# Legislative Assembly of Manitoba

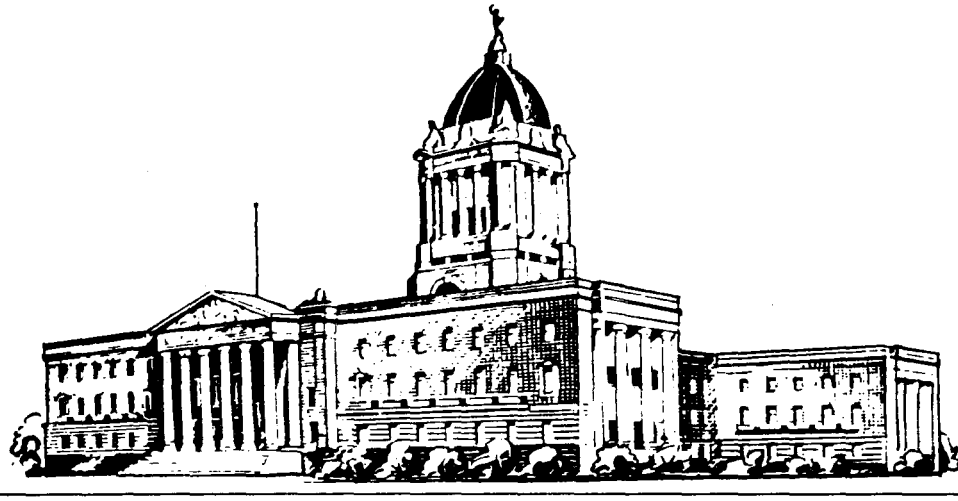
## STANDING COMMITTEE

## ON

## STATUTORY ~~RULES AND~~ REGULATIONS and Orders

### Chairman

Mr. Warren Steen
Constituency of Crescentwood



**Thursday, July 13, 1978 8:00 p.m.**

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# Hearing Of The Standing Committee
# On
# Statutory Rules and Regulations

**Thursday, July 13, 1978**

**ime: 8:00 p.m.**

**:HAI:** Mr. Warren Steen. AN

**IR. CHAIRMAN, Mr. Len Domino:** Order please. We have a quorum I believe. It is after the hour f 8 o'clock. The Chairman spoke to me this afternoon and mentioned that he would be delayed ıis evening. He asked me to fill in for him as Chairman of the meeting. Do we have any objections? hank you.

In that case we call Mrs. Myrna Bowman to come forward and answer questions on her submission ıst night.

The first person on my list is Mr. Mercier.

**IR. MERCIER:** Mrs. Bowman, I just have one question for the moment. I may have more later n. You made a submission with respect to the wording used in Section 6(2) and 6(3) of The Marital roperty Act, which begin by saying, "notwithstanding Subsection (1)." Do you have the section? ubsection (1) of Section 6 generally provides that "no provision of the Act vests any title to or ıterest in any asset of one spouse, etc., to any order of a court to sell, lease, mortgage, etc." nd then Subsection 2 goes on to say, "notwithstanding that Subsection, spouses each have an qual right to to the use and enjoyment of their marital home," and then in Section 6(3) "to the se and enjoyment of family assets."

**IS. BOWMAN:** Yes.

**IR. MERCIER:** Would you be of the view that Section 6(2) and 6(3) as they are worded override ection 1, Subsection () as to "the right to use and enjoyment of the marital home and the family ssets" and create perhaps an enforceable relationship between the spouses?

**IS. BOWMAN:** What you might call a veto power of some kind?

**IR. MERCIER:** Yes.

**IS. BOWMAN:** I think that it is unclear whether or not it does that and that is why we made the ıggestion that if that was not your intention to create that kind of veto that you should clarify so that there can be no question about it one way or the other. Of course, if you intended to revent the creation of that kind of veto power or enforceable right, which would prevent or limit ıe disposal by the title-holding spouse, well that is another matter. We took it that you did not ıtend to impede the dealings of the title-holding spouse with the assets.

**IR. MERCIER:** Well, forgetting about what your presumptions were as to the intention, what would e your interpretation of the actual words that are used? Is "notwithstanding" Subsection (1) pretty ear?

**S. BOWMAN:** Well, I think it was clear enough until you get to Subsection (2) and I think that is not crystal clear. I think that there is an arguable case there that you might make, that there as some kind of a right created to the continued use and enjoyment which could impede the sposition of . . . I'm not saying that it does create that, I'm simply saying that it's un clear.

**R. MERCIER:** That's the only question I have for now. Just let me take the opportunity to thank ɔu and the Bar Association for the excellent brief which you submitted, and which I'm sure will e of some assistance to us in completing the final form of the legislation.

**MS. BOWMAN:** I'm sorry I had to go through it so hurriedly last night, but I'm sure you will g to it in due course in detail.

**MR. CHAIRMAN:** Mr. Cherniack.

**MR. CHERNIACK:** Well, Mr. Chairman, may I assert the presumptuous position of also thanki Mrs. Bowman and the Manitoba Bar for presenting such an excellent brief. I seem to recall th we used sort of similar words in relation to Mr. Perry Schulman's presentation, and since I not some disagreement, or seemed to think that there was some disagreement between Perry Schulm and Mrs. Bowman, I thought I'd like to explore some of what appeared to be a difference opinion.

The submission by Mrs. Bowman started out on the basis of recommendations of The Manitol Law Reform Commission, which I'm afraid, Mrs. Bowman, are sort of academic now and a matt of history, nevertheless, you revived history to point out that the recommendation involved no very narrow discretion of the court to vary the equal sharing of assets in marriage breakdown. A I jump to Page 2 where you refer to the fact that the Bill 38 does not recognize immediate shari of the home.

I'm wondering, Mrs. Bowman, if there's some conclusion that we can draw in relation to t apparent reluctance to recognize the immediate sharing of the family home, and I do that, an ask you — and I haven't asked anybody else, I think, mainly because you have been more involv than most people have in the very detailed study of the entire question, and I believe an eff to be objective about it — we have heard arguments, let me say on both sides of the House, th in most marriages, there is a recognized equal sharing of the family home in that, "most peo own their homes as joint tenants."

Do you, Mrs. Bowman, with not just your experience, but with your extensive study of this proble understand why there should be any sort of reluctance, once one recognizes the right of mut opting out, to recognize that the home during the marriage should be mutually owned?

**MS. BOWMAN:** It's hard, Mr. Cherniack, to answer that question. I think you are asking me read the minds of unnamed people, and the only arguments that I have heard in favour of it a certainly arguments that I think are invalid, in terms of an interference with the private affairs married people. That, to me, is not a valid objection to this. I think the basic reason why peo object to it is, that those that have the title don't want to give it up, because it is a means of exerti power.

**MR. CHERNIACK:** I think it's fair to say, Mrs. Bowman, that The Dower Act is a tremendo interference in the private lives of a married couple. Is that a fair statement?

**MS. BOWMAN:** I think it's a fair statement, it's just an interference that we're accustomed t

**MR. CHERNIACK:** And is that the difference that we have grown accustomed to it, so we acce it. Because really the government, last year's government and this year's government, have blithe proceeded to propose changes to The Dower Act from one-third to one-half and there have n been great protestations that I am aware of from anybody by this very substantial one-six transference of an asset. And yet there seems to be a reluctance to continue the law which w passed last year to recognize that immediate sharing of the family home is a matter of right a should be recognized in light of the fact that The Dower Act, which precedes my time and obvious therefore well precedes your time, was an accepted, I guess socially accepted, principle.

**MS. BOWMAN:** Was that a question?

**MR. CHERNIACK:** I was just wondering myself whether or not it was a question. I just came the conclusion it wasn't, so I better go on to indicate that you seem, from Page 2, to indicate th the different approach taken by Bill 3 is not acceptable to the Manitoba Bar and that is: " limitle discretion without guidelines to vary the equal sharing of the commercial asset Now when I sa "on behalf of the Manitoba Bar," may I ask you the extent to which you are speaking for the B rather than in your capacity.

**MS. BOWMAN:** This is the brief that has been prepared by members of the Manitoba Bar. It h been approved for submission to you by the Executive of the Manitoba Bar. Mr. Jack McJann the President, was here in fact last night to verify that in fact that was the case. Unfortunately is not able to be here tonight.

**IR. CHERNIACK:** Well, I must say Ms. Bowman I appreciate learning that he was here to confirm , because his predecessor, I think, made some pretty outlandish statements about last year's ıgislation without ever coming here, and I believe through doubt on the right, of you or any other ɔokesmen who appeared on behalf of the Manitoba Bar, to express a point of view. I am correct ıat Mr. Mercury took a pretty strong objection to. . .

**IS. BOWMAN:** Mr. Mercury made some statements which were his own statements. In fact last ɛar at the time that these hearings were held, Mr. Bob Goodwin was the President of the Manitoba ar. He appeared before you and verified that the presentation I made at that time was made on ehalf of the Manitoba Bar Association, and that brief also had the approval of the Executive of ıe Manitoba Bar Association.

**IR. CHERNIACK:** Thank you for reminding of that. I had forgotten that. Well, then let's go back ı Page 2, where you speak in criticism of the enormous discretion of Section 13(2) and again I ıuote, "the enormous unfettered discretion of Section 13(2)" and ask you whether you heard the ıbmission of Perry Schulman.

**IS. BOWMAN:** No.

**IR. CHERNIACK:** Are you aware of Mr. Schulman's comments enough to comment on them.

**S. BOWMAN:** I have heard them summarized. I don't know how accurately.

**MR. CHERNIACK:** Well as I recall it, and I may be wron and I am sure other persons present who did hear him would correct me if I am wrong, that he seemed to find very little real difference between 13(1) and 13(2), except he felt that there was a difference in interpretation between the term "inequity" and the term "unconscionable". It seems to me that that is what he zeroed in on, and felt that that was not a big difference. Further, he said, that in his opinion the wording of Section 13(2), which I will paraphrase, the judge, or the court, shall consider any of the circumstances including the following list of 10. That that to him meant, that that really excluded any other circumstances other than the 10, and that was his legal opinion. I have to ask you, what is your legal opinion about the wording of 13(2)?

**S. BOWMAN:** legal opinion about that wording is that Mr. Schulman is wrong.

**R. CHERNIACK:** Well, you do say at the top of Page 3, that the discretion is so broad and ırestricted as to provide and permit lengthy and detailed examination and weighing of conduct ver many years of marriage, including fault, quality of housekeeping, etc. Mrs. Bowman, I have ɛard it stated that there is nothing in 13(2) which would give the court the opportunity to deal ith conduct, that in reading 13(2) there's no reference to conduct, and that none of the 10 items ɛfer to conduct, and that there would not be an opportunity to discuss conduct within the marriage ɔcept as it relates to the property in question, under 13(2). I think your subsection (c) does not ɔcept that possibility.

**S. BOWMAN:** I think that my reading of that section is, that it is the broadest possible discretion take into account just what it says, "any circumstances the court deems relevant," and it is ɛrtainly within my expectations, that some courts in some cases will deem conduct, fault or whatever rm you want to use, to be relevant.

**R. CHEIACK:** Well, Mrs. Bowman, assuming that you were appearing before a court, dealing with e division of commercial assets, and you were arguing on behalf of the spouse that didn't own ıy part of it, that there should be the equal sharing — and I won't use the words "fair sharing", I stick to equal sharing — that you would think that you could bring evidence before the court, ıich might relate to the horrible relationship that existed between the parties because of the ɔmplete abhorrent activities or actions on the part of the spouse that holds the property? Would ɔu think that you have the right to do that, and the court would listen?

**S. BOWMAN:** Well, Mr. Cherniack, you know as trial counsel, I'm a hired gun. When I go to ɔurt, I use whatever tactics I think are within the bounds of propriety, and I use whatever straw ɔan find to make as many bricks as I can construct. And I sure would try, if I thought it would lvance my client's case, then I think that I would get the evidence in. How much weight would ɛ given to it would depend on the court.

**MR. CHERNIACK:** Exactly. I concluded my question by saying, "and that the court wou listen?"

**MS. BOWMAN:** They will listen. How much weight they will give it will depend on the court, a on the case.

**MR. CHERNIACK:** Well, you are therefore assuming that the court is bound to listen. I think th to me, is the very important interpretation that I have to deal with. Is the court bound to liste I know that the court is not bound to give weight to it, but if the court is bound to listen to condu then it seems to me that conduct becomes a factor contrary to the opinion that has been express by lawyers that conduct is not a factor.

**MS. BOWMAN:** The general pattern evidenced in matrimonial cases is that the court listens all of the evidence and then they sort out afterwards, after it's all in, to what they wish to gi weight and to what they don't. Often you're really not sure what weight was given to various facto You must bear in mind that these cases under The Marital Property Act will almost certainly heard in most cases in conjunction with separation cases or divorce matters, where the questic of fault will, in any event, be relevant to other issues. So I certainly think that fault may be a releva circumstance in the view of some courts in some cases, yes.

**MR. CHERNIACK:** Well, that's a very important answer, to me, Mrs. Bowman, because what you saying is that . . . Well, let me put it in my words — I'm not intending to interpret you. It wou appear to me that even if the interpretation that conduct is not a factor under 13(2) is corre if that's a correct interpretation, that the court will be hearing all sorts of evidence relating to condu because of the other matters that you referred to, custody or other factors, and then the co will make a decision based on its conclusions which may, in its own mind, affect conduct or n And then I'm worried about how a Court of Appeal would look at that kind of decision and to assess whether or not conduct was a factor. What I fear is that a Court of Appeal might s "Well, the decision arrived at was not clearly one that excluded conduct and therefore the co had a right to arrive at its conclusion," as compared with some wording that might say to the co that we will now look at what the original court said, in order to decide whether or not condu motivated the court's decision and if it did, then we would rule it out.

Let me just go to the next step which is that I believe, firstly, that what they ought to do w 13(2) is to cut it out completely. Failing that, I think they ought to say that 13(1) should apply 13(2) which means cut it out completely. Or failing that, that they ought to say that it is clea grossly inequitable and not all the other reasons. Failing that — I'm just describing to you all steps backwards that I would have to take as I am defeated from position to position — to s the court shall consider the following circumstances and no other — I thought that might clea remove conduct.

But then I was faced with Perry Schulman, whom I respect, saying, "But the court will not able to consider any other," and I begged Perry Schulman to agree with me that my wording carr out the same intent as the present wording. He wouldn't agree with me; he wouldn't agree t it was better to change it to my wording: "the following and no other," because he kept argui "Well, it's the same thing." And really, Mrs. Bowman, I am now stuck by a legal interpretati not a logical one in English, because I think I understand English, but because of the interpretat of this lawyer as to what it really means. I now appeal to you to deal with this aspect of the various steps that I described to you of elimination of this Section saying, "clearly and gros inequitable," or just, "clearly inequitable," or, "the following ten only and no others." Am I mak clear to you my concerns about the wording of that?

**MS. BOWMAN:** Well, you certainly make clear to me that you're concerned.

First of all, let me reiterate that this brief which is on behalf of the Bar Association, and tha something separate from what I might personally say on the subject, is that if you don't have unilate opting out, that you must have a broad discretion. We're not suggesting that the breadth of t discretion in Section 13(2) should be changed as affecting existing marriages unless there is unilate opting out. So once you understand that clearly, I'll try and deal with the concern that you h about the conduct and what is, or is not, included within 13(2).

First of all, the suggestio, that I understand was made by Mr. Schulman was that this word then really means that only items (a) to (j) may be considered by the court. To reach that conclusi a court interpreting this Section would have to determine that you did not in fact mean what said, which is that any other circumstances the court deems relevant including the following. N the golden rule, — I think I have it here — on interpretation of statutes which has been . —(Interjection)— Pardon?

**MR. CHERNIACK:** I'm sorry. I was going to give you the Golden Rule but you've got your own.

**MS. BOWMAN:** Oh, well then if you know it, I won't repeat it.

**MR. CHERNIACK:** Well, I mean the Golden Rule.

**MS. BOWNAN:** No, that Golden Rule. It's been around almost as long, but not quite. "In the construction of statutes, their words must be interpreted in their ordinary grammatical sense, unless there be something in the context or in the object of the statute or in the circumstances to show that they were used in a special sense or different from their ordinary grammatical sense."

Now it appears to me, and I think that I can say that that would be the positio of most lawyers – I've not heard anyone else make the same astonishing submission that I understand Perry made – that in fact this Section means just what it says: "Any circumstances the court deems relevant." If the government determines that they want it to mean only those following subsections, then I think that it ought to be amended to say so. It is hardly satisfactory to leave a situation that one lawyer has one interpretation and another lawyer has another and let some unfortunate couple spend half of their family or commercial assets going to the Supreme Court to find out which one of us is right. So I think it should be clarified if in fact anyone else is in any doubt other than Mr. Schulman.

**MR. CHERNIACK:** Thank you, Mrs. Bowman. I do understand that you believe in unilateral opting out as described in the Law Reform Commission. I am not debating with you your beliefs in the principle of this matter. I am concerned about your legal opinion, that of the Manitoba Bar. So I will go quickly now.

**MS. BOWMAN:** Well the legal opinion I've given you is my legal opinion. I haven't had the opportunity to consult the Manitoba Bar about it. Unfortunately that's the position of someone answering questions.

**MR. CHERNIACK:** But it is the same, it confirms the wording that, as I read it, of your submission. It's not in conflict with the submission.

**MS. BOWMAN:** No.

**MR. CHERNIACK:** All right, let's skip now quickly. Section 11, you say that there is a difference between "may" and "shall" in Section 11. Mr. Schulman says there is no difference and that "may" means "shall" but that you would rather it said "shall" than be interpreted to mean "shall." Is that . . .?

**MS. BOWMAN:** Well, if it means "shall," why should it say "may"?

**MR. CHERNIACK:** Right. —(Interjection)— Pardon? Oh, we've just had a declaration of success on behalf of the Manitoba Bar. The Attorney-General says, "We'll change it,."

**MS. BOWMAN:** My fortune cookie was right.

**MR. CHERNIACK:** You can take credit because the word came at the moment you were discussing

Moving quickly again, Mr. Shead, did you hear him?

**MS. BOWMAN:** Oh, I did, yes.

**MR. CHERNIACK:** I don't want to review or remind any of us what Mr. Shead said on behalf of the Chamber of Commerce , but I am talking to a lawyer, and Mr. Shead suggested that where third party was involved and his personal affairs were involved, the court should listen to what was available and decide which portion, if any, of that information the lawyer shall be permitted to pass on to his client. And it's my words, but I think that was his intent. On looking at your comments on Section 17(3) where you don't even want camera hearings, would you, as a lawyer, comment briefly as you're able to on Mr. Shead's suggesttion that a court should limit a lawyer from reporting to his client or receiving instructions from the client on certain aspects of evidence.

**MS. BOWMAN:** Indefensible.

**MR. CHERNIACK:** That's short enough, and clear enough. Now, I want to debate with you or point and that's your Item 21 where you are saying, "We are concerned that the section may invol a person receiving half the assets and then inheriting another half of the remainder under The Dow Act." Right?

**MS. BOWMAN:** Yes.

**MR. CHERNIACK:** Mrs. Bowman, don't you accept the fact that the first half is a matter of righ to the spouse and not any form of inheritance or sharing of the potentially deceased spouse's asset The first half, I say, is clearly and always was in the concept of equity, the right of the spouse acquire.

**MRS. BOWMAN:** Yes, that's true.

**MR. CHERNIACK:** Well, then, if you agree with that, then I think we should debate The Dow Act, whether a spouse has a right to claim any part of the other spouse's assets.

**MS. BOWMAN:** Well, I think that you have to look at the circumstances under which a pers will have already obtained their division. The marriage will already effectively have terminated. T dower share would normally not go to someone who was in desertion, if that had been the ca or was living separate and apart other than for cause involving fault. It seemed to us that wh the parties had, in fact, finalized their financial relationship, at that point, it was not intended th the dower share should still continue to apply. Now, if that was the intention then we ha misconstrued it.

**MR. CHERNIACK:** Are you then saying that we should review carefully whether or not The Dow Act should apply at all in the case of persons who have become separated and thus divided t property, the assets of the marriage?

**MS. BOWMAN:** Well, people may be separated and not have made that division, which I wo suggest would indicate that the marriage, in the mind of one or both of them, was not yet terminat But where they actually have gone to the point of having the division, then it would appear th the marriage is effectively terminated and that you should look again at whether it is reasona in those circumstances for the survivor to get the full dower share that he or she would have be entitled to had they been continuing their married life at the time of the death.

**MR. CHERNIACK:** But you do recognize that the assets that are to be divided with discreti limited or otherwise, may not turn out to be equal, are only assets acquired during the course the marriage, whereas The Dower Act includes all assets acquired by the deceased spouse throu that person's lifetime. There is a much different . . . You said it may mean three-quarters of assets, and indeed it may. On the other hand, it may mean an awful lot more than that.

**M dS. BOWMAN:** Oh, yes, the estate on which the ower claim is based will be the larg pool.

**MR. CHERNIACK:** Only one final thing, Mrs. Bowman, dealing on Pages 12 and 13, dealing w what you say about judges and courts, and I quote, "No consistency, no predictability." It see to go counter to what has been stated by lawyers who have appeared before us, both within a without the committee, that we should have no fear in leaving to the discretion of the courts important decisions that these bills do. Am I right in my interpretation, Mrs. Bowman, I mea in all seriousness, that you are saying, contrary to what others have said, that the court's discret is not predictable and that there is no guarantee of consistency and predictability in the decis of judges?

**MS. BOWMAN:** Well, whenever you have a discretion, you have the problem, although it is a flex approach to a problem, the approach of judges to the exercise of that discretion varies with judge. That is a well-known fact. That is not due to any evil intention on the part of judges.

**MR. CHERNIACK:** No, I'm not suggesting that. I would think that in order to counter what I th is an obvious fact, which you have stated — you will pardon my saying that what you said is obvi

- that it would take an awful lot of buildup of jurisprudence and appeals of a great number, and many jurisdictions, to start limiting the judges to a greater extent than this legislation itself limits ıem. It may take a long time before we get some pattern which becomes predictable.

