworthy.

MR. AXWORTHY: Mr. Shead, I just wanted to really ask you about your statement of principle, on behalf of the Chamber. I should say you have achieved the almost, what I thought would be he impossible task of making this legislation look so progressive and radical, that we shouldn't pass it. I t's just that I didn't think anyone would be able to accomplish that at this late stage in he game. But I am interested in your comments. You've made several of them, just the latest one, you didn't see this particular legislation as dealing with the public good, your comments about fair sharing and so on.

I take it then that the position of the Chamber really is that they do not see this legislation on he question of equal division of family property as part of a more general movement towards the establishment of equalities between the sexes.

MR. SHEAD: I disagree with that, Mr. Axworthy. I think the Chamber is in full support of that movement. What they're taking issue with is that the law should start from presumption that fair s equal, so we say make the movement go towards fair sharing, don't presume in every case it's equal. That's all.

MR. AXWORTHY: Mr. Shead, we're in danger of getting into sematic games, but if the Chamber believes in the notion of equality, then why don't they just simply say they believe in equality, and hat there should be equality in the sharing? Why do we have to start using words like fair and so on which I don't understand. Why the rationale for all of a sudden fudging on that concept if n fact the Chamber is four square behind that principle?

MR. SHEAD: The Chamber has never fudged on that issue, that's why our brief is the same today o the Committee as it was to the NDP government when they held their hearings. Just because equality happens to have the first five letters the same as equal, doesn't mean the words have the same meaning, they don't. Equality is fairness, it's justice, okay, that may very well in most cases be equal, but it may not necessarily be so and as a matter of principle therefore, the Chamber s saying the move should be towards the object of fairness. If in the given situation that is equality, here I use your words, is equal, that's where it should end up.

MR. AXWORTHY: Mr. Shead, I don't want to take the Committee's time to get into a sort of a positivist argument on semantics which I'm quite prepared to do, but there is an old cliche that learned I guess in an ethics course years ago, that a man can be very fair to his slave, and it doesn't make it equal. You can treat somebody in a fair way . . .

MR. CHAIRMAN: Order please. Order please. I would like to point out to the persons in attendance hat the rules of the Legislature, whether they be in the Chamber or in Committee, call for no public applauses or hissing and so on. We started this committee last Friday night and sat Saturday, Monday, Tuesday and again today and I have permitted short applauses to certain presentations and briefs but just when we get a particular person making a presentation, that doesn't have the ull support of the audience, I think that that person deserves the same courtesy as someone who does have the support of the majority. I would have to ask you if you would do your best to restrain

from applauding or hissing. I have heard the odd person who has been hissed. If you disagree with the person, that is your right. Each and every person is going to be given an opportunity to say his or her say and if we're going to have continual public outbursts, we have one way of correcting that and that is that we can ask that the room be emptied and that only the person that's appearing before the committee would be in the room and before the committee.

Now I don't think we have to go that far but please show some courtesy to both the members of the committee who are trying to ask delegates questions and to the person that is appearing before the committee. I think each and every person is entitled to his or her view.

Would you carry on, Mr. Shead and Mr. Axworthy.

MR. AXWORTHY: Thank you, Mr. Chairman. The point I was trying to make was just simply that the difference between fairness and making something equal is the establishment of certain guaranteed rights which then designates it a state or condition of being equal, as opposed to simply fairness being a way in which one can treat one's — well I won't use the word again — but someone else in a nice way, a good way, a proper way, but equal means that there is an establishment of rights which is what this legislation is about, is the establishment of certain rights. You could say it could be a 45-55 right but we're doing the 50-50 because that's the way that we usually enumerate equality. I'm just really kind of intrigued why the Chamber, which is an important economic organization in this community, seems to be really backing away from the commitment to that principle of a need to establish guaranteed rights in legislation for the notion of equality, which then can be somewhat altered according to the discretion of the court if circumstances warrant, as opposed to going the other way around. I really would be intrigued as to why they weren't prepared to accept that notion of equality.

MR. SHEAD: Well again, you use the word equality and that's not fair because we use the word equality. We say fairness is equality. I think the rationalization, if there is one between your approach and the Chamber's, is that you presuppose that in order to guarantee rights you have to quantify it. We don't agree with that principle. In fact we go further and say that's a mistake. If you want to guarantee rights, you say a spouse is entitled to a fair share. You have now guaranteed that right. You don't have to quantify it to guarantee it and we say the error of the legislation, both in the previous administration and this to date, is that that confusion takes place. To guarantee something you don't quantify it, you guarantee it. You let either mutual agreement, negotiation between the parties or ultimately the judiciary system quantify it, the right that's been guaranteed given certain factors that's put in the legislation.

MR. AXWORTHY: Well, Mr. Shead, you seem to be concerned about the quantification of this and it seems to me that both the long history of the common law dealing with partnership has always resulted in the idea that there is an equal split. It usually comes out on the starting point of a 50-50 split and then works back from that. As well as politically we always work on the grounds of, you know, 51 percent forms the majority. We have always established quantum measurements to determine certain equal rights in our society and we are simply, without designating it as 50-50 the notion of equality is that there is an equal portion, if you like, of the assets that would be divided . . .

MR. SHEAD: But I think it's a point.

MR. AXWORTHY: . . . and then you can move back from that according to circumstance. But that is a notion of equality, I don't know of any other definition. This concept of fairness I find unusual to say the least.

MR. SHEAD: But you certainly would agree with it, I trust.

MR. AXWORTHY: No, I don't agree with it.

MR. SHEAD: You don't agree with fairness.

MR. AXWORTHY: I agree with fairness; I don't agree that it's a synonym or in any way can be equated with a notion of equality.

MR. SHEAD: Again I reiterate, I think that's the difference between your approach and the Chamber's approach. The Chamber is saying, to use your words, don't be reactionary, don't just because in other situations where fairness had to be strived for, equality or equalness or 50-50 was the bench mark and therefore has been used time and time again. Call the principle as it should be called and we say that's fairness. So perhaps we're the other, we're not reactionary, probably

we're perhaps ahead of our time, I don't know.

MR. AXWORTHY: Well, Mr. Chairman, I suppose in a Catch-22 world you might be, but I don't think under normal definitions you would be considered to be ahead of your time on this one. But we will leave that up to others to judge.

I would just like to raise some questions. The brief that you presented, and I'm sorry I don't have a copy in front of me. I assume when you're dealing with the proposals on maintenance and that you were concerned about the notion of fault. Why again did the Chamber take this particular stand that fault should be attributed to one partner or the other? I want to preface it by saying that I've listened to a number of presentations from professionals working in the marriage field who have appeared this time with some very interesting commentary about the kind of dynamics that take place in a marriage and how it's so very difficult that even if they were asked in a court to attribute what is a gross action or gross conduct, they would find it very difficult to do and yet you seem to want to do it. Is it because there should be some retribution or is there a good pragmatic reason in your mind for insisting upon fault as a basis for determining the amount of maintenance or support?

MR. SHEAD: We're not insisting that there in any situation be fault. I think what we are insisting on is that if the judge feels that the conduct of either of the parties is such that it should be taken into consideration, then as a matter of principle that should be enshrined in the legislation. We also said, if you remember, that if no such conduct was apparent or was weighty enough to be of merit, the judge should be authorized to deem equal as being fair. I mean, the principle we're recommending be in there, but it not be the first principle, it be where you're working towards.

MR. AXWORTHY: I think the point I'm raising and it's something that I am interested in your comments on, is that as I've understood presentations before us, that one of the difficulties with the legislation before us on Bill 39 is that it is very difficult to isolate out whose particular action was the fault for the marriage breakdown, or I think in the words of the legislation, "the gross or unconscionable" fault because that may be related to some other cause. Someone's adultery may be related to the behaviour of the other partner in the home. I mean when you start to make judgments you start getting into a very murky field and that's why to eliminate the fault concept totally from the notion of maintenance would seem to serve your purposes better than trying to insist upon it.

MR. SHEAD: Well, but again, you see, we're using the importance of the fault concept in different contexts. You're saying fault as it may relate to why the marriage broke down. That's not what we're saying. We're saying fault is only relevant to an entitlement to maintenance, an entitlement to a sharing of assets. It's got nothing to do with why the marriage broke down. It only relates to entitlement.

MR. AXWORTHY: Well, the point is . . .

MR. SHEAD: So it doesn't matter why the marriage broke down from the sense of the fact that he marriage did break down. It only relates to entitlement to maintenance and entitlement to a share of assets.

MR. AXWORTHY: Yes, I'm aware of that but one must point to the fault in the marriage breakdown as a determination for the quantum of that support and maintenance. That's the way it will be nterpreted. You can't divorce it all of a sudden and unless you're talking about the behaviour of one of the parties in the court room at the present moment, it must be related back to the behaviour or conduct in the marriage, and what led to the particular circumstance that brought two people nto court to gain a settlement. So there is someone who is going to have to make some judgments about that behaviour as a determination of maintenance and I again am interested to know why he Chamber is so insistent upon it.

MR. SHEAD: Because the Chamber feels that you cannot legislate fairness by coming up with an arbitrary 50-50 arrangement or an arbitrary pre-set number. In fact, Mr. Axworthy, in the proposed legislation, there's a tremendous amount of discretion given to the court.

MR. AXWORTHY: Well, you've just changed the course. We're back in 38; I'm still talking about 9, which is the question of fault, which eliminates any requirement then for arbitrary or capricious ecision as to what is fault, it eliminates that criteria altogether and you're not into that business whatsoever. I mean if you're concerned about someone legislating arbitrary decisions, then wouldn't

you think it would be wiser to take it out so that it isn't part of some judge or whatever decidin(that that was an arbitrary act that should be related to how much money a person shoul(get?

MR. SHEAD: No, because I suppose the Chamber has the confidence in the judicial system tha they will do what is right given the facts put before them. The only thing the legislation is goin(to do is to give them some guidelines as to what this Legislature feels is relevant in determinin(what is fair, what is equal, whichever of the approaches the government eventually ends up takinc It has the confidence in the judiciary system, but we do say that certain definitions, a certain statemen of principles, is now needed in the law to take us towards this, as you call it momentum, this directio towards a much more equal treatment between the spouses. And that the Chamber fully supports It's a question of how to get there that we disagree on.

MR. AXWORTHY: Yes. Well, we certainly do disagree on how to get to that particular concep Thank you, Mr. Chairman.

MR. CHAIRMAN: Mr. Parasiuk.

MR. PARASIUK: Mr. Shead, the final paragraph of your brief points out to the Provinci Government that the issue of creating new marital property laws is not a question of coping wit a provincial emergency or resolving a purely political problem, and you say the Provincial Governme should be very sure of the consequences of this law before it alters the basic pattern of privat married lives by the exercise of legislative power. I infer from that that you really don't think th this matter is the most pressing one that the Provincial Government is dealing with, or could de with.

Do you think that the settlements to date with respect to division of assets has been fair?

MR. SHEAD: You're talking about a specific situation or . . .

MR. PARASIUK: No, I'm talking about the general trend regarding division of assets when marriage split up.

MR. SHEAD: I can only speak from the personal experience of our firm, that I would hope th most of the female clients or male clients we've acted for felt that they ended up getting an equitabl settlement. Beyond that, I have no knowledge.

MR. PARASIUK: Well, we've received information which indicates that generally females have bee receiving 12 percent of the assets and males have been receiving 88 percent of the assets an no one has disputed that statistical evidence. Given that statistical evidence, would you think th that indicates fairness in the division of assets upon marriage breakdown?

MR. SHEAD: I don't think I'm prepared to comment upon that because I don't have the fac surrounding those statistics.

MR. PARASIUK: Well, I'm presenting to you, Mr. Shead, the facts that have been presented t us by other people who have done research in this area and have come forward indicating th that is one of their main reasons why in fact it is necessary to come up with some objecti definitions.

MR. SHEAD: The Chamber doesn't disagree with that. The Chamber fully endorses a change (a clarification as proposed in the law. And the fact that in our last paragraph we say it's not provincial emergency or purely political problem, we're talking in terms of making sure that whe the legislation is enacted it not only achieves the right principles, and I don't think that - notwithstanding the differences we have in approach — that we're that far apart, in fact I don think we are apart in objective. We're apart in how to get there and all we're saying is haste mak waste and we're not suggesting a delay; we're suggesting that the Legislature, as it is doing in the sessions, spends the necessary amount of time to in fact make sure that it fully understands t consequences both to the marital spouses and to third parties before it enacts the final legislati and whichever way in its wisdom it decides. That's the point that's being made in the la paragraph.

MR. CHAIRMAN: Mr. Mercier.

MR. MERCIER: Just one further question, Mr. Chairman. I think I should take advantage of Mr. Shead's presence before the committee and his expertise in the area of his law practice and ask him his comments on the tax implications of the legislation. My understanding is that the only tax implication at the present moment, particularly if there were immediate sharing of assets, would be that the one relating to principle place of residence where the house is in one name and the cottage is in another name, but I wonder if Mr. Shead has any comments to make about possible tax implications.

MR. SHEAD: I think, Mr. Mercier, that the principles set out in the proposed bills now in fact have minimized to the most extent possible any adverse tax situation. I would hope that the principles that are finally embodied in the legislation wouldn't be dictated by tax considerations. I would hope that the relationship between the province and the Federal Government is such that where necessary, the tax system would flex to accommodate the appropriate principle in the legislation. I think that from my discussions with certain people in Ottawa, and I'm sure this government has had many more discussions than I, that that obviously is the situation. So I would think that that should not be a major consideration in determining, and I'm speaking personally now, what the legislation should say. That should come as part of the final legislation, it should not determine its principles.

MR. CHAIRMAN: Any further questions of Mr. Shead? Hearing none, thank you Mr. Shead, very kindly.

MR. SHEAD: Thank you for your attention.

MR. CHAIRMAN: Norma McCormick.

NORMA McCORMICK: Before I begin my own presentation, I would like to point out as a member of the Board of Directors of the YWCA that the YWCA is a member of The Chamber of Commerce but does not endorse its position.

I recognize that much of what I could say tonight has already been said. As a meer of the Coalition on Family Law, I wish to endorse the substance and content of tuat brief, as reflecting my personal beliefs of those principles, which I believe ought to be endorsed and enshrined in family law legislation.

I do not wish to take up the committee's time with unnecessary review, but rather I wish to zero in on one aspect of Bill 39, The Family Maintenance Act, which I feel does not eody these principles in spirit, nor reflect a practical solution to the problems which necessitated the introduction of such legislation.o1

The problem is that of enforcement of maintenance orders. I will present what I believe to be a practical alternative as a solution to this problem.

The Federal Law Reform Commission, in one of its working papers, stated that 75 percent of all maintenance orders are not collected. My personal experience, in working with many single parents over the past eleven 11 years in day care, is that Manitoba's experience is not far off the national figures. Under the present and proposed legislation, law enforcement is the responsibility of the spouse or the parent to whom the order is to be paid. There are a number of ways in which an order can be enforced; it is possible to garnishee the other spouse's wages or bank accounts or the enforcing spouse can get an order that a sheriff seizes the other spouse's property, such as a car, and have it sold or the enforcing spouse can register an order in the Land Titles Office, so if the other spouse sells land, the money then goes first to the enforcing spouse or the enforcing spouse can force the other spouse to sell land to get the money or the spouse can ask the enforcement officer at the Family Court to collect money. In this case, the other spouse must make payments to Family Court, which then forwards the money on to the first spouse. If payments are not made, then the other spouse is summoned to court on a Contempt of Court charge. If the spouse does not have good reason for not paying, he can be put in jail.

There are problems to all of these present methods of enforcement, but a common problem to all of them is that they are time consuming and involve further appearances in Court. Beyond these problems, is the all too common problem of the defaulting spouse, who goes off into another province or country, or who deliberatelycchanges jobs, all to frustrate the enforcing spouse. Dealing with these problems is even more time consuming, and involves even more court appearances.

You have doubtless recognized this problem of default as provisions have been made for the deposit of a specified amount with the court as a security against default. But as default occurs in the majority of cases, and judges have to date been reluctant to use the threat of jail, as it interrupts the earnings and jeopardizes the employment of the defaulting spouse, I believe that we are no closer to a solution to this overwhelming problem with this bill than we were in the provisions of Bill 60 of last year.

It has been my experience that this is one of the grossest failures of our Family Law systen and it appears one which is to continue into perpetuity. This failure has, in my estimate, severa tragic consequences. The first and less obvious, is that, based on the grim reality of the uncollectibilit of any awards made and the equally grim economic prospects facing women in the paid employmer market in which jobs are difficult to find, and pay roughly 50 to 60 percent of that which can b earned by a man, many women who have been out of the labour force to provide homemakin and child rearing contributions, are literally trapped in intolerable marriage situations. Until we ca guarantee the payment of maintenance orders, or guarantee equal pay for work of equal value, thi condition will continue to the detriment of the mental health of many women and children.

Secondly, according to the information on poverty in Canada available through the Canadia Council on Social Development, 78 percent of all female headed families in Canada live at or belo the poverty line. And in Canada, one-parent families are increasing at twice the rate of two-parer families. We cannot tolerate this continued economic hardship in a country as advanced an advantaged as Canada. We have options open to us to alleviate the hardships in families in whic the parents are living apart, but it is not sufficient to give lip service to the principle that the car of children is a responsibility to be shared by both parents in society.

Finally, the options open to parents are not always clear until the family is in dire circumstance In the daily activities of my job, I deal on a regular basis with women as they approach the da nursery for care, at the point at which their marriages have broken down, and they are explorin resources available to them in the community to establish independent self-sufficient lives. Thes parents are working or in retraining or upgrading programs, and are supporting their children. Mar of these people have been awarded maintenance orders at the time of separation; most of thei do not receive the maintenance payments on a regular basis, if at all.

They apply to the Manitoba Department of Health and Social Development for Day Care subsid in which they are obligated to indicate whether they have a maintenance affiliation order. Many app for the subsidy at the point of separation, and indicate the amounts which they have been awarde but have yet to receive. They are assessed on the basis that they will have the payments on regula intervals, and the fee reflects that assumption. Many view the award as being for child care, c for payment of the Day Care fees from their spouse. When the payment is not received, their fir reaction is to approach the Day Care Centre and indicate that they have a financial problem. W then encourage the individual to contact the Child Day Care office for reassessment.

The policy of the Day Care office is that reassessments are done every six months, and the are willing to average the payments received, in order to calculate the fee in the ensuing six month There is no retroactive adjustment, despite the overassessment of fees in the first six months. Th Child Day Care office is likely to encourage the parent to apply to Legal Aid for enforcement c the order. This involves loss of time from work, and potentially further loss of income. The viciou circle begins, and people in these circumstances are vulnerable prey for high cost credit, high intere loans and even for welfare. The real support to encourage financial independence is lacking.