**RS. BOWMAN:** And there is the additional problem which I know, as a lawyer, you recognize, ıat when you go to the Court of Appeal on a judgment which has been made on discretionary ·ounds, you have a very tough row to hoe, because the Court of Appeal says this is a matter ır the judge's discretion and he has exercised it. Unless he has gone way off base, we're not going ) interfere.

**R. CHERNIACK:** Mrs. Bowman, I have never seen a study, but I wonder if you are aware of any udy made as to the extent to which Courts of Appeal have been unanimous in their decision? ·aise that because it seems to me that so often there is a minority decision by the Courts of Appeal, I the way up, enough to indicate that even the Courts of Appeal don't have such a clear and ertain view as to how the law should be interpreted in relation to the facts presented. Is that a ir statement? I don't know any study that has been made, I'm sure there has been.

**S. BOWMAN:** I don't know of any studies either, but that's why we have the Supreme Court, suppose, because Courts of Appeal differ and when the Supreme Court differs, then you are just uck with it.

**R. CHERNIACK:** Would you concur with me that that is the reason why the Privy Council never ated a number in majority and never showed a minority, because they thought that the final Court Appeal should appear to be unanimous even though it wasn't? I think that was the principle volved.

**S. BOWMAN:** No, the Privy Council didn't confide in me; I don't know why they did it.

**R. CHERNIACK:** I think they did it because there is no appeal beyond them so it should appear ; if that is the end; they have all agreed on it. Thank you, Mr. Chairman.

**R. CHAIRMAN:** Mr. Pawley.

**R. PAWLEY:** Thank you, Mr. Chairman. I would just like to ask a few brief questions of you, rs. Bowman. I would like first to just have your comment in connection with the definition of marital )me as in Bill 38, in which there has been a substantial change in the definition from the definition at was in the former bill last year, particularly in reference to the farmstead.

**S. BOWMAN:** I don't have any comment to make on behalf of the Bar Association about that. would be glad to tell you my own personal opinion if I knew what it was you wanted to ıow.

**R. PAWLEY:** What I am concerned about, Mrs. Bowman, is the fact that the farmstead will only e the house and the property immediately surrounding same as "reasonably be regarded as ecessary to the use and enjoyment of the residence." I have enquired from other presenters as The Planning Act and the potential conflicts with The Planning Act, the uncertainty of the ability r the property to be sold and therefore for value to be established, and whether or not, therefore, is definition, particularly in the farmstead, was fair under those circumstances, whether it should )t be the same definition as provided for in The Dower Act for homestead?

**S. BOWMAN:** Well, the argument, I suppose, that would justify the change would be that there no reason why a person should have a claim to a different area of property comprising the marital )me because they live in a rural area, as opposed to a city area. The right of the farm wife to r dower interest in the homestead still remains, in addition to the rights under The Marital Property ct, so that it doesn't appear, so long as the definition under The Dower Act remains the same, at the farm wife is prejudiced in that sense. There could be difficulties in establishing value. I ıagine you are going to have a lot of difficulties establishing value in the first few years of this ct.

**R. PAWLEY:** I believe that is a major problem and if I could just relate to you the problem as ee it, that with the home in town, it obviously can be resold for value. Location is not a problem d the law is not a problem. But insofar as the farm home detached from the balance of the acreage, ere is a problem becaus The Planning Act now prohibits the sale of any land under 80 acres,

unless approval of the planning authority has been obtained. Sometimes it is given, sometimes is not, depending upon the circumstances.

So in view of that, a farm home with an acre or two surrounding it might be worth very ve little, because it cannot be sold to a third party, or it could, in fact, be worth a great deal, becau they are in demand where the sales can be proved, particularly in the areas surrounding the Ci of Winnipeg. So, basically I see a serious problem in determining value because of the provisio of The Planning Act, and if I could just quickly relate to you the circumstance outlined to us l a farm wife the other night, in which she indicated their particular farm home is located exac in the middle of the quarter section, and therefore its value was very very small in relationship the total farm, and of course couldn't be sold to a third party under the circumstanc involved.

**MS. BOWMAN:** I wonder — this is a new problem to me, Mr. Pawley, so I will be speaking the top of my head as I wasn't familiar with that particular problem — but I wonder if you would be able to argue there that the whole 80 acres, because of the restriction on sale, was indeed t extent of the property that was reasonably regarded as necessary to the use and enjoyment of t residence. That might be one way in which the courts might approach it, or they may figure o another approach.

**MR. PAWLEY:** Would we not be wise then to say "80 acres" right in the legislation, becau sometimes it can be sold, sometimes it can't be sold. The court wouldn't know for certain unle there was an application being actually processed before the planning authority. So at the time the court hearing there would be no way that the court would know whether approval could granted or not. However, I just wanted to explore that with you, and I appreciate that it is a n problem which I'm confronting you with, and I oo appreciate your comment that possibly we shou define it as 80 acres, which is the minimum allowed under The Planning Act as an automa right.

I'm worried about your suggestion, and I certainly understand the reasons for it, on Page about opening up the court to the media. I would like just your impression as experienced couns as to whether or not media attendance in the court room might not intimidate parties, particula when they are dealing with such personal matters as would be involved in a family dispute?

**MS. BOWMAN:** Well, I think you'll appreciate from the references in this brief that we are certai not in any way suggesting that the media should be encouraged to report the details of peopl personal lives as revealed in the cases. The media do, though, have a watchdog function, as I' indicated to you, that I think they see how the law itself is operating, how the courts are operati and I think that that is a public interest that supercedes the occasional time when a party mig feel a little uneasy about it. There are not television cameras and flash bulbs going off, but as y know in criminal cases, the press is never barred from the court room, even when they are n permitted to publish what is going on for a period of time. I have never found it a problem, practisi in The County Court or the Queen's Bench, that the courts are open. Sometimes a client express a little concern when they are approaching trial, but once they get there, in fact, almost no o ever comes in who is not concerned with the case, unless it's a lawyer coming to wait for the jud to speak with him at a break. So that it does not turn out to be a problem in practice.

**MR. PAWLEY:** I just felt that in this particular type of case where the matters involved are ve very personal, that parties are very reluctant to discuss even in the best of circumstances, perso factors relating to sometimes a lifetime of difficulty and problems, that it could intimidate, not j a few but many.

**MS. BOWMAN:** Well there are eight or nine strangers, if you will, in the court room of necess in any event, between counsel, clerks, reporters — court reporter, that is — and so on. So on the client has to accept that, and there's no way around those necessary attendances, one or t more people don't seem to make any difference. Once they begin to give their evidence, it's diffic certainly to tell those things to anyone, and it's difficult to tell them in a court room, but in divor cases and in custody cases and in property cases in the Queen's Bench and the County Court since the courts were established, these courts have been open. Rarely do people bother to atte but it is open, and the fact that people can attend, that the media can come in and see how thin are operating, whether they ever do it or not, has a very salutary effect, I think, on the cond of the courts.

**MR. PAWLEY:** Yes, I gather that is your feeling and reason for the proposal, and yet I would concerned that although it is only one or two newsmen, as far as the parties are concerned in deali

vith their intimate matters, those one or two reporters could, in their minds, publish the information hat is being dealt with in the court room to the entire world, and they would be quite conscious )f that.

**MS. BOWMAN:** Well, that has always been possible in the last 100 years, I guess, since there were :ourts in Manitoba, and in my lifetime it just hasn't happened, because the news media fortunately iave had the good sense not to abuse their privileges in that way.

If they ever did abuse them in that way, then I would be right back here in front of you saying, "Let's put a stop to this."

**MR. PAWLEY:** I wondered on Page 12, Mrs. Bowman, if you had read the English Case Law, which Mr. Mercier had provided us with on second reading of this bill, in which he provided us with a number of English cases, and on the basis of those cases he felt assistance in developing a wording which he provided for us in his legislation. So, you've indicated that you have seen those cases?

**MS. BOWMAN:** Yes.

**MR. PAWLEY:** Do you still, then, that those cases, when read, justified the position that you have taken on Page 12, rather than the view that was expressed by the Attorney-General as to the effect of those cases . . .

**MS. BOWMAN:** Yes.

**MR. PAWLEY:** . . . And I wondered if you could, therefore, just elaborate a little bit more then on those cases, as to where you see the problems?

**MS. BOWMAN:** Well, first of all, the wording in England is used . . . it's not a legislative wording, it's one that developed in the cases beginning with the Wachtel case, where they said that one of the factors that could effect an award was gross and obvious misconduct. Now, that is somewhat different from what is contained in Section 2, Sub-section 2, in that that relates to conduct so unconscionable as to constitute a gross and obvious repudiation — that is somewhat different, and I think may well be interpreted somewhat differently by our court. As you know, they are not bound to follow the English decisions, but when you look at those English decisions, it's very difficult to understand . . . well, it's certainly not possible, I think, to find that they are consistent in what they consider to be a gross and obvious conduct. I could give you examples, if that's what you want.

**MR. PAWLEY:** Yes, if you could provide us with several examples.

**MS. BOWMAN:** For example, there was the one case where a couple had lived together apparently in relative harmony for a number of years, and the husband determined to purchase the new house in joint names for tax reasons. Before the transfer was completed, his wife admitted that she had committed adultery, and he nevertheless continued with the transfer because he hoped that she would stay, and a few weeks later, she left. Now, he had put the property — and it was the family home, it wasn't some other investment property, it was the family home in joint names — and the court found that that was such a terrible thing to do, that that was gross and obvious conduct, and took the whole thing away from her. Alright, now you might thing that adultery would do it, but then you'll find another lady who had been married for many years, and was found by her husband to be committing adultery with a young boarder, and he then chucked them both out. The court found that that wasn't gross and obvious conduct, although it seems pretty obvious to me because he came home and found them, because they said the husband was no prize himself and the wife was not intending to break up the marriage, but merely to gratify her physical needs — and this rather encouraging — any reasonable husband would have forgiven her.

Now if you can make sense out of that, I don't know. Now, remember the lady who had committed adultery and thereby lost her half of the house, which had been given to her by her husband. Then there was a man who had been for eighteen or twenty months guilty of brutal and unforgiveable conduct, but that wasn't gross and obvious they said because he had twenty years of good conduct as well, and so he got to keep his half.

So I can't make any rationale out of these cases looking at them as a whole. What is gross and obvious conduct to one judge is just the breaks of the game, as it were, to another, and what does come through quite clearly in looking at the cases is, in deciding whether one parties conduct gross and obvious they look to see how the other one has behaved and so they are weighing

one against the other, which does not appear to be consistent with what we are told this sectio is supposed to mean.

**MR. PAWLEY:** Well, Mrs. Bowman, you have suggested as you had previously in the Law Reform Commission and to the previous government that the wording used should be simply that behaviou ought to be a factor to be considered.

**MS. BOWMAN:** That is what the Bar Association brief says, yes.

**MR. PAWLEY:** In what way do you feel that would be an improvement. It seems to me that ther still would be a wide latitude for, in fact possibly wider than what the Attorney-General is attemptin to do here, if all behaviour could be examined.

**MS. BOWMAN:** Well, the main advantage that I see and as I say this is the position put forwar by the Bar Association, it is not necessarily the one that would be my first choice. But in any ever the advantage would be simply that the standard would then be consistent with the standard tha is going to be applied to that same couple in the divorce courts, in terms of maintenance, an we have the jurisprudence indicating, over some years, what weight conduct of various kinds shoul be given. For example, conduct following a separation, whether it be adultery or otherwise, is nc generally viewed as being of any great significance to the issue of maintenance, and it appear to me from Section 2, Subsection (2) that it is really primarily the conduct of the wife that is goin to be at issue, whereas in the more general statement in The Divorce Act, where it is the conduc of the parties, I think the court is going to look at the conduct of the applicant in the light of wha provocation or mitigation may have been provided by the conduct of the other party. It is a ver general standard, it is true, . but it is certainly no more general than what has been happenin under the English standard of "gross and obvious conduct."

**MR. PAWLEY:** Would there still not then be that balancing or that comparison as you suggeste would take place under the Attorney-General's definition, the conduct of one party as to th other?

**MS. BOWMAN:** Well, I am not sure if that is what the Attorney-General thinks is going to tak place under that definition. I am saying that that is what has happened in England. Our courts ma take a totally different view of what this section means than either Mr. Mercier thinks they will tak or than the English cases have taken. That wording when I first looked at it certainly didn't mea to me bizarre conduct, which is really what the newspaper reports have suggested the governmer intends. For example, it appeared to me from looking at that, that if a man left his wife and wer to live with another lady that was as clear and obvious a repudiation of the marriage relationshi as anyone could ask for, but that doesn't appear to be what is contemplated. I don't know whethe this section is intended to mean that if he does that, and if it is gross and obvious repudiatio that she gets a 10 percent added on to her maintenance award because he is has been bad. just don't know how the courts are going to interpret this, but I suspect that they will not interpr it as being only bizarre or very unusual conduct.

**MR. PAWLEY:** So you feel there could be a punitive factor that would be added to a findinç

**MS. BOWMAN:** Well, if you look at the Section, it appears that the gross and obvious condu on the part of either party is to be taken into account in the amount of maintenance, and if th is so, and if the gross and obvious conduct is on the part of the one who is going to be payin then you would think that he must have to pay a penalty for bad behaviour. Otherwise, what relevanc does his conduct have at all? Why is it there? That, of course, as you know is quite contrary the trend over many years in maintenance law where they say maintenance is not punitive, it to deal with means and need once you have established entitlement.

**MR. PAWLEY:** Mr. Chairman, that is all the questions I have, but I would like to thank Mrs. Bowma and I want to add also to the comments earlier. Mrs. Bowman has been involved in the study Family Law, I believe, longer than probably anyone that is presently participating, involved the origin Law Reform Commission Study, and I want to say that although we have had our disagreement that certainly we have always respected your point of view, Mrs. Bowman. It has been always ve helpful, I am sure, to not only this government, but to the previous government.

**MS. BOWMAN:** Well, I am glad if it has been helpful but I would really rather not do it next ye again.

**IR. PAWLEY:** You may have to four years from now.

**IR. CHAIAN:** Mr. Spivak.

**IR. SPIVAK:** Mrs. Bowman, as I understand it you have basically said that if unilateral opting out ; provided then the wide discretion is not necessary, but if in fact the position of the government ; that there should not be unilateral opting out, then a wide discretion is necessary.

**IS. BOWMAN:** In respect of existing marriages, yes.

**IR. SPIVAK:** Yes. Dealing now with the question of discretion and the comments of Mr. Cherniack ealing with 13(2), he asked whether you thought that conduct would be a factor in the determination y the judge as to what is inequitable, having regard to any circumstances the court may deem elevant, and you indicated that would be the case. I ask you whether if a limited discretion, as has been described, dealing with family assets in which equal shares would be grossly unfair or nconscionable having regard to an extraordinary financial or other circumstance of the spouses, ould not also mean that conduct could be a factor and you, as one of the many hired guns who ill be arguing that, would not in fact argue on conduct under that particular clause.

**IS. BOWMAN:** It is not beyond the realm of possibility that in a really bizarre case you might e able to squeeze some conduct into that section, however, the standard of the discretion is really o restricted, grossly unfair or unconscionable, that you would really have to go some to achieve arital misconduct on that scale.

**IR. SPIVAK:** However, as a hired gun you would argue it, and until the case law is determined e couldn't be sure.

**IS. BOWMAN:** I think that it is a pretty far out argument, but if I was hard up I would try it, es.

**IR. SPIVAK:** All right. So we come down to the position that conduct will be argued, probably ntil there is the interpreation of law through a series of court cases, until it is established what terpretation will be given to the discretion that is to be exercised, and so we come back to omething pretty important. Are you saying that if in fact there is unilateral opting out, there should e no discretion?

**IS. BOWMAN:** No, I didn't say that and I am not sure that I agree with what you said previously, hat it is not until the cases are decided that we will know whether conduct could be included here r not. You could certainly determine whether conduct would be included here or not by saying o.

**IR. SPIVAK:** Well, do you believe then, I ask you directly, do you believe that if other circumstances hould be defined as other circumstances, but not conduct?

**IS. BOWMAN:** Are you asking my opinion or the Bar Association?

**IR. SPIVAK:** Well, I guess at this point the Bar has not discussed it, so I have to ask your pinion.

**IS. BOWMAN:** My opinion is that marital misconduct ought not to be a factor in that iscretion.

**IR. SPIVAK:** All right. Would you agree with the words "grossly unfair and unconscionable?"

**IS. BOWMAN:** I think that is reasonable, yes.

**IR. SPIVAK:** And not including marriage misconduct?

**IS. BOWMAN:** I am sorry, what was the. . .

**IR.SPIVAK:** Well, I am asking whether you agree that in terms of discretion the use of the words grossly unfair and unconscionable should in fact be applied and I am saying that again with whatever

definition of circumstances but not including marital misconduct.

**MS. BOWMAN:** I would be satisifed with that, yes.

**MR. SPIVAK:** Well, okay, that's fine at this point, but you then still accept that only in the situatio where there is unilateral opting out. MS. BOWMAN: In respect of existing marriages. MF SPIVAK: Yes. Okay, now, if I can I would like to go back to the question of maintenance. On Pag 12 you say, "In our previous submissions we recommend the conduct of the party should continu to play some part in the determining of maintenance applications." And then on Page 14, you sa "We therefore recommend that Section 2 (2) be deleted and that the conduct of the parties b included as a factor in determining whether and what amount of maintenance should be grante to a dependent spouse."

So then in terms of the entitlement of maintenance, you believe conduct should be a facto That is some part. I wonder if you could describe what you mean by some part.

**MS. BOWMAN:** Well, the position taken in the brief by the Bar Association is that it should b one of the factors affecting an order under Section 5(1), simply the conduct of the parties. Th would be consistent with what the Divorce Act has to say, which I quoted in the brief. The condu of the parties and their means and other circumstances.

**MR. SPIVAK:** No, but you basically said, "We therefore recommend that Section 2(2) be delete and that the conduct of the parties be included as a factor in determining whether and what amou of maintenance should be granted to a dependent spouse.

**MS. BOWMAN:** Yes.

**MR. SPIVAK:** That is the entitlement and the amount.

**MS. BOWMAN:** Yes.

**MR. SPIVAK:** Okay, and you say that conduct should continue to play some part in the determinatic of maintenance application.

**MS. BOWMAN:** Yes.

**MR. SPIVAK:** I want you to define for me what you mean by "some part".

**MS. BOWMAN:** I thought that I had defined it. I have said that it should be one of the facto considered by the court in determining whether to make an order of maintenance, and in wh amount.

**MR. SPIVAK:** And in effect the Act before us now would in fact not be a factor as far as t entitlement, but would in fact be a factor as far as maintenance, as far as the amount.

**MS. BOWMAN:** I think that is the distinction without a difference, because if you are talking abo amount it can be a dollar or it can be a thousand dollars a month. So it really comes almost the same thing.

**MR. SPIVAK:** So in effect what you are saying is that the Act amounts to the same thing as wh you are suggesting.

**MS. BOWMAN:** No, because we're certainly not suggesting that this standard set out in 2(2) a reasonable kind of a standard to include, because it is going to lead to all kinds of ridiculo legal arguments about whether conduct while gross is still not obvious or while obvious it was quite gross enough, or even so whether if one but not the other or both, it was repudiation of t marriage relationship.

**MR. SPIVAK:** All right, then I'm asking you to define what do you mean by "some part" of t determination. How would you refer to it, just as conduct?

**MS. BOWMAN:** As it is in the Divorce Act. In most cases, conduct will be a very minor fact if at all, but in some cases it can play an important part. And the cases indicate that, for examp as I have indicated to Mr. Pawley, conduct occurring following a separation is really not consider

oo significant. Conduct that brings about the breakdown of the marriage certainly carries a lot more veight, but even so may not disqualify a person from maintenance.

**MR. CHAIRMAN:** Any further questions to Mrs. Bowman? Mr. Parasiuk.

**MR. WILSON PARASIUK:** Yes, I just have some brief questions regarding enforcement of naintenance. I see in your brief that you really don't have that much to say apart from saying that he filing of orders, that you shouldn't use the Family Court as much as you had done in the past hrough using the County Court. Are there any other proposals that you would make for the :nforcement of maintenance orders. Other people who have raised concerns have indicated that naintenance orders aren't enforced, and your brief has very little to say about that. Do you have nything more that you would like to add on that? Any suggestions as to how this Act might be ightened in this respect in that people on both sides of the House have commented that the past egislation and this legislation is weak in that respect?

**MS. BOWMAN:** Well, I think there is only so mucb you can expect of this legislation. There are lot of things that it can't do; it can't cure the common cold and I don't think it can cure the roblems of enforcement of maintenance. I believe that Manitoba probably has better facilities for nforcement of maintenance than most other provinces. It's a very difficult problem. There are no agic solutions. The Bar Association has indeed made submissions through the Canadian Bar ssociation for efforts which we suggested might be helpful through the Federal Government and rough federal-provincial co-operation, and I believe the previous Attorney-General's files will isclose that. . . I think he has copies of those suggestions which had been put forward, but those ings are lengthy things. There was a piece of legislation put forward in parliament last year on hich we made some submissions, which was to establish a federal-provincial committee to work ut means of co-operating, in order to facilitate enforcement.

The one thing I did notice about this Act, and I think it was pointed out at the last set of hearings, as that rather than toughening it up they have reduced by ten days the amount of jail time that an be given to a defaulter. I don't know that that's a matter of great significance, but it surprised e that they would reduce it.

**MR. PARASIUK:** But you really don't see any great way of strengthening this Act or strengthening nforcement through legislation. Some people have made the suggestion that 25(1) be changed to shall'' rather than ''may'' require the person to deposit a specified amount in court or to enter to a bond.

**MS. BOWMAN:** Most of the people with whom you have difficulty enforcing maintenance orders on't have the money to put up the bond or the security deposit. If they had the money, then the roblem wouldn't arise. They are primarily people on whom the maintenance order is either a severe r even a moderate financial burden and when faced when claims by the loan company, by the ar payment people and so on, and the maintenance order, they give priority to the car payment every instance and that is their difficulty is that they have too many claims on the same amount f money. That's the chronic problem with maintenance laws. There is not enough to go around nd the priorities are wrong in many cases. The person who has the money to put up the deposit the person who has got a steady job. If he has got a steady job, you can collect from him by eans of garnisheeing orders, continuing garnisheeing orders, which are quick and inexpensive, and o home should be without one.

**MR. PARASIUK:** What about a system whereby the court . . . It is the court that decides the amount maintenance and there have been some suggestions that the court should pay the maintenance, to a certain amount, say a social assistance amount or Canada Manpower allowance amount, nd that the court should enforce the maintenance order. It's said that the court is in a better position pursue the person who should be paying the maintenance.

**MS. BOWMAN:** The court can and does initiate default proceedings for any person who wants register their order in the Family Court, or where the maintenance order is made payable to e Family Court. If there is default, the process begins automatically. As to having the government ay the money and then collect from the defaulter, I see some pretty difficult problems to grapple th there. If you have a woman who has an income of her own of, say, $900 a month, and her sband has quite properly been ordered to pay another 600 because he can well afford it, are u going to pay her 600 or 200? You have another woman whose husband has been ordered to ay her 100, and he doesn't pay. Now, are you going to be in the position where you are paying e woman who has already got 900 the same amount out of the public purse as the woman who

has only got 300 of her own? I mean, you have got some very basic problems there. What it boil down to, ultimately, I think is that you will have to look at it as a substitute for welfare and it ha got just the same problems.

**MR. PARASIUK:** Okay, thank you.

**MR. CHAIRMAN:** Any further questions? If not, thank you very kindly Mrs. Bowman. Leigl Halprin.

**MS. LEIGH HALPRIN:** Mr. Chairman, I see the Attorney-General isn't present at the moment.

**MR. CHAIRMAN:** He will be back in a moment.

**MS. HALPRIN:** Honourable Members and Members of the Committee. I speak to you this evenin as an individual. I might mention, however, that I am a lawyer involved in the practice of famil law and a member of the Family Law Subsection of the Manitoba Bar Association, and was a membe of the Sub-Committee of the Family Law, Subsection Structure Review Bill 38.

Before beginning my commentary on Bills 38 and 39, I should like to applaud this governmer for its positive response to the criticisms of Bills 60 and 61, the present legislation, made by man of my colleagues and myself as evidenced by the introduction of these two new bills. The lega profession is uniquely qualified to offer constructive advice in a forum such as this. Please not that I say uniquely and not solely qualified. While not discounting the contribution of the lay citizer whose personal experience with family law and the judicial process has prompted his or her suppo of the previous legislation, my experience has been that many such individuals have a misconceptio of what actually happened in their particular case. Often admittedly as a result of a communicatio breakdown between counsel and client, and the rights and remedies, if any, which the previou legislation — I actually should say the existing legislation — would have afforded them.

For example, during the last session of Law Amendments and I imagine it was in consequenc of some press coverage of my submission, I received a telephone call from a woman who expresse great outrage at my position in regard to the Acts. After some discussion, I learned that this lad had a 19-year-old child, who still lived with her, and had just commenced his first year of universit at the University of Manitoba. Her husband had ceased making maintenance payments approximatel two years ago and maintenance, I might add, was payable pursuant to court order. She was no desirous of obtaining a contribution from her husband to finance the child's education, and h refused. The legislation, she believed, would assist her and she, of course, was plainly mistaker because under the legislation, which I will refer to as Bill 60 and 61, under that legislation of cours maintenance was only payable until a child was of the age of 18 years and then of course it ceasec as it is under the proposed bills.

She did not understand the legislation, yet this woman gave her support to the legislation an vigorously resisted any attempts at constructive amendment because she believed that this legislatio would offer her a remedy. And she believed that individuals like myself were attempting to der her that remedy and, presumably, the government in power was attempting to deny her tha remedy.

I suggest that some of the support — and please note again I say "some" of the support - for the bills enacted by the previous NDP Government was and is not an informed support, ju as some of the resistance to these bills, meaning Bills 38 and 39, is an uninformed resistanc

Now, it's unfortunate that some individuals, although fully acquainted with the realities of th legislation, because of their own over-zealous commitment to the philosophy of equal sharing - and I don't want to comment on that philosophy itself but because of that over-zealous commitmer to that philosophy — permit and even foster an inadequate understanding of these two bills.

I believe that the previous government, the NDP Government, was cognizant of the fact tha many of those who supported the legislation did not understand the legislation, its ramificatior and the objections and concerns of those who advocated suspension and/or amendment. I belie that the previous government was also aware that many individuals who supported the legislatic believed that the legislation, as enacted by the previous government, was a codification of th proposals made by the Law Reform Commission. We have heard selected quotations from th Commission report, presumably cited to illustrate how this government, the Conservati government's bill flies in the face of the Commission's recommendations, yet which one of th opposition here pointed out the Commission's recommendations were meant to operate as package. And while indeed the Commission recommended an equal sharing of commercial asse with no such discretion as we now find in this new bill, it also recommended deferred sharing family assets and unilateral opting out, both of which proposals were absent from the existi legislation that was Bill 61.

Under the new legislation there is, of course, no immediate sharing of family assets, and to my distress, the recommendation of the unilateral opting out has been rejected and a discretion, presumably adopted as a compromise by this government, between two opposing factions inserted in its stead. May I suggest that had the previous government and the supporters of Bill 61 not adopted so inflexible and rigid a stance in regard to unilateral opting out, this government would not have enacted its discretion section to deal with the obvious injustices which will arise when the legislation is applied retroactively to prior existing marriages.

I might also mention that the family law subsection again reaffirmed its support for unilateral opting out, but in the event this government chose to reject that submission, enthusiastically supported a discretion as provided for in Section 13, subsection (2). I think there is a general consensus that many of the difficulties which were created as a result of legislative drafting have been solved bylegislative re-drafting. I again say "many," not all, certainly certainly this legislation is not flawless. Problems regarding classification of such assets as life insurance and pension plans have been eliminated, and a more comprehensive definition of commercial assets. I might mention at this stage that I agree with this government that such assets as insurance, pension, superannuation schemes and plans, should be defined as commercial assets, and this also is the view shared by the subsection.

Whereas the original Act seemed to apply and even to spouses who spent a night at the Holiday Inn enroute to an extraprovincial destination, Section 2, subsection (1) of the new bill properly restricts its application. Whereas Section 2, subsection (4) of what I'll again refer to as the previous Act, actually seemed to discourage separated individuals from reconciling — and that was a very, very important flaw with that piece of legislation — Section 2, subsection (4) of the new bill allows individuals a 90-day trial period to effect a reconciliation and is consistent with the 90-day trial period for reconciliation permitted under The Divorce Act.

The so-called deferred sharing of family assets in the marital home proposed under the new bill also will cure many of the problems perceived by many of my colleagues and myself, and these included the evoking of the attribution rules and deemed dispositions on death, under The Income Tax Act (Canada), aborting existing estate planning schemes and wills, negative ramification for creditors, finances for creditors, and a significant change in the lending practices of financial institutions in this province, and on that point, I think I speak with some authority. The firm with which I am associated represents a major lending institution in this city, and had the existing legislation been proclaimed, every spouse would have been required to guarantee the obligations of his or her spouse if that spouse took a loan from that particular lending institution. So, despite the objections of some individuals who have appeared before you and who discount it, the change in lending practices, I can assure you, that at least at that particular lending institution, which is a major one, there would have been a significant change.

Now to turn to the proposed legislation. Section 1, subsection (a). I would recommend that the word "jewellery" be included as an asset, as in my mind there is some confusion as to whether jewellery is indeed personal apparel.

Section 1, subsection (f): Although a pre-nuptial agreement may indeed be a marriage contract, for the sake of clarity, I would also suggest that it be listed, and I also see no reason why one should necessarily restrict spousal agreements to written agreements. The Act seems to only allow an agreement in writing. In Manitoba, no contract need be in writing to be enforceable, although some certainly must be evidenced in writing. Although a verbal contract would certainly create its share of evidentiary problems, I believe that it should be open to the party asserting that such an agreement exists to demonstrate it in a court of law.

Now, I don't have any particular problem with the definition of "marital home," and I must say that I haven't had the opportunity to peruse the amendments to The Planning Act to which Mr. Pawley addressed himself, but I might make this comment, that in regard to his situation in which he set up, where he envisioned a farm home being located in the centre of a piece of property, the argument that I would make was that the adjacent land was necessary to the use and enjoyment of the farm house.

The next section, Section 5, subsection (3), is a section that gives me a great deal of concern. It's my fear that many agreements will be opened up, as most solicitors could not have anticipated when drafting an agreement, when ownership of certain assets would ever be an issue. That's the section which says that where one hasn't specifically addressed oneself to an asset, and how that asset is to be disposed of, then presumably that asset is up for grabs, even though you have an agreement. Now, for example, up until this legislation was proposed, in separation agreements, pre-nuptial agreements, I never thought to include a provision to the effect that a husband's business was his own. We dealt with things like cars, homes, furniture — household chattels and the like – but never really actually dealt with things like businesses because we presumed that that would ever be an issue. Now, of course, it certainly is an issue. Things like pension plans were never dealt with; Canada Pension was never dealt with. Now these things are of course up for grabs.

There's many agreements in existence where it was intended to be a final settlement between th parties, but there's a failure in those agreements to deal with each asset on an individual basi We would have perhaps an agreement that was pages and pages and pages long, with schedule listing those particular assets. So my submission is that where it's clear from a reading of th agreement that that was intended to be a final settlement between the parties — and often ther is wording to that effect in an agreement but even in those cases where it's not, if it appears t be from a reading of an agreement that it was intended to be a final settlement between the partie then I believe that those agreements should not be opened up, and I believe that in fact there a wording suggested by Mrs. Bowman in her report that commends itself to me in th connection.

Now, the next section I'm dealing with is Section 7, subsection (4). That's the section that say any income from, or appreciation or depreciation in the value of an asset acquired in the mann described in Section 1, 2 or 3, those are those sections that deal with gifts, insurance premiun and inheritances, where the Act goes on to say that those things are not normally shareable. goes on to say that income or appreciation or depreciation is not included either in an accountin unless it can be shown that the gift was conferred or the inheritance devised or bequeathed, a the case may be, with the intention that the income or appreciation should benefit both spouse Now, I think that part:,cular section is inconsistent with Section 4, subsection (3). That's the sectic that says that where the Act doesn't apply to assets because — well, for example, they were acquire prior to the marriage or while the parties were not cohabiting. In those cases, the appreciation the value of the asset is shareable where it's used to acquire a family asset, so those sections a not operating along the same lines; they're clearly inconsistent with one another. I would pref to see none of that shareable, but I think the important point is that they be made to be consiste with one another.

Now, the last sections, with which I take exception to, are Sections 13, subsection (1), and Sectic 13, subsection (2) but unlike many of the individuals who presented briefs in the past, I find the sections too restrictive. I share Mr. Schulman's interpretation with respect to these sections ar I believe that they're going to be interpreted on a very narrow basis. Now, why do I believe tha Well, at first blush, I believe it on a reading of those particular sections. Secondly, because of n knowledge of the law as regard presumptions in law, and thirdly, because we now have some judic authority out of the province of Ontario, which deals with a section of an Act which is substantia similar, couched in very similar language, to that found in the proposed Marital Property Bill. No I know that Mr. Schulman dealt with the presumption — as I'll call it — which he referred to the Law of Property Acts, Section 90, and dealt with it most ably, but if I might be permitted refer to that again. Now that section again reads that, "All joint tenants, tenants in commc mortgagees and other creditors having any lien or charge on, and all persons interested in, to, out of any land in Manitoba, may be compelled" — may, that is — "be compelled to make suffer partition or sale of the land or any part thereof."

Now, the way the language is couched, at first blush it would seem to be clearly discretiona and in fact it is a discretionary section. But quoting from the Szaba case, which is the leading ca in Manitoba on the law of partition and sale — at least it was when I went to Law School — is the decision, 1965, of Mr. Justice Smith. And he goes on to say at Page 551 of that case, "t right to partition is a matter in the discretion of the court but the court's discretion is a judic one and is governed by certain rules, *prima facie* the applicant is entitled to an order for partiti and sale or sale."

Then the judge quotes from another case, the case of Szaba versus Szaba, which is an Onta case, and quoting from that case, he adopts the judgment of the trial judge in that case and say "When there is a*prima facie* right to partition or sale which the applicant seeks to enforce witho vexation or oppression and the applicant comes to court with clean hands, the order sought is right." Now that is a decision based on a statute in which the language is permissive. It says "ma as compared to legislation under Bill 38 which says that the right to have assets, people have right to have their assets divided in certain circumstances, not that the judge may choose to divi assets on a 50-50 basis, but they have the right to do it.

And the judge goes on to quote from the case of Roblin and Roblin. This is dealing with h the courts will constrain themselves because in the law of partition and sale, one can only de an applicant's right to partition and sale if a court makes the finding that the applicant's applicati is vexatious or oppressive. So those words must be interpreted as the words "unconscionab and "inequitable" will have to be interpreted. The courts narrowly interpret those words and conf the cases which they find to be vexatious and oppressive. In this particular case, the applic asserted that she had been forced to leave her husband by reason of ill treatment and lack of pro maintenance. The husband claimed that all the moneys expended to acquire the house had be provided by him and it was the husband who was resisting the application. He didn't want his hou divided between them or the house sold and the proceeds divided between them. The husb

laimed that all the moneys expended to acquire the house had been provided by him, that the pplicant, his wife, had left him voluntarily and for no reason, that he was bringing up both the hildren of the marriage, that the home would be broken up if the land were sold and that in the vent there was a strong probability that the mortgagee would foreclose or sell under his power f sale. It's a hard luck story if I ever heard one. In my opinion that would have been oppressive ut no, said the court, that's not oppressive or vexatious, they said. They said that was just a matter f personal inconvenience and hardship and that was not enough to resist an application for artition.

It's my submission that that's exactly the way the courts are going to interpret words like unconscionable'' and ''inequitable,'' particularly in light of the recent Silverstein case which is an nreported case and which I understand Mr. Attorney has referred to. If you will bear with me I ould like to refer to it again. There the judge says, ''It seems clear to me that the intention of he Legislature of Ontario, when it enacted The Reform Act, was that family assets in Ontario are o be divided equally between the spouses on termination of their marriage regardless of who happens o be the legal owner of the family assets.'' Now under that legislation, they deal actually only with amily asets. There are specific provisions where they can bring commercial assets into the common ool but the provision of their Act, which is almost analogous and which is almost identically couched n identical words, is the Section that deals with family assets. ''It is my opinion that the Legislature ntended to put an end, once and for all, to the interminable litigation that has been before the ourts of this province concerning the ownership of, or interest in, those assets which were jointly sed by spouses while living together as a married couple.''

The Legislature has provided that the court is entitled to make an unequal division of family ssets which it is of the opinion that an equal division would be inequitable, just as our courts are oing to be given that power under this legislation. But he continues, ''However, the power to make n unequal division of family assets may only be exercised when such a division would be inequitable n the light of certain specific statutory criteria.'' Then he goes on to say, ''It appears to me that court may only depart from the*prima facie* right of a spouse to equal division of family assets it is satisfied that because one or more of the criteria set out in paragraphs (a) to (f) are established, here would be an equity in an equal division.'' I am convinced that the Legislature did not intend he court to be entitled to exercise any broad discretion to divide family assets in accordance with hat an individual judge may think is fair and equitable on a particular case. The property law in his province is of vital importance to married persons and, in my view, that law not only should e, but is in fact now clear and precise. The rule of law — the rule of law — is that there is equal haring of family assets. It is my opinion that a court should be loathe to depart from that basic ule and it should exercise its power to depart from that rule only in clear cases where an equity ould result, having regard to one or more of the statutory criteria set out in paragraphs (a) to ). I do not think that the property laws between spouses in this province is now to be vague and ncertain and dependent upon the sense of fairness of an individual judge in an individual ase.

The Legislature is reponsible to the people of the province for the enactment of the laws that overn property rights. Judges do not share in that responsibility. It seems to me that the Legislature as spoken and expressed its intent clearly and without ambiguity and I can see that my duty to pply the law in accordance with the obvious intention of the Legislature.

Now based on that case, I have no reason to believe that that Section will be interpreted in ny different light than it was in the Ontario courts.

Returning to Section 13(2), I believe it was during Mr. Schulman's submission that Mr. Pawley ueried what cases Mr. Schulman might envision might fall within Section 13(2)(h). I believe that's ie nature of the assets. If I might be permitted to address myself to this section, the kinds of tuations that I envision falling within that Section might be, for example, the case of a windfall here clearly neither spouse could have said to actually have worked towards the acquisition of ie asset, it wasn't acquired by either of their individual labours or efforts, and that is indeed the ay the Income Tax Department views windfalls as well.

Another situation might be unique assets, for example, such as a special wheelchair, a motorized heelchair where clearly that kind of asset would inequitable to share in those kinds of assets. Those e the kinds of situations that I envision falling within that Section. I think it's important to cover ose particular situations.

Now another comment that I'd like to make before leaving Section 13(2), I believe Mr. Pawley ade a comment about the presumption of advancement being rebutted in Silverstein. Mr. Schulman ad made the point that presumptions were rarely overturned and it certainly was an uphill battle overturn a presumption and Mr. Pawley pointed out that wasn't it indeed overturned in the case Silverstein. If I may be permitted to read from that case again: ''If I thought it necessary to decide the question of fact whether or not Mr. Silverstein made a gift of the matrimonial home to his ife I would be inclined to draw the inference that he did.'' And then he continues, ''I do not think

that I have to make that decision in this case. I think that it was the intention of the Legislatur to remove this kind of issue from consideration in our courts by enacting Section 4 of The Reform Act." So indeed on a reading of that case, the presumption of advancement was not rebutted, i was considered irrelevant to the proceedings before the court because even if a gift had beer established it was in fact irrelevant because even gifts came into that pool of shareable assets whicl had to be divided on a 50-50 basis.

**MR. CHAIRMAN:** Ms. Halprin, you have used about 31 minutes. Do you expect to be muc longer?

**MS. HALPRIN:** No, not much longer, Mr. Chairman.

Finally, before I leave the Silverstein case, there was also some mention about the fact that th judge in that case directed his mind to the income tax ramifications of awarding Mrs. Silverstei the house, and that was somehow a prime consideration in his mind. That's been somewhat distorte and I'd like to read from that case again.

"The final statutory consideration is that contained in paragraph (f). Mrs. Silverstein's evidenc is that she feels it a matter of great importance to her that she remain in that home." She wa trying to resist a sharing of the house on a 50-50 basis and then a sale of that house. She testifie that not only is it her dream home and the place that she wishes to live until she dies, but als that it is admirably suited to her needs.

"While I can readily understand and sympathize with her feelings in wanting to stay in the home I cannot accept that it is reasonable for her to remain living alone in a large four-bedroom home attractive and comfortable as it undoubtedly is, the house is obviously much larger than she coul reasonably need. While I sympathize with her desire to use the house as her residence, I do nc see anything in her desired use of it that would render it inequitable to an equal division of tha family asset. I can see nothing in the circumstances relating to the acquisition, dispositio preservation, maintenance or improvement of the property that would in any way render it inequitabl that the property be divided equally. In all the circumstances of this case, I can find no circumstanc within paragraphs (a) to (f) inclusive that would render it inequitable that the matrimonial home b divided in equal shares between these spouses." And then the judge directed partition an sale.

Now it was only after the judge made that decision that he went on to discuss the income ta ramifications. His decision was not based on the income tax ramifications and any comments i regard to the income tax ramifications were clearly obiter in that case.

Now that concludes my submission with respect to Bill 38. I have just a few remarks in connectic with Bill 39, The Family Maintenance Act. I, too, take issue with Section 2(2) but again, not for th reasons put forth by the individuals who made previous submissions. Again, I find that section fa too restrictive and I have difficulty envisaging all but the most obvious and gross of behaviou being found to remove an individual or to bring an individual within that Section.

I have examined some of the case law, although not in detail, and I find it terribly restrictiv Quoting from the case of Harnett versus Harnett: "In my view, to satisfy the test, the conduct mu be obvious and gross in the sense that the party concerned must be plainly seen to have wilful persisted in conduct or course of conduct calculated to destroy the marriage in circumstances which the other party is substantially blameless." I think that there will be very few cases in whic these conditions will be satisfied.

Quoting from the case of W vs. W: "What does gross and obvious mean? The kind that wou cause the ordinary mortal to throw up his hands and say, surely that woman is not going to b given any money or is not going to get a full award."

As regards those concerns that the courts will backtrack and go back and discuss every particul detail and all kinds of conduct will be brought up, quoting from the case of Campbell versus Campbe "It is really impossible to go into the affairs of these parties ten years ago, certainly without a ve detailed enquiry, which in my view would be entirely wrong. I disregard any question of condu and while I appreciate that in some cases it is impossible, particularly with litigates in person ar often for counsel, to dissuade spouses or ex-spouses from pursuing conduct, I take the view th everything should be done by the court to avoid costly, indecent, and time-wasti investigation."

It is these very courts that people are criticizing, and yet they are doing exactly what you wa the court to do. It is my submission that, because I believe that this section will be interpret in much the same way as it has been in the English cases, and I see no reason why it should n be. It is true that the English jurisprudence is not binding on our courts. As a matter of law, th are certainly a high authority and extremely persuasive, and inasmuch as it is the only case la on those particular interpretation, it is definitely going to be considered in our courts. In light that, I would recommend that there be a definite listing of the types of conduct that may be consider

narital misconduct.

The only other real concern that I have in respect to this legislation is that section dealing with he postponement of sale. I see no reason why a family court should be permitted to postpone he sale, and in addition, I have some doubts as whether they actually have the authority to do o. In any case, if they do have such authority, if they do have the jurisdiction to make such an rder, I certainly take exception to them being given that power in this Act. I think that should be eserved to a Queen's Bench judge on a partition and sale application.