I propose an amendment, which would require an amount equal to three months' payments t be deposited as security against default. This would remain in a central fund for the life of the orde and it would be deemed to be the last three payments, should no default occur during the peric of obligation. Should default occur, the recipient spouse can draw against the central fund, amoun equal to the monthly award, thus providing a buffer against financial hardship and vulnerability, whi the courts pursue the defaulting spouse. Thus the fund would comprise an amount of three month deposit for each award during the life of the order. This pool of money could be viewed as a gener fund against which the recipient spouse could borrow, should the court not succeed in re-establishir regular payments within the first three months. The obligation for repayment would rest with th defaulting spouse, or failing that, the charge could be made against the interest accrued to th general fund.

However, under no circumstances should the recipient spouse be forced on to welfare, or int personal debt because the defaulting spouse or the courts are unwilling or unable to assist. Perhap when the trend is reversed, and 75 percent of all orders are collected, we could consider returnir the paying spouse the interest accumulated on the deposit, after the obligation has ceased.

I have been challenged on this plan by those who believe that it is unrealistic to expect the payir spouse to come up with three months' deposit as security. I must counter that it is equally unrealist to expect the recipient spouse to get along without it, and if the spouse cannot pay, it is ridiculou that an order should have been awarded in the first place. You cannot get blood from turnip.

I wish to repeat that we can no longer accept the uncollectibility of maintenance orders as given, and ignore the hardships that this metes out to those who have deemed to have had legitimate need and right to this support. We do not overlook our obligations to pay taxes ar fines, and we are rigorous in our pursuit of those who try to default on these. Maintenance orde awarded by our courts must be pursued with equal vigour.

MR. CHAIRN: Would you permit questions?

MS. McCORMICK: Yes.

MR. CHAIRMAN: Any questions to the delegate? Mr. Parasiuk.

MR. PARASIUK: I'm pleased with your suggestions regarding enforcement of maintenance orders. Many people have criticized past legislation, and yet we've had no progress on this matter since November of last year when the previous legislation was suspended. I'm not sure whether you are aware that the Attorney-General indicates that he has some internal Task Force looking at this matter, and we're hopeful that he might bring forward the results of this Task Force analysis before we get into clause by clause review of this particular legislation, because I think it's critical to the effectiveness of any type of maintenance legislation. So this is something that I am just informing you that you can look forward to the Attorney-General providing us with information on enforcement of maintenance.

I'm glad, that, despite the fact that you don't have the resources that the Attorney-General does within his department, that you were able to do some research and provide some comments on this, because if the Attorney-General isn't forthcoming with any suggestions regarding enforcement of maintenance, I'm pretty sure we will be.

MR. CHAIRMAN: Any further questions? Seeing none, thank you very kindly.

The Manitoba Action Committee on the Status of Women, a two part brief, I understand.

CLAUDIA ENGEL: Mr. Chairman, we've altered our presentation a bit. My name is Claudia Engel and I'll be representing the Action Committee. alone, Sylvia will not be presenting this evening.

MR. CHAIRMAN: Thank you.

MS. ENGEL: Mr. Chairman, meers of the Standing Committee on Law a Amendments.

The Manitoba Action Committee on the Status of Women is a non-partisan organization founded ten years ago to work for improvements in the legal, social and economic status of women in our society. The woman most responsible for the founding of this organization is Thelma Forbes, who as Minister of Urban Affairs under the former Conservative Government, called together a representative group of Manitoba women to prepare a submission to the Federal Government's Royal Commission on the Status of Women. While the political ideologies of our meers are different, we share one common belief. We believe that women should enjoy the same rights as men. While acting as advocates for equal rights for women, we are also, at the same time, proponents of equal responsibilities for women.

Nowhere is this issue of equal rights and responsibilities more important than in our marriages. The responsibilities for giving emotional support, managing a home, earning an income, and caring for children, and the rights to emotional support, a standard of living in keeping with the income of the household, and the right to the children of that marriage, are shared equally by both partners in any marriage.

We believe that the reform of family law must support the principle that marriage is an economic and social partnership of equals. By giving expression to this principle in law, you will be recognizing the autonomy and independent status of women in our society, and that the unpaid work one spouse does in the home — managing a household and caring for children — is of equal value to the work of the income-earning spouse, no matter what the dollar amount is of that income.

In reviewing the proposed legislation before us, members of the Action Committee found a nuer of points for which the government deserves praise. We also have some recommendations which we urge you to consider carefully so that the principles upon which equal family law should be based, will find expression in our laws. While I have no copies of my presentation to share with you, it generally follows the bills.

Bill No. 38 — The Marital Property Act. We would like to see Bill 38 include a preamble. We would suggest that you begin Bill 38 with a statement indicating the intent of the legislation is to recognize marriage as an equal partnership. This would clearly outline to couples contemplating marriage, married couples, their lawyers, and judges, that our Legislature recognizes that couples contribute equally to their marriages and therefore they should have equal rights, both during the marriage and at its end.

Specifically, we would also recommend a change in some of the definitions, beginning with 1(d)(2), the definition of "family assets." We recommend that pension rights, retirement savings and the pay cheques of employed spouses be included as family assets. The major assets most couples

develop during their marriage are their home and their retirement benefits. Therefore, to deny or spouse the retirement benefits, both have worked to secure, is to deny one the security in old ag that a pension provides. The splitting of pensions is a relatively simple accounting procedure. W recommend the formula worked out by the Canada Pension and implemented at the outset of 197 to you for consideration.

The pay cheque of employed persons should also be considered family assets. It is for mo couples the only source of income. Therefore this regular income of the household, whether earne by one or both spouses, should be jointly managed. To deny management of regular househo income to one's spouse is to give a dependant status not unlike that of a child to the non-earnir spouse. Such an action does not recognize the contribution of the spouse who works either at hom or in a family business without being paid, or in a salaried position while continuing to bear th major responsibility for management of the home.

Now on to Section 2 — Application to Spouses. We applaud your decision to make the la applicable to all marriages in Manitoba. You have not allowed one spouse to remove their marriag from the requirements of the law. This indicates certainly a support for your concept of equali in marriage.

As far as foreign assets, Section 11, the Action Committee recommends that the word "may be changed to "shall", so that the value of all commercial and family assets, including those locate outside the province and the country, be included in any accounting of assets. The location of tl assets is not a valid criteria for determining whether or not the value of that asset is part of th assets owned by the married couple.

Section 13(1) — The Sharing of Family Assets. The Action Committee believes the sharing family assets should be immediate. Section 12 of Bill 38 states that spouses will have the right share assets equally at the point their marriage is at an end, or if dissipation can be proven. Th Section combined wiht with Section 6(3), which gives both spouses the right to the use and enjoyme of any family asset, does not support the bill's presumption of equal sharing of family assets. merely provides for the equal use and enjoyment of the asset. The right to use and enjoyment not the same as the right of ownership. Ownership of money and property give a person powe be it power in the business world or power in a marriage. By passing a law which gives one spous power over another spouse, by virtue of the income he or she produces, you will perpetutate th dependant status of the spouse who works at home.

A married person should not be forced into a dependant status with their husband because o government has passed a law which equates the type of partnership they enjoy with the amou of money they are paid by an employer. A ratio of 30-70 sharing is not equal, 40-60 and 0-10 is not equal. 50-50 is equal. To provide that this formula, 50-50, is used to define the type of marriage the men and women of this province enjoy, this law should be changed to provide for the joi ownership and management of all family assets during the marriage.

If you do not think that joint ownership is an important matter consider the spouse who psychologically or physically abused by her husband. If she is not working she has no money her own. She owns no assets, which will help her to leave the abusive spouse. She can't chec into a hotel. She hasn't the capital to rent an apartment, and because she has no financial resource she will remain with her abusive spouse. You might also consider the situation of your wife, yo mother, or a married sister, who hasn't worked outside the home for many years. The next tim you see her, perhaps this evening when you go home, sit down with her and look at all the thing around the house, and point out to her that she doesn't really own any of these things unless the were gifts, inheritances, damage awards, or if she acquired them before the marriage. As a non-earning spouse she has the right to use these assets, but she has no legal right to the management. All the years, the long hours she has worked to care for her husband and childre is unrecognized by this law. To reward these women with one-half the family assets only when th marriage ends is to punish them for choosing to make what most adults acknowledge to be a maj contribution to our society.

How is it that on one hand we encourage women to be good homemakers and parents, praisir them for their sacrifices and unceasing work to make the family the strongest single unit in o society, and at the same time refusing to let these same women control their own financial situation Our society trusts women with the care of our children, but won't guarantee them the right to ha ownership of their family assets, control of the pay cheque or a pension, during their marriag

The Action Committee has examined your proposal with regard to the sharing of commerci assets, Section 13(2). We believe, in principle, that all assets owned by one or the other spous whether family or commercial, should be jointly owned and managed throughout the marriag Excepting for the time being however that our society is generally unwilling to accept joi management of commercial assets, we recommend changes to Section 13(2) which would mal it perfectly clear that commercial assets are to be equally shared at the end of the marriage.

We suggest that this be done in two ways. First, we recommend that the limitation that yo

ave put on judicial discretion in 13(1) for family assets be also used in Section 13(2) for commercial ssets. This limitation would read, "If the court is satisfied that a division of commercial assets and qual shares would be grossly unfair or unconscionable, having regard to any extraordinary financial r other circumstances of the spouse or the extraordinary nature of value of the asset.

Secondly, we recommend that the circumstances the judge would consider be limited. The ircumstances included in the proposed bill are either redundant or not in keeping with the overnment's intention to divide all assets equally.

Specifically I would like to go through each one of them. (a) Unreasonable impoverishment of ıe family assets. This has already been provided in the sections on dissipation, excessive gift, ıadequate consideration and recovery from receipt. You have also suggested that the debts and abilities of each spouse be considered. The section directing and accounting of assets including ebts and assets is covered. You can see Section 10(1) in your bill. Spousal agreements — Section already allows spouses to contract out.

Item (g), the other assets of the spouse acquired by way of gift or inheritance. Bill 38 indicates ıat these assets are not sharable. There is no reason why they should come into play when other ssets are bin being divided.

(d) and (e) the lenth of time that spouses live together or apart. The length of length of the marriage r the duration of a separation need not be considered since the proposed law stipulates that assets cquired before the marriage are not shared. Spouses can apply for division of assets after six ıonths of living apart without a Separation Order. So lengthy separations need not affect the division f assets.

Point (f) the date of acquisition. The law states that all assets acquired during the marriage are hared equally. One either acquires the asset during the marriage or before the marriage, making either part of the assets of the marriage or excluding it from consideration.

Point (h) the nature of the asset. We think that the nature of asset is irrelevant. We cannot see hat the characteristics of an asset have to do with who shares in the asset. The only relevant onsideration is whether or not the asset was acquired through the work of the couple and therfore belongs to both. The asset belongs to one and not the other only if it was inherited, a gift, or n insurance benefit.

Finally, the unpaid contribution of one spouse. This circumstance that you give to the judge is ne of the principles upon which the debate on Family Law has focused. To instruct a judge to onsider it as a circumstance suggests that it is special and of concern when varying equal sharing. is in fact the reason for equal sharing. One might also ask why the non-domestic contribution f a spouse is also not included as a criteria. Its absence would suggest to the sceptical that it the assumption upon which this section is based, that the earning spouse is entitled to an equitable ıare which is more than one-half of the commercial assets.

And, of course, point (j) any other circumstances. This would allow judges to consider most verything, thus its inclusion weakens the presumption of equal sharing.

The Action Committee believe that by delineating the criteria which may be reviewed in varying ıe equal division of commercial assets, the effect will be to make equal sharing of commercial ssets the exception rather than the rule. We recommend that these qualifications be removed in ıeir entirety and that judicial discretion be limited.

Most men and women find it difficult to understand the implications of Bill 38 for our lives. I ould suggest to you that one way of doing this yourselves, as well as with your colleagues, is consider how this law will affect your daughters.

One day, maybe this has happened already, your daughter is going to come to you and tell you ıat she and her boyfriend wish to marry. Undoubtedly you are going to be pleased. After all most us want the best for our children. We want them to find a companion with whom they share l of life's joys and sorrows. But as you and I know having listened to the 40-odd briefs which oceeded this one, marriage is also a contract regarding property. If Bill 38 passes unamended ıd you believe that your daughter is the equal of your future son-in-law, you should advise your ıughter to draw up a marriage contract, which supersedes the provisions of the law before .

Bill 38 virtually guarantees your daughter will enjoy a dependence and unequal status in relation her husband unless she is an extraordinary young women who will earn roughly the same salary her husband throughout the marriage, and who will work at her profession without taking any ne off to raise a family. Without a marriage contract your daughter will not have the right to the vnership of all the assets which accrue. She owns only what she pays for. The rest she is permitted use and enjoy. If she generates one-third of the household income she will own at most one-third the assets during her marriage.

Without a marriage contract, and under this law, she should keep a careful accounting of all e does with her income. If she boys the furniture she should keep the receipt. If her income allows ır and her husband to make a down payment on a house she should retain the cancelled cheques.

If she wishes to participate in the management of the household finances, and to protect hersel if her marriage ends in a divorce, the best wedding present you could her is a marriage contrac or an accounting book. Without a guarantee that she has equal right to manage the family assets her husband can sell the family car, mortgage their summer home in Kenora, unless she can prov that she has paid for the car or the summer home or the asset is in her name.

And when your daughter gets pregnant tell her to keep working at her job. Unless she has marriage contract which recognizes her as an equal marriage partner, she must work unless sh wishes to become totally dependant on her husband. As Bill 38 stands now the work she woul do, managing the household and caring for your grandchildren, has no economic value. The fac that she works at home permitting your son-in-law to earn an income, which he alone manages is of no consequence. His pay cheque, you remember, is not a family asset, and even if it wa your daughter is only legally entitled to one-half of that pay cheque, and that only after the marriag ends.

A portion of your son-in-law's income may be invested in commercial assets. Without a marriag contract, your daughter has no control over these. Your son-in-law can go bankrupt, reduce hi family standard of living. Your daughter, with the dependant status Bill 38 guarantees, has no contro Furthermore, you know that if she divorces her husband unless she has continued to work an maintained that accounting system during the marriage, she can anticipate receiving at the mos one-third of the assets accrued during the marriage, if the British experience is to serve as a guidelin Not one-half, one-third., despite her equal contribution to her marriage.

I would like to go on now to Bill 39, The Family Maintenance Act. The Action Committee believe that Section 4 putting the onus of self-support after separation is one of the most important section in this bill. We agree with you that both spouses have an obligation to make all reasonable step to become self-supporting. In our view it is one of the ways that women assume equal responsibilitie in return for gaining equal rights.

Moving on to Section 2(2), the section on conduct. We do not believe that conduct of any kinc including that which is so unconscionable as to constitute an obvious and gross repudiation of th marriage relation, should in any way have any bearing on the amount of a maintenance award. Th criteria for maintenance should be limited to considerations related to need and the obligation an the ability to pay. The inclusion of conduct in this law can only be explained in one way. One seek to ascribe fault to another person in an effort to punish. The result is that one spouse is labelle innocent and the other guilty for the breakup of the marriage. Not only is ascribing fault to on person in a relationship as complex and intimate as a marriage a difficult task, it serves no rea purpose. It is a vengeful and unforgiving answer to a situation which calls for forgiveness an forgetting. Isn't it better for two people to admit that the relationship which once existed is no dead rather than trying someone for a crime? Isn't it easier on children to concentrate o re-establishing a relationship with both parents rather than forcing them to participate in a revie of their parents' conduct? Divorce may end a marriage but the children of that marriage still requir the continued love and guidance of both parents.

What does the innocent spouse, the victim, have to gain from the fault-finding process? A large maintenance award perhaps, but if awards are based on need and ability to pay, this matters onl slightly. Furthermore the guilty spouse may refuse to pay the maintenance as a way of seeking hi or her own revenge. It — fault finding that is — begins a process that has no end. The guilty spous has committed no criminal offence. Why should he or she be taken to court to be tried for an ac or gross repudiation of the marriage relationship? Chances are the marriage was already falterin when the act was committed.

If fault finding is meant to deter men and women from ending their marriage in the same wa life imprisonment is supposed to deter potential murderers, we doubt its effectiveness. We mus remember that two spouses once loved each other and had made a commitment to their relationshi When their marriage ends, they are both hurting, they are both faced with failure. Why add to th suffering by giving one the opportunity to label the other guilty?

The Action Committee has shared the Conservative Government's concern on enforcemen particularly with reference to the failure of the previous government to include an improved syste of collecting maintenance awards in their Bill 47. We were, however, disappointed that your ne bills make no alternative proposals. Therefore, we urge you to give immediate attention to this matte It is an obvious weakness in your bill. which will continue to cause economic uncertainty for man persons who depend on the regular receipt of a maintenance cheque to support themselves an their children.

In conclusion, we urge you to make the changes we have recommended to Bills 38 and 3 Members of the Manitoba Action Committee on the Status of Women regard these laws as th most important legislation to be passed by our representatives since Nellie McClung and the Manitob feminists won the right to vote in 1916. The fact that over 50 groups and individuals representin a cross-section of our citizens have appeared to speak to you during these hearings, should indica

ıe strength of the support for changes in this legislation. This is not an accident. Many, many men nd women are informed about the principles at stake. We believe that marriage is an important, vital institution, and that our laws can strengthen it by recognizing marriage as an economic and ɔcial partnership of equals. The women of this province are willing to assume the equal share of ıe responsibilities that marriage entails. What we are lobbying for is an equal share to the rights hich come with our marriages. Thank you.

IR. CHAIRMAN: Would you permit questions?

S. ENGEL: Yes.

R. CHAIRMAN: Are there any questions from members of the committee? Mr. Axworthy.

IR. AXWORTHY: Well, Mr. Chairman, there was just one area of questioning I wanted to raise ıd that is on the testimony we've heard concerning this question of presumption of equality that's ɹilt into this legislation. We heard evidence this afternoon that under other domestic law statutes, ıce the court is given instruction by the Legislature as is contained in this bill, that the court would ıen tend to follow those instructions generally and take into account only exceptional rcumstances.

You mentioned in your brief the experience in Great Britain and, as I understand it, the legislation statutes in Great Britain do not include presumption but they have built up a substantial body case law surrounding that and even on those grounds the settlements, you contend, has been ıe-third. Could you . . .

S. ENGEL: For the non-earning spouse.

R. AXWORTHY: Pardon? For the non-earning spouse, yes. Could you elaborate or do you have rther description or commentary upon that fact itself? I think it really is pretty germane to the ɔntention that has been raised about the nature of how far and how extensive discretion is built to this bill and whether there are sufficient safeguards for the equality principle in the bill.$

S. ENGEL: My response to that is that in trying to examine the laws and trying to come to grips th what the implications might be, we've looked, the women studying the law, at other examples ıd the one we came up with was Great Britain. Even though they don't have a presumption, our formation is that the law is not that dissimilar and that it would be reasonable to expect that e settlements that were given in Manitoba would not vary too terribly much from what happened Great Britain. If you want more actual legal interpretation or a report on that or detailed analysis, n afraid I'm not prepared to give that to you.

R. AXWORTHY: Well, I accept that because I realize that it's difficult to supply because we really e dealing in a new area of law and it's difficult to argue by analogy or by other ·cumstances.