That concludes my comments. Thank you very much.

**MR. CHAIRMAN:** Are there any questions to Ms. Halprin? Seeing none, I thank you very indly.

Eleanor Large.

**MS. ELEANOR LARGE:** Mr. Chairman, honourable members. I speak as a private citizen, also as wife of 22 years, a mother of three, a deserted and battered wife. I do not come from the highest ocioeconomic group, nor do I come from the lowest socioeconomic group. I come from a decent nd well-known musical and literary family. As a matter of fact, I went to school with Mr. Spivak's ife Myra. My husband's first cousin was a Conservative Premier for a very short period and my usband has a at least a nodding acquaintance with the Honourable Sterling Lyon.

I have never spoken to any group before and I do not have the expertise of the persons who ave already spoken, but I have personal experience of the injustices to wives and children when marriage breaks down. My husband was a despot, not a benevolent despot; he controlled all oneys. He could always find money for a good set of golf clubs, but not an extra $5.00 for groceries. le could find $600.008 to have a patent searched for an acquaintance, with the hope of becoming stantly rich, but he could not find $200.00 to have badly needed orthodontia work done on his on's teeth. My mother paid for the boy's orthodontia work, as she paid for shoes, snowsuits, etc8 s the children grew up.

Over the years, my folks gave me bonds worth many thousands of dollars, which I simply turned ver to my husband to pay bills. She bought the house I now live in. Even so, when a finance company honed me to say they wanted my signature on a form, it was because my husband wanted to oan more money, even though the first loan was not paid. My husband became enraged: How dare ey phone me. I have never known what my husband's salary was. There was no such thing as joint bank account, and when he went into business for himself I was never given a key to the hop nor the combination to the three safes he has, in case anything happened to him. I was not his will.m.

Mr. Schulman spoke of presumption? I found his brief to truly be an Alice in Wonderland piece f fiction. As for the Chamber of Commerce brief, Mr. Shead speaking, it was so indescribably naive s to be laughable. Actually, I felt sick. When I look at the honourable members sitting here, I wish at each one of them could walk one mile in my shoes, or in the shoes of the countless other eserted and battered wives. You see, I know that you gentlemen have never been physically abused nd have never had to beg for even the necessities of life.

The first house we purchased caused a terrible argument. My parents had mortgaged their home order to enable use to buy a small house for cash. My husband fought with my parents and e until five in the morning as he wanted title in his name only. My parents had never heard of uch an arrangement and of course would not agree. We bought the house and title was in both ur names. When we sold it upon separation, we both got one-half the equity. The second house e had, after getting together again, was bought with the help of my husband's parents, and my usband had his way and the house was put in his name only. When that house was sold, after ur second separation, I received nothing. The cars we owned were always in my husband's name ntil we became a two-car family, and the second car was put in my name.

Seven years ago in Toronto, my husband decided to go into business for himself after spending 7 years in his job. He took out his pension and used most of it to buy stock. Anyone knows that struggle the first few years of a new business, but when he became enraged and called me down ecause I asked him to pick up some deodorant and a very special medicine for my sick baby, had had enough. We separated. A separation agreement was signed and I came to Winnipeg in 972.

Let me tell you a little of that separation agreement. We both used the same lawyer as I did ot have money to pay a lawyer. When I objected that $180.00 for three children and myself was ot enough maintenance, my husband said that if I didn't accept what I was offered I would not et one penny. My mother paid to have all my worldly possessions moved to Winnipeg. My husband ame to Winnipeg from Toronto in 1975 and we got together again. I helped my husband find his ,200 square foot shop, scrubbed all the equipment he bought, while also working part-time and, f course, continuing to be a wife, mother, and homema

ker. I have the feeling by this time you are asking yourself why I continued to go back to my husband time after time. My upbringing has a lot to do with it. I was brought up a strict Catholic in a family that believed in the sanctity of marriage. My parents were responsible citizens and marriage was not viewed as it is so often today, as a short-term affair. My parents shared everything equally the good and the bad. This is all I knew, so my husband's attitudes, as formerly stated, were a shock to me. Also, I am not career minded, but love my home and family and its inherent duties Also, my husband was the natural father of my children and I did not separate from my husband at any time because of another man. These are some of the reasons I tried time and time again to make a go of it.

My husband left me in December, 1976. One of the reasons he gave was that I had stopped working and that I had said I would work until he got his business going. I had been asked for the second time, by the second different employer, to get my nerves under control and then I could come back to work. I knew I was not doing a good job. My bad nerves stemmed from the fact that my little son, who had been abusive to me when he was a teenager, had been allowed back into the family fold. My husband wished it; I wished to please my husband. Just a year after my husband had returned to live with me in Winnipeg, the boy became abusive to me again and his father took his part. I later learned that the boy knew what my husband was up to and that's why my husband took his part. When this boy assaulted me for the second time in one day and the police were called, my husband said if the boy had to leave he had no other choice but to leave also, and leave he did, with our son, and they both took up residence in his shop. My husband would come home once a week for a shower and a change of clothes, clothes which I faithfully washed for another six months. A shower once a week, you ask? This was always his normal routine My husband's personal cleanliness, or lack of personal cleanliness, had always been a bone of contention.

For over five months, I would go to his office to ask him if he was coming back. His answer was that he couldn't turn out our 20-year old son from his shop, a boy who was making $800.00 a month and drove a $5,000.00 car. Finally, he admitted that he liked things the way they were Ithen petitioned for a divorce. As we had no separation agreement for a few months, he gave me $200.00, then he dropped it to $100.00 a month. For one and a half months he gave me not one penny, and when he was taken to court, the judge ordered him to pay me $200.00 August, 1977 and $200.00 September, 1977. He paid, but in October he went to court and said if he had to continue to pay this he would go bankrupt and the judge ordered him to pay $75.00 interim maintenance.

In November, 1976, my eight-year old son and I moved into my husband's shop as my gas was turned off. I was there for two days and received a beating severe enough to sustain a concussion With the aid of my eldest son, who told his father I would have to remain in the shop if I did not receive more money, my husband agreed verbally to give me another $75.00 per month until the divorce.

As my husband became more and more involved with the woman he is presently living with the extra $75.00 became harder to obtain. It came late. Usually I ended up going to the office and arguing for it, then he refused to pay it at all. He said he simply didn't have it. You must all have a fairly good clue as to why he didn't have it. With a few further clues, you will understand more fully why he does not have the money. The woman he lives with is 32 years old and has statements of claim and judgments against her by banks and stores for over $37,000.00. My husband has closed his shop on at least four occasions to attend court when she was charged when failing to take a breathalyzer test, attending Autopac offices concerning an accident, opening his office late so he could drive her to various places, etc. He paid for insurance and repairs to the daughter's car in the amount of $300.00. He takes this woman to eat at the best restaurants, to movies, etc. would not be standing before you if I was receiving decent maintenance.

If one spouse has found another partner, there is nothing one can do about it, but be fair to the family you have left behind. As previous speakers have mentioned, women do not want more they just want to have an equal share.

This very week, my husband and his friend are on holidays together and yet two weeks ago I was hit with a hammer and bitten on the arm hard enough to draw blood through a long-sleeved blouse by my husband's new partner. Why? My husband had refused to give me my interim maintenance and I went to where they reside to collect it. When I had told him he would be in contempt of court for not giving me the $75.00, he said, "Take me to court then." Do you realize what that would have meant to me and my son? One of the first things my husband took care of when he left me was to lower the insurance on his stock so that he could claim he did not have much. He did this when he thought the legislation was going to be passed that said wives had an equal share of commercial assets. He said that since he had lowered the value of his stock my house was actually worth far more — the house my mother had bought me. Mr. Perry Schulman and Mr. Shead, Chamber of Commerce — so much for them. Daily, men can and do wipe the

wives right out. The percentage of women who get their 50-50 share, or even 70-30 share, is so small as not to be worth mentioning. I know many separated and divorced women, and the justice they have received through judicial discretion is deplorable. I myself would rather have a jury of six men and six women; at least we would have some chance.

The first separation I had, I received $70 for two children. My husband bought a car. The second separation, I received $150 for two children; my husband bought a better car and joined a country club. The third separation, when I received $180 for three children — I can only go by my middle son who told me his father lived very well. My husband spent $1,000 to have his teeth removed and new ones put in when he started in business in Winnipeg. To lessen his burden I went to the School of Dentistry for two years to have a partial plate made. He would not give me the $20 I needed to pay for it. To further lessen the demands on his business I brought home at least five forms from the dental unit. He always had an excuse not to fill this form out, because they want to know all about your business, your stock, your bonds, etc. After he deserted me, he said, "Now that I have left you can go on welfare, and you will be the head of the household, and you can fill in the blanks." Of course, the blanks would be blank. This is the thinking of not only my husband but thousands of others like him. Perhaps you look at me and say, "She doesn't look as though she's been through so much." I can tell you, I owe my thanks for that to my widowed mother, my family, my wonderful friends, my doctor and my psychiatrist.

I hope that Ms. Halprin does not make a marriage such as I did. She probably won't run into the same problems because she probably will have a marriage contract. But perhaps her child or grandchild might find themselves in the same circumstances I find myself in; then she can think back to her submission of tonight, and I think she will regret what she stood for. She has never lived the horrors that so many of us have.

As for enforcement of maintenance, the court should pay the maintenance to at least the amount of social assistance and then collect it from the defaulter. Should I go on social assistance a lien would be placed on my home. Why is not a lien placed on my husband's stock?

Finally, I thank you for listening to me, and I wish it were possible to have the opportunity to have Mr. Mercier and Mr. Perry Schulman as my counsel in my divorce case. Perhaps then I, at least, would see some of this fair treatment they are so sure the court gives to wives. Thank you very much.

**MR. CHAIRMAN:** Are there any questions to the delegate? Mr. Cherniack.

**MR. CHERNIACK:** Mr. Chairman, I don't want the opportunity to go by without someone responding to Ms. Large. We've been thanking various people who have come to give of their advice of experience to guide us in our deliberations. Mr. Chairman, it's no easy thing for a person to come and expose her personal problems and to talk about her very serious life and problems that were created in the past, and I think that we should recognize that Ms. Large has come here to talk about very personal things in order for us to understand it. So I, of course, express my appreciation, but I want to ask whether throughout all these periods of time I gather you have had an opportunity to consult a lawyer or lawyers. But you said you had — during the three separations, did you not have a lawyer?

**MS. LARGE:** Yes, I did have a lawyer, but I had very poor — as a matter of fact, the last one I had in Toronto — which was my husband's lawyer — it was inserted in that agreement that I could not cohabit with anyone; should I cohabit and not remain chaste and pure, all moneys would cease to my children. And they tell me that this is not the case. Now, I have never lived with a man; I don't have men friends, but this was inserted and I had to accept this. But I knew myself that I didn't need such a clause, but I had to accept it because he would not have given me a penny had I not accepted what was in that separation agreement. And as I say, I had no money, and I used his lawyer.

**MR. CHERNIACK:** That clause dates back to something like the Middle Ages, but it's still in some agreements, I know.

**MS. LARGE:** Yes. I didn't even know there was such a thing as a legal separation. I only knew of a separation agreement.

**MR. CHERNIACK:** Well now, at this time, is there an order outstanding which your husband is not honouring?

**MS. LARGE:** He honoured it, with his lady friend beating me. Yes, he gave me the $75 that night.

**MR. CHERNIACK:** May I ask — I'm sorry to do this, and yet you've come here to tell us — did you lay a charge in connection with this assault?

**MS. LARGE:** I started to lay one of common assault. The County Clerk believed it was criminal, but now it goes back to common assault as this is a domestic thing. My husband had let me into the house to speak with him. He was surprised to see me, albeit, but he did open the door and let me in, so this woman really had no right to go at me. But because it's a domestic, ongoing thing, they will only take it now, I found out yesterday, as common assault.

**MR. CHERNIACK:** Who told you that?

**MS. LARGE:** A detective at Public Safety Building, and he got this word from the detectives of the Charleswood-Fort Garry police.

**MR. CHERNIACK:** To the effect that, it being a domestic problem, that it is not a question of assault and battery by this person, and that is pretty recent advice that you received from the . . .

**MS. LARGE:** Yesterday. It's funny, but he said he's had cases come in where the person has actually been knifed, but because it's a domestic thing — as I say, it wasn't my husband who beat me this time, it was the lady.

**MR. CHRRNIACK:** A stranger.

**MS. LARGE:** A stranger. It's still considered domestic because I went to ask for my maintenance.

**MR. CHERNIACK:** I'm not aware that the bills we are now considering would help you at all in that respect.

**MS. LARGE:** No, I suppose not. There are lots of things . . .

**MR. CHERNIACK:** But what we are considering is an equal division, a presumed entitlement to equal division of assets acquired during your marriage, during your lives together.

**MS. LARGE:** My husband has hidden many things, the safe is full of things, full of stock that is worth much, but I have no knowledge of this particular type of stock, and I would have to hire experts to come in and evaluate .

**MR. CHERNIACK:** Have you discussed this aspect with lawyers?

**MS. LARGE:** Well, I simply don't have the money to do that, you know.

**MR. CHERNIACK:** Have you been to Legal Aid?

**MS. LARGE:** I have a lawyer — well, he's on holiday right now — I have a lawyer right at the moment.

**MR. CHERNIACK:** Through Legal Aid?

**MS. LARGE:** Yes.

**MR. CHERNIACK:** And he is acting for you in this connection?

**MS. LARGE:** Yes.

**MR. CHERNIACK:** Thank you, Mr. Chairman.

**MR. CHAIRMAN:** Mr. Mercier.

**MR. MERCIER:** Ms. Large, I want to tell you firstly that I've asked a member of my department to look into the particular matter that you have raised with respect to the type of charge involved in this matter. Is there a separation order that is presently outstanding? No?

**MS. LARGE:** He simply deserted because I had quit working. He said that I had said that I would work until his business got on its feet. Well, I know now that there would never be enough for this man. I would continue working the rest of my life — but that's not why I quit; I simply quit because my nerves were so bad over the actions of the son I had allowed back into the home, after many years. I was no longer able to work.

**MR. MERCIER:** There is no separation order in existence, but there is an interim maintenance order on the divorce proceeding?

**MS. LARGE:** The judge knew we were going to get a divorce, and he said, "Get this divorce over quickly," but something came up and it hasn't been quick. I petitioned last June for divorce.

**MR. MERCIER:** What was the — if you don't mind — what was the date of your last separation?

**MS. LARGE:** 1972, approximately July of 1972. We lived separate and apart; he in Toronto, I in Winnipeg, until approximately September, October of 1975, when he decided to return to me, and brought his business with him.

**MR. MERCIER:** But the date that you last separated, has it been recently?

**MS. LARGE:** With a separation agreement, was 1972, but then we cohabited from 1975 on until 1976, of December, you see, we lived as man and wife. He came to Winnipeg; he brought . . .

**MR. MERCIER:** You haven't lived together since then?

**MS. LARGE:** Since December 1976, no.

**MR. MERCIER:** Thank you very much Ms. Large.

**MR. CHAIRMAN:** Mr. Axworthy.

**MR. AXWORTHY:** Ms. Large, I'm sorry I missed the first part of your presentation, but there were some ideas you introduced in the latter part of your comments that I thought were interesting. One was you intimated that you would prefer to have a jury look at your case than a judge.

**MS. LARGE:** Yes, I really would.

**MR. AXWORTHY:** As I understand it, in the British system, in domestic cases, there is that election that can take place between judge or jury. Can you just elaborate a little bit as to why you would prefer your peers as opposed to one of those honoured, learned gentlemen, or ladies?

**MS. LARGE:** Well, at least you can have a hung jury, with six men and six women. I mean, it could get awfully messy, you know; it could tie up a lot of time, but at least they might get the point, that women really aren't greedy. You know, I've had 22 years, off and on, and I made a darn good try of it, and it didn't work. But, that's why I would like a judge and jury, because at least you have six women, and hopefully, at least one of them would have been through the same thing I have been through and could understand. You gentlemen sitting here just have no idea whatsoever what women go through; you never will, because you're not the dependent spouse, in most — well, not you gentlemen here — you're not the dependent spouse.

**MR. AXWORTHY:** I wouldn't be too sure of that.

**MS. LARGE:** Well, I know some men — their wives put them through school, etc., etc. I did things – I didn't put my husband through school, but I did without many things so that I would not burden my husband. I had a big bill of $90 at Simpsons when my husband deserted me, and he hassled me, and Simpsons hassled me for it. But I think when he learned that this lady he's living with had $37,000 worth of debts outstanding, he paid the $90. I never heard any more about it. So you know, this is just the thing.

**MR. AXWORTHY:** It's the old cliche that "I cried because I had no shoes until I saw a man with

no feet."

**MS. LARGE:** Right.

**MR. AXWORTHY:** Mr. Chairman, I was just wondering if the Attorney-General might take that comment for advisement. It might be useful to have some opinion on that particular proposal at some point along in the proceedings. In any event, the other question that you raised may be a more technical matter. You said that in terms of the enforcement of the maintenance orders, that you would prefer to see — if I take your words correctly — that the court provide with maintenance up to the social assistance level, but be responsible for the collection of that maintenance.

**MS. LARGE:** I'll tell you why.

**MR. AXWORTHY:** I was going to say, the other part was that because then the lien would go on your husband's property versus yours, is that the reason?

**MS. LARGE:** Well, no. I was asking — my mother bought a house and put it in my name. If I go on social assistance a lien will be placed against my house.

**MR. AXWORTHY:** Right. I understand that's right.

**MS. LARGE:** My husband should be giving my child and I maintenance. Why is not a lien placed on his stock? He doesn't own the building he's in, but he does own the stock. Why is it on me why is it not on my husband, who should be supporting — men ususally support their wives and children. So why does the lien go on my home but not on his stock? And as for putting it with the courts, I have a girlfriend who maintenance was ordered, and it never came through, and when she tried to collect it from her husband, he would come over and beat her up. This went on, and she skipped around the country to so many places and he always found out where she was even though she had unlisted phone numbers — I don't know if he did it through the Manitoba Medical he had some contact. And he would come, not even when it was over maintenance, and beat her up, until finally she simply went on social assistance and when they said, "Well, your husband should be paying maintenance," she said, "I won't even tell you where he is because I don't want you to bother him because he will come back at me." As a matter of fact, when she got her divorce he tried to run her lawyer and her down outside after they had left the court room.

I mean, you don't know the madness and the angry feelings in situations like this and if my husband were giving me decent maintenance, I wouldn't be going down to where he lives. I certainly don't want to see him in that situation. This was a man and it never occurred to me that he would do such a thing, because he has a fairly good background, and you know, I still can't believe it I know it's true, but I can't believe it. So I don't want to be in that situation. I would just like the money to be given to me and I would run my own life and try and make a new life. But my family and friends have literally been supporting me because they believed that there is a great deal of wrongness and injustice done, not only to me but to other wives and children, so they have been backing me so that I can continue on.

**MR. AXWORTHY:** Well, there is really two questions that arise out of your remarks. One is that the present system of having court enforced orders isn't working, but you can appeal to the court.

**MS. LARGE:** Well, there are not enough people — three people trying to collect the maintenance for how many thousands of deserted wives or divorced wives?

**MR. AXWORTHY:** So you're saying that the inadequacy is in . . .

**MS. LARGE:** Absolutely.

**MR. AXWORTHY:** . . . numbers of personnel, but I gather that you would like to really see the courts become the primary collection agency and then redistribute the money to the individuals.

**MS. LARGE:** I'll tell you why from my own personal experience. My husband, if the judge had ordered him, when he had gone back to plead that he could not pay $200 from then on, if the judge had said, "Sir, you will pay your wife, I know you own such-and-such a business." If he had ordered my husband to pay that money, my husband would have found that money even if he had

:o take a second job, but I happen to know that he doesn't need to have a second job to pay ne even $200.00. But he would do it because his throw-back every time is: Well, that's all the judge :old me I had to pay. I don't have to pay . . . He has no heart for, never mind for me, but for iis now 9-year-old son. I don't know, men seem to be able to wipe even their children out of their minds and their hearts. So if the judge had ordered him to pay $200, my husband would have lived ıp to the court order, but when the judge very leniently gave in because this man came in crying hat he could only afford . . . the judge was worried, I guess, that they wouldn't be getting their ɔusiness tax from my husband if he went bankrupt and maybe it would have done something to he income tax people, or whatever.

**MR. AXWORTHY:** Well, the other question that does arise though, and it's one that's maybe even nore serious in the immediate sense, is that you are suggesting that a number of women who are egitimately trying to enforce their maintenance orders are subject to a degree of abuse, both physical ınd otherwise, for which there is no protection available under our present legal or judicial ;ystem.

**MS. LARGE:** Unless you get a court order, a restraining order, but I tell you so many women don't :ven know about that. This one particular friend of mine, she did not know, because she said to he policeman, "This man is not to be here. We have a separation agreement. We are living separate ınd apart." And he said, "Lady, that paper isn't worth the paper it's written on." And he said, 'It's a domestic affair."

Now in Alberta, they have much stricter views on that type of thing. You don't need a restraining ɔrder. If your husband whom you are separated from, comes to your door and you phone the police, hey'll take him away and they'll warn him and the next time he comes, he's plunked in jail. Now ;he has been in Manitoba, she's been in Alberta, and she's been in B.C., and both in Alberta and 3.C. they are much stricter when a husband — it's usually a husband that goes to the wife.

**MR. AXWORTHY:** So what you're really saying is our court system here is not performing the kind ɔf rigorous application and enforcement of the law that is required even under the present ules.

**MS. LARGE:** Well, the policemen's hands are tied; the policemen's hands are tied. I feel sorry for hem because they can't do it.

**MR. AXWORTHY:** Thank you, Mr. Chairman. I just raise a comment here. I think Mrs. Large has aised some fairly critical issues I hope the Attorney-General will look at, not in respect to this egislation, but in terms of the enforcement of the judicial system frankly.

**MR. CHAIRMAN:** Mr. Pawley.

**MR. PAWLEY:** Well, the last comments that Mr. Axworthy raised are ones that I would like to express ɔo, and I wanted to just specify. The party, Mrs. Large, that refused to lay charges on the basis hat it was a domestic dispute, did you say that was a Justice of the Peace, or was it a police ıfficer?

**MS. LARGE:** It was a police constable. He simply said, you know, he told the husband to go away ıut this man is really, he's really wild, and she took beatings from this man while she had a separation greement because he was to pay her maintenance and he did not want to pay maintenance. I'll ell you, since she stopped asking him for maintenance — she is on social assistance, she has four hildren — this man is living with another woman, he doesn't have a family with her but this woman ad a family, he will talk to his former wife, they are divorced now, he talks to her and he even ıkes two of the children as long as he doesn't have to pay one red cent towards their upkeep. his is what I have found in my experience talking to wives who rely on maintenance from their usbands.

**IR. PAWLEY:** Going back to this particular case of yours, this wasn't even your husband that ssaulted you, it was a friend of your husband.

**IS. LARGE:** No, it was his friend, his lady friend.

**IR. PAWLEY:** And with injury to yourself. Did the police officer advise you that you could make private complaint and lay a private charge of assault?

**MS. LARGE:** He told me it would be going before the Crown Attorney, and I didn't understanc why. When the two policemen went down to interview the other two my husband convinced therr that, well, I had been nagging him and was coming down to his office and asking him for mone and that I had really asked for what I got. But it had nothing to do with this lady. He's still m husband, I have a marriage certificate that says he's my husband, and I wanted my maintenance It was a long weekend, as a matter of fact, I had asked him to bring me some cash and I woulc give him a receipt because by the time he would get to me the banks would have been closed Well, as it turned out, he did not bring me any cash. When I got the $75.00 it was a cheque bu I was stranded for the weekend.

**MR. PAWLEY:** Well, did the police officer advise you that he had referred this matter to a Crowr Attorney?

**MS. LARGE:** He said it would, in his estimation, it would be.

**MR. PAWLEY:** It would be, so then it is presently under review. He hasn't refused then, as of yet to lay this charge, the Crown Attorney is reviewing the case at this moment.

**MS. LARGE:** No, it will not be going before the Crown Attorney because my husband and thi woman convinced the policeman that it was simply a domestic dispute and that because I sustaine no broken head — she had hit me with the flat side of the hammer, not with the top or the prongs but with the flat side of the hammer, and had bitten my arm which I believe I have shown a fe of you gentlemen . . .

**MR. PAWLEY:** Yes. TF250

**MS. LARGE:** . . . that I was just a nagging wife and you know, I got what I deserved. So no it's no longer . . .

**MR. PAWLEY:** Could I ask you, and I don't want to get into too much detail, maybe I'm gettin into too much, but you hadn't hit her or struck her first.

**MS. LARGE:** Never, no. No, I was simply stunned when she . . . My 9-year-old son saw the whol thing. He did not see her pick up the hammer but he saw her attacking me with the hammer an it's not a very nice thing. My son goes weekly to a psychologist; I go to a psychiatrist. My on son has made it — has fourth year Psychology and first year Medicine. He seems to be . . .

**MR. PAWLEY:** It's all in the family.

**MS. LARGE:** Yes. He's lucky but we're seeing those people. He will be one of those people hopefull No, it will not be going to Crown Attorney, as far as I know as of yesterday, according to the detectiv at the Public Safety Building.

**MR. PAWLEY:** Well, I'm very pleased that the Attorney-General has indicated he is reviewin it.

**MS. LARGE:** I am too, and it's very hard to come and lay out your dirty linen. But I believe tha what I have said here tonight will stir in the minds of the members sitting here and make ther think a bit. This is a really personal experience and, as I said, I come from a fairly decent famil You know, I wasn't brought up on welfare and it's shocking to me that in this day and age tha I have been so humiliated and so, you know, I'm a beggar, that's all really I am is a beggar, an I don't believe that women, or I myself, should be reduced to that state because we are huma beings, we are a member of the opposite sex, but I believe we are equal.

I thank you very much for listening to me.

**MR. CHAIRMAN:** Thank you. Winnifred $

**MS. WINNIFRED HAVELOCK:** Thank you, Mr. Chairman. I didn't expect to be back here for th third time but here I am. I was listening to some of the speeches last week and I thought perha I had a few things that I might contribute.

Since I've spoken to the Commission before, I don't think I want to speak any more about th dirty linen except to say that I think I've put in 90 percent toward the financial and other aspec of our marriage and I would like to thank you for the opportunity to speak to you.

First, I would like to make it clear that I do not oppose the rights of women nor the rights of children to the necessities of life or to a few of the luxuries. My own mother was probably one of the first in her own small town to assert the right, or to exercise the right to earn and also to manage a large portion of the family income. As a member of the teaching profession I observe many inequalities in the opportunity to advance to managerial positions. Although this is not the case in my own school division I know it is so in others.

There is, in our school, a course called Children's Literature which includes a section on fairy tales in which the couple is married and lives happily ever after. There seems to be a number of these marriages in existence for it is almost universal, it is assumed that it is a universal 50-50 input in almost all cases. Unfortunately such is not the case in cases of separation, as you already know. Because of the frequent inequality in the obligations in the marriage which breaks up it would be most unfair to a number of people who would be forced to accept 50 percent when they deserve much more. Surely there is some way to evaluate the contributions of a woman who stays at home to raise a family, some times to work as well, and to do all the extra duties which evolve from the position of a housewife and mother. In some cases, the woman deserves more than half — I would say in many cases. Likewise, there are some men who deserve more than 50 percent too.

The references to the unfairness of some decisions spoken of by previous speakers makes it clear that perhaps more than one person should be in on the decision-making. The previous speaker somewhat stole my thunder in this respect, I did mention this on the occasion when I spoke before. Why would it not be possible to have a permanent group, or semi-permanent group, which would decide on a fair division of property in cases where there is a dispute about the assets? Decisions would be more consistent than now appears to be the case.

If the case has to be taken to the Supreme Court many couples and/or individuals cannot afford this expense. The one who has been treated unfairly would probably forego the option of appealing to the Supreme Court because of the expense involved. What the lower income families need is proper enforcement of the maintenance settlements, not a 50-50 division of assets which are non-existent. As a person not experienced in proceedings of the law I am amazed that spouses can so easily escape giving out money which has been decided upon by the courts of this province. Are the motorists allowed to escape their fines? Of course not. Why, then, are the spouses allowed to get away with this kind of treatment of the courts?

I am not a farmer's wife, but I was raised in a small community which was the centre of an agricultural area. I am heartily in agreement with the concern expressed by some of the speakers and members of the committee. The farm wives do indeed deserve at least 50 percent and in some cases much more. Many of those who are now assisting their husbands would, if given the opportunity, be as good or maybe even more successful at managing a farm.

It is amazing to me that courts place so much emphasis on physical cruelty when the effects of mental cruelty may be so much more lasting even though they are not as easily seen. In speaking to lawyers, I judge that mental cruelty is a very difficult thing to prove and that is why I speak to this. Why is it so difficult to show that mental cruelty is a reason for separation? Surely the one who has suffered abuse or neglect should have this taken into consideration.

Previous speakers have pointed out that punishment does not change behaviour. . I am quite familiar with this concept in my own line of work, but that is not the only aspect of the situation. A person who has endured abuse and contributed more than 50 percent, should be rewarded, never mind the punishment to the other party. Our society and educational system are based on a system of reward. Without this system, the attitude of many individuals will likely develop into one of, why should I put forth more effort if all I will get will be half. Both young and old are highly incensed if they feel that an individual, whether male or female, has been rewarded for something which has not been earned.

In conclusion, I wish to urge you to either use the words "fair division" or retain some form of judicial discretion in cases where there is clearly an inequality in the input to the marriage. In addition, some group could assist in the decision regarding division of property in order to avoid costly appeals. I appreciate the fact that you gentlemen have sat here day after day and night after night listening to presentations, so I will not mention anything more of my own private situation. I do think that many women have been very badly abused and as I said before, I'm not against women getting their fair share. I think everyone, whether male or female, should get their fair share. That is all I have to say.

**MR. CHAIRMAN:** Would you permit a question?

**MS. HAVELOCK:** Yes.

**MR. CHAIRMAN:** Mr. Mercier.

**MR. MERCIER:** Ms. Havelock, thank you very much for coming forward to present a brief. You have indicated you are in favour of fair sharing or some discretion. I take it you have read the provisions of Sections 12 and 13 of the Act?

**MS. HAVELOCK:** Yes. I am not a lawyer; I don't quite understand all the terminology but I do understand that there is a presumption of 50-50 sharing with some judicial discretion for other situations where it warrants it. Is that what you meant?

**MR. MERCIER:** Yes. The wording then, from your layman's point of view, is acceptable to you?

**MS. HAVELOCK:** Yes, although as a layman, I find some difficulty in interpreting the phraseology "grossly unfair or unconscionable, etc." although I understand that if you had a long list of things which were allowed, then as time goes on, there may be some others which could should be included and perhaps it was worded that way for that reason.

**MR. MERCIER:** Thank you very much.

**MR. CHAIRMAN:** Any further questions? Mr. Cherniack.

**MR. CHERNIACK:** Ms. Havelock, looking back to what you said on December 9, 1976, you concluded your statement by saying: "I would like to say then that I recommend that there should be judicial discretion on certain very very obvious things such as gross non-support, certain cases of what fringes on insanity, or on complete inability to handle money." I think that covers most of the points I wished to mention. Do you support that statement as it stands or do you feel that there are certain qualifications you would like to apply to it? Maybe I was wrong in just selecting your last sentence.

**MS. HAVELOCK:** Well, I didn't recall the exact words that I had used. I support it with one qualification, that where the insanity may be a temporary situation, that that maybe isn't fair. certainly think that the others should be included.

**MR. CHERNIACK:** Are you prepared to rely on the court's decision as to what is fair rather than what is equitable?

**MS. HAVELOCK:** Well, if I had to, I guess I would have to. If you don't have a choice, you accept what is given.

**MR. CHERNIACK:** What is the alternative you would propose? You say, "If you had to." We suppose you didn't have to, what choice would you make?

**MS. HAVELOCK:** Well, the alternatives are you stay with the spouse when there is no longer any marriage except on paper; you move out of the province or out of the country.

**MR. CHERNIACK:** So you are saying if you must resort to a judicial decision rather than a personal one, such as running away from it or staying and absorbing all the problems that are there, you would rely on the discretion of a judge to assess what is fair.

**MS. HAVELOCK:** Well, I already said that I thought it would be better to have a group. I didn't mention any specific number, but I think a group that is permanent will be more consistent than one individual or three or four individuals who may not be consistent even though they really want to be.

**MR. CHERNIACK:** Would you give guidelines to such a group?

**MS. HAVELOCK:** Well, I was thinking about three people in a group.

**MR. CHERNIACK:** I'm sorry, when I say guidelines, would you say to a group, "You should be governed by the following consideration," or just leave it to them to work out their own criteria as to what is fair?

**MS. HAVELOCK:** You want me to give you a list?

**MR. CHERNIACK:** No, I'm asking you whether you would want to give them a list or whether you would be prepared just to rely on what you would think would be their judgment without direction as to what is fair.

**MS. HAVELOCK:** I could give a list. I would think that maybe a specific list might be of more help, but I think also you have to leave some kind of — not exactly a loophole, but you have to leave some kind of consideration for a case which may not fit into any of these but which certainly deserves attention.

**MR. CHERNIACK:** Thank you, Ms. Havelock.

**MR. CHAIRMAN:** Any further questions? Thank you very kindly.

The Manitoba Federation of Labour, Equal Rights and Opportunities Committee, Jean Duncan.

**MS. SANDRA OAKLEY:** First let me state that in the absence of Jean Duncan, I have been selected as a member of the committee to present this brief. My name is Sandra Oakley. I have copies of the brief here.

This brief is being presented by the Manitoba Federation of Labour's Equal Rights and Opportunities Committee on behalf of the Federation which represents 80,000 union members in the Province of Manitoba. I would like to add at this point that this brief states the policy of the Manitoba Federation of Labour, which is formulated at its annual convention from resolutions passed by affiliates, locals, and forwarded to the convention where some 700 elected delegates approved them.

As an Equal Rights and Opportunities Committee, we support the concept of marriage as a partnership with equal rights and responsibilities. We are concerned that the proposed changes in the family law legislation will contradict the principles of equal sharing which were enshrined in the original laws.

The Marital Property Act, Bill 38. We appreciate the decision to retain 50-50 sharing of family assets and the provision for mutual opting-out. However, we are disappointed that family assets are not to be shared during the marriage but only upon dissolution of the marriage. Such deferred sharing does not allow the non-earning spouse to be recognized as an equal partner during the marriage. It perpetuates the condition of economic dependence and does not allow the non-titled spouse to take an active role in family financial matters.

We are also strongly opposed to the sections of Bill 38 which give judges wide discretion to vary from equal division of commercial assets. If marriage is to be viewed as an equal partnerhship, then all the assets acquired during the marriage must be divided equally. Although there is a presumption of equal sharing, as stated in Section 12, the allowance for the judge to consider ten factors, plus an all-encompassing directive to include any circumstances the court deems relevant, makes the presumption extremely weak and vulnerable. This section will also have the ffect of greatly increasing litigation as many spouses will have to go to court to prove his or her case. The law appears to be biased in favour of the wealthy, as the average working people would have great difficulty in affording the necessary lawyers.

Of serious concern to us is the inclusion of assets such as pensions, insurance policies, retirement savings plans, under the commercial category. The majority of average working people whom we represent do not have large, expensive assets such as businesses, apartment blocks, etc. Pensions are probably the main asset of such families over and above the family home and car, and as the family's only source of long-term security, they should be included in the assets which will be divided equally. If a woman has worked only in the home, she will not have had access to a pension scheme and her major source of security for old age will be her husband's pension benefits. Under this proposed legislation, if the marriage breaks down, there is no guarantee that the woman would get an equal share of her husband's pension benefits.

To quote from a recent study, "Women and Pensions" by Kevin Collins: "Particularly tragic is the case of the older woman who has shared in the accumulation of assets over decades of a marriage, has not herself worked outside the home, and loses all rights to benefit of the husband's private pension plan in the event of divorce. Studies have shown that elderly women are the poorest of the poor and not receiving their fair share of pension benefits will only increase their hardship. The mechanics of sharing such pension benefits, including ones which are locked in until age 65, could be resolved by the debtor spouse paying the equalizing claim out of other assets or over a period of time. There is a precedent for such sharing in the recent amendment to The Canada Pension Plan which allows the homemaker to apply for a portion of the employed spouse's CPP credits at dissolution of marriage."

Our concern is also for the woman in the labour force, the majority of whose pension benefits if any, are very low. Only approximately 20 percent of women in the labour force are unionized so many are not covered by any group pension programs, and also 71 percent of part-time workers are women and they too are not covered by benefits such as pension plans. Even those women who do have pension plans are at a disadvantage in that many do not have vesting rights because they do not have ten years of service with the employer. One of the reasons for this is that women have to opt-in and out of the labour market to have and/or take care of children.

For all of the above reasons, it is crucial that all married women have the legislated right to an equal share in her husband's pension benefits.

The Family Maintenance Act, Bill 39. With regard to Bill 39, The Family Maintenance Act, we are opposed to the inclusion of fault in the determination of the amount of maintenance. Financial need should be the only factor under consideration when the amount of maintenance is being determined. The establishing of fault in the court can be a devastating experience for the "at-fault" spouse and also the children. To say that children would learn responsibility from such a process is a very strange argument.

It is essential that the amount of maintenance be adequate and reasonable and also that there be some viable machinery for the enforcement of the maintenance orders. Those women who have been out of the labour force for some time have a particular need for financial assistance to become independent. Also, given the fact that the unemployment rate is currently so high, and significantly higher for women, the need of separated women for reasonable maintenance awards is very great. The provision for limited-duration maintenance is of concern to us given that all assets acquired during the marriage are not guaranteed to be shared equally.

In conclusion, we have stated our concerns about changes to family law legislation which will defer sharing of family assets, will increase use of judicial discretion in the division of commercial assets, will include assets such as pensions in the commercial category, and will include some form of fault in determination of maintenance orders. We urge the members of the committee to consider our proposals and to recommend legislation which will truly reflect the concept of equality.

**MR. CHAIRMAN:** Would you permit questions?

**MS. OAKLEY:** Yes.

**MR. CHAIRMAN:** Mr. Cherniack.

**MR. CHERNIACK:** Ms. Oakley, I am sorry that the Minister of Labour wasn't here to hear your presentation, especially in the light of the fact that by coincidence while you were speaking we received a copy of the submission made yesterday by the Winnipeg Chamber of Commerce. I make this point to elicit from you confirmation that you represent a special group with a certain characteristic, just as the Chamber of Commerce represents the business fraternity of Winnipeg so you represent, as I understand it, earning spouses. Is that a correct assumption?

**MS. OAKLEY:** Yes.

**MR. CHERNIACK:** I see. Well, they may not all be earning at this moment but they are people who are in the labour force.

**MS. OAKLEY:** Yes.

**MR. CHERNIACK:** Therefore they would have a special interest, if they had any, to protect their earnings.

**MS. OAKLEY:** They certainly would.

**MR. CHERNIACK:** I also note that you speak of pension benefits and say only approximately 20 percent of the women in the labour force are unionized, so many are not covered by any group pension programs. And I assume that you represent the 20 percent who are unionized and not the 80 percent who are not covered by group pension programs.

**MS. OAKLEY:** That is true.

**MR. CHERNIACK:** And yet you are saying that you are concerned that the pension benefits are not available to the spouse, who I assume is a non-earning spouse, not a member of your group. That's correct?

**MS. OAKLEY:** Yes.

**MR. CHERNIACK:** So that we have here what appears to be a contradiction, that you are speaking on behalf of a group that has a real interest, that would be assumed to have an interest such as I thought the Chamber of Commerce had, to protect what it itself has earned, and yet you are speaking, as I read it, in the personal interests of that group. That's consistent with what you're saying; is it not?

**MS. OAKLEY:** I would say so.

**MR. CHERNIACK:** Yes, I think so, too. So let's therefore not waste any more time on the sincerity and integrity of your position and let me then come to one particular thing. The law that this bill is about to repeal provides that an earning spouse is responsible to inform the other spouse of his or her earnings, and the law which we have today, which this bill is about to repeal, says that if the spouse does not give that information, the earning spouse, then the other spouse has the right to demand it from the employer or from an accountant, or a person who obviously has knowledge of it. But this bill does not provide that right and provides only that a court, on application, may order that.

The Chamber of Commerce objected pretty strongly to this bill's concept of having even a judge review it in the presence of the lawyer for the spouse asking for information and, therefore, since you represent people who are earning people and therefore have information which they may not want to divulge, I'd like to know whether you, on behalf of the people you represent, are prepared to say that you do not object to the right of a spouse to go to the employer of your members and obtain information as to their earnings. Now, have you gone into this aspect officially to say that yes, you believe that the spouse should have that right?

**MS. OAKLEY:** Yes, I believe the spouse should have the right because, as a member of a union, and I'm sure you know that when a contract is signed every member of a union is given a contract, in that contract it is stated job classification and salary codes for job classifications. So if every member of the company that I am employed in has a right to know how much I earn, I feel to see any bizarre reason that my spouse could not know.

**MR. CHERNIACK:** But isn't that your personal private information that you have a right to say is my business and no one elses?

**MS. OAKLEY:** No, I think a spouse is entitled to know how much their partner is making.

**MR. CHERNIACK:** And if your members, the earning spouses, don't want to give that information you say that their spouses should have the right to go to the employer and say, "We demand to know."

**MS. OAKLEY:** I feel they should have the right.

**MR. CHERNIACK:** I am asking you particularly because all of your members are earners. It's not as if you are in this way saying, well, we believe that something should be done that, in this case, would possibly be contrary to the opinion of some of the people whom you represent. Thank you, Mr. Chairman.

**MR. CHAIRMAN:** Any further questions? Thank you very kindly.

**MS. OAKLEY:** Thank you.

**MR. CHAIRMAN:** Mr. Ken Filkow. I know Mr. Filkow and I don't see him. The next person on the list, Mr. Abe Anhang, has called in and said that he is approximately 30 minutes away from being able to be with us, so I will carry on and when he appears we will work him in. Mr. Norman King. I don't see him. The Attorney-General says that maybe we better ask if there is a member of the Liberal Party that wants to represent Mr. Norman King, then.

**MR. CHERNIACK:** Well, we haven't seen any members of the Conservative Party coming out and trying to justify their party's actions.

**MR. CHAIRMAN:** Well, because Mr. King is listed with a party name I just was going to give the

spot to someone else if they wished it. We will go on. Mrs. Muriel Laird. Linda Gouriluk. Terry Gray the Voice of Women. Is Terry Gray of the Voice of Women present? —(Interjection)— All right Is Irene Grant of the Winnipeg Business and Professional Women's Club present? Is Irene Grant present?

**MR. PAWLEY:** You have been going over so many names we can be assured that everybody was advised of tonight's meeting.

**MR. CHAIRMAN:** Well, I mentioned it last night to those that were present.

**MR. PAWLEY:** I'm wondering if so many, because they were so far down on the list, may not have been here last night.

**MR. CHAIRMAN:** Well, that could be a problem. Is Marilyn McGonigal present? Marilyn McGonigal Would you get closer to the mike, please.

**MRS. CUMMINGS:** Irene Ryland is after me on the list, and it's all right with me if it's all right with you for her to take my place at this time, and I will speak after her.

**MR. CHAIRMAN:** All right; that's fine. Irene Ryland, the very last name on our list. Perhaps we could turn the microphone down for her, if one of our technical staff could do that.