S. ENGEL: I could continue. My concern is that this law provides for the equal sharing of ımmercial and family assets upon the dissolution of the marriage. But for some reason, the way which the decision about dividing those assets is left to the courts in two very different ways. ıe, a statement which says that the conduct should be grossly unfair, the circumstances should out of the ordinary, and the second, the commercial assets provide the direction to the judge at includes some very normal circumstances, the considerations, some of the principles that derlie all of this legislation. If in fact we wanted to limit judicial discretion very much for both ɔes of assets, Sections 13(1) and 13(2) would read almost in identical fashion.

ꞁ. AXWORTHY: So your committee would then be satisfied if the application of discretion under family assets was similarly applied to commercial assets, that would satisfy your concern?

S. ENGEL: I would call that a compromise. The position of the Action Committee is that mmercial and family assets should be jointly owned and managed from the day the marriage gins. But given the circumstances of this bill, we would be more than happy to see judicial discretion ıited for commercial assets in the way that it was proposed for family assets and that family assets jointly owned and managed during the marriage.

ꞁ. AXWORTHY: So those are really the two primary changes you would like to see in the bill, joint ownership and the similarity in criteria for discretion.

MS. ENGEL: Right, and I was offering the suggestion that the criteria for family assets be use for commercial because it's already acceptable to the government as a way of limiting judici discretion for family assets and perhaps it would be acceptable for commercial assets, if we ar to believe that they believe in equal sharing.

MR. AXWORTHY: There's only one other area question, which may be more just in the way amusing. I've been struck by a couple of references this evening to Nellie McClung and you see to feel that once you get this, it may be another 50 years until you get something else. Is that right Are we working on 50 year periods?

MS. ENGEL: I think if the members of this committee realized how many hours the women in th room have worked for this legislation, how much study has gone into it, how many meetings we' attended, how many coffee clatches we've gone to, small group meetings in community clubs, th fact that there are many many men and women in this province informed about this issue, we' learned to deal with the press, we've learned to deal with you, to write briefs, it's been the be education. I don't think we're going to stop. I would foresee a time when many of the women th have been involved in this process are going to run for political office and it's only the beginnin . . .

MR. PAWLEY: Hear, hear.

MS. ENGEL: You're going to see a lot of us.

MR. CHAIRMAN: Thank you kindly.
The Provincial Council of Women of Manitoba, Jean Carson. You have waited very patiently fro the start, I know.

MS. CARSON: You know, the last time I wrote to the Attorney-General, I started out by sayin that I was sure he was sick and tired of hearing from me, but he couldn't possibly be as sick hearing from me as I am of addressing him because he's only been in office for a few months an I've been doing this for ten years. I can't tell you how weary I am to come before you once aga and speak these obvious truths. This is my fifth appearance. You know, it's really getting pret trying.

I really don't think that I have very much to say. All the points the Council makes have bee made by everybody else. However, Council is a very respectable organization which no one cou regard as radical or abrasive, so I think that you should know how we feel.

In our frequent meetings with Ministers of the Government, we have been repeatedly told th we would be surprised — pleasantly was the implication — that would eventually be produced ar that "we ladies had nothing to worry about." Well, the legislation has now been produced and th Ministers were wrong. We are not pleasantly surprised. Our previous concerns are still our concer and we ladies have a great deal to worry about. For years when Council has gone annually to me with the Premier and Cabinet, we have insisted that during the currency of the marriage there shou be legal recognition of the sharing of family assets. This is not a paper problem as your advis suggested but a basic need in the partnership of marriage and the presently contemplated legislati denies this sharing. One must break up the marriage to achieve a share of the assets and this not Council's concept of the way to preserve a basic institution of marriage in our society. I wor say anything more about that because Mary Jo did it magnificently and there's no need for n to go on any further about it.

When we get to commercial assets, you know, I don't have much in common with Mr. Schulm but I do have an inclination to feel as though Alice in Wonderland has entered the whole scen I listened to Mr. Mercier, a man of good intentions. I listened to Mr. Spivak, obviously also a m of good intentions, and they assure me that equality is built in to this commercial assets thing ar yet to me it looks as though you could drive a team of horses through it. It looks to me as thou you're saying to the judge, "Well now, yes, equal sharing but look, this is how you can avoid i You know and you list ten things, any one of which could be subverted to the disadvantage of wome It reminds me of the title of a song of a few years back, "There's 50 ways to leave your lover And you know this is not my idea of the way the thing should go.

Then I listened to Mr. Schulman and I listened to Mr. Chamber of Commerce, and I'm mo confused than ever. The whole thing seems beyond my grasp and I really do think of Alice conversation with the Cheshire cat. When the cat said to her, "They're all crazy here. I'm cra You're crazy." "I'm not," said Alice. "Oh, yes, you are," said the cat, "or you wouldn't I here."

Well, you know, it's funny. But you know what I mean. .

We've all tried to tell you, one way or another, how very insecure we feel with judicial discretion. luth Browne tried to do it by reminding you what it was like to be seventeen; Mary Jo did the ame thing. Georgia tried to tell you what it would like if the position were reversed, you couldn't et at your children. Claudia just finished telling you what it will be like for your daughters, and re're all trying to say to you, we're all trying to get through to you, we're not comfortable, we're uspicious, we feel sure that once again, as over the years, we're going to be shafted.

Now, Mr. Mercier in his praise of honourable judges, cited the . . . what's the . . . the Steinberg -(Interjection)— Silverstein case. Now when the judge was making his decision in that case, Irs. . . . what was her name? —(Interjection)— Silverstein. Mrs. Silverstein was very anxious to ave the house and she didn't get it, and there were, you know, it's a very complicated thing, and m not going to go into all of it, but one of the reasons that the judge gave was that it would e too bad to deprive Mr. Silverstein of a non-taxable asset. Now this is exactly the sort of thing 'e're trying and trying to get through to you. The extreme solicitude for the business assets and ıoney of the male.

Now if you could bring us a judicial decision, and not one but many, in which the judge said, ou know, too bad about Mr. Silverstein, but Mrs. Silverstein loves that house more than anything ı the world, and to ask her to be deprived of it would be a great emotional impact. Now if you et a bunch of judges bringing us those decisions, we'll be prepared to think, well maybe you're ght. That the precept of equality is there and the judges are acting on it, but nothing in our past istory tells us that this is so. We've given you all kinds of statistics and so on, and this goes on nd on and on. Well, I musn't go on and on.

There's just one thing, under 17(3), "A court hearing in application may exclude all or any members f the public from all or part of the proceedings." Our ambivlent views on judicial discretion cause s to wonder if all cases should not be monitored. Mr. Mercier said he would do that, so perhaps don't have to worry.

About The Family Maintenance Act, we have one major criticism and that is the inclusion of onduct. I don't have to talk about that either; Bernice did a magnificent job the other night and laudia did it again tonight. But we do really feel, or I feel personally, terribly baffled, when you 're, in a ruthless fashion, willing to investigate fault and drag out all the things that people have one and I don't think they are pertinent and I don't really know what you'd call fault, I'm rather ıclined to the late Mrs. Patrick Campbell's view that she didn't care what people did as long as ıey didn't do it in the street and scare the horses. But I just don't think there's any reason to rag out this fault thing.

But on the other hand, after ruthlessly inspecting fault, you've got a clause here that says, "There great concern expressed about possible reconciliation." Well, you know, it seems highly improbable ıat reconciliation is feasible in the atmosphere of confrontation induced by the concept of fault. ll the name calling and bitterness that such accusations produce, are not going to call the opposing arties to fall into each other's arms.

We are sorry to find no provisions for the collection of maintenance orders; Norma talked to ou about that, and she had a good idea and we have more, we'd be glad to give them to ou.

The legislation has, we are happy to see, included all Manitobans in the Act, but what we regard ; this watered down version, makes it so easy to avoid sharing, that that's not as important. We 'e happy also that you have retained the option of mutually opting out although we think there ıould be compulsory legal advice, and that's really all Provincial Council has to say. We feel that s a short and cursory and very simplistic presentation, however, everybody else — you've heard em for days and days — and personally, I am so proud of all these women. I think they've been agnificent. And we leave more detailed examination of the law to you when you get down to clause / clause. Our function is to point out to you the principles on which our dissent is founded, and remind you that we represent 50 women's organizations, all of which are dedicated in their own ays to removing inequities in society. This legislation seems to us to reinforce rather than remove ıme of those inequities, and it's thus at odds for the people of whom we speak.

Now I'd just like to conclude by saying a few personal things. And the first thing I would like say, I'd like to read you an excerpt and you'll be glad to know I'm going to say something positive. quote from an editorial by Frances Russell: "There are many similarities between the men who offed ,,at the idea of their wives having the vote 80 and 90 years ago, and those who are now ankly frightened at the prospect of a simply stated community of property in marriage. Manitoba omen must now and settle in for a long and tedious fight but they will win because change may halted or rerouted, but it is inevitable," and you can't be more positive than that.

Secondly, I'd like to thank you for the most educational process to which I have ever been posed. This whole long process of studying these laws, writing briefs, attending seminars, speaking numerous groups, interviewing Ministers and backbenchers . . . actually I'm thinking of writing

an article on it, and I think I'll call it, "A Funny Thing Happened On The Way To Reform". Tl whole process, I repeat, has given me an in-depth view, not only of the workings of the Legislatuı but of the legislators, a close-up look at the people who make the laws that govern my life. Aı this has been true not only of me but of all the women that have worked in this — very interestir That knowledge will be extremely valuable to all these women, and to me, in my thinking hencefort and will be the subject of many conversations and many discussions, and I am sure you reali that it will have a great effect on all our voting patterns. Thank you. You don't need to ask n any questions.