**MS. IRENE RYLAND:** Thank you, Mr. Chairman and honourable members, and I appreciate the time to speak before you. I have got here a letter which I wrote to the Law Society of Manitoba to do with separation agreements, and a couple of clauses in it which I consider to be something which the women who are here today should really give a little bit of consideration to because really does affect their lives an awful lot once these agreements are signed. But I would like, at the same time, to voice the fact that I consider that . . . Well, I will just read this, I guess.

"To deprive the children of a separated couple the right to a decent social position within the system's framework, based on the fault concept, is a very childish maneuver and is a discriminatio against children. The total dependency of women with children is enough in itself to enforce the unwilling compliance to much punitive misconduct on the part of her mate.

"Even this unwilling compliance is an enforced misuse of her democratic right. Women do not get married to become psychiatrists and, while they are busy with the demands of a young family just don't have either the time or the inclination. Overly dominant financial fiascos, over-aggressio and ego-mania are just classier names for greed, brute and bully.

"Punitive conduct during marriage. If the discretion is left to any third person, whether it be a lawyer or judge, then that is a discrimination against one party as these lawyers or judges are not trained for psychiatry. Many times the actions of a person are not voluntary actions but are actually reactions against the pressures and misuse and use by another person, and total dependenc does not help in situations like this. In fact, it kind of aggravates it, whether it's recognized or not."

This letter that I wrote to Mr. Stubbs has got to do with the fact that I went to the lawyer's office to have a separation agreement drawn up and he told me that this separation agreement would be on both behalfs. I will read you the letter which I wrote to him.

"Enclosed is a copy of my separation agreement, executed by lawyer Paul Walsh on behalf of both parties on September 1st, 1972. This contract was signed in his office with Paul Walsh informin us verbally prior to signature that he would be acting on both behalfs. By failing to incorporat a date in each month when alimony, which is child support, was supposed to be paid he has cause myself and our children much suffering, as this failure has given to the estranged husband the fre licence to continue practising further cruelties, both mental and physical, upon the persons of myse and the children.

"Estranged husband has, for approximately the last year, been using this failure as a lever t cause hunger, frenzied money borrowings, plus mental anguish to myself and the children. He als uses this lever to punish us with with regard to visiting rights of his parents. Also, this is placir the children in the further victimized position of being taken by the Children's Aid Society and force into strange homes. This is a further violation of their rights to security and is enforcing terror i their environment future upon them, both physically and mentally.$

"We have suffered enough from his ego-maniac personality through the years of marriage an should be protected in a more decent manner upon legalized termination of the marriage, but wi legal agreements being drawn up in lawyer's offices of this type, the children and myself are enforce to continue under the same circumstances because of the agreement.

"A person does not have to be classified as a male or a female in order to think human.

s a basic freedom, but separation agreements, as the one imposed, are outside of the human classification and under the Constitution of Canada should be given some immediate attention. At least that is my personal feeling about it.

"Paul Walsh took photostatic copies of signed documents attesting to husband's physical abuse during the years of marriage. I was wearing the bruises inflicted by my husband. These bruises were also seen by Paul Walsh, along with the dated testament signed by the family doctor and a witness to the inflicting. In order to obtain mother's allowance, these agreements are being drawn up while the woman is in a state of shock, and also very mentally depressed. I suggest that under the Constitution of Canada, she be placed on Mother's Allowance in cases where cruelty is the basis for separation, without being rushed by the welfare to the Salvation Army for food vouchers, till the agreement is signed — as I was. The fact that a man having no children to look after is free to go back to a well-paying job, and establishment in the social structure to which both men, women and children contribute their joint efforts, certainly does show some omissions with regard to who has taken the legal protection, and also the political protections. When a woman has to be forced to go to the Salvation Army for food vouchers for herself and children, and be forced to sign rushed separation agreements under shock and mental depression, it certainly shows that he has taken his legal protections at the expense of women and children, and even of his own children.

"It is not decent for children to watch their father using tuem like this, and it is not decent to watch society support him at it. And if that separation agreement enclosed herewith had been drawn up in a common, decent manner, they would not have to, or be forced to.

"It has been suggested to me by very many people that I write this letter to you, as I would like legal information as to getting this separation agreement into common, decent shape, as to its wordings and omissions. I sent a copy of this letter to Peter Warren and one to the District MLA, Ben Hanuschak, and while I am on the subject of it, this marriage separation agreement of mine, the lawyer wrote it up in such a negligible fashion that for me to go to welfare and try to get maintenance help on the home — now this has got to do with lots of sanitary problems in the home, like say, an overflowing toilet. For six weeks that toilet overflowed on our floor because the lawyer had written up such a negligible form of wording as to my husband's help with the maintenance of the home the welfare did not have to respect it and neither did he. And that's not the first thing that has happened in that home because of it."

I am here also to mention the misuse of myself and the children through the social workers of Manitoba, by their failure to send out a social worker at the times when we need help, by them taking off my income the fumigation of a home which was caused by me taking in a child for the Children's Aid, to keep till the Children's Aid could come and pick this child up — she sent her children to me with her dresses and their clothing — and we got bedbugs for the effort. And do you think that I could get the Children's Aid to help me? They wouldn't do it. And not only that, this social worker of mine took this fumigation bill off my existence income. Now, because she had done that, we got mice in the house this year, and I did not want any more money taken off my income — it's an existence income — and I am paying $32 for the washing machine — and she has been to the house — I asked her to come out before Christmas. In early June of this year she sent out a social worker — now, that's seven months later.

And in the meantime, my cupboards have become so badly infested with rats that I decided I was going to take them up to see what the heck was under them; I was going to remove some anyway. Well, I would say that I found, roughly, 15 pounds of chewed out newspapers, mice droppings, dead mice, and all the other black beetles, and other paraphernalia that goes with it. Now, this other social worker at the welfare office told me that she should not have taken that first fumigation bill off my income at any time, which she did do, and because of which, I cannot stand any more money coming off that income. They have been taking money off me ever since I've been on welfare, and I'm sick to death of it, because we are just living on the fringes, last fringes of — on nerves, okay? And this year, resultant neglect of her to send out a social worker has caused the removal of the cupboards, the tap has been dripping long since before then, when I first mentioned it to her — it has wrecked and rotted the cupboards besides, and I am without cupboards, I am without a sink, and she could have — she tells me, when she gets out there, well, you didn't put a price on the tap, you didn't put a price on a mattress for my daughter, which I had been asking her for since last December. But we had put a price on it in the house. She just used this as sort of an excuse to avoid the issue of sending some type of letter to the Ministers for this help.

And another thing that I would like to mention is that these contracts that are being drawn up are on behalf o,, both parties, they are definitely not on behalf of women, and if the lawyers think that this kind of a game that they are playing is funny, to do with women and children, then they could just really, have to really get into that house for a while, and I'm afraid that between that and the toilet, it would be quite a little deal, especially if I was at the helm of both of them at the moment, you know. I have had really an awful lot of sanitary problems in there because of the welfare and because of the way that this separation agreement was drawn up.

And while I'm on the subject, if many lawyers do not want to handle divorce cases, this is no only annoying, it could also be interpreted as a discrimination. A system of law which leaves people discriminated against, both because of the lawyer's refusal to handle divorce cases, and possibly by the fact that the laws are either too lax or too rigid or too fault-finding to compose a workable solution. It's kind of gotten to me, anyway, and the reason that I am here is to point out to these women that it doesn't matter what kind of a legalized thing that they can work out for themselves through legislation, as long as the lawyers can play games with it like this in their offices, then i is not going to do them very much good at all. That is what I would like to point out to them and that's why I'm here. And if I sound a little bit emotionally upset, well, it's because I definitely am.

And the answer to Mr. Stubbs of the Law Society with regard to that letter, he writes to me:

"I received your letter of March 17. I wrote Mr. Walsh, asking him for an explanation of you complaint. I understand that he has sent you a copy of his letter to me and I would suggest tha you get in touch with Mr. Walsh."

Well, all right, but it's not going to help matters any. And I really think that the women of Manitoba should really be informed about some of the games that can be played on their protection in the law courts, or in the law offices in Manitoba. That i do not consider to be on my behalf, and no only that, when you write a letter to the Law Society, you would at least expect a decent answe about it, that one could at least possibly get that much from it. But this negligible reply, it's jus a little bit too much for me to find acceptable, and mind you, even if I had gotten a better reply to it, I probably would have come here tonight, to at least mention some of these facts.

The Welfare Act, with regard to the maintenance of children, the way it is being administrated today — I don't know if it's ever been worse, because I wasn't on it until six years ago, but it's not being administrated very much to the benefit of children. They are being further abused on that Welfare Act, by the social workers themselves, that I rather, in fact, would feel like as if there should be some pressure applied to put a monitoring board for the benefit of the public, so tha the public cannot be misused by these social workers, in the personal depths of their little cubicles That is something that I feel would be a very good thing for the protection of children.

**MR. CHAIRMAN:** Would you permit questions?

**MS. RYLAND:** Definitely.

**MR. CHAIRMAN:** Mr. Cherniack.

**MR. CHERNIACK:** Well, Mr. Chairman, I . . .

**MR. CHAIRMAN:** I wasn't sure whether you wanted to question her.

**MR. CHERNIACK:** No, the extent to which it's a question, I understand pretty well what Mrs Ryland's concerns are, and I wanted to suggest, Mr. Chairman, through you to Mr. Mercier, tha he ought to look at in more detail the transcript where Mrs. Ryland said, together with his colleague the Minister of Health and Social Development, Mr. Sherman, just to see whether this is the kin of case that is one in which the government can intrude and assist. I believe that both of them would want to do it, Mr. Mercier, especially, as a bench of the Law Society, Mr. Sherman as being responsible for the provincial welfare. So, I was wondering, Mr. Chairman, if we could request tha of Mr. Mercier — I'm just assuming he will agree — and that in due course he let us member of the Committee know the conclusions that he and Mr. Sherman will have reached, since we hav heard it, and I think we will not forget what we've heard from Mrs. Ryland, and will want to hav some idea of the extent to which she . . .

**MS. RYLAND:** Well, while we are on the subject, I requested a mattress for my daughter, definitely seven months ago. She is now sleeping — the springs are right through it, they are sticking u like this here — and this has been slightly so far even neglected to this moment, because I hav asked my social worker about it, and she said that, well, you didn't put a price on the mattress Well, I put a price on the mattress.

**MR. CHERNIACK:** Mr. Chairman, I think, in all fairness, Mrs. Ryland should know that none o us, including the Minister of the government, has the authority here to make that kind of decisio but what they do have, and we all have, is a right to investigate and see that fair play is carrie out. And that's why I'm just asking Mr. Mercier — I am sure he will do it, but I don't think tha Mrs. Ryland should feel that anyone here has the authority to do the actual . . .

**MS. RYLAND:** Well, I don't know whether you can or not, but as I said, there are women here onight that are in here in their own defence against lots of this kind of stuff, which is what they are working toward, and that this would be one very good department where they could really make a good start. What good is a law if it is going to be abused by everybody that works under its administration?

**MR. CHAIRMAN:** Mr. Mercier.

**MR. MERCIER:** Mr. Chairman, I will undertake to review the transcript and to refer it to the Minister of Health.

**MR. CHAIRMAN:** Thank you. Marilyn McGonigal.

**MS. McGONIGAL:** Mr. Chairperson and members of the Legislative Committee, my name is Marilyn McGonigal and I speak tonight as an individual. I have spoken to you before as a delegate from a group, but tonight I speak to you with my own views, and firstly, there are a few things I'd like to speak to you about that I consider very important with respect to these hearings, and the issues that are at stake here.

The first is that I'd like to explain to you our anger. You have heard many submissions and some of them have been given to you, have been presented with a great deal of anger and frustration evident in the presentation, and the delegate prior to me is an example to that, but there are others. You have also heard submissions that did not contain actual angry tones, but they stated that we are angry. Now, I want to explain to you a little bit just why that is so. We, as women in this society, and throughout the world, have a long history of being discriminated against, and we have fought from time to time with all the resources that we could muster to see that that discrimination is eliminated from our system.

Now, the history of family law and all laws affecting women, the history of all laws has been very frustrating to women, and it is important that you recognize this anger and consider it when you consider our submissions, that it is a part of our submissions, and that it is an important thing for you to take into consideration as legislators, because finally, not only are women ay again, but we're angry enough and organized enough and educated enough to try to make it politically important that we are angry.

Now, the other major point about our anger with respect to these laws — and I don't mean these specific laws — I think that a . lot of effort and thought has gone into these laws, and an attempt was made to give us better laws, but our problem is that we started this fight. The women who have made submissions to you for better laws started the whole ball rolling, and we asked for specific things that this Legislature turn its attention to and give us in order that we have better legislation. How many times have you heard delegations, about laws that you are about to present to the public, from the very people without whom the legislative reform wouldn't have even begun? We began this and here we are fighting it, 100 percent of us who started to try to get better laws are here trying to tell you that it's still not right and must be changed again. And that I find to be a very real part of our anger and our frustration and I think that it's a very important point for you to take into consideration.

You have seen, of course, what the opponents of this legislation — that is the opponents of our feelings about this legislation — have said. You know what the Chamber of Commerce calls fair. Well, we have been fighting those kinds of attitudes for a long, long time.

I made a submission to the Law Reform Commission two-and-a-half years ago, approximately, and in that submission, which I would like to read excerpts from, we started to ask for certain things. And what I said at first was — on behalf of the Manitoba Action Committee — "When it comes to a discussion of family law two issues immediately surface as the most compelling in this whole area of concern. They are not academic or precisely legal issues and perhaps not what you would expect unless you are a victim of the inequities that produce them.

"The first is the problem of extra-provincial enforcement of custody and maintenance payments and the appalling ineptitude of the present system to cope with delinquent spouses, usually husbands. The other is the problem within ongoing marriages, marriages in which the partners are not contemplating separation and divorce. In plain language, how does the non-earning spouse get her or his hands on a portion of the family income when the other spouse is less than co-operative about sharing control over income, or where the earning spouse is financially irresponsible? Let's face it, we're talking about earning husbands and non-earning wives in the vast majority of cases but we include a few situations in which the roles are reversed.

"Specifically, we are concerned about the imbalance of power in the day-to-day operation of a household. This forces inefficiences and diseconomies and often a lot more physical labour than

necessary on wives and mothers, where husbands and fathers who are not directly involved o particularly adept in the area of homemaking retain control over household expenditures. The fac that he who earns the family income has no inherent obligation to share it with the partner wh works equally hard in the home has produced this situation.''

Now, those were the two problems that we saw as being the major problems. Enforcement o maintenance, and at that time we were interested in extra-provincial because we had th understanding that many spouses don't pay maintenance payments by skipping out of the province We now know from all the data received that there is an equal or greater problem within the province that people are not receiving their maintenance payments anyway.

And the other problem was the ongoing marriage, and we looked for legislation that would assis us in our managements of our homes. We made the statement that the basic premise that mus be articulated in the new family law is the presumption of equality and equal ownership in marriage Of particular importance is the removal of all reference to any law or premise that denies this concept Wives have a right to be regarded as capable of managing property and income, as responsibl in their decisions about family and personal needs, and as deserving of economic rewards an property ownership as their respective husbands. Manitoba Action Committee on the Status o Women believes that property and income acquired by either spouse in marriage should b community property in recognition of the fact that the contribution of the non-earning spouse i equal to that of the other spouse.

Now, the reason I am referring to this is that this is what we said two-and-a-half years ago afte perhaps two years of work on this law.

Now, we also made a point about judicial discretion. Judicial discretion in the disposition o property should be considerably more limited by statute than the majority position of the Law Reform Commission proposed. Wide discretionary powers do not guarantee the presumption of equal sharin in property and leaves judges open to use precedents such as Murdoch and Murdoch and Rathwe and Rathwell in determining the value of the contributions of the spouses.

Now, we also made a number of specific recommendations. Community of property, join management, the right to contract management by one designated spouse, that was the right t contract within marriage during the ongoing marriage as to how the property is to be dealt with We wanted gifts exempted, and so forth, as you have in this legislation.

We recommended that the debts incurred by one spouse — that is personal loans — excludin debts incurred directly for family maintenance in the form of rent, food, children's dental work, etc. be borne by the spouse who incurred it, rather than by both. And we recommended that the marita home should be included in the community property regime with the same conditions attached. one spouse brings the home into the marriage, community property should not apply to the valu of the interest brought into the marriage.

We recommended that the disposition of community property must be agreed to by both spouses We recommended the marital home should be community property and subject to partition an sale on dissolution of the marriage.

Those were the recommendations I wanted to draw to your attention that we started out with Now, our problem is that these things do not occur in this legislation the way they should, if a all.

Before I get into a discussion of the major points that I want to draw to your attention I war to mention a second concern that I have about these hearings and that is that we regard this issu as non-partisan. It is true that the previous Legislature was an NDP government and brought thes laws in, and we were very very pleased with the results at that time. However, we are very concerne that you are going to consider this legislation in the light of your political differences and I thin that this problem goes much deeper than that, and I hope that you will overcome your partisa differences and consider these issues on a non-partisan basis for the purpose of seeing that justic is done in Manitoba with respect to the new family law. We're trying to take sexism out of the la and preserVe the family unit in society.

Now, the first point I would like to discuss is the matter of discretion. An awful lot has bee said about judicial discretion and my position is that of those who want very very limited judicia discretion and clarity and certainty in the law. We know that society is sexist and has very stron property biases, biases that favour the entitled person, and we are concerned about a discretio that will vary from a shared property concept if such is in the legislation. Judges are a part of tha society that is sexist and I think you can understand that we would not worry so much about th discretion if some of the people who presented briefs to you were the judges. We could count o less bias from the society as a whole in the determination of equal sharing. But I think you ca immediately recognize that there would be a difference in the kind of judicial determinations if wome who are very familiar with the circumstances and who do not have the social bias that prevails i society, if these women were to implement these laws or were to be the judges, I think you ca immediately see that there may be very different decisions made.

There is plenty of evidence in the different court decisions that this bias exists. I had one case this year in which I was trying to get maintenance for a wife in Family Court and it was the first case I had been to Family Court with in which to make any argument, and in that case the husband earned $850 a month and the wife was on welfare, pending receipt of any maintenance, and I attempted to use arguments of equality before the judge. Now, the judge actually became angry that I would suggest that if these two people were to be broke as a result of their marital differences that they should be equally broke. He started off to consider a figure of $230 a month for this mother of two children, aged four and two, and after I tried to argue the equality arguments that I wanted to use and hoped to pursuade a judge with, he actually reduced what he intended to order. I don't know if he did that directly as a result of my argument, there were other statements from the other lawyer about the man's debts and so forth, but on the other hand the man's debt was for a new car and of course he had payments to make, and so forth and so on. There was no evidence of fault in that, although there was clearly fault in the situation, but we were going into court to get a Consent Order as to everything but maintenance. Now, I was very nonplussed by the blatant and open statements that we are simply not going to apply such principles in Manitoba. That's not the law. He said that for 200 years women have gotten no more than a third. Men get two-thirds; women get one-third, and that's the way it is.

Now, those were the kinds of statements the judge in fact made and, furthermore, his reasons for not giving any more maintenance were that this woman should go out and work for herself, and earn money. Now, in this situation, this woman was planning to do jus that but she needed a basic maintenance order so that she could supplement it with what she could earn and gain skills so that she could earn enough, together with maintenance, to give her enough to live on. But the judge saw it as her duty to earn the income and, in fact, besides giving a very low order, he said, 'Come back in three months and show me that you have a job.''

Now, this case really did frighten me. I was speaking to the lawyer on the other side afterwards and he said that there were points during the discussion at which he was ready to stand up and argue my case.

Now, the fact of the matter is that this kind of bias exists, and it's called the law when it suits the purposes of the judges.

Now, with respect to the discretion arguments that you have heard here, and some of them seem rather compelling as to whether or not it's narrow or broad discretion. I'd like to say one thing. The fact that there is so much discussion about it indicates that there is going to be a great deal of variation from court to court on what the discretion means.

I would like to point out, too, that in law, of course as you know, the words ''shall'' and ''may'' have different meanings and we're not objecting to the kind of discretion that is inherent in the judicial role, and where the judge has been directed by a word like ''shall'', then we know that there is no judicial discretion and that is fine. For instance, where the judge ''shall'' grant an order. We have asked you to change the legislation to say that the judge ''shall'' grant an order of separation, rather than ''may'' grant, in certain circumstances. That is mandatory. And where the use of ''may'' is employed, where the word ''may'' is employed in the legislation, we know that by the rules of interpretation that will be narrowly construed in many cases. It was in The Law of Property Act, Section 19, situation about which Mr. Schulman spoke to you.

We are talking about a discretion to vary the principle, and our statement is that with discretion to vary a principle such that it is non-existent, you have in fact displaced the principle itself, and you've created a very litigious situation.

I'd like to point out about the Law of Property Act, Section 19 discussion, that that case, that situation, really should be interpreted in terms of the sexist biases in society, because in the situation in Section 19, two people have equal ownership to property. Now, one has possession, and the other wishes to sell it. Our property biases lean toward the ability to sell or dispose of your property and to use your property, and the only way the person who wants it sold can use the property is to have his or her share to use for themselves. And so, of course, the legislation states a principle that the person who wishes to sell has rights overriding the person who wishes to possess, and that situation had to be solved statutorily because otherwise rights were totally equal.

Then there was a discretion there too given about that. Now, it is no surprise to me that in that case the discretion was construed narrowly, because usually the person coming for a partition and sale is a spouse who is wanting to sell property that the other spouse and children are occupying, and it doesn't surprise me at all that in that case, it became very narrowly construed by the courts. In other words, a sexist bias can be read into that, because we are now asking for alteration of the law such that partition and sale, that that discretion in fact will be broadened to include hardship cases. Right now, it's strictly construed, as Mr. Schulman has pointed out to you, you have to come to court with clean hands, or if it's vexatious or whatever — an ulterior motive is the only thing that will bar the sale. And there are many situations of hardship in which partition and sale is granted where we believe in fact it shouldn't be, and that's why we asked for those sections in the family

law that say the spouse in the home, in a situation in which it would be a hardship for her to leav the home, should have possession. So, I don't see how that argument helps Mr. Schulman. It point out to us how strong our property biases are and our sexist biases are in society. And that sectio is premised on the fact, as I said, that two people own the property equally. You have not create any ownership rights in the non-owning spouse in this legislation. You have in fact gone as far a you can go in the other direction.