MR. CHAIRMAN: No questions?

MR. MERCIER: Mrs. Carson, just let me say that I appreciate your comment that really the maj points have probably by now been fairly well covered, but of course everyone has an opportun to comment further. But I do thank you for the presentation that you've made now and in the pa eight or nine months, and I express probably on behalf of all Committee members, on both sid of the House, that it has been a very enjoyable experience discussing these matters with you

MRS. CARSON: Well, it's gotta be fun or you can't live.

MR. CHERNIACK: Mr. Chairman, may I say that I don't find it so pleasurable to be reviewing th again and again, unlike Mr. Mercier.

MR. CHAIRMAN: Myrna Bowman on behalf of the Manitoba Bar Association.

MS. BOWMAN: I don't know, Mr. Chairman, how long you intend to go tonight, but I may be little while.

MR. CHAIRMAN: Another half an hour.

MS. BOWMAN: Mr. Chairman, I was feeling somewhat discouraged about appearing once agai Like others who have appeared before you, this is not my first encounter with this legislation, b at dinner time, we went to a local Chinese restaurant, and in my fortune cookie I found a litt notice that said, "Expect changes," so I took heart and I stuck it out.

My presentation is not a personal presentation; it is on behalf of the Manitoba Bar Associatic I have first of all some initial comments on the overall scheme of Bill 38, and then I have son detailed comments which will go through the bill clause by clause. Members of the Committee wl were members of the House last session will recall that the Manitoba Bar Association during tl last set of hearings, adopted in general the provisions recommended by the Manitoba Law Refor Commission, which had the elements of first of all deferred sharing of all assets, other than tl family home, which would be shared immediately, no or very narrow discretion in the court to va the equal sharing, and those already married would have a six-month period after the commenceme of the legislation in which to unilaterally opt out of its provisions with respect to property acquir up to that point. And where one party had opted out and the marriage subsequently broke dow the court would grant a lump sum judgment to the other party based upon a contribution to tl marriage, not to the assets, but to the marriage including physical as well as financial contributio and the common intention of the parties as evidenced by their conduct and acts.

We believed then and we believe now that the opting out provision is necessary, where the is this narrow discretion, because of the effect of retroactive change of a very substantial kind (the law relating to marital property and the effect of that upon persons already married who m not be in a position of being able to reach a marital agreement with their spouse.

Bill 38 takes a totally different approach with deferred sharing of all assets and no immedia sharing of the home, a narrow discretion as to variation of family assets, a limitless discretion almo: without guidelines to vary the equal sharing of commercial assets, and a totally retroactive applicati to all persons who are married but not separated, by May 6th of 1977. We acknowledge and agr that some relief has to be given to a totally retroactive piece of legislation that changes the mari property law. If our recommendations are not accepted, then it is clear that a wide discretion necessary. In our view, however, that approach, taken in Bill 38, runs a very poor second to tl approach which we recommended to you last year. The enormous discretion given in Section 13 respecting commercial assets, is in our view, an unsatisfactory method of dealing with the proble of retroactivity for a number of reasons including, first of all, if the principle of the legislation whi the government intends to uphold is that marriage is among other things an economic partnersh in which the partners stand on equal footing, then that principle is diluted almost beyond recogniti by this enormous unfettered discretion of Section 13(2).

We foresee, secondly, that the legislation will invite and encourage litigation, both in connection ith the broad discretion in and of itself, and also with respect to the distinction made between mily and commercial assets. For example, I imagine endless litigation as to whether vehicles and ınk accounts are in particular cases, family or commercial assets. In this connection, I would note / the way, that in the newspapers, and Miss Paxton, amongst others, have suggested that this gislation will be greeted with joy by lawyers because of the fact that it will certainly bring them creased business. Well, it certainly will bring us increased business but we are not greeting it th joy; we do not think that that kind of an increase in our business is in the public interest and ɜ are certainly suggesting to you that that is not the course tuat you ought to follow.

The necessary consequences of broad discretion will be, and always have been, uncertainty and ıpredictability of result and that is an encouragement to litigation and a discouragement to the ;ttlement of disputes.

The discretion is so broad and unrestricted in our view as to provide and permit lengthy and ;tailed examination and weighing of conduct over many years of marriage, including fault possibly, e quality of housekeeping and similar considerations. We consider this to be undesirable.

Experience in other jurisdictions, in England and New Zealand, has demonstrated conclusively, ıd this is borne out by experience in other jurisdictions as well, that a broad discretion has ınsistently been exercised in such a manner that the woman whose married life is spent as a ıusewife and a mother, rarely if ever, receives an equal share of assets. Indeed they receive virtually ıthing from the commercial assets unless they have made a financial contribution or are in fact ɿolved in the business in its operation. Bill 38 does contain a presumption of equal sharing, it's ıe, but the discretion to vary that is so broad as to greatly diminish the value of this esumption.

We therefore recommend to you that the government should, in place of the provisions of Bill ;, substitute provisions in accordance with our prior recommendation which was in fact the same commendation as The Manitoba Law Reform Commission made to you and substantially the same that of the Family Law Review Committee.

Secondly, if the government is not prepared to adopt the foregoing recommendation, then — d I think this is a recommendation that will probably be approved by most of the previous speakers as a second choice, very much a second choice, we recommend that the revisions of Section (2) should apply only to persons who are already married prior to the Act coming into force. A 'ther sub-section should be added to provide that where the parties marry after this new legislation, assets should be considered to be family assets, and thus subject only to the narrow discretion. is recommendation has the advantage that, over a period of years, the amount of litigation and ɜ uncertainty of rights would ultimately diminish. It also recognizes the fact that, whatever may ve been the case 20 or 30 years ago, young people marrying today do look upon marriage as equal partnership, and expect that the law will keep pace with that expectation. In a sense, this ıd of an amendment would incorporate into the legislation a self-modernizing, or self-reforming ıture, which would gradually bring the law into line with what people now expect it to be. It would, course, always be open to couples who didn't wish to have that kind of an arrangement to make ɜir own contract.

The third general recommendation is that, in any event, there should be wide publicity as to ɜ substance of this new Family Property Law, including pamphlets written for the laymen, or 'women, which would be distributed to each couple applying for a marriage licence, as well as ing disseminated through social agencies, community groups, marriage preparation courses, and ɜ like. Some have suggested that perhaps the licence should be stamped with a warning, similar that on American cigarette packages, that it may be dangerous to your financial health.

Those are the comments on the overall scheme, and I would now like to go through the various uses and suggest to you the changes which we think would improve the operation of the l.

First of all, in Section 1(a) — Articles of personal apparel are excluded, and we found ourselves able to be clear in respect to whether or not jewelry would be included in this exemption. We ɜ of two minds, that is there are valid arguments on both sides of the issue as to whether jewelry ɡht to be included or not, that is to say, if a mink coat is exempt, why ought not to be a gold tch, but on the other hand you could take the view that jewelry is often a gift and should be ɜmpted on that ground. However, our primary point is that you should make it clear whether not you wish to have jewelry exempted as personal apparel or not.

The next point is with respect to Section 1(f). The spousal agreements should also specifically lude prenuptial agreements. It appears from the general tenure of the legislation that it is intended t prenuptial agreements should, in fact, be honoured and be binding, but it would not appear the section is now worded, they would be included in subsection (f), since, by their nature, they not agreements made between spouses. This is a simple amendment, but one that is ;essary.

Section 4(1), as worded, in our view, could result in considerable injustice. Section 4(1) deal with assets acquired while married, but living separate and apart from the other spouse, bein excluded. For example, during the marriage a husband might acquire in his own bank account saving of $10,000.00. This would be a commercial asset. The parties may separate for a short period (time, and during that period, the husband will take that money out of the bank, possibly, and bu say, a Canada Savings Bond. The parties subsequently reconcile — and people do this over an over again for some reason — and perhaps five years later they would separate for the last tim The savings bond, being an asset acquired while living separate and apart, would be excluded fro the Act, even though in fact the funds that were accumulated to acquire this were accumulate during the period of co-habitation. We don't think this was the intention of the Act, or is in accordanc with its spirit, and we suggest that the section ought to be amended so that what is exempte from the Act is "any increase in the overall value of the spouse's assets during a period (separation".

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: During this pause I wonder if Ms. Bowman and you will permit me to brea in with what I think is sort of a radical suggestion, and of course both she and you and the committe can reject it, but I have looked ahead a little and I see that Ms. Bowman has some specifi recommendations for specific sections, all of which, as far as I can see in a semi-review, have re validity and are more technical than involved in the policy and more legal in their nature. And want to suggest to Ms. Bowman, in view of the limited time that she has, and her indication alreac that it may not be enough, that maybe she would agree to skip some of these specifics on a understanding which I would like to have with Mr. Mercier, that the Legislative Counsel charge with this will deal separately with her suggestions and report back to us, because I really don want to enter into a discussion with her about the legal interpretation of what I think makes a l of sense. Now I suggest that to her first of all because this is her brief, and secondly I wonde if Mr. Mercier would agree to the suggestion that I make that we get a report.m.

Now, if I'm out of order, Mr. Chairman, as far as Ms. Bowman is concerned, please slap m down, it's your brief not mine.

MS. BOWN: I don't mind at all leaving some of these things to the consideration of the Legislati Counsel . It's difficult for me, while I'm standing here, to go through and pick out those ones th are more of a policy nature.