Section 12 doesn't raise an ownership right, and I suggest to you that Section 12 gives a righ of division of the assets, not a property right and ownership right. And I say that the same ownershi bias will be considered, the same property biases we have in society about property ownership wi prevail, and in that case allow Section 13 to vary equal sharing a very great deal.

The other point about discretion has been made many, many times, and that is that there i no consistency and no predictability as Mrs. Bowman has pointed out to you with respect to this I can't tell you how important it is that we have consistency and predictability in the law. We ar very concerned about the litigious nature of this law. The fact that everything is going to lead t court, the fact that lawyers are going to be unable to advise their clients with certainty as to th consequences if the matter is taken to court. Now, we want to encourage settlement. I think tha a clearer law, a clearer statement of equal ownership, that assets should be — it should be state if you must defer — and I will speak in a minute about deferred sharing — if you must defer th sharing, then why not defer the ownership and raise a presumption of 50-50 ownership? Now, see that there is a big difference in that, because if you start with a presumption that each spous equally owns each and every asset, which you have not done here, then you may have a chanc with te judges narrowly construing Section 13(2). It's my opinion that they won't, under the preser wording.

Now, I don't know if I've been as clear as I'd like to be on that. But the next point I'd like t make is with respect to deferred sharing. The Family Law Review Committee has stated that th instant sharing of the home and family asset serves only to satisfy a psychological need, that is a paper right. I suggest to you that those statements in the Family Law Review Committee Repo are so wrong and so misleading that I am again frightened by the way in which this concept wa perceived and the way we have had a myth perpetrated on us that it's the same difference. Ho dare any lawyer say that to anyone, that there is no difference between deferred and instant sharing it is just the most obnoxious statement you could make. It's one thing to try and tell us that w are going to be in a good position and have equality on breakdown of marriage, which is in itse not true, by this law, but to tell us that it's the same difference, or to tell anybody in Manitob — you've heard people try to tell you that you shouldn't listen to non-lawyers because lawyers kno better — that scares me even more, and I'm a lawyer.

I can't tell you — there are so many legal differences. Have you ever drawn — now, some o you are lawyers, and perhaps some of you have been partners — have you ever sat down an let a lawyer tell you, in drawing a partnership agreement, that, look, it's okay, you and your partne are going to have a 50-50 agreement, right? You're going to put into it the same amount of asse and perhaps one is going to manage and the other is going to put up the money — whateve Have you ever heard of anyone signing an agreement like that on the premise — an permittin clauses that say that one of the two partners is going to own 100 percent of the assets of th partnership, one of the two partners — the same one — is going to manage them for the enti time, and then, when the partnership dissolves, by whatever cause, the other partner is going t rely on the good wishes of the partner who is owning and managing, plus the court process whic in accordance with about 17 different principles in two different Acts, is going to determine wheth or not it winds up to be a 50-50 split. Can you imagine advising clients to sign such an agreement I'm sure that it is just ridiculous, and I am sure you know that. I know that I'm not going to pu the words of the Review Committee in your mouths, but don't let this legal fiction persist.

Now, the legal ramifications of instant owning are practically legion, but one or two or thre of them will suffice. First of all, there's automatic joint management rights with instant sharing. Bo signatures are necessary on important decisions, and I fail to see how anyone can argue that th commercial community is going to fall apart over that. There are all kinds of partnerships in whic two signatures are necessary; there are all kinds of bank accounts in which two signatures a necessary. The commercial community has not fallen apart through feast, famine, war — it keep going, and believe me, it's going to keep going, and giving rights to women, giving human righ to the spouses, is not going to deter the commercial community at all. They are going to find way to adapt. I would suggest to you as well that they have already done so, because I find th most unfortunate of things. I worked for Legal Aid for a year and articled with them this year, an I was in the position of interviewing, I would say perhaps 200 women and men — but mostly wome of course — Legal Aid is for, I think, women and criminals — who that's for, wives an criminals.

But anyway, I certainly saw a lot of wives and criminals. I saw that many and it was just appallin

how many of those ' women had signed bank loans and were now equally legally liable for a debt from which their spouse has run or is successfully avoiding. Furthermore, they had no right over the property that was purchased with that money. They may or may not have had some of the furniture, but they certainly had no legal right to the property involved, otherwise they could perhaps even return it, or something. But the creditor had a right to it, perhaps. What I really meant to say, though, was in the majority of cases, these bank loans are not for specific items. I think that a loan for a specific item gives a right in ownership of the two people, and I correct myself on that. But where these loans were for money, for general purposes, and the purposes for which they were used, the objects were not necessarily owned at all by these women who owed the debt. Frequently, of course, the debt was for a car, and the car was gone with the spouse.

The second thing about . . .

**MR. CHAIRMAN:** Did you know that you have used up 30 minutes. Are you near the end of your presentation?

**MS. McGONIGAL:** Well, I have a few more things I'd like to say. I'd like the opportunity to complete what I have to say, in that I used some of my submission to rebut some things I think were said by other delegates who, I think, were incorrect, particularly with respect to the Law of Property Act. So I'd like an opportunity to complete.

**MR. CHAIRMAN:** How long do you . . . ?

**MS. McGONIGAL:** It will be just a few minutes, I think.

**MR. CHAIRMAN:** All right, would you carry on, then.

**MS. McGONIGAL:** Now, the second right that arises is that an immediate right in property obviates the necessity of a fault determination on ownership at the end. I see that the sharing concept has nothing to do with the marriage breakdown. The marriage breakdown comes along a long time afterwards, even if there is gross or obvious repudiation, let's say, in the 16th year of marriage. Surely that cannot take away the rights of a full partner for the years preceding that. Now, that's what immediate sharing would do to the concept of fault, and of course, we don't have anything like a concept of fault in our laws with respect to ownership.

I would suggest that if you are going to continue with this discretion in Sections 13(1) and 13(2) that you include a section that says, "Under no circumstances will it be relevant who owned the property prior to the breakdown of the marriage." It shouldn't be relevant, if it's equal sharing. And I would suggest tat you also put a statement in there that says conduct will not be considered.

If you are going to have a variation — and you heard one submission two or three people before me, about the fact that sometimes a spouse deserves more than half — I would think that your exceptions would follow the current law and deal with things like intention of the spouses to the contrary, verbal or written, and such concepts as advancement, you know, whereby one spouse has, in fact, and this is on the facts, already received a share. I'm thinking of a situation in which there is a large bank account and by mutual consent, and not by dissipation, but one of them takes a trip to Europe and spends, let's say, six out of the ten thousand dollar bank account, in the year prior to the marriage breakdown. It seems to me that such a financial consideration would not violate the rule, it would exacerbate some of your problems with the rule in its strictness, and so on the basis of financial fact alone, you would be able to allow the judge discretion as to whether you take into account the facts that make absolutely equal sharing, in a mathematical sense, unequal a fact. So that you are still aiming at the 50-50 rule, and not aiming to destroy it.

And those principles, as you know, are found in a state law, and testamentary planning, and so forth, and it might be an idea to take a close look at such things as advancement, if you're going to think about exceptions.

On the point of discretion, then, I would rather you build in specific exceptions, rather than a broad judicial discretion, or judicial discretion at all, and I think you do know the difference, or should understand that there's a difference between discretion to vary a principle, and a legitimate statutory exception.

Now, there were some specific points that I wanted to make and I'll be quite speedy about it. In Bill 38, I strongly suggest, as many others have, that pensions be considered a family asset.

Your definitions in Section 1 are very litigious in terms of determining what is what, because you have used the use of the asset as a determining factor as between family and commercial assets. Without equal ownership during the marriage, though, I'm not sure that it makes a big difference

how you define these things. You have not given us basically what we want.

I strongly object to your definition of marital home. I think that you have done a very very grea injustice to a lot of people with that. The farmers, in particular, and I would defer to their statement as to why and how, but I think that all those considerations that were raised by the people w are talking about — farms should be taken into account. I don't know, it looks to me like a nightmar for the Land Titles Office to figure out just who owns the property.

With respect to Section 1(f), Spousal Agreements. I mentioned that we should have evidenc of verbal agreements to the contrary but I would point out to you that you've done something els with this legislation and I don't think that it was intentional, and this is a very big point I woul like to make before I sum up. Take Section 1(f) and read it together with Section 5, in which written agreement is necessary for the Act not to apply to assets, and read that together with Sectio 6(1). You have deprived present Manitobans, who have equal economic sharing in their marriage to their rights if it's not in writing. Now, one of the reasons why we want this legislation is tha we believe that most marriages are based on an equal economic partnership, and if most marriage have shared economic ownership in their marriage, then I suggest to you that you have reverse that with Section 6(1). And, frankly, I find that to be despicable. You have forced Manitobans t sit down and write a separation agreement in order to have equal sharing. Now, when it come to opting out, I can hardly thank you for not letting people opt out of this, except that it certain is a principle we oppose, but here you've written unequal legislation, and people have to opt ou of it to have equality, and that you should not have done. I don't think you intended to do tha There are lots of marriages in which people regard their property as equally owned right now, an they shouldn't have to write a contract to show that, and I think that when that marriage break down Section 6(1) will be absolutely conclusive for the party who can prove he or she bought th assets.

Now, I think Section 4 is quite confusing. I have heard a lot of different explanations of appreciatic and depreciation, and it may need to be clarified.

Section 12 is interesting in that it raises a problem. I'm not sure whether you can bring an actio whether you can have sharing within the first six months after the separation. I think that if there any chance at all of delay that will allow a spouse to get rid of assets I think that that should b blocked and that it should be clearly stated that they can't do that, that you can immediately hav your sharing decided.

With respect to the technical changes, I would support the submission of the Bar Associatic that you heard from Mrs. Bowman.

In conclusion, then, we asked for equal ownership, and it is clearly not there. You have preserve a separate property regime. The deferred sharing you've allowed us is, in that regard, an insul And Section 6(1) is your real werewolf clause. If nothing else settles it, then that certainly doe that we can't have equal sharing. I think 6(1) will override evidence of intention in The Marrie Womens Property Act, unless something is done about the ability to have an equal marriage, a equal economic partnership.

We asked you for a limited discretion. We have very wide discretion in today's law, we kno it doesn't work, we've demonstrated that it doesn't work, so you did not give us that limite discretion.

We asked for sharing of the home, and it would appear to me that unless Section 9 prevai over the inclusion of the family home in the family assets — and I invite you to take a look Section 9 — that you have removed the certainty from the title to a home, and I wonder if yc really intended to do that. I would ask the Attorney-General to just indicate whether Section 9 permi the joint ownership of a house to be excluded from the property that is subject to discretion? think the absence of a comma in the second line, after the word other, for those of you who a looking at it, the absence of a comma would lead me to believe that you haven't disturbed a joi tenancy, but you know we said we didn't want to rely on discretion, believe me, I don't want rely on a comma for my rights either.

I think you have made our certain rights today uncertain in this legislation. You haven't guarantee joint ownership. Nowhere in that Act do you ever get ownership at all, you get the value of ha of whatever is on the accounting, and you never, ever have an ownership right.

You have expanded the faul concept. Before, in maintenance, there were two faults that yc could use to bar maintenance — adultery and desertion — and those were bad enough, but he we have potentially anything, and I think that's wrong. You've really betrayed us.

We asked for certainty in the legislation, you have given us litigation, and tons of it. We aske for quantum, at various points we asked for you to give us some ideas as to amounts of maintenanc and there has been nothing in the legislation that would guarantee that wives and children ha a right to a standard of living equal to that of the husbands and fathers after breakdown. We ha asked for enforcement procedures, and you've heard plenty often enough that you haven't give us that either. You've given us no unilateral opting out, but I say, "Of what?" You've given applicatic

o everyone in Manitoba — I would thank you for that, but I don't go around thanking people for ot robbing banks, and I'm not going to thank you for applying it to everyone — of course it applies o everyone.

So what have you changed? There is no objection ever to the fact that a woman has to be elf-dependent, and without giving some really concrete rights to back that up, during and after ıe marriage, you've made it simply that much more difficult to be self-dependent, and still we don't bject to that because we stick to our principles. We demand our 50-50, and we acknowledge our esponsibilities — and by the way, we've had those responsibilities in law without any money or nything else for a long long time, our responsibilities for our children and so forth.

Now I ask you how you can justify legislation to which The 1916 Dower Act, I believe it is, is uperior? Now we've been told that our dower rights are better than these rights, and therefore 's a better idea to have dower rights on death than have an equal partnership prevail, and we ll know that dower rights amount to nothing if the non-owner predeceases the owner. There are o testamentary rights, that's the other thing about instant sharing that's important, that a person an be married for 40 years and have dower rights, that's great, but die before her husband, and ot be able to bequeath any of the property, not to have any control over it at all. And The Dower ,ct has any nuer of things wrong with it. It was good legislation when it was passed, but I submit o you that it's a shame that this legislation is being passed to which such an old law is uperior.

Now, the final thing I would like to say is, I don't know how you can justify the fact that, in rder to continue an existing equal marriage, a couple must write a contract and opt out of this egislation.

That is my submission.

**MR. CHAIRMAN:** Would you permit questions?

**MS. McGONIGAL:** Yes.

**MR. CHAIRMAN:** Mr. Cherniack.

**MR. CHERNIACK:** Ms. McGonigal, listening to your pretty strong attack against the committee, m bound to say, "Who me?"

**MS. McGONIGAL:** I know that. I'm talking to the government in this respect.

**MR. CHERNIACK:** Ms. McGonigal, I only want to ask you, it is late, and I only want to deal with ıe reference you made to the case that you had earlier this year, I think you said it was the first me you appeared contesting the question of maintenance, and the difficulty you had, and I wanted o compare that situation that you describe with what it would be after this legislation passed.

The first problem I had was the fact that the Attorney-General contradicted himself in describing ıe intents of 5(1), because when he introduced the bill on May 29th, he said: "The conclusions /ould therefore appear to be that an order for maintenance should be based primarily upon financial eed, but that conduct ought to play some role in the determination of whether and in what amount n order for maintenance ought to be granted." And then he went on to talk about the individual's esponsibility for his or her own actions, etcetera. Well, later on, he changed that approach about onduct playing a role in determination of whether, and in what amount, and on July 5 — I think was when he was closing debate — he said: "It may be taken into account in the determination f quantum. I also said that the actual wording of "in the conduct" which is set out in Section .(2) would indicate that conduct is not a ground or a basis for a support order, but a judge may onsider conduct if and only if it is within the ambit of the conduct contemplated in Section 2.(2) nd so it may be a factor in the determination of quantum."

So I simply refer' Mr. Speaker, the Member for St. Johns to those statements once again and oint out that it is clear that the intention of the government with respect to the role of conduct ı the determination of a maintenance order only refers to the possible limitation of quantum. So, s I say, he contradicted his first statement and I will try to have him make clear in the wording f the section that conduct shall not be a factor under 5.(1) as to whether or not, in spite of his arlier statement.

But, assuming that we make that change, considering Section 5.(1) and the circumstances, do ou see anything in 5.(1) which, had it been enacted before the case you had, would have helped ou to achieve a better, fairer, more equitable order as to maintenance? In other words, are we nproving in any way your opportunity to collect a fair and equitable payment from that husband o that wife that you referred to?

**MS. McGONIGAL:** I think that this section might have put me in more jeopardy with respect t conduct, because the conduct of neither spouse under the circumstances was evidence in cou because it was a consent order. Now, I see that in Section 5.(1), if you are going to consider a the circumstances, you certainly may have the conduct which would be of the recipient's . . .

**MR. CHERNIACK:** Let me interrupt you.

**MS. McGONIGAL:** That's not your question?

**MR. CHERNIACK:** No, I would like you to assume that Mr. Mercier will see to it that conduct i eliminated from a consideration under 5.(1) because . . .

**MS. McGONIGAL:** And you want to know if this improves my chances . . .

**MR. CHERNIACK:** Setting aside the question of conduct, are these circumstances described i some way that would have helped you obtain a more equitable amount under the order?

**MS. McGONIGAL:** I believe so, in that I could have pointed out specific reasons why my argumen were relevant. These are the arguments that I used, similar arguments like this, and they weren there; he said that's not the law. So I think that using these criteria — I mean, the law seems t be that they consider the financial needs and means of the spouses and they consider the deb very highly. I see that you haven't included anything about debts here, that it is not in here.

**MR. CHERNIACK:** I think it is.

**MS. McGONIGAL:** Is it there?

**MR. CHERNIACK:** I guess not. They left that out, didn't they?

**MS. McGONIGAL:** Perhaps I would suggest that debt be a considertion, but the point being abo debt, that if you are going to look at debts for maintenance, they should not reduce the wife maintenance payment unless they were for assets that she shared.

**MR. CHERNIACK:** I'm sorry, it does say that financial means of each spouse — and I think th debts would be considered as part of financial need. You are saying that they might have helpe you, because I don't see anything there that, in my experience which was a long time ago, a cou could have refused to listen to. It didn't have to follow it but I don't see how the court could ha refused to listen.

**MS. McGONIGAL:** I think that you're right, that apart from the fact that I could have pointed a statutory basis for what I was trying to say, you are right about the fact that they have not indicate to what standard of maintenance one is to aspire in a court of law. I have set a standard I wou recommend in the interests of children particularly, is that they enjoy as much as possible the san standard of living that the departing spouse . . .

**MR. CHERNIACK:** Thank you, Ms. McGonigal.

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

**MS. McGONIGAL:** Thank you.

**MR. CHAIRMAN:** Mr. Cherniack, on a point of order.

**MR. CHERNIACK:** Mr. Chairman, it is tomorrow — today is tomorrow already, it's just aft midnight. I am under the impression that no one else is prepared to appear other than Mr. Anhar in which case I would assume that it would be worthwhile to hear Mr. Anhang and then adjou until Monday. But if there is any indication that somebody else will speak, and if we have to cor back tomorrow, I think Mr. Anhang could come back tomorrow as well. So could we clarify t picture?

**MR. CHAIRMAN:** First of all, I was going to ask, after Mr. Anhang, if there was anyone else w has not had an opportunity to speak, who is present, who wished to speak. I was just figuring c for the Committee, Mr. Anhang will be the 50th presentation and we are on our 27th hour of sittir

point that out for your clarification, Mr. Anhang. Since there are no other persons present who ave not had an opportunity to present a brief, I would think that Mr. Anhang will be our final esentation. I am not aware of when the Government House Leader wishes to deal with these bills n a clause-by-clause nature, but I would not think it would be tomorrow; I would think it would e Monday. I am expressing the Chairman's wish, and that is that we don't sit tomorrow or on aturday. This is our seventh sitting day and I personally would like to have a little time off.

**R. CHERNIACK:** Mr. Chairman, I would propose, after Mr. Anhang, and giving all the time that advisable to give him, after that I would move a motion then that we adjourn until Monday.

**R. CHAIRMAN:** Mr. Spivak.

**R. SPIVAK:** As a matter of record, I think it was agreed that there would be time given to the embers of the opposition as well as the government to be able to deal with the briefs and prepare hatever amendments are necessary. But as to whether it will be Monday or not, I think that is matter to be left open to the House and for the determination of the House Leader. My expectation that that will be the case, but at the same time, I think that that is really not our decision.

**R. CHERNIACK:** It might be after Monday?

**R. SPIVAK:** No, it may before Monday, I don't know, it may be Saturday. I'm not suggesting at that will be the case, but I don't think that we can make that determination until we are in e House tomorrow. So I would leave that to the discretion of the House Leader, but recognizing s well that it is obviously not going to be tomorrow because there has been an agreement that ere would be time to be able to prepare amendments. I think that is all we can do at this oint.

**R. CHERNIACK:** Mr. Chairman, if we are forced to come back here on Saturday, then I think only right that we re-open Saturday for briefs. Either we have that opportunity to review and prepare r section by section, but if not, then we ought to understand that people who have yet — there e quite a number of them who still want to come — that if we are going to come back before e weekend is over, then it should be to hear briefs as well.

**R. SPIVAK:** Mr. Chairman, I really don't think that it makes any difference in terms of the Saturday Monday, from that point of view, but I think that if we are going to follow the practice as it as been followed in the past, and I think that is all we are suggesting, while there has been an ndertaken given that there will be time to prepare amendments, there is the right of the House eader to indicate, under speed-up, the rules under which we will follow, and that will be given the first sitting of the House tomorrow. My expectation, Mr. Speaker, is that from everything I now, we will be sitting on Monday, that is, as a committee. I think that's the position, and I think at rather than our commit ourselves, we will wait until tomorrow.$

**R. CHAIRMAN:** I would agree with Mr. Spivak, that the Government House Leader really sets e timings of meetings and so on, and that we can't — but that Mr. Anhang will make the final esentation.

Would you proceed, Mr. Anhang.

**R. ABE ANHANG:** Thank you, Mr. Chairman. I was told I would be speaking on Friday but I didn't pect it would be at 12:15 Friday morning.

Mr. Chairman, let me assure you at the outset that I am not here to chastize or castigate. Having at in on three evenings, I am afraid that you have had enough of that. In fact, Mr. Chairman, I peak to you on behalf of a beleaguered minority group in the Province of Manitoba, and that is e men. There are less men in the province than there are women. Having read and listened to e presentations before your committee over the last seven days, Mr. Chairman, I fear that an dependent outsider may get the impression that the husbands of this province are beasts and allawags or, at best, inconsiderate boors. —(Interjection)— Just some of them? I hope, Mr. Pawley, u are not in that category. I hope to set the record straight, Mr. Chairman.

Mr. Chairman, as indicated in the roster on which my name appears, I appear actually on behalf the Estate Planning Council of Winnipeg. It is an organization of some 100 professional people the city, some of them chartered life underwriters, others chartered accountants, lawyers, and ust officers. It is on their behalf that I have been asked to make this presentation. I myself am practising lawyer and I speak to you as well as a practising lawyer with some 15 year's standing the Bar. I have had some experience in the field, having specialized in estate planning and also

the question of domestics where the problem of splitting up family assets has occurred.