MR. CHAIRMAN: Well, Ms. Bowman, both Mr. Schulman and Miss Steinbart went approximate 20 minutes over their half hour, and they had lengthy briefs, so I'm quite sure we can give yo an extension, but I would appreciate, as I know Mr. Cherniack would, if in areas that you ca summarize rather than read word for word, that you do that.

MS. BOWMAN: Yes.

MR. CHERNIACK: But, Mr. Chairman, I take it so seriously that I would hope that if she ski over it that Mr. Mercier would provide us the services of the Legislative Counsel for comment otherwise, we might . . .

MR. CHAIRMAN: When we go clause by clause you mean?

MR. CHERNIACK: Yes, when we go clause by clause.

MR. CHAIRMAN: It hasn't been my practice to involve staff people into the hearings until we g clause by clause.

MR. CHERNIACK: I agree.

MR. CHAIRMAN: The purpose of the hearings is to hear from the public.

MS. BOWN: Well, I'm not here particularly to give a performance, but to try and give assistan to the committee, and whatever way you would wish me to proceed, I'll be glad to do that. I dor mind how you do it.

MR. CHAIRMAN: Mr. Spivak, have you some suggestions to offer to us?

IR. SPIVAK: I accept the spirit in which the suggestion was given by Mr. Cherniack, and I nderstand what he is saying, but I have a feeling that it's fairly important for the record, and for ll of us who are concerned about including anything that should be included, or excluding those iings that should be excluded, for Ms. Bowman to go through it, and for us to spend the time nd to deal with it as she has presented it, and to be in a position then to ask fair questions on . And I think it's necessary, and I think the record has to show that as well.

IR. CHAIRMAN: Ms. Bowman, I would gather that the consensus is that you carry on in the fashion iat you were, and where you can be brief, please do so.

IS. BOWN: I will summarize as much as I can, the members will recognize that when I do summarize n using my own words and that the brief is really the expression of the association's view.

Point No. 7 refers to assets under Section 5, disposed of by a spousal agreement. We suggest ere that a more general wording in that section would be appropriate, because, in fact, many greements do not, or even by there very nature could not, deal with specific assets, but will make eneral provisions concerning assets, and we refer you to the Family Law Review Committee commendations as to a general wording which would, in effect, honour any agreement which, when was made, was intended to constitute a full and permanent disposition of the property rights etween the spouses. I think this is a fairly important suggestion, and I would ask that you do look : it again when you come to clause by clause consideration.

The next point, Section 8, is purely a technical point and I will leave that to Legislative Counsel deal with. It is a matter of conforming with possible provisions of another Act.

Section 9 again is a purely technical amendment which can be dealt with by Legislative ounsel.

Section 10, I think has substance rather than form to be considered, and that is it deals with ection 6, Subsection 5, and we are concerned that it may encourage manipulation by one spouse hile there are marital difficulties in prospect. For example, a spouse will have control of an asset hich is in fact a family asset, owns it and may dispose of it unilaterally. Realizing that the end near this person may convert the family asset into cash, put it into his own bank account, and iereby convert it into a commercial asset. We think that this provision should not be left as it in order to have that unjust result, and that the provisions of Section 6, Subsection 5, should nly apply with respect to assets that are exempt as gift, inheritances, or previously owned ssets.

Section 7, Subsection 4, excludes from the accounting any increase or decrease in the value an asset acquired by gift or inheritance, and we think that this is inconsistent with the provisions r sharing of appreciation and depreciation of assets owned prior to marriage, and that it should e consistent with that provision of Section 4, Subsection 3.

The next point, Section 11, is again, I think, an important point of policy. We were very surprised find that the section says that the value of an asset situated outside Manitoba may be taken to account. There can be no logical reason, in our view, why such an asset ought not to be taken to account, and that "may" should be turned into a "shall", in our view. We don't know whether iat was an accidental wording or whether it was intentional, but there can be no reason in our ew why it should be discretionary, it should be manditory that all assets, wherever situated, should e included.

Section 12, again this is a wording change, but I think it is one that should be corrected. You fer to the division of the assets. It's not the assets that are to be divided, it's the value of the ssets. This again occurs in Section 13.

Section 16, this is Point No. 14, should be amended to prevent the court, in a proper case, order the sale of an asset in order to pay the judgment. The reasons are set out here, in Point o. 14, and I think it's an important omission. We don't want to make the litigation any more olonged or expensive than is absolutely essential, and the power to sell should be included.

Section 17(3), is again a point of principle, I think. It provides for the court to be closed to the iblic. The court may exclude all or any members of the public from the court room for all or part the proceedings. We disagree in principle with that. We believe that it is a matter of principle at the courts ought to be open to the public, excepting under most unusual circumstances, and no case should the legal profession and the news media be excluded. We believe it's a fundamental inciple of justice that the court should be open to the public, and experience, both in this country id elsewhere, has indicated that abuses are far more likely to occur where tribunals are secret id where proceedings are not open than they are where things are public, and the Family Law eview Committee report goes into that in considerably more detail.

We also point out to you that the County Court and the Court of Queen's Bench have traditionally ld open hearings, and I think will no doubt continue to do so in other proceedings, which will obably be held concurrently with proceedings under The Marital Property Act. The view of our

members has been that, neither our clients nor the administration of justice, has suffered any degr(at all from the fact that the courts are open, and we can recommend that this should continu We do recognize that in an unusual case the court should have the power to clear the court roo of the general public, but that, because of the watch dog function that the profession and the med can perform, both as to the conduct of the court and to the operation of the laws themselves, th should not be excluded.

No. 16 is a technical amendment, which I think I can leave safely to the consideration of Legislati Counsel , and also Section 18, which deals with the length of time which will be permitted to bri applications after the new Act comes into force following a divorce. That is also dealt with in Poi No. 18, and Point No. 19 again dealing with time for an appeal.

Point No. 20, I think has more substance. You might want to think about this a bit. In Secti 19, it's provided that the court may extend the time for payment of a judgment to the opposi spouse where immediate payment will work a hardship. Now the experience of most lawyers is th all clients find it a hardship to pay a judgment. The greater the judgment, the greater the hardshi It's our considered opinion that this wording is too lax and that there should be a somewhat high standard imposed. We would suggest, for example, that the term "excessive hardship" might I more reasonable. It's very common, as I say, for anyone to find it a hardship to pay a judgme and the disgruntled spouse finds it even more of a hardship than other judgment debtors. It's o hope and intention that this section will not be used routinely because we think that the intenti of the legislation is that each party should receive their share of the assets and go on their w without a very prolonged finalization of their relationship so that we hope that this will be used rar and we think that this wording certainly should be tightened up.

Point No. 21, which is the last point under The Family Maintenance Act, is the point of considerab substance. If you look at Section 24(1), the rights given under this Act are in addition to and n in substitution for rights given under The Dower Act. All very well, but when you look at the tv Acts together, it appears that where a person has their accounting under this Act and prior to divorce, the other spouse dies, that the surviving spouse may still be able to claim their share und The Dower Act in the remaining estate, thus ending up with three-quarters. We don't think th this is what you intended and we think that that should be looked at so that the possibility c be eliminated. Those are the specific points under The Marital Property Act.

It seems to be my fate to come before this committee always at 11 o'clock. I hope that yo bear with me while I go through The Family Maintenance Act.

First of all, dealing with Section 1(b), we note that again there is not included here a jurisdicti for a magistrate to hear applications for interim relief under this Act. This recommendation w made to this committee last year and was made by the Family Law Review Committee. There a many parts of this province where family courts are unable to hold regular sittings or where t regular sittings are widely spaced. There are emergency cases that may arise where relief has be given immediately under this Act and we suggest that it is only humane to make it possib for parties to apply to the magistrate who will be much more readily available for interim relief an emergency situation. We therefore recommend that there be an amendment to give th jurisdiction.

Section 2, subsection (2) regarding conduct, is perhaps the major area of policy contained this Act. In our previous submission we recommended to you that conduct of the spouses shou continue to play some part in determining maintenance applications. Unfortunately, however, do not agree with the particular approach which you have adopted in Section 2, subsection (That is for a number of reasons.

First of all, the English case law relating to this wording shows that the interpretation given the English cases varies tremendously from one judge to another. There is little or no consisten in the approaches which they have used. We do know, however, that what does happen in the Engli cases is that the conduct of one party is weighed against the conduct of the other and wheth or not the conduct of one is gross and obvious depends on how bad the other one had has be or how good. This usually leads to a detailed examination of conduct during the whole course the marriage. We do not agree with the published suggestions that the English cases indicate th only extreme or bizarre behaviour falls within this definition as they are interpreted. Even if th interpretation were correct, however, and only extreme behaviour was included in the Engli interpretations, you have to bear in mind that the English phrase is used — first of all, it is word somewhat differently — in a different context from that which will be in our Family Maintenan Act. Our section says that the conduct must be so unconscionable as to constitute an obvious a gross repudiation of the marriage relationship. The English cases simply refer to gross and obvic conduct. They do not refer to a repudiation of the marriage relationship per se. But the salient f is that our judges are not bound by those decisions and I very much doubt that they are goi to follow those English cases.

The third point is that if the behaviour is so bizarre, so extreme, so unconscionable, as to

ithin what we are led to believe this section is supposed to contain, surely it ought to disqualify ou altogether from maintenance and not merely vary the amount.

The last point is that the section provides conduct on the part of a respondent spouse — and is point was dealt with earlier' I think, by Mr. Cherniack — is also relevant to the amount of aintenance. That is, it's the conduct gross and obvious of both spouses. If the dependent spouse *prima facie* entitled to maintenance according to need, without anyone looking at conduct, then seems to me that this suggests that if the respondent spouse is truly a rotten one, then the ependent spouse is entitled to more. I think Mr. Cherniack made that point. I think he's quite right. ut if that's what it means, then it flies right in the face of everything that our present law says) us concerning maintenance not being used for punitive purposes. Now, of course, if that's what intended, that's an interesting proposition. You get damages in effect in the family court. If that's ot what it means, then what does it mean in terms of the conduct of the respondent pouse?

We suggest that the wording invites all kinds of judicial quibbling, legal distinctions, tortuous asoning and nitpicking and almost certainly inconsistent judgments because the courts will be ying to grapple with wording which means something different to each one of them as it does) each one of us.

What is the alternative? Well, the alternative that we had recommended to you before and which e recommend to you again is this: the Divorce Act of Canada provides that in determining aintenance the court will have regard to the conduct of the parties and the condition means and ther circumstances of each of them. In effect, conduct is merely one factor amongst many others hich is weighed in determining whether and in what amount maintenance is appropriate. We have ome established case law over the last ten years on what that means and the weight to be given conduct in various circumstances. It seems to us that it would be highly desirable that the criteria r maintenance under provincial legislation should be consistent with that which the same parties ill encounter when they subsequently engage in divorce proceedings.

We therefore recommend that Section 2, subsection (2) should be deleted and the conduct of e parties be included as a factor in determining whether and in what amount maintenance should e granted.

Section 6, Financial I nformation — We're very pleased that this section did survive. We had ery great doubts about whether it would or not. However, we note that you have deleted the provision hereby the information can be obtained directly from the employer. We believe that this was a ery simple, effective and inexpensive way of having the information provided when the spouse didn't ovide it voluntarily and we suggest that that subsection should be restored in order to save, as say, time, effort and legal costs. It appeared to me from listening to Mr. Shead's presentation, at oddly enough the Chamber of Commerce agreed with that proposition. We also suggest that e itemized statements required to be provided in this section by one spouse to the other should e required to be provided in writing.

The next point regarding the kind of orders to be made, Section 8. We are again concerned out the uncertainty that still remains. Is a person entitled, as of right, to a separation order merely ecause you apply for it? Section 8(1) says that the court may grant the order which implies that en again, it may not. If it may not, why may it not, if all you are required to do in applying is say that you want it? We hope that your intention was that a person who is applying for a separation order to live separate and apart without harrassment from the other party should be absolutely ntitled, as of right, to get that order, and that it is only with respect to any other relief that that erson may be requesting that the various considerations set out in the Act will come into play. that is the case, then we suggest that Section 8 should be further divided to make it clear that e order of separation will go, as of right, and that the other relief only will be dealt with after king into account the criteria set out in the other sections.

We also suggest that the wording "that the spouses be no longer bound to cohabit with one other," should be placed with the modern terminology "that the spouses shall henceforth live parate and apart." I can tell you from lengthly experience that clients never understand what that eans. They didn't know that they were cohabiting in the first place, much less that they didn't ve to do it any more.

The next point with regard to sole custody is a technical point, one of wording, which I can leave Legislative Counsel. However we do note that you have again included in the provisions to be ade under The Family Maintenance Act, the possibility of lump sums, and we consider this to totally inappropriate in dealing with separation proceedings. Lump sums are, and should be, served to final dispositions which will be made under The Divorce Act and that is the proper place them. We do suggest that the court should ' so be able to make maintenance retroactive to e date of application, that there will be no longer any advantage to prolonging the evil day.

Section 8, subsection (3), regarding reconciliation — I n our experience this new section is similar what is in The Divorce Act and that in The Divorce Act it has been found to be uniformly useless.

If it is to remain in the Act, we suggest that the wording should be changed to "may adjourn tł proceedings," rather than "shall adjourn the proceedings." It's a very common practice in o experience for one spouse to try to wear down the other's resistance and force them in reconciliation by asking for adjournment, crying crocodile tears and expressing a wish for reconciliation, which is entirely false. If the other person' the applicant, is absolutely rejecting a reconciliation, then you're wasting the counsellor's time and the court's time in adjourning the matte because you can't have a reconciliation if only one wants it. Consequently, we feel that the cou should be left with the discretion to refuse such an application if it does not appear that both parti are interested in reconciliation. Our experience has been that where matters under The Divorce A are adjourned for that purpose, the person asking for it often doesn't even show up at the counsellor office.

No. 6 refers to Section 9, subsection (2), postponement of sale. Again we feel, as we told y in the last submission, that this is not an appropriate provision to put in The Family Maintenan Act. When one party is given sole possession of the House under this Act, that factor will be tak into account in partition and sale proceedings. We do not think it proper that this Act should preve a person from applying to a court of superior jurisdiction for an order for sale. That is an equitab remedy and the court will take into account all the circumstances including the order for possessio You must bear in mind that people often appear in the family court without counsel, husban particularly, and they may not have any realization when they consent to an order of that kind to the long-term consequences. Furthermore, there may be factors that the court doesn't know wh they make those orders concerning the fact that a mortgage is falling due or the mortgage sa proceedings are about to commence or tax sale proceedings and so on. If you put in a provisi in an order saying that the respondent cannot apply for partition and sale for two more years, th means that nothing else is going to happen in that case on mortgage sale proceedings, nothi can be done to save that property until you first come back and get rid of the family co order.

In addition, if you subsequently come to a divorce or an application under The Marital Prope Act, you've again got to get another proceeding in the family court to get rid of that provision befo you can get on with it and get the whole thing cleared up. It seems to us totally unnecessary a bound to add to the cost of litigation.

No. 7 is a technical point. I'll go on and leave that to counsel.

No. 8, an application for an order. This is more or less technical. It appears from the Secti that no one can make an application for an order for maintenance of a child unless the other pers has already failed to maintain the child, which seems rather foolish since the child may have be living with them until the application comes on for hearing.

No. 9, again is a wording matter which we will leave to Legislative Counsel. No. 10, also.

No. 11, we suggest that in addition to the . other criteria for variation of maintenance orde there should be the possibility of applying on fresh evidence. This is a concept that has been us for some years, where there is evidence which has not been previously discoverable which alte the complexion of the case, and that should leave it open to the court to reconsider the matt with that evidence.

Another matter which I think is of some importance is with respect to the possibility that aft an order is made for maintenance of a dependent spouse that spouse may fail in the obligati to take reasonable steps to become financially independent of the other spouse. That failure, it seer to us, ought to give rise to the right in the person paying the maintenance, to apply for variati or discharge of the order. However, as the Act is presently worded, if the party receiving t maintenance simply sits back and does nothing there will be no change in the condition, mea or circumstances of the parties, and no variation would be possible.

With respect to Section 23, it has the same provision for a hearing in private as The Mari Property Act, and we object to it for the same reasons. I will not go through the comments tł are made here and I again refer you to The Family Law Review Committee Report which also de with that point.

On appeals again, that's a technical matter; I'll leave that alone.

On the enforcement of maintenance orders, I see that the legislation apparently still contemplat that the Family Court is going to be issuing its own garnishing orders rather than having them do through the County Court as previously has been done. We think this is not a progressive thi to do, there is a simple way of getting garnishing orders in the County Court, it's worked well years. We feel that the issuance of garnishing orders by the Family Court has some constitutio questionability, but even if that were not so, it seems silly to set up new administrative machin when what's there is perfectly satisfactory.

We also question whether or not it is constitutionally possible to have a judge of the Fam Court appoint a receiver, and again, this has been done through the machinery of the County Co previously and that seems to us to be a perfectly satisfactory way of dealing with it.

The final point is, and I think it's important, this legislation has had what I call a checkered history. 'hatever you come to, gentlemen, let's have it in a hurry, let's have it proclaimed as quickly as ›u can after it's passed. We have clients who have been sitting around for over a year waiting ı know what their rights are, and it makes it very, very difficult, not only for lawyers, but more ıportantly, for their clients to govern their affairs not knowing from one week to the next what e law may turn out to be, so whatever you do, we woul like it proclaimed as quickly as ›ssible.

I am sorry to have to rush through this, but if you have any questions I would be glad to try ıd deal with them.

R. CHAIRMAN: Thank you, Mrs. Bowman. I've been trying to get a consensus from members the Committee as to whether they just had a few questions apiece for you or a considerable ımber of questions.

to have S. BOWMAN: I'd be glad to come back if you would preferme come back ·morrow.

R. CHAIRMAN: We are going to sit tomorrow evening at 8 o'clock and there is a strong possibility at we will sit Friday at 10 a.m. and again Friday afternoon, and conclude public hearings, and en not deal with the clauses on a clause by clause basis until some time Monday. This Committee d sit all through last weekend, and it's may wish and I know the Attorney-General's that we have is weekend off, and so maybe Mr. Pawley and some of the others, you could tell me, have we st a few short questions apiece? The Attorney-General tells me he's only got a couple. What is e wish of the Committee, would you like to have the evening, or the night to study Mrs. Bowman's ·ief?

R. PAWLEY: Mr. Chairman, I do think, speaking to Mr. Cherniack, that between the two of us e probably would have sufficient questions that would take — I am sure with the questions Mr. ercier would contribute too — close to an hour.

R. CHAIRMAN: All right then, Mrs. Bowman you tell us when you can come back because you e accommodating us and we will work you in whenever you can be with us.

S. BOWMAN: You're not sitting tomorrow afternoon?

R. CHAIRMAN: No, we'll be in the House.

will S. BOWMAN: I come back tomorrow at 8 o'clock, if you wish.

R. CHAIRMAN: All right, the n I have said to Leigh Halprin that she would be the next person, ı we will start off at 8 o'clock tomorrow night with questions from the Committee to you regarding ›ur brief and then we'll go on to Leigh Halprin.

Committee rise.