Mr. Chairman, what I must suggest to you is that what you have been hearing to a very lar degree is a one-sided story, and what is really necessary is a little perspective. Someone must spe up for the other side lest the impression be given that the institution of marriage in the provin has collapsed and that doomsday has arrived and the battleground has shifted from the bedroo into the sharing of the family booty, the commercial side, and the forts dissipated or secreted and those are the words that are used in the Act. We must get our hands on those men to he out the downtrodden and the ill-treated women. Well, the truth, of course, Mr. Chairman, is th perhaps 85 or 90 percent of the marriages in this province are probably in fairly good shape, a this Act that we are talking about here really deals with the last 5 or 10 percent, perhaps ev less.

Now, Mr. Chairman, because of the lateness of the hour, notwithstanding that I had a larg presentation to make, I think I will restrict my presentation to three major points. One will be judic discretion. A great deal has been made of that. The second will be retroactivity and applicabil of present marriages. The third will be the reasons why we believe commercial assets are justifiab kept separate from the family assets.

First, Mr. Chairman, I am deeply distressed by the number of women who have appeared front of you, some of them saying they distrusted judicial discretion, and others have gone furth and said they distrusted the entire judicial system. I need not defend the judicial system althoug as you are aware, judges are not allowed to speak up for themselves in matters of this kind. S if I may, I will take the liberty for a moment. I don't believe that being a Family Court Judge, even a Court of Queen's Bench judge sitting on these types of actions is the most happy task perform. In most cases, though, the judges, after having heard the entire history of a marriage a then of the assets, they come down with what they believe to be a just rendering of a verdict of a judgment. They deal with very difficult tasks. It was Voltaire who said that happy marriag are all the same, but unhappy ones are all unique, and it's probably true. Hence, the reason f judicial discretion. Should all unhappy marriages, on the verge of breakup or divorce, be judg by the same law? Is a computer the one that's going to give you the answer? Is 50-50 or figl is that really the answer?

Mr. Chairman, in my experience I have found that many many marriages break up because economic scarcity. There is not enough money in the family to make everyone happy for their neec They break up and they believe that they are going to be happier after that, and they come the courts wanting justice. The theory being, Mr. Chairman, that somehow magically, that 100 perce that wasn't enough for both living in one household, is going to be enough for two living in t households, except unfortunately, it costs more to run two households. So, who is to blame? it the judicial system — what is it exactly? The fact is if 100 percent is not enough, 2 times will not give you more than 100 percent, and listening to a number of the briefs, much as I sympathi with a great of the plight of the women, the fact of the matter is that 50-50 or fight will not g you more than 100 percent.

On the question of retroactivity, Mr. Chairman. This is a question that is fundamentally importa because, it probably affects almost everyone who hasn't yet been married, until this evening. other words, should the law be retroactive to marriages that have already been consummated, we which have already been performed however you want to describe it. The fact of the matter that as time goes on in a marriage, people make accommodations to each other with respect their economic lives. They plan for their children . . .

MR. CHAIRMAN: I'm sorry, Mr. Anhang, to interrupt, but our tape has run out, and we mu change the master tape. I apologize for this inconvenience. It will just take about a minute.

**MR. ANHANG:** Mr. Chairman, we were referring, to the question of retroactivity and the applicabil of the legislation to existing marriages, and I was saying, Mr. Chairman, that in most cases in existi marriages, the economic accommodations have already been made, in most cases. As the marria goes on, and more family assets and commercial assets are accumulated, people make plans, a Estate Planning lawyers are often heavily involved, and the estate plans involve such things as fam trusts for the children, and the concept of passing on the business to one or two or three of t children, perhaps to the exclusion of others. These are plans that are already in place, and th legislation, the way it reads now, would say to the husband and the wife, "You must now go a opt out, not unilaterally, but together."

Now, Mr. Chairman, for a moment put yourself in the position of the husband and the wife o evening having the conversation as to opting out, and they decide to go to see the lawyer the ne day and the lawyer is put in this position — as I already have, incidentally — and you have ask the woman or the man, one or the other, to go and get independent advice. The difficulty w that, Mr. Chairman, is that there has to be full disclosure, which is fine, but it's an expensive a time-consuming process. It's one that you are going to be inflicting on all of the marriages whe

ney want to opt out, and I'm suggesting to you, Mr. Chairman, that where the marriage arrangement as already been made it makes more sense to have people opt in. We are dealing here with everyone n the province who is married as of May 6, 1977. Why not have it opt in instead of opt out?

On the question of commercial assets, very briefly again, the question has been put, "What is ne difference between commercial and family assets in fact?" Well, there are two or three very ndamental differences. One is that with a commercial asset such as, let's say, a family business, nany many other people, outsiders, are affected. You have employees of the small business, you ave the bank, you have a nuer of other inter-connected, inter-related relationships, other people re affected. If you have a partner, he's affected.

For example, with a banking relationship, in many cases where a corporation is the vehicle used or the business, the bank requires that the individual retain control, and if you provide here that y a simple act of the woman applying — she can apply to have the one-half valued — I'm suggesting o you that it will interfere with the commercial life of the community. Yes it will, notwithstanding ne previous speaker, I can tell you that it will, and I can go into instances where I can demonstrate here I think the banks might indeed call a loan, where perhaps a business cannot generate the ind of cash flow to pay out the woman and the business could suffer, and so forth and so n.

Mr. Chairman, those are the three major points I wish to deal with. There are two slight points n the bill itself which are important, and then I would be more than pleased to answer any uestions.

Section 6, sub-paragraph 9, Mr. Chairman. This is where the absconding husband has just sold ff some of the property below its fair market value, and the money cannot be received, the excess alue cannot be received, you are tracing it here through to the ultimate recipient, the person who ought the property. I'm suggesting to you, Mr. Chairman, that if the property has been sold *bona de* to a purchaser, that he should get good title, because otherwise no one can properly, in law, urchase an asset from a husband, or a wife, and know that they are getting the full title. So I nink that the words "*bona fide* for value" should be added into Section 6 sub-section 9. -(Interjection)— No, no, of the value, but that contemplates a determination of the true value as pposed to the selling price.

We can take a concrete example, if a man is selling a car for $4,000, which may be worth $6,000, nd you buy the car for $4,000, the $2,000 can be recovered from you, and yet you didn't even now that the husband was unloading the asset. The excessive portion of the gift or the amount f the inadequacy may be extracted from the transferee, it says. —(Interjection)— Who knows the alue of a car, who knows the value of a car? What I'm saying is you should give protection to *bona fide* purchaser for value.

The other section, Mr. Chairman, was Section 9, Asset already shared. My reading of this concerns ne. It seems to say that where a husband has already gifted the homsstead to a wife, and put ne homestead in her name, it appears to say that, in the future split of assets, again, that that alue is not added back in. In other words, she would get the homestead plus half.

**R. CHAIRMAN:** Anything further?

**R. ANHANG:** No, those are the major points I have.

**R. CHAIRMAN: r. Cherniack would like to ask you a question or two.**

**R. CHERNIACK:** Dealing with retroactivity. I wrote down, just before Mr. Anhang went a little rther into it, the question as to what is the purpose of Estate Planning? But, from what you said, r. Anhang, I wrote down, "It is such as to create a family trust for children, or sometimes in the ecisions as to who is to carry on a business — not your words — but to discriminate as among e children — to select one more than the other." Would you say that's the purpose of Estate anning to which you've devoted so much of your professional energy? Is that the purpose?

**R. ANHANG:** Mr. Chairman, the question is obviously directed to a certain area, so I'll reply in at way.

I believe, Mr. Chairman, until the law of the province says otherwise, men and women should e able to bequest their assets to whomever they wish, and certain minimum protection, perhaps, ould be given to people who should be protected, but the law should not intrude. The law should ot intrude, or go too far in determining for a father if he wishes to bequeath his business to one n rather than to another.

**R. CHERNIACK:** Could we for a minute think about the wife or the mother and the father?

**MR. ANHANG:** Certainly.

**MR. CHERNIACK:** Are you avoiding the statement which I would be inclined to attribute to yo in view of what you said, that a person, i.e. a mother or a father, has the right to decide wh happens to the mother's or the father's assets, without the State intruding as between the minim rights of the mother or the father in the estate of the spouse? In other words, Mr. Anhang, witho playing with words, are you actually denying the principle which is espoused in this bill, crumm as I think it is, that says, "There is a presumption of equal sharing which can only be set asid by very little judicial discretion." Are you in agreement with that, in what you said, or do you challeng that concept?

**MR. ANHANG:** I don't necessarily challenge the concept, but I do believe that 13, sub 2, with th discretion to varv the equal division, would probably take into account, first of all the needs of th widow, but it would also probably allow to a great degree the wishes of the man, the father, if h had already bequeathed his business to his son.

**MR. CHERNIACK:** Well, Mr. Anhang, I take you back to what 12 is supposed to say, and th is, "Equal sharing is a presumption." Now, it seems to me what little you've said, and when I s "little" I realize you've done that out of consideration for the lateness of the hour, that I'm und the impression — I infer from what you imply — that you are not in agreement with the princip of the presumption of equal sharing.

**MR. ANHANG:** I repeat, Mr. Chairman, that reading Mr. Cherniack that in the case of the commerci assets, the discretion is much wider than with respect to family assets, and one of the reaso I believe it to be the case is because it's intended, that in cases such as the one I just mentione where the father wishes to bequeath the family business to the son, providing the mother's interes are looked after, he can do so, without having to get the mother's consent.

**MR. CHERNIACK:** Mr. Anhang, is it fair to suggest that you've not answered my question. Is because you don't want to, and you don't have to, of course?

**MR. ANHANG:** I think I've answered the question.

**MR. CHERNIACK:** All right. Now you're saying that the bill should not interfere with the father decision as to what he wants to do with his estate insofar as his son is concerned.

**MR. ANHANG:** Subject to the widow's rights to get her half of the family assets, and perhaps pa of the commercial assets if the judicial discretion so suggests it.

**MR. CHERNIACK:** My problem, Mr. Anhang, is that I've always, and I have difficulty not considerin that the assets acquired during a marriage really belong to both, and all I'm involved in trying see is how the Conservative bill is protecting that principle, and I think inadequately, but protecti that principle with a very — to quote them — limited discretion of the court in exceptional case one description of which the Attorney-General used as bizarre, or clear inequity, that kind of statement. So, really, I'm trying to get you to either agree with the Conservative approach, whi I'm trying to describe to you as accepting in principle that a spouse has an equal right to t ownership of assets, both commercial and family, because of the accident of marriage, if you wa to call it an accident and of course sometimes it is . . . I have the impression you don't agr with it and I think I am pressing you, because if you don't agree with it and since you are not he to give legal advice alone, you are here to present a point of view on behalf of a group of peop who work in estate planning, I cannot force an answer but I really believe that your belief as what is right must influence the reaction you are giving us in relation to the bill.

I am now going on the premise, fully justified, that the Conservative bill is designed to recogni the rights of the two spouses to a marriage as being equal; where I disagree with them is the fa that they have watered it down and left loopholes and the rest of it. But I think you don't agr with that. I think you are saying, the father, having acquired a commercial asset, shall be able deal with it as he sees fit, in a discriminatory way, and I use that in the proper sense of the wo not in the bad sense, providing only that there is protection to the widow, I suppose under T Dower Act, or in some limited way.

**MR. ANHANG:** Plus one-half the family assets, don't forget those.

**MR. CHERNIACK:** Even in that there is discretion, isn't there? Do you believe then . . .

**MR. ANHANG:** I read that discretion, incidentally, Mr. Cherniack, to be that in the event the widow needs more than 50 percent, she will probably get it, as far as the family assets.

**MR. CHERNIACK:** You read that?

**MR. ANHANG:** I believe I do, yes.

**MR. CHERNIACK:** Good for you.

**MR. ANHANG:** But that is only the family assets.

**MR. CHERNIACK:** May I know then whether I am right in assuming that you do not go as far as the Conservatives do in recognizing the right of presumption, the actual right, not the good graces of the husband, but rather the actual right of the spouse to share equally in all assets, subject to discretion of a limited nature for variation in case of clear inequity or bizzare circumstances, or something like that? Are you in disagreement with that? I think in all fairness you ought to tell us so we will know how to judge what you are trying to tell us in relation to the faults here, in regard to retroactivity.

**MR. ANHANG:** I'm not here, Mr. Chairman, to give an interpretation of subsection 13, sub. (2). As I say in the business, call me at the office. But I think that there may be some discretion where a judge might well say that a commercial asset should go to the son because the will states it to be so; the widow is looked after sufficiently well; the onus shifts.

**MR. CHERNIACK:** But, Mr. Anhang, you disagree with that because you are saying that where the decision has been made already, no court should have the right to vary it, but the father — and I use the father in terms of the boss, the owner, the commander of the assets, the control, the fellow who doesn't have to go to his wife to get her to sign to the bank — having made the decision by setting up a family trust, which you or other members of your organization have drawn up, that that should be inviolate and not subject to even a minor discretion of the court.

**MR. ANHANG:** I am talking particularly, of course, with respect to existing marriages. We shouldn't forget that . . .

**MR. CHERNIACK:** We're talking about retroactivity, which . . .

**MR. ANHANG:** Existing marriages.

**MR. CHERNIACK:** Of course.

**MR. ANHANG:** I think that men and women who have taken the time and the trouble to settle their affairs in the past should not have the law interfere with them at this time.

**MR. CHERNIACK:** All right. I will conclude with one question, Mr. Anhang. What proportion of your experience — and I don't mean necessarily your office and your work, but you are speaking on behalf of, I don't know how many, estate planners — what proportion of those cases was the wife actually brought into the picture and told, the father has made decisions about commercial assets, do you agree? What percentage, what proportion?

**MR. ANHANG:** It may surprise you to know, Mr. Cherniack, that in most of those cases, the husbands have advised their wives and in fact, they have gone even further. In most cases, because of your Succession Duty Act, they transfer the family home into the wife's name. They actually did that. And if you took a summation of the assets at this point, you would probably get 50-50 right now, or close to it.

**MR. CHERNIACK:** Mr. Anhang, I know, because we forced them to, and I'm very happy we did. I'm sorry that no longer are they impelled to transfer the house to the wife because the Conservatives have wiped out that motivation.

**MR. ANHANG:** The deed is done.

**MR. CHERNIACK:** Yes, but there are a lot of marriages in the future where the Conservatives are

not protecting the ownership of the house for the wife during the marriage.

**MR. ANHANG:** In response to your question, in many cases, the wife is either a party to it or s has been asked to consent to something and it has already been done; she knows about it.

**MR. CHERNIACK:** Has she been a party to the planning process, to the decision making? Real I am surprised that you say — I think you said "in most cases" — I am surprised. I admit to y I am surprised. Has the wife been involved in the decision-making process?

**MR. ANHANG:** It's very hard to say in this case or that case. Of course, you know, if I said th in the last year there were 100 people and of that, 58 were and 42 weren't, I think it is very diffic to give you exact figures. First of all, the type of planning that you do is very complicated and is difficult to understand, even quite often for the husband, and for you to suggest to n —(Interjection)—

**MR. CHERNIACK:** Boy, what you said . . .

**MR. ANHANG:** It's true.

**MR. CHERNIACK:** You said "even for the husband."

**MR. ANHANG:** That's right.

**MR. CHERNIACK:** Well, you know what the other side of that says?

**MR. ANHANG:** That's right. I'll be hung, I think, outside the door by the ladies. —(Interjection) No, that's a sexist bias, I've just been told.

In seriousness, in many cases, it is a complicated estate plan and you do try to explain it people, yes, you do. In some cases they understand the entire impact and in some cases they perha don't. You do talk to women and you do try to explain things, yes, you do. And that's t answer.

**MR. CHERNIACK:** All right, then, in seriousness — . . .

**MR. ANHANG:** That's what I'm saying, in seriousness.

**MR. CHERNIACK:** If in the majority of cases, or a large number of cases, or in a goodly numb of cases the wife has been consulted to the extent that she could understand and has agre . . .

**MR. ANHANG:** I already indicated that in some cases the husband didn't understand either.

**MR. CHERNIACK:** Even, you said.

**MR. ANHANG:** That's right.

**MR. CHERNIACK:** And assuming that they therefore relied considerably on the advice given the by their legal and accounting advisors, would you not expect that this law being passed, that th will be back in your office confirming the agreement that they had arrived at just recently or befo because it was fair and understandable and they participated.

**MR. ANHANG:** Why should they be put to the trouble, Mr. Cherniack? Why should they be p to that trouble? They have already settled their affairs. Why not have the others who haven't settl their affairs —(Interjection)— I don't think it is that high — 99 percent.

**MR. CHERNIACK:** Mr. Anhang, you said you don't think it is that high. Would you say the populatic over 1 percent of the people have entered into family trusts and estate planning?

**MR. ANHANG:** I couldn't tell you the percentage.

**MR. CHERNIACK:** No.

**MR. ANHANG:** Do you know the percentage?

**MR. CHERNIACK:** No, but I have enough experience to know that very few, and only those people who have substantial estates and substantial assets are involved in estate planning. That's my limited knowledge.

**MR. ANHANG:** Mr. Cherniack, with the estate tax laws, when you had your $150,000 limits, you didn't have to own very much to worry about estate planning.

**MR. CHERNIACK:** Well now, Mr. Anhang, that we don't have the problem of estate taxation, how do you earn a living. That's not fair.

**MR. ANHANG:** Oh, I get by. Appearing before committees like this.

**MR. CHAIRMAN:** Mr. Mercier has a question.

**MR. MERCIER:** Mr. Anhang, could you clarify your concern about Section 9 because I think the intention of that Section was to in fact avoid double sharing of an asset that had already been shared equally by agreement between the spouses or by one sharing of assets under the Act.

**MR. ANHANG:** I think the problem is the word "shared" in the first line. "This Act does not apply to any asset that has already been shared." When you transfer it across, it's been gifted, so that my concern is that if it's been shared it may fall back in, that's all. I think if you were to use the word " "gifted," you'd be better off. You have to take out "equally between spouses." Where it has been gifted to the other spouse then it does not . . .

**MR. MERCIER:** We'll have to give that further consideration then. The Chairman who is unable to ask questions because he's the Chairman has asked me to ask you one further question. You may have some expertise in the field of pensions and life insurance policies and he points out in particular an amendment to The Insurance Act in 1962 which allowed an owner to transfer ownership to a life insurance policy. Do you see any particular problems in the sharing of pension plans or life insurance policies or any similar kinds of investments? And if you haven't given that consideration, you may not be in a position to answer, I appreciate.

**MR. ANHANG:** What you're asking is, what would the impact be if those three assets were transferred to family assets, that's what you are asking, I guess.

**MR. MERCIER:** There's been some concern expressed about locked-in pension plans.

**MR. ANHANG:** You may have difficulty with plans that are vested; you may have to redo a plan, make an amendment to it. Life insurance policies are a little different. You don't have to have the consent of the beneficiary any more, of course, and then there is the question of who paid for the policy as to ownership. Unless you deemed it to be a trust on behalf of both, that's the only way you could do it, under the policy of life insurance. Under the pension plan, I think the only way you could do it is to amend your plan. I don't see any other way offhand.

**MR. MERCIER:** Thank you.

**MR. CHAIRMAN:** Mr. Corrin.

**MR. CORRIN:** . . . question. I must say, Mr. Anhang, I'm a bit confused as a result of your exchange with Mr. Cherniack. In your reading of Section 13(2) and the discretions vested in the courts therein with respect to commercial assets, is it your contention that the Act provides too little discretion or too much discretion? I couldn't decide whether your concern related to estate plans being ruined — for lack of a better term — upset as a result of too little discretion and the judge being forced to lock the parties into an equal sharing regime, or that you were evincing a concern about too much discretion and therefore the judge being able to upset the plan in that respect. What's your feeling as a lawyer, what's your feeling as to the discretion that is vested in the court? Too much, too little, or just right?

**MR. ANHANG:** It sounds like Goldilocks and the Three Bears. I think we'll have to wait and see what the judges do with the discretion that they've been given. We'll live with it as it is for now.

**MR. CORRIN:** I'm sorry, I didn't . . .

**MR. ANHANG:** I say, we'll see what the judges do with the discretion that's been given to the in this Section. We'll live with this as it is now. I think that we have to wait and see what the judg do with it, that's all I can say.

**MR. CORRIN:** You have no opinion as to whether the amount of discretion is appropriate not?

**MR. ANHANG:** I think it's appropriate and we'll see what the judges do with it. That's what I' saying, yes. I think it's appropriate.

**MR. CORRIN:** I see. It's the principle then, it's actually the principle behind that bill that upse you; it's the equal sharing principle.

**MR. ANHANG:** That's right. Well, it depends . . . Well, I didn't go that far. I didn't say that.

**MR. CORRIN:** No, well, I thought that was implicit in your remarks though.

**MR. ANHANG:** No.

**MR. CORRIN:** You're satisfied then, on behalf of the Estate Planning Council, that the princip is sound, that equal sharing is a worthy goal and concept.

**MR. ANHANG:** Subject to the discussion and the interchange with Mr. Cherniack.

**MR. CORRIN:** You're running us about.

**MR. CHAIRMAN:** Are there any further questions? If not, thank you very kindly, Mr. Anhang.

That concludes almost 27 hours of hearings and some 50 delegations. On behalf of the Committe I would like to thank all those persons that put many many hours of efforts into their presentatio and especially the large number of you that have sat through almost every one of the hours th we have sat through. It's obvious that your interest is there.

So this concludes the public presentations regarding Bills Nos. 38, 39, 40, 41 and 42. Tl Government House Leader will announce in the Legislature tomorrow when this Committee will again to go through these bills on a clause by clause study.

**MR. SPIVAK:** Committee rise.

**MR. CHAIRMAN:** Committee rise